



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

**Case Reference** : **MAN/00BN/HMF/2019/0097**  
**MAN/00BN/HMF/2019/0103 - 0107**

**Property** : **2 Burton Avenue, Manchester M20 3EL**

**Applicants** : **Rhys Harbison, Hendrik Van Den Bout, Angelo  
Thanthirige, Oliver Swan, Luke Entwistle,  
Leonardo Morgan**

**Respondent** : **Mohammed Kasem Ghani**

**Type of Application** : **Rent Repayment Order**

**Tribunal Members** : **A M Davies, LLB  
J Jacobs, MRICS**

**Date of Decision** : **24 April 2020**

**Date of determination:** **14 May 2020**

---

**DECISION**

---

## **ORDER**

- (1) No Rent Repayment Order is made in response to any of the applications.
- (2) The Respondent is to reimburse to each Applicant the application fee of £100 (total £600).

## **REASONS**

### **BACKGROUND**

1. The Respondent has owned 2 Burton Avenue, Manchester (“the Property”) since 2012. The house comprises 6 bedrooms with shared living accommodation and is let as an HMO. As such, the Property is required to be licensed pursuant to section 61 of the Housing Act 2004. An owner or manager of an unlicensed HMO commits an offence under section 72(1) of the same Act. The purpose of the licensing regulations is to ensure that tenanted accommodation is maintained to a good standard.
2. The Respondent permitted Astute Estates Limited, a property management company, to let the Property on his behalf. He relied on the agents to make all arrangements regarding the Property including compliance with legislation. Astute Estates Limited failed to apply for a licence. When the Respondent became aware of the need for a licence and asked Astute Estates to confirm that there was either a licence in place or that one had been applied for, he was told more than once that a licence application had been submitted.
3. The 6 Applicants rented the property from 1<sup>st</sup> July 2018 for one year at an annual rent of £4,070 each, except for Mr Entwistle who paid £3700. The Respondent therefore received £24,050 in rent over the year, less expenses and agent’s fee. It appears to be generally accepted that the Respondent was a good landlord, and that the Property was maintained in good condition.
4. On 29 October 2019, having learned that the Property had not been licensed during their tenancy, the Applicants made a joint application for a Rent Repayment Order and subsequently each made an individual application dated late November or early December 2019. Each paid an application fee of £100.
5. Meanwhile Manchester City Council had levied a financial penalty on the Respondent pursuant to section 95 of the Housing Act 2004. The penalty was initially assessed at £5000 but following consideration of the Respondent’s representations it was reduced to £3500.

### **THE LAW**

6. Section 41 of the Housing and Planning Act 2016 (“the Act”) enables a tenant to apply to this Tribunal for an order for repayment of rent by a landlord who has committed one of the offences listed at section 40 of the Act, including control of management of an unlicensed HMO.

7. Section 95(4) of the Housing Act 2004 states:  
*“In proceedings against a person for an offence under subsection (1)... 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).....”*
8. Section 43 of the Housing and Planning Act 2016 empowers the Tribunal to make an order for repayment of rent in the following terms:  
*“(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.....”*

### **DECISION**

9. The Tribunal finds that the Respondent did not have a reasonable excuse for failing to check that a licence had been obtained, and he admits his failing in this regard. It follows that an offence was committed.
10. The Respondent has paid the reduced fine that Manchester City Council determined was appropriate in all the circumstances of the case, including the high standard of accommodation provided at the Property. The Tribunal finds that the Respondent was misled by his property agents, and that he was a good landlord. It is not appropriate, in this instance, to make a rent repayment order. However, the Applicants were entitled to seek a determination from the Tribunal and their application fees are therefore to be reimbursed by the Respondent.

**Judge: A M Davies**

**Date: 24 April 2020**