



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

Case references: MAN/00BY/HMF/2019/0085
MAN/00BY/HMF/2019/0086

Property: Apartment 7 Windsor House, 2 Clint
Road West, Liverpool L7 5DB

Applicants: Joe Brookman
Katie Hallam

Respondent: Trophy Homes Limited

Type of Applications: Applications for a rent repayment order
under Section 41 of the Housing and
Planning Act 2016

Tribunal Members: Judge J M Going
J Faulkner FRICS

**Dates of
Deliberations:** 2 June 2020 and 7 July 2020

Date of Decision: 7 July 2020

DECISION

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The Decision and Order

Trophy Homes is ordered to repay :-

- (1) rent of £1782.22 together with fees of £100 to Mr Brookman,
and
(2) rent of £2574.22 together with fees of £100 to Ms Hallam.**

Background

1. By Applications (“the Applications”) dated 16 and 19 October 2019 respectively the Applicants (“Mr Brookman and Ms Hallam”) each applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order in respect of rents paid by Mr Brookman and Ms Hallam to the Respondent (“Trophy Homes”) as the landlord of the property.

2. The Tribunal on 12 November 2019 issued Directions to the parties stating that the matter would be dealt with on the basis of the written representations and documentary evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing. After allowing various extensions of the times set out in the Directions, and without there being any engagement from Trophy Homes, the Tribunal convened on 2 June 2020 and 7 July 2020 to consider the Applications.

3. The Tribunal did not inspect the property, but understands that it is a single storey six bedroom flat with a shared bathroom and kitchen facilities in a purpose-built apartment block.

Facts

4. On 1 April 2015 Liverpool City Council (“the Council”) introduced citywide selective licensing in accordance with part 3 of the Housing Act 2004 meaning that all privately rented properties in the city required a licence.

5. Since October 2006 it had also been a legal requirement for specified Houses in Multiple Occupation (“HMOs”) meeting certain designated tests to be licensed under part 2 of the Housing Act 2004 (“the 2004 Act”) with a mandatory HMO licence.

6. On 1 October 2018 the types of buildings requiring a mandatory HMO licence were extended to include those on a single storey, meaning that a property required a mandatory HMO licence if it was occupied by five or more people living in two or more households and containing shared facilities such as a kitchen bathroom or toilet.

7. Mr Brookman and Ms Hallam, with three other students, entered into an Assured Shorthold Tenancy Agreement (“the Tenancy Agreement”) with Trophy Homes in March 2018 for a term beginning on 26 August 2018 until 30

June 2019. The rent payable was £98 per person per week for the 44 week term of the tenancy, and payable in instalments.

8. Clause A3 of the Tenancy Agreement stated that “The Landlord will pay for any charges arising from the use of: – standard Internet Access as well as: – Electricity, Gas, Water”.

9. Clause B4 stated that the Tenant will pay charges for the telephone, any Council tax and television licence and “ an allowance for energy is included in the rental payment equivalent to 10% of the annual rent.... The Landlord reserves the right to charge the Tenant over and above this allowance where usage is deemed to be exceptionally unreasonable.”

10. As referred to in the Applicants’ submissions following a complaint to the Council as regards inadequate rubbish removal arrangements, the Council began an investigation as to whether the property had been properly licensed.

11. On 27 February 2020 at the Liverpool, Knowsley and St Helens Magistrates’ Court, Trophy Homes was found guilty of the offence, under Sections 72 (1) and (6) of the 2004 Act of having control or management between 26 August 2018 and 30 June 2019 of the property, an HMO which was required to be licensed under part 2 of the 2004 Act, but which was not so licensed. Trophy Homes pleaded guilty, and was fined £5000 for each of nine properties which it had failed to licence (i.e. a total £45,000), and ordered to pay costs of £3500.

12. Despite reminders and warnings as the consequences of non-compliance with its Directions, Trophy Homes has not provided any evidence, submissions or responded to the Applications.

The Applicants submissions

13. Copies of emails show that at the start of the tenancy the Applicants raised various issues with Trophy Homes, stating that the property was not fully ready, had not been properly cleaned, was missing some furniture, appeared shoddy in parts, and that a shower and light were not working. They also stated that they were very unhappy that the flat that they had been allocated was different to that which they had been led to believe would be the one that they would be moving into. The email stated that they felt misled into signing for the wrong property, because there were no numbers on the doors to the different flats at the time of the viewing. The Applicants also raised concerns about bin collections and the lack of provision for postal deliveries.

14. The shower and light were repaired in a matter of days and the missing furniture replaced within approximately a fortnight.

15. The tenants had also raised their complaints with Liverpool Student Homes, an organisation established by various Liverpool Universities as a support service for students seeking or living in private rented accommodation, which operates an accreditation scheme, and which Trophy Homes is registered with.

16. As time went on the tenants decided that they should request a rent reduction based on the differences between the property and that which they had been shown prior to signing the Tenancy Agreement. Their email to Trophy Homes on 4 March 2019 repeated their previous complaints and suggested that the rent should as a consequence be reduced from £95 to £80 per week per tenant.

17. The sequence of events relating to the complaints is shown by copies of the relevant emails and supported by a Witness Statement by Ian Humphreys, a Standards Officer for Liverpool Student Homes.

18. Following the complaints made in respect of the facilities for rubbish removal, the Council checked its licensing records, and found that the property was not licensed either under part 2 or part 3 of the 2004 Act.

19. Christopher Williams, a senior Compliance Officer in the Council's Private sector Housing Department, provided a Witness Statement confirming his inspection of the property in May 2019 and of the Council's records and correspondence.

20. Each of the Applicants provided bank statements and other documentary evidence to confirm the rental payments made during the term of the tenancy.

21. Trophy Homes did not agree to the suggestion of a rent reduction, but each Applicant reduced the final instalment, due under the Tenancy Agreement, by £792.

22. The papers then show Debt Guard Solicitors wrote to Ms Hallam on 3 October 2019 stating that unless Trophy Homes "receive payment of the outstanding debt within seven days of this letter it is our intention to issue legal proceedings against you". Ms Hallam thereafter paid a further £792.

23. In an email to the Tribunal Office on 24 March 2020 Mr Brookman stated "we now have confirmation that the Respondent has been successfully prosecuted by Liverpool City Council".

24. The Tribunal subsequently obtained Memoranda of the convictions referred to in paragraph 11 above, from the registers of the Merseyside Magistrates' Court.

Law

25. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

26. The list, repeated in the Directions, includes the offences under Section 72 (1) of the 2004 Act of controlling or managing an unlicensed HMO and under Section 95 (1) of the 2004 Act of controlling or managing of an unlicensed house.

27. Where the offence was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.

28. Section 41 (2) provides that 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.

29. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

30. When the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

31. If the order is made on the ground that the landlord has committed the offence or offences of controlling or managing an unlicensed HMO or an unlicensed house, the amount must relate to rent paid during a period not exceeding 12 months, during which the landlord was committing the offence (section 44 (2)).

32. Section 44(3) confirms that the amount that the landlord may be required to repay must not exceed:

- (a) the rent paid in respect of the period in question, less
- (b) any relevant award of universal credit paid (to any person) in respect of rent and the tenancy during that period.

33. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44 (3) states that it 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 any of the specified offences.

The Tribunal's Reasons and Conclusions

34. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

35. None of the parties requested an oral hearing and, having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. Although the parties are not legally represented, the issues to be decided have been clearly identified in the papers enabling conclusions to

be properly reached in respect of the issues to be determined, including any incidental issues of fact.

36. The next issue for the Tribunal to address was whether it is satisfied, beyond reasonable doubt, that Trophy Homes has committed an offence or offences mentioned in Section 40(3) of the 2016 Act.

37. The sole evidence has been provided by the Applicants. The documentation is persuasive providing clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

38. The Tribunal is satisfied, beyond reasonable doubt, from the evidence provided the Council, and copies of the Magistrates' Court records, that Trophy Homes committed the offences of controlling or managing the property without the necessary selective licence throughout the whole of the term of the tenancy i.e from 26 August 2018 until 30 June 2019, and without the necessary mandatory HMO licence from 1 October 2018 until 30 June 2019.

39. Because these offences were committed within the period of 12 months before the Applications, the Tribunal is clear that it does have jurisdiction.

40. The Tribunal (particularly having regard to the objectives behind the statutory provisions i.e. to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property, to help prevent a landlord from profiting from renting properties illegally, and resolve the legal problems arising from the withholding of rent by tenants) is satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.

41. Having decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent which had to be repaid.

42. The maximum possible amount for which a rent repayment order could be made equates to the full amount each Applicant has paid in respect of the term of the tenancy. This is because Trophy Homes was committing an offence or offences throughout the whole of the term and the term itself did not exceed 12 months.

43. The Tribunal is satisfied from the copies of bank statements and other evidence supplied that Mr Brookman made rental payments totalling £3520, and that Ms Hallam made payments totalling £4312. There is nothing to indicate that either Applicant was in receipt of universal credit which would need to be deducted from those maximum amounts.

44. It is important to note however that the Tribunal is not required to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount.

45. Useful guidance has been provided by George Bartlett QC, the President of the Upper Tribunal in the case of *Parker v Waller* (2012) UKUT 301 (LC).

("Parker v Waller"). This was a decision under sections of the 2004 Act where the wording was similar, but not identical, to the relevant provisions under the 2016 Act. The President, having referred to Hansard, identified the various statutory objectives as referred to in paragraph 40 above, and made it clear that there are no presumptions that a rent repayment order should for be the total amount received by landlord during the relevant period, or that repayment of the maximum amount should be made unless there were reasons for not doing so.

46. The President emphasised that the Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. It was stated the fact that the tenant would have had the benefit of occupying the premises during the relevant period is not a material consideration, but that the circumstances in which the offence is committed is always likely to be material. It was confirmed that any fine imposed is a relevant factor, and that a Tribunal should consider the length of time that the offence has been committed. It was also confirmed the payments in respect of utilities should normally be excluded. The culpability of the landlord is also a relevant factor. The President confirmed that a deliberate flouting of the requirement to obtain a necessary licence would merit a larger rent repayment than an instance of inadvertence. It was also stated that the landlord who is engaged professionally in letting is likely to be dealt with more harshly than the nonprofessional.

47. In Parker v Waller the President when deciding on the specific facts of the case considered it would not be appropriate to impose on the landlord a rent repayment order that exceeded his profit in the relevant period.

48. Section 44(4) also mandates the Tribunal to specifically have regard to the conduct of the parties, the financial circumstances of the landlord, and whether it has at any time been convicted of a specified offence.

49. Trophy Homes has not provided any explanation of its failure to comply with the licensing requirements. It is clearly a professional landlord, and the Tribunal can find no reason for excusing or mitigating the failure. It either was or should have been fully aware of the licensing requirements, and the Tribunal can only assume that it deliberately chose to ignore the same.

50. There has been no evidence of unreasonable or inappropriate conduct by the Applicants.

51. Trophy Homes has not acknowledged the application and has not provided any evidence of its financial circumstances. It has however clearly profited from the rent paid.

52. Having reviewed all the circumstances of the case the Tribunal noted that:

- Trophy Homes, a professional landlord with a portfolio of properties, either ignored or should have known that the property required licensing,
- an offence was ongoing throughout the tenancy,

- Trophy Homes has offered no explanation or mitigation, and has chosen to not to engage at all with the Tribunal, and
- no details of its financial circumstances have been forthcoming, and
- there is no evidence of any misconduct by the Tenants.

53. The Tribunal when exercising its discretion concluded that there were only two factors which should go to reduce the maximum possible amount of the rent repayment orders.

54. The first relates to the provisions in the Tenancy Agreement referred to in paragraph 8 above which confirm that the payments made by the tenants included the supplier's charges for the occupiers use of electricity, water and the internet.

55. Whilst *Parker v Walker* makes it clear that a tenant's own occupation is not a material consideration (where there is no tenant's misconduct), it also makes it clear that where a landlord has not benefited from utility payments those payments should normally be excluded from a rent repayment order.

56. Without any evidence from Trophy Homes of the actual costs of utilities, the Tribunal has had to estimate the same. It has noted that the Tenancy Agreement refers to a 10% allowance for energy (being £9.80 per week per tenant) and after having regard to its own general knowledge and experience the Tribunal concluded that an allowance of £15 per week per person, to include the cost of water and internet as well as energy, would be reasonable.

57. The Tribunal then went on to consider the conviction by the Magistrates' Court and amount of the £5000 fine. Whilst the legislation does not specify a maximum fine, the sum imposed by the Magistrates' Court was nonetheless substantial and shows the seriousness with which the Court considered the offence.

58. Nevertheless, the Tribunal considered that it must have regard to the total amount that Trophy Homes will have to pay both in respect of the fines and the rent repayment orders.

59. Having carefully weighed such considerations, the Tribunal decided it should deduct from the maximum sums allowed in respect of each rent repayment order, £15 per week for the utility payments paid by Trophy Homes and, because there were five tenants, 1/5 of the £5000 fine imposed by the Magistrates' Court in respect of the property, and a due proportion of the Magistrates' Court costs (being the global figure of £3500 divided by nine, because such costs related to 9 separate properties, and further divided by five, between each of the 5 tenants of the property).

60. By such calculations it was decided that Trophy Homes should make rent repayment orders of £1782.22 to Mr Brookman, and of £2574.22 to Ms Hallam.

61. The Tribunal's calculations are summarised as follows: –

	Mr Brookman		Ms Hallam	
	£	£	£	£
Rent paid		3520.00		4312.00
Less cost of utilities	660.00		660.00	
Less allowance for the fine	1077.78		1077.78	
Amount of rent repayment order		1782.22		2574.22

62. Each Applicant incurred an application fee of £100 in connection with the proceedings. Because each has succeeded in obtaining a rent repayment order, the Tribunal concluded that Trophy Homes should also reimburse those fees.

Judge J M Going
7 July 2020