



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

Case references : CAM/00KA/HSD/2020/0001

Property : 14 Kenneth Road, Luton, Beds LU2 0LE

Applicant : Luton Borough Council

Applicant's Representative : Susan Desfontaines

Respondent : Marco Caruso

Respondent's Representative : Did not attend and was not represented

Type of application : For a Rent Repayment Order pursuant to ss. 40-46 Housing & Planning Act 2016

Tribunal members : Mr Max Thorowgood

Venue : Telephone hearing

Date of Decision : 21st October 2020

DECISION

1. The application

- 1.1. By its application dated 24th February 2020 the Applicant, which is a Local Housing Authority (“LHA”) for the purposes of Chapter 4 of the Housing & Planning Act 2016 (“the Act”), seeks a Rent Repayment Order in respect of the total sum of £2,460.71 paid by it to the Respondent by way of Universal Credit in respect of the Property between 7th March 2018 and 6th March 2019, that being the period of 12 month immediately preceding the inspection of the Property by Mr Brian McCrossan and Mr Adam Karaphillides on 6th March 2019 in the course of which the offences to which the Respondent subsequently pleaded guilty were first identified.

2. The hearing on 21st October 2020

- 2.1. The matter came before the Tribunal on 21st October 2020. The hearing was conducted by telephone.
- 2.2. There was an initial mix up with the log in information which required fresh passwords to be sent. That was done and the new information was sent to all parties by email by my clerk Laura Lawless. The Applicant was represented by Ms Susan Desfontaines who also represented the Applicant in relation proceedings before the Magistrates’ Court. No other person attended the second hearing and to the best of my knowledge no one other than Ms Desfontaines attended the first hearing.
- 2.3. It is worth noting also that this application was directed to be heard together with the application made by Mr Brendan Lewis in respect of his occupation of a room within the Property. Mr Lewis did not attend but had put together a comprehensive bundle and informed the Tribunal that he wished the matter to be dealt with on the paper because he would be unable to attend due to work commitments. I shall prepare a separate decision in respect of his matter.

3. The applicable law

- 3.1. The relevant legislation is set out in ss. 40-46 of the Housing & Planning Act 2016 which is set out in Appendix 2 below.
- 3.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a Local Housing Authority if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004, that the offence relates to housing within the LHA's area and that the LHA has complied with s. 42.
- 3.3. S. 42 requires that the LHA serve a notice of intended proceedings on the Landlord stating that: it intends to make an application for an RRO, the amount which it seeks to recover; and that the landlord may make representations in respect of the proposed application within 28 days.
- 3.4. The maximum amount of that order is fixed by s. 45 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the amount of Universal Credit paid received by the Respondent in any 12 month period during which the offence was being committed.
- 3.5. In considering the amount of the order s. 45(4) provides that the Tribunal is bound to consider:
 - 3.5.1. the conduct of the landlord and the tenant,
 - 3.5.2. the financial circumstances of the landlord, and
 - 3.5.3. whether the landlord has at any time been convicted of an offence to which this Chapter applies.
- 3.6. However, s.46 provides that where the following two conditions are satisfied, the amount which the Respondent is ordered to pay should be calculated without reference to the s. 45(4) considerations unless there

are exceptional circumstances which would make it unreasonable for the Respondent to be ordered to pay the maximum amount of an order calculated in accordance with s. 45.

- 3.7. For these purposes those conditions are: i) that the Respondent has been convicted of an offence and ii) that the Applicant is an LHA.

4. The Respondent's commission of an offence under s. 72(1) Housing Act 2004

- 4.1. On 5th November 2019 the Respondent pleaded guilty to the following offences relating to the Property:

4.1.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

4.1.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges against him were withdrawn.

- 4.2. The Respondent was represented at that hearing at which the Applicant submitted the offences were serious, that the potential for serious harm to result was high and that there was a high degree of culpability on the part of the Respondent.
- 4.3. At the adjourned hearing on 13th December 2019, at which the Respondent was again represented by counsel, he was fined £27,000.00 and ordered to pay a Victim's Surcharge of £170.00 and costs of £848.70.
- 4.4. I was informed by Ms Desfontaines that the Respondent paid those sums in full within 14 days and that part of the material which he placed before the Court, by way of defence or mitigation of his offences, was that he had been unable to take the time necessary to comply with the HMO

Regulations because all of his time was taken up by his job in respect of which he received a salary of £60,000.00 p.a.

- 4.5. It is also worthy of note that the Respondent owns and operates two other unlicensed HMO's within the Applicant's area, one at 12 Kenneth Road and the other at 35 Axe Close. On 1st March 2019 a serious fire at 12 Kenneth Road, started as a result of defective wiring, caused the Applicant to inspect the Property and to identify the commission of the offences to which the Respondent later pleaded guilty and in respect of which this application is made.
- 4.6. A subsequent inspection of the Property on 22nd August 2019 revealed that despite the notices served by the Applicant in respect of the breaches of the HMO regulations no steps had been taken to remedy them. As a result of that inspection the Applicant commenced work to remedy the breaches following which solicitors instructed by the Respondent wrote to the Applicant demanding that it cease work and confirming that the Respondent would carry out the necessary works himself. I have no information as to whether he has in fact done so.
- 4.7. After the Respondent was sentenced, on 13th December 2019, the Applicant prepared and served a Notice of Intended Proceedings pursuant to s. 42 of the Act. That notice provided the Respondent with the requisite information and was served more than 28 days before the application was issued. I was informed that the Respondent did not respond.

5. My decision

- 5.1. I am satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.

- 5.2. I am further satisfied, on the basis of the information provided by Mr Mealey on behalf of the Council in the case brought by Tomas Prochazka against this Respondent in relation to the Property and by Ms Desfontaines at the hearing that the Property has never been licensed for use as an HMO.
- 5.3. I am satisfied by Ms Desfontaines that the Applicant served a Notice of Intended Proceedings on the Applicant at his home address on or about 13th December 2019, and that this application was made more than 28 days after the service of that notice. I am also satisfied that the application was made within 12 months of the date of the offence, the nominal date of which has been taken as 6th March 2019 although it apparently continued thereafter and had been ongoing for more than 12 months beforehand.
- 5.4. Finally, I am satisfied, from the witness statement of Anne Keogh dated 12th February 2020, that in the period ending with the nominal date of the offence the Applicant paid the Respondent the sum of £2,460.17 by way of universal credit.
- 5.5. On the basis of the provisions of ss. 45 and 46 of the Act I therefore order that the Respondent pay the Applicant the sum of £2,460.17 within 28 days of the service of this decision upon him.

Dated this 21st day of October 2020

Max Thorowgood

BY ORDER OF THE TRIBUNAL

APPENDIX 1- 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 Tribunal 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 for 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 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

40 Introduction and key definitions

- (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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition

order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Application for rent repayment order

41 Application for rent repayment order

- (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.
- (3) A local housing authority may apply for a rent repayment order only if—
 - (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Making of rent repayment order

43 Making of rent repayment order

(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 section 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);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

(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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

45 Amount of order: local housing authorities

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.
- (2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

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

(a) the conduct of the landlord,

(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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local **housing** authority.

(4) For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Enforcement of rent repayment order

47 Enforcement of rent repayment orders

(1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.