



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

A: BTMM REMOTE

Case Reference : **CAM/00MC/HMF/2020/0006**

Property : **33 Home Farm Close
Reading
Berkshire
RG2 7TE.**

Applicant : **Vladislav Dimitri Grahovski**

Respondent : **Mohammad Safdar**

Type of Application : **Application for a rent repayment
order pursuant to ss.40 to 44 of the
Housing and Planning Act 2016.**

Tribunal Members : **Tribunal Judge S Evans**

**Date and venue of
Hearing** : **Remote hearing, by telephone**

Date of Decision : **8 September 2020**

DECISION

The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicant the sum of £2000 within 35 days of the date of this decision.

DECISION

Introduction

1. The Tribunal is asked to make a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

The Application

3. The application is dated 27th February 2020. It alleges an offence under s.72(1) of the Housing Act 2004 on the part of the Respondent, i.e. he was a person in control of or managing a HMO which was not licensed and was required to be.
4. The Applicant claims an order on the basis he was the tenant of a room in the property by virtue of a written agreement dated 16th December 2018 for a term of 6 months at a rent of £380 pcm, payable on the 16th of each month; that the property consists of a 2 bedroom converted house, with a bathroom and kitchen shared by more than 5 occupiers of 2 or more households, such that it was a HMO which required to be licensed but was not.
5. In a manuscript document on p.67 of the Tribunal's bundle, it is contended that £3280 by way of repayment should be made for the period December 2018 to August 2020 (at typographical error presumably for 2019).
6. In a single page response dated 21st June 2020 to the application, the Respondent alleges as follows:

“I have rented the property in good faith to these people who told me exclusively they were a family all from one household.

Thereafter they lied and teamed up with Reading Borough Council to falsely accuse me of running an illegal HMO property.

All tenants were managed and appointed by Mr Liviu Rosca. He ran all the property and gave Mr Vladislav Grahovski my bank details to pay me directly.

All I can say is the rent repayment order is unfair because Mr Vladislav Grahovski and his partner had a quiet enjoyment of the property, with no interference by myself. I only dealt with Mr Liviu Rosca.

Mr Liviu Rosca and his associates deliberately targeted me and brought this case on me and deliberately advised the local authority of my alleged HMO usage when in fact Mr Liviu Rosca created this HMO situation.

Hence this is the reason why no one else is claiming the rent repayment order because they know the truth.

I believe his claim should be dismissed on this basis.”

The Issues

7. On 30th April 2020 directions were given in this matter by Tribunal Judge Wyatt. The Tribunal identified the following issues to be determined:
 - (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.
 - (2) The defence related to housing that, at the time of the offence, was let to the tenant.
 - (3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
 - (4) What is the maximum amount that can be ordered under section 44(3) of the Act?
 - (5) What account must be taken of:
 - (a) The conduct of the landlord?
 - (b) The financial circumstances of the landlord?
 - (c) Whether the landlord has at any time being convicted of an offence?
 - (d) The conduct of the tenant?
 - (e) Any other factors?

The hearing

8. This was a remote hearing which was not objected to by the parties. A face to face hearing was not held, because was is not practicable on account of the Coronavirus pandemic and all issues could be determined in a remote hearing. On 30th April 2020, the Tribunal gave directions that any remote hearing would be likely to be conducted by telephone. I confirmed the Tribunal direction that the hearing be in private and recorded on BT Meet Me. The documents before the

Tribunal were in an Applicant's bundle of 68 pages, and a Respondent's single page letter, which the Tribunal has directed will be treated as his case/evidence for the hearing.

9. The Applicant was assisted from the outset of the hearing by his fiancée Nora Veazey. English is not the Applicant's first language. However, the Tribunal was satisfied that the Applicant himself could understand sufficient English to be able to answer questions, with Miss Veazey being able to advance his case clearly to the Tribunal.
10. The Respondent was also unrepresented, but was able to conduct his defence without any difficulty.
11. It was established at the beginning that neither party had a copy of the paginated bundle which had been sent to the Tribunal. The Tribunal took time to establish which documents the parties had and did not have. The Tribunal was informed that the Applicant was conducting the hearing in a car, but could go back to a flat to continue. The hearing was therefore adjourned for a short period to enable the Tribunal's case officer to email the necessary documents to both parties. At 11:15 AM the hearing resumed, when it was established that both parties welcomed an opportunity to read and consider the documents sent to them. At 12:30 PM the hearing resumed in full, the Applicant and the Respondent each confirming that they were willing to proceed with the hearing.
12. The Tribunal reminded the parties that the standard and burden of proof lay on the Applicant to establish an offence beyond reasonable doubt, but any defence of reasonable excuse raised by the Respondent need only be proved on balance of probability.
13. The Tribunal took the opportunity to remind the Respondent that while he could not be prosecuted for any offences for which a financial penalty had been imposed, he could be prosecuted for other matters admitted by him or in respect of which the Tribunal made findings of fact; that he did not have to answer any question or make any statement which might tend to incriminate him, although the Tribunal might draw an adverse inference from his failure to answer.
14. The Respondent indicated that he wished to proceed.

Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

15. The Applicant opened his case on the basis that since Reading Borough Council had imposed a financial penalty on the Respondent by final notice dated 3rd October 2019, and since they had provided confirmation of that in a letter dated 27th February 2020, that was sufficient to establish this issue in his favour.
16. The Applicant was informed that the Tribunal needed to be satisfied independently beyond reasonable doubt that an offence under section 72 of the Housing Act 2004 had been committed. Therefore, the Applicant was invited to confirm, and did confirm, his witness statement to Reading Borough Council dated 12th April 2019.
17. The Applicant also confirmed that he was given a written tenancy agreement dated 16th December 2018, and that the signatures at the end of that agreement are that of he and Mr Safdar.
18. The Applicant explained that the document was signed by both parties at the same time, in his room on the second floor of the property.
19. The Tribunal then spent some time seeking to establish who was in occupation of each room in the building at any one time from the 27th February 2019 onwards, being the 12 month period immediately preceding the application.
20. The Applicant informed the Tribunal that there was on the ground floor a large room used as a bedroom, a kitchen, and a small room. He also confirmed that on the upper floor there were 2 large rooms used as bedrooms, a toilet, and a small room which he occupied at all material times as his residence from the 27th February 2019 until he left the property in September 2019, the precise date of which he cannot now remember.
21. Taking each room in turn, the Applicant was not always consistent in his account of the persons in occupation of each room, but the Tribunal was conscious that the Applicant was relying solely on his memory in relation to events some 18 months previously. Nevertheless, the Tribunal is satisfied that the Applicant was telling the truth insofar as he told the Tribunal that this ground floor bedroom was occupied by a Romanian man and woman called Liviu Rosca and Adriana; that they were there between February 2019 and May 2019, when he believes they left and went to Liverpool. At that point in time, 2 men who were brothers moved in, whose names he can't remember, and they were there until he left in September 2019.

22. As to the first of the 2 bedrooms on the upper floor, the Tribunal was satisfied that the Applicant was telling the truth when he said that there were 2 men occupying from February 2019 onwards, that he does not remember their names, but they left after a month or two. The room was then empty for about a week, before 2 Bulgarian men moved in for about 3 weeks. Then 2 Turkish people moved in, who were men, and they were still living there when the Applicant left the building.
23. As to the other large room used as a bedroom on the upper floor, there were 2 Romanians living in there in February 2019, whose names he cannot recall; he did not know them well, leaving the house as he did at about 6:00 AM everyday. Again, these occupants were replaced by some Turkish people who stayed in that room until the Applicant left in September 2019.
24. The Applicant also referred to a ground floor glass room, which the Tribunal understands to be a conservatory, which was occupied by a Romanian man called Villi from February 2019 until he was evicted by the Respondent in or about March 2019. Thereafter, for about 2 months there was no one in occupation, but then a Turkish family of 2 adults and 1 child moved there for about a month, but found it too dirty. Then 2 Romanians came to occupy it, after a gap of about 2 to 3 weeks, before they left.
25. The Applicant confirmed that these people were not relatives, but were each from separate households.
26. The Applicant also confirmed that these persons were sharing the WC, the bathroom and the kitchen in the property along with himself.
27. The Applicant further confirmed that these people were occupying the property not on any holiday basis, but whilst they were working on occasional jobs such as building.
28. The Applicant confirmed, and indeed it does not appear to be in dispute, that money was paid by him as consideration for his occupation.
29. The Tribunal also believes the Applicant when he said that he saw a Bulgarian person pay cash directly to the Respondent in the kitchen of the property on one occasion in March 2019 which he understood was for that person's occupation.
30. The Respondent was given the opportunity to ask questions of the Applicant and he did. He suggested to the Applicant that these were all

lies. The Applicant denied he was lying, adding that he didn't like the suggestion that he was.

31. With the assistance of the Tribunal, the Respondent also put the suggestion to the Applicant that it was not his signature on the tenancy agreement and that he was not there when it was signed. The Applicant was adamant that the Respondent did sign it in his presence.
32. The Respondent then informed the Tribunal that he wished to rely on his written letter and say nothing further. However, he did go on to add that he had an assured shorthold tenancy agreement with Mr Liviu Rosca for a term of 12 months with a 6 month break clause at a rent of £1000 per calendar month for the entire house, a copy of which he sent to the council. When asked where the contract was, and if he could produce it, the Respondent said that he did not want to answer any further questions.
33. On hearing the evidence above, the Tribunal prefers the evidence of the Applicant and finds it more credible and detailed than the Respondent's. The Tribunal is satisfied beyond reasonable doubt that the property between February 2019 and September 2019 satisfied the definition of a house in multiple occupation (HMO) on the standard test, but was not licensed. Even with the various comings and goings of occupants in and out of different rooms, there were at least 5 persons in occupation constituting 2 or more different households, residing therein as their only or main residence, and sharing necessary facilities. The Applicant paid rent as confirmed by the Bank Statements adduced in evidence. Even on the Respondent's case, his bank details were given to the Applicant to pay the Respondent directly.
34. The Tribunal is also satisfied that the Respondent was at all material times a person having control of the premises, being in receipt of the rack rents for the Applicant's room.
35. The Tribunal rejects the defence advanced by the Respondent that the persons in occupation were a family all from one household. It further rejects the defence that this is a fraudulent claim concocted between the Applicant and Reading Borough Council to falsely accuse the Respondent of running an HMO. The Respondent called no witnesses, and did not produce any tenancy agreement with Mr Liviu. The Tribunal is doubtful of the suggestion that the whole of this property was rented to Mr Rosca for a sum as low as £1000pcm. It simply did not have the ring of truth to it.

36. The Respondent did not advance a defence of reasonable excuse, but in any event the Tribunal does not consider that any of the matters advanced by the Respondent orally or in writing amount to a defence of reasonable excuse for the purposes of section 72(5) of the 2004 Act. In particular, the Tribunal is satisfied beyond reasonable doubt that the Respondent signed the tenancy agreement with the Applicant and was fully aware of the occupation of the property by 5 or more persons from at least 2 different households.

The defence related to housing that, at the time of the offence, was let to the tenant

37. For the reasons already given under the first issue, the Tribunal finds this matter satisfied beyond reasonable doubt.

Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

38. For all the reasons given under the previous 2 issues, the Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004 on a date or dates between 27th February 2019 and September 2019. This is within the period of 12 months preceding the application made on 27th February 2020.

What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

39. By section 44 of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period not exceeding 12 months during which the landlord was committing the offence: s.44(2) of the Act.

40. It was established during the Applicant's opening statement that the following sums were paid from February 2019 onwards:

- (1) February 2019: £360;
- (2) March 2019: £360 (2 payments of £250 and £110);
- (3) April 2019: £360;
- (4) May 2019: £380;
- (5) June 2019: £250 (allegedly cash in hand);
- (6) July 2019: £400;
- (7) August 2019: £300.

41. With the exception of June 2019, for which there is no corroborating bank statement or other evidence, the Tribunal is satisfied that all the other payments were made to the Respondent. This totals £2160.
42. There was no evidence of receipt of universal credit to deduct from any rental payment.
43. In *Vadamalayan v Stewart* [2020] UK UT 0183 (LC), the Upper Tribunal at paragraph 11 emphasised that there is no requirement that a rent repayment order in favour of a tenant should be a reasonable one. At paragraph 12, it held that the obvious starting point is the rent payable for up to 12 months. At paragraph 14 it held that a restriction to the landlord's profits in relation to the tenancy was impossible to justify. At paragraph 15 it held that there was no reason why a landlord's costs in meeting its obligations under the lease should be set off. The only deduction which could be legitimately made, apart from the statutory ones, is a deduction for utilities paid for by a landlord (para. 16). At paragraph 19 the only basis for a deduction, aside from that, was the factors in section 44(4) of the 2016 Act, namely (a) the conduct of the landlord and tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence.

What account must be taken of the matters in s.44(4) or any other factors?

44. The Tribunal does not find any material conduct issues which might impact on the level of the award.
45. The Respondent informed the Tribunal that he does not have any money, that he is working as a machine operator, earning £1200 after tax; that he has a wife and five children; that he is in receipt of working tax credits between £700 and £800 per month; that he has all the usual household expenses to meet; that the property is not rented out at the moment because he can't get anyone to occupy it; that he has no savings; that he has another property which he owns and lives in; therefore he has two mortgages to pay.
46. The Respondent confirmed that he was not convicted of an offence by Reading Borough Council, but he was not prepared to disclose the amount of the financial penalty he has been required to pay.
47. Given all the above factors, the Tribunal finds that a small reduction would be appropriate.

Conclusions

48. The Tribunal determines that it shall exercise its discretion to make a rent repayment in terms that the Respondent shall pay to the Applicant the sum of £2000 within 35 days of the date of this decision.

Judge: _____
S J Evans

Date:
8/9/20

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix 1

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 ...

(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.

| Act | section | general description of offence |
|--------------------------------------|---------------------------|--|
| 1) Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2) Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |
| 3) Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4) | section 32(1) | failure to comply with prohibition order etc |
| 5) | section 72(1) | control or management of unlicensed HMO |
| 6) | section 95(1) | control or management of unlicensed house |
| 7) This Act | | section 21 breach of banning order |

Section 41

(1) A tenant or a local housing authority 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 satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) ...

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.

If the order is made on the ground that the landlord has committed the amount must relate to rent paid by the tenant in respect of an offence mentioned in row 1 or 2 of the table in section 40(3)
-the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)
-a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay 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.

Housing Act 2004

Section 72

Offences in relation to licensing of HMOs

(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.

(2)...

(3)...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition, as the case may be.

254 Meaning of “house in multiple occupation

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if— (a) it meets the conditions in subsection (2) (“the standard test”); (b) it meets the conditions in subsection (3) (“the self-contained flat test”); (c) it meets the conditions in subsection (4) (“the converted building test”); (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the **standard test** if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the **self-contained flat test** if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the **converted building test** if—

(a) it is a converted building;

- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
- (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(8) In this section— “basic amenities” means— (a) a toilet, (b) personal washing facilities, or (c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)— (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

S.263 Meaning of “person having control” and “person managing” etc.

(1) In this Act “*person having control*”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “*rack-rent*” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “*person managing*” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in

occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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

“4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [Housing] Act [2004] if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households;
and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.”