



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/30UK/HMF/2019/0076
MAN/30UK/HMF/2019/0078
MAN/30UK/HMF/2019/0079**

Property : **2 Christian Road, Preston, Lancashire PR1
8NB**

Applicants : **Emily Rangeley
Kirsten Rix
Charlotte Rangeley**

Respondent : **Joanne Proctor**

Type of Application : **Applications for Rent Repayment Orders by
Tenants**
Housing and Planning Act 2016 - Section 41(1)

Tribunal Members : **Mr S Moorhouse LLB
Mr WA Reynolds MRICS**

Date of Decision : **15 July 2020**

DECISION

DECISION

The tribunal makes a rent repayment order in favour of each of the three Applicants in the sum of £524, such sum to be paid by the Respondent to each Applicant within 28 days of the date of this decision.

REASONS

The Applications

1. By their applications respectively dated 10, 19 and 20 September 2019 ('the Applications'), Emily Rangeley, Charlotte Rangeley and Kirsten Rix ('the Applicants') each seek a Rent Repayment Order pursuant to section 41(1) of the Housing and Planning Act 2016 ('the 2016 Act') in relation to their tenancy at 2 Christian Road, Preston, Lancashire PR1 8NB ('the Property'). The Respondent was named in the application forms as Joanne Proctor ('the Respondent'), who purchased the Property on 10 August 2018 and became their landlord at that time.
2. Directions were issued on 12 November 2019 pursuant to which each of the Applicants, and the Respondent, made written submissions.
3. The Tribunal met on 25 February 2020 to consider the written representations and supporting evidence contained in the parties' submissions. The Tribunal considered it unnecessary in view of the matters in issue to conduct an inspection.

Further Directions

4. The Tribunal noted in considering the papers that the tenancy agreement in this case provided for occupancy for the term 1 August 2018 to 30 June 2019. The Respondent accepts that from 1 October 2018 the Property met the criteria for mandatory licensing, following changes introduced by the Licensing of Homes in Multiple Occupation (Prescribed Description) (England) Order 2018. The Respondent does not consider there to have been a licensing requirement prior to 1 October 2018.
5. The Applicants seek repayment of rent for a period commencing 1 August 2018, contending that their tenancy was illegal from 1 August 2018 and that neither the Respondent nor the managing agent had the required licence. The Respondent has supplied documentary evidence to show that she did not acquire the Property until 10 August 2018. The issue of whether there was a licensing requirement from 10 August 2018 to 1 October 2018 was potentially relevant to the Tribunal's overall decision.
6. Accordingly, Further Directions were issued by the Tribunal seeking any further representations by the Applicants to substantiate why, in their view, the Property was required to be licensed prior to 1 October 2018, and clarification as to the use of the basement at the Property (the Tribunal having considered this to be potentially relevant). A submission in response was invited from the Respondent. In accordance

with Further Directions the three Applicants jointly submitted a single statement and the Respondent submitted a statement in response.

Paper Determination

7. Rule 31(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be determined on the papers provided that the parties consent (or do not object when a paper determination is proposed). In this case the parties were content that the matter be determined on the papers and the Tribunal considered it appropriate to do so. Although the parties were not legally represented the issues to be decided were clear from the parties' submissions which set out their competing arguments sufficiently clearly to enable conclusions to be reached properly in respect of the issues to be determined, including those issues of fact that it was necessary to determine.

Applicant's Submission

8. The basis for the Applications was that the Applicants had rented accommodation at the Property from 1 August 2018 to 30 June 2019, and that Preston City Council had confirmed the Property to have been unlicensed from August 2018 to April 2019. It was submitted by the Applicants that an HMO licence granted to the Respondent on 27 June 2019 was valid from 26 April 2019.
9. The Applicants submitted a copy of the assured shorthold tenancy agreement entered into on 27 November 2017 between a previous owner as landlord, and each of the Applicants together with two others, as tenants, at a total rent of £19,200 for the term. An additional amount was paid as a deposit (total £1000) to be held by The Deposit Protection Service. The application forms completed by the Applicants indicated that the total rent was paid by the 5 tenants in equal shares, that each tenant received a rent rebate of £100 per term related to ongoing repair work and that one tenant (not one of the Applicants) had made an additional payment to extend her stay. The assured tenancy agreement identified the managing agent as Kingswood Sales & Lettings.
10. Each Applicant seeks repayment of an outstanding part of their contractual deposit (amounts varying from £165.36 to £200 per Applicant) together with a rent repayment. The rent repayment sought is calculated in the application forms to be £2,592.20 per Applicant, and in the written submissions to be £2,987.84 per Applicant (calculated as 38 weeks rent at £78.63 per week after agreed rent deductions). Evidence of payment was provided. It is submitted that any delays in payment were due solely to the delays encountered attempting to agree rent reductions related to ongoing repair work, given that contractual repairs had not been completed at the commencement of the tenancy.
11. The Applicants also supplied supplementary information, documents and pictures relating to issues with the condition of the Property and health and safety concerns.
12. In response to Further Directions the Applicants submit that during their occupancy the Property was of 3 storeys, occupied by 5 or more persons forming at least 2 separate households and was therefore required to be licensed prior to the changes introduced from 1 October 2018 by the Licensing of Homes in Multiple Occupation (Prescribed Description) (England) Order 2018. In this respect the Applicants submit

that the basement should be taken into account as a storey for the reasons given below:

13. It is submitted that Kingswood had informed the tenants prior to their occupancy that the basement could be used as they wished, and that the previous tenants had used it occasionally for socialising. As such it had seating, a lamp and a table. It is submitted that the basement was painted, carpeted and had wall light fittings and a fireplace, indicating that it had previously been used as living space. It is submitted that it was also apparent that it was being used as a storage room as it contained old wall art, boxes and other miscellaneous items.
14. The Applicants submit that when they moved in the basement smelt horribly of damp and was unclean, still with rubbish including boxes, food wrappers and bottles from the previous tenants. Also, builders had used it for storage as there were paint cans on the stairs leading down to the basement. The basement also contained the fuse box and, gas and electricity meters. The Applicants submit that the basement was included as a room on the inventory when they moved in and that they used it for storage for less needed belongings such as suitcases. They submit that the basement has a fireplace and wall light fittings and supplied a photograph they state was included as part of the inventory showing painted walls, carpeting, and contents including a table, chair and cushions, with an empty picture frame and other debris on the floor. The Applicants submit also that they were advised by the Council, after 1 October 2018, not to enter the basement due to damp.

Respondent's Submission

15. The Respondent's written submission set out a preliminary point concerning liability and went on to respond to the Applications pursuant to the initial Directions.
16. On the issue of liability, the Respondent stated that nothing in her written statement should be taken as an admission of guilt of any offence which triggers a Rent Repayment Order. The offence alleged in the Applications came under section 72(1) of the Housing Act 2004 ('the 2004 Act'). It was submitted that the Tribunal would have to be satisfied beyond all reasonable doubt that the offence had been committed, and that the Respondent did not have a valid defence, the effect of which would mean no liability. In this respect the Respondent accepted that the Property was unlicensed until 16 April 2019 but pointed to the statutory defence of 'reasonable excuse' and asked that the Tribunal consider this.
17. The Respondent confirms that she was aware at the time of her purchase on 10 August 2018 that the property had been let to 5 students. The Respondent states that she does not own other rental properties, does not consider herself to be a commercial landlord and since she does not live in Preston she appointed Kingswood on a full management contract.
18. In relation to the deposit, the Respondent submits that this was taken for the usual reasons, as security for breach/repair/rent etc and was dealt with by agreement at the end of the tenancy, and that it is not relevant to the proceedings as it was not rent.
19. The Property is submitted to have 5 bedrooms and 2 floors and not therefore to be subject to HMO licensing until a change in law on 1 October 2018. The Respondent

states that she was aware at the time of her purchase of the forthcoming change in the law and as a new landlord she trusted that she could rely on Kingswood to advise her through the process and help her complete the application.

20. The Respondent states that she initiated the process of the HMO application in October 2018 having contacted Preston City Council to discuss the process and request an application form. The Respondent acknowledges that she could have started the process sooner but assumes it would be relatively quick and that she could rely on Kingswood. The Respondent states that between 10 August 2018 and the time her application was submitted on 20 December 2018 her primary focus was on making sure the Property was tenantable and addressing issues agreed by the previous owner with tenants at the start of their tenancy but not dealt with.
21. The Respondent states that Kingswood were slow and unresponsive, obstructing and hindering her completion of the application. She remained in contact with Preston City Council to keep them up to date on her situation. On 25 February 2019 she emailed the Council and was informed the application was incomplete and they had contacted Kingswood on 4 February 2019 requesting further documentation. She also removed Kingswood from the application by agreement with the Council as they refused a DBS check, later discontinuing their appointment as managing agent. The Respondent states that the Council eventually had a complete application on 16 April 2019 and submits that an HMO licence is valid upon receipt of the completed application, citing another First-tier Tribunal case that took this view.
22. The Respondent goes on to comment on the repair and condition issues, submitting that she should not be held responsible for the failures of the previous landlord, and that she made honest efforts to address the issues raised by the tenants. Relevant email correspondence is supplied. The Respondent also supplied details of outgoings related to utilities and other expenditure related to the Property.
23. On the issue of conduct the Respondent submits that any failures were inadvertent, not deliberate, she was let down by her managing agents and that she treated her tenants fairly deciding not to impose penalties for late payment of rent. It is submitted further that the Property is now licensed and that the Respondent has continued to meet the terms and conditions, with no complaints from the current tenants. In relation to the tenants' conduct the Respondent refers to lack of cleanliness and damage to the walls of one bedroom, all addressed through agreed deductions from the deposit. A rent reduction of £1500 was agreed and applied to the 3 instalments of rent due.
24. The Respondent submits on the issue of financial circumstances that she is not a commercial landlord and will face any repayment personally. It is submitted that the Respondent has never been convicted or cautioned for any offence, including the 'listed' offences for which a Rent Repayment Order may be made, and that she has never had any regulatory action against her in connection with the ownership and letting of property.
25. In response to Further Directions the Respondent submits that the basement does not meet Council requirements for use as living space because it does not have a window opening directly to the external air. The Respondent submits that when she bought the Property the basement was not used in connection with and as an integral

part of the HMO because it was unsuitable as living accommodation or storage due to filth, damp, junk and lack of conversion, and that it was used by the Applicants only for access to the meters. The Respondent states further that the Property was marketed to her by Kingswood as comprising two storeys.

The Law

26. The change in the law on licensing referred to earlier came into effect on 1 October 2018 and is set out in the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. The new definition removed the previous requirement that the HMO (or part) comprises three storeys or more, retained the requirement that the HMO is occupied by 5 or more persons living in 2 or more single households, and incorporated other tests related to the definition of an HMO.
27. The previous 'three storeys or more' requirement was prescribed by the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006. This included provision that a basement could be classed as a 'storey' in the circumstances set out at paragraph 3(3)(a) of the Order. An extract is included in the Schedule to this decision document.
28. The relevant statutory provisions relating to Rent Repayment Orders are contained in sections 40, 41, 43 and 44 of the 2016 Act, extracts from which are set out in the Schedule.
29. Section 40 identifies the relevant offences, including an offence under Section 72(1) of the 2004 Act (control or management of unlicensed HMO). Section 72(1) provides that an offence is committed if a person is a person having control of or managing an HMO required to be licensed which is not licensed. Subsection (5) provides that in proceedings against a person for such an offence it is a defence that he had a reasonable excuse for having control or managing the house in those circumstances. Subsection (4) also provides a defence where at the material time an application for a licence had been duly made. In this respect section 63(2) of the 2004 Act provides that an application must be made in accordance with such requirements as the authority may specify.
30. Section 44(4) lists considerations which the tribunal must 'in particular' take into account in determining the amount of any repayment - conduct of the landlord and tenant, financial circumstances of the landlord and whether the landlord has been convicted of an offence to which that chapter of the 2016 Act applied. The use of the words 'in particular' suggests that these are not the only considerations the tribunal is to take into account.
31. The Upper Tribunal decisions in *Parker v Waller and others* [2012] UKUT 301 (LC) and *Fallon v Wilson and others* [2014] UKUT 300 (LC) relate to the amount of a rent repayment order under the 2004 Act. In the 2004 Act, section 74(4) provides that (where there has been no conviction) the tribunal shall order such amount as is reasonable in the circumstances. Whilst section 44 in the 2016 Act does not use the word 'reasonable', given the similarities between section 44 and the other provisions of section 74 of the 2004 Act it is reasonable to conclude that the principle of

'reasonable amount' applies to section 44 and that these Upper Tribunal decisions remain relevant.

32. In the *Parker* case the lower tribunal had ordered 100% rent repayment. The President stated that the critical issue was what criteria should govern the meaning of 'such amount as the tribunal considers reasonable in the circumstances' as used in section 74(5) of the 2004 Act. That depended on its purpose, and for that the President turned to Hansard, discovering three purposes: (1) to provide for further penalty additional to any fine, (2) to help discourage illegal letting; and (3) to resolve problems that would arise from a tenant withholding rent. He then decided that:

- any fine imposed is a relevant factor
- there is no presumption or starting point of 100% refund
- the tribunal should consider the length of time an offence was being committed
- the benefit obtained by the tenant of having the accommodation is not a material consideration
- payments in respect of utilities should normally be excluded
- the culpability of the landlord is relevant - a professional landlord is expected to know better.

33. In *Parker* the President awarded 75% of the landlord's profit less his fine.

34. In the *Fallon* case Judge Cousins referred to *Parker* and confirmed there was no presumption that the repayment should be of the full amount received by the landlord unless there are good reasons why it should be. The tribunal should take an overall view of the circumstances in determining what amount would be reasonable. He went on to confirm that sums paid out by the landlord on utilities and the like and the amount of any fine should be taken into account, as should the profit level.

Findings and determination

35. Section 40(3) of the 2016 Act sets out in a table the offences which would entitle a tenant (or local housing authority) to apply to the First-tier Tribunal for a rent repayment order against the offender pursuant to section 41(1).

36. Row 5 in the table describes an offence under section 72(1) of the 2004 Act, generally described as the control or management of an unlicensed HMO. There is no specific allegation by the Applicants, nor is there evidence before the Tribunal, that the Respondent has committed any of the other offences described in the table. The Tribunal therefore focuses its attention upon the offence described at row 5.

37. The Tribunal finds that the Respondent purchased the Property on 10 August 2018. Prior to this she was not a person in control of, or managing the Property. Accordingly the offence described at row 5 was not committed prior to 10 August 2018.

38. In relation to the period 10 August 2018 to 30 September 2018, the Property was not required to be licensed unless it comprised 3 storeys or more. It is common ground that the Property comprises ground floor and first floor accommodation and that there is a basement.

39. Applying the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 the basement was not being used 'wholly or partly as living accommodation' - on the Applicants' own submission the basement smelt horribly of damp, was unclean and contained rubbish. The Applicants submit, and the Respondent denies, that they placed items such as suitcases in the basement, being items that they would not normally need access to. The Tribunal considered that a basement area used to the limited extent claimed by the Applicants, and to which access was not normally required, could not properly be considered to be an 'integral part' of an HMO.
40. The Tribunal did not consider the basement to have been constructed, converted or adapted for use as 'living accommodation'. Notwithstanding evidence that the basement had previously been painted and carpeted, and the Applicants' references to a fireplace and wall light fittings, the basement had limited ventilation, no external window and would not in the Tribunal's view have been habitable as living accommodation.
41. On the final test at paragraph 3(3) of the 2006 Order, it was common ground that the basement did not constitute the only or principal entry from the street.
42. The Tribunal finds therefore that whilst the Respondent owned the Property and was landlord to the Applicants throughout the period 10 August 2018 to 30 September 2018 (inclusive), the Property was not required to be licensed during that period.
43. It is not disputed by the Respondent that she was required to hold an HMO licence from 1 October 2018. She did eventually apply and a licence was issued on 27 June 2019. The Tribunal accepts that the Respondent encountered significant issues with her managing agent which delayed her application. The Respondent was asking Kingswood for help completing the form at 29 August 2018 (as evidenced by the email correspondence at page 59 in the Respondent's submission) and the Tribunal accepts that Kingswood were not forthcoming with assistance or the information she required.
44. The Respondent had a responsibility to apply by 1 October 2018 at the latest to avoid being in breach of the new licensing requirement. The Tribunal find that the delay was not entirely attributable to the managing agent.
45. The Respondent was aware that there was a licensing requirement being introduced from 1 October 2018 when she purchased the Property in August 2018 but only obtained the application pack from Preston City Council after the Property was required to be licensed - email correspondence confirms that the application form was requested in October 2018 (page 47) and that the licence application pack was posted to the Respondent by the Council on 24 October 2018 (page 45). The requirement for DBS checks was raised by the Respondent with Kingswood on 30 October 2018.
46. The Respondent could have done more at the time she was purchasing the Property, and once she became the owner, to ensure that Preston City Council received a completed licensing application by 1 October 2018. In these circumstances the Tribunal finds that the difficulties encountered by the Respondent do not amount to a 'reasonable excuse' within the meaning of section 72(5) of the 2004 Act.

47. The Tribunal finds that the completed application for an HMO licence was received by the Council on 16 April 2019, evidenced by an email from the Council stating 'final item of the application paperwork received 16 April 2019'. Applying section 72(4)(b) of the 2004 Act any offence under section 72(1) would have ceased to be committed at that date.
48. On the evidence before it, the Tribunal finds beyond reasonable doubt that an offence under Section 72(1) of the 2004 Act was being committed during the period 1 October 2018 to 16 April 2019. It is apparent from email correspondence that this is not something that Preston City Council would have pursued in the circumstances (page 47) and it is the Tribunal's view that had the matter been pursued there would have been significant mitigations in view of the Respondent's situation.
49. Having determined that an offence under section 72(1) of the 2004 Act was committed, the Tribunal finds that the requirements of section 41(1) of the Act have been met. The Tribunal finds also that the requirements of section 41(2) of the 2016 Act are met- it is common ground that the Applicants were tenants of the Property during the entire period 1 October 2018 to 16 April 2019. The Applicants were therefore entitled to make the Applications.
50. Having found beyond reasonable doubt that an offence listed in section 40(3) has been committed, the requirements of section 43(1) of the 2016 Act are met and the Tribunal may make a Rent Repayment Order.
51. In this case the Tribunal considers that it is appropriate to make a Rent Repayment Order on the ground that the Respondent committed an HMO licensing offence. In reaching this decision the Tribunal is mindful of the purpose behind such an Order recorded in Hansard and referred to earlier, namely (1) to provide for further penalty additional to any fine, (2) to help discourage illegal letting; and (3) to resolve problems that would arise from a tenant withholding rent.
52. The amount of any repayment is to be determined by the Tribunal pursuant to section 44. Provisions within section 46 of the 2016 Act requiring a maximum repayment in the event that the Tribunal makes an order do not apply in the present case because the offence is not one of those specified at section 46.
53. Section 44(2) of the 2016 Act prescribes that (for the type of offence in the present case) any repayment must relate to rent paid by the tenant in respect of a period (not exceeding 12 months) during which the landlord was committing the offence. Having regard to its earlier findings the Tribunal determines this period to be 1 October 2018 to 16 April 2019. It was not disputed that the rent had been paid (less agreed rebate).
54. The particular considerations at section 44(4) of the 2016 Act relate to conduct of both parties, landlord's financial circumstances and any conviction(s) to which that Chapter of the 2016 Act applies.
55. The Tribunal accepts that the Respondent has never had a conviction or caution on any matter, including one listed at section 40(3).
56. In relation to 'financial circumstances', the Tribunal finds that the Respondent is not professional landlord and that during the period of the Applicants' tenancy expenditure related to the Property and its management significantly exceeded

income. Outgoings (not including utilities) are stated to be £18244.15 (p161 of the Respondent's submission) against income of £19,200 (gross) and the rent rebates and utility costs significantly exceed the difference.

57. A calculation is supplied by the Respondent at page 121 of the Respondent's submission. This identifies the gross rent as £19,200, deducts rent paid to the previous owner for the period 1 August 2018 to 9 August 2018 (inclusive) of £514.29, deducts rent rebates given by the Respondent totalling £1500 and deducts utility costs. The Tribunal accepts that in considering any rent repayment, it is appropriate to deduct rent paid to the previous owner, the rent rebates and utility costs, and accepts the Respondent's representations and supporting evidence as to the amounts.
58. The total rent received by the Respondent (after these deductions) per tenant of the Property comes to £2880.56. Dividing this by 325 days (not 334 days as in the Respondent's calculation) gives the rent received by the Respondent per day (after deductions) during her period as the Applicants' landlord, namely £8.86. The period of the offence was 197 days. The apportioned rent received per tenant for the period of the offence therefore comes to £1746.
59. Turning to the conduct of the parties, the Tribunal finds that the Respondent made considerable efforts to resolve the issues with the Property inherited by her, being inhibited in carrying out necessary work by the Property being tenanted, but endeavouring to do what could reasonably be achieved and agreeing rent rebates related to disruption suffered. The Respondent's situation was compounded in relation to licensing requirements by being reliant upon agents who held relevant information and whose cooperation was essential, eventually removing them from the licensing application by agreement with the Council.
60. The Applicants encountered numerous problems related to work being carried out at the Property, or not yet done, understandably raising numerous complaints. It is open to the Tribunal to reduce any proposed rent repayment as a consequence of significant misconduct on the part of the tenants, but that is not considered appropriate in this case.
61. As per the *Parker* and *Fallon* cases it would be inappropriate to make a presumption or take a 'starting point' of 100% repayment for the period in which the offence was committed. Whilst the Tribunal considers it appropriate to make a rent repayment order for the reasons given earlier, a modest percentage of the total rent per tenant for the period of the offence (after the deductions referred to earlier) is considered to be appropriate. This reflects the issues inherited by the Respondent and endeavours she has made with regard to the Property, the lack of financial benefit during the tenancy period, the absence of any conviction or caution, and the significant mitigating factors concerning the delay in submitting her licensing application.
62. In the Tribunal's view the percentage needs to be a material one, but a modest percentage of 30% is considered appropriate, applied to the apportioned rent per tenant after deductions of £1746.
63. The Tribunal does not reach findings concerning any outstanding deposit held under the Deposit Protection Scheme. The Tribunal does not have Jurisdiction in this respect and refers the Applicants to the terms of their tenancy agreement.

64. The Tribunal accordingly makes rent repayment orders in favour of each of the Applicants in the sum of £524 (being 30% of £1746), to be paid by the Respondent to each Applicant within 28 days of the date of this decision.

S Moorhouse

Tribunal Judge

Schedule

Housing and Planning Act 2016

Section 40

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

- (a) repay an amount of rent paid by a tenant, or
- (b).....

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 “control or management of unlicensed HMO”

Section 72(1) provides: (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

Section 41

(1) A tenant.....may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if-

- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (whether or not the landlord has been convicted).

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.

(3) The amount that the landlord may be required to pay in respect of a period must not exceed-

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) in determining the amount the tribunal must, in particular, take into account-

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018

Paragraph 3(3)

The following storeys shall be taken into account when calculating whether the HMO or any part of it comprises three storeys or more -

(a) any basement if -

- (i) it is used wholly or partly as living accommodation;
 - (ii) it has been constructed, converted or adapted for use wholly or partly as living accommodation;
 - (iii) it is being used in connection with, and as an integral part of, the HMO; or
 - (iv) it is the only principal entry into the HMO from the street.
- (b).....