



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

Case number : **MAN/00CJ/HMF/0016, 0017, 0023,
0042 and 0046**

Property : **19 Grantham Road,
Newcastle Upon Tyne, NE2 1QX**

Applicants : **Tirion Parkman
Caitlin Stiles
Lucy Stones
Erin Dent
Alexandra Ream**

Respondents : **Melissa Commercial**

Type of Application : **Housing and Planning Act 2016 Section
41(1)**

Tribunal Members : **K M Southby (Judge)
I Jefferson (Valuer Member)**

Date of Determination : **26 October 2020**

Date of Decision : **3 November 2020**

DECISION

DECISION

The tribunal makes a rent repayment order in favour of each of the five Applicants within 28 days of the date of this decision as follows:

Applicant	Sum to be reimbursed by Respondent to Applicant
Tirion Parkman	£668.64
Caitlin Stiles	£668.64
Lucy Stones	£547.20
Erin Dent	£668.64
Alexandra Ream	£410.40

The Respondent is also to reimburse the Applicants with the application fee in the sum of £500 (£100 each) within 28 days of the date of this decision.

REASONS

The Applications

1. By their applications which are respectively undated, dated 23 February 2020, 10 March 2020 26 April 2020 and 3 May 2020 ('the Applications'), Tirion Parkman, Caitlin Stiles, Lucy Stones, Erin Dent and Alexandra Ream ('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 19 Grantham Road, Newcastle Upon Tyne, NE2 1QX ('the Property'). The Respondent was named in the application forms as Melissa Commercial ('the Respondent'), as agent for the Landlord Sunil Maini.
2. Directions were issued on 21 August 2020 pursuant to which each of the Applicants, and the Respondent, made written submissions.
3. The Tribunal met on 26 October 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 September 2019 to 30 December 2019 and then to continue on a month to month rolling contract basis. The Respondent accepts that the Property met the criteria for mandatory licensing, following changes introduced by the Licensing of Homes in Multiple Occupation (Prescribed Description) (England) Order 2018.

5. The Applicants seek repayment of rent, although their letter to the Tribunal is unclear in terms of the period for which rent repayment is sought and does not specify the amount of rent repayment requested, instead having 'X' in the correspondence where the repayment amount requested should otherwise be.
6. The Tribunal further notes that the Application of Tirion Parkman is undated, although has clearly been received by the Tribunal prior to the issuing of direction on 21 August 2020.

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 September 2019 to 1 April 2020 and that Newcastle City Council had confirmed the Property to have been unlicensed from 6 January 2019 until 27 January 2020, this being the date from which the licence dated 14 July 2020 in the name of Sunil Maini was valid.
9. The Applicants submitted a copy of the assured shorthold tenancy agreement entered into on 18 August 2019 between Sunil Maini as landlord, and each of the Applicants, as tenants, at a rent of £1710 per calendar month collectively or £342 per person per month. An additional amount was paid as a deposit (total £1710) to be held by The Deposit Protection Service. The assured tenancy agreement is signed "Melissa Commercial" above the typed name "Melissa Maini" indicating that it is signed on behalf of the Landlord.
10. Each Applicant seeks a rent repayment. The rent repayment sought is not calculated in the application forms although some evidence of rent payments through bank statements is provided by the applicants.
11. The Applicants also supplied supplementary information, documents and pictures relating to issues with the condition of the Property and health and safety concerns including the managing agent entering the property without giving at least 24 hours notice in writing, as required by clause 14 of the tenancy agreement.

Respondent's Submission

15. The Respondent's written submission sets out that the Respondent is the Managing Agent for the Landlord, Sunil Maini to whom she is married. She manages 47 properties under the company Commercial and Co Limited, fourteen of which are Licensed HMOs. All 14 HMOs have been licensed, although the Respondent accepts that the licence for the Property at 19 Grantham Road expired on 6 January 2019 without her realising. The Respondent states that this was an oversight due in part to all of the licenses having differing expiry dates, and also due to the Council having ceased sending reminders. She also had a medical condition at the time which was not fully and effectively managed, which contributed to the omission in renewing the licence. She states that she applied for the licence on 27 January 2020 as soon as she was notified by the Council of the oversight. The licence was granted on 14 July 2020 and its validity backdated to 27 January 2020.
16. On the issue of liability, the Respondent stated that she accepts that the Property was unlicensed during the Applicants' tenancy for four months and 27 days but states that this was an unwitting oversight and whilst not explicitly pointing to the statutory defence of 'reasonable excuse' appears to be asking that the Tribunal consider this.
17. The Respondent sets out financial records of payments received from the Applicants, including some paid into the incorrect account. These figures are more generous to the Applicants than the documentation provided by the Applicants themselves in terms of setting out the sums already paid by the Applicants.
18. In respect of conduct the Respondent states that the course of dealing between the parties was informal, and that there was no intention to cause distress by turning up unannounced, but instead an intention to get necessary maintenance work completed as rapidly as possible.

The Law

19. The law on licensing houses in multiple occupation came into effect on 1 October 2018 and is set out in the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.
20. 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.
21. 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.

22. 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.

Findings and determination

26. It is common ground between the parties that
 - a) the Respondent controlled and managed the Property
 - b) the Property was an HMO which required to be licensed under the scheme administered by Newcastle City Council.
 - c) there was no licence in force for the Property from 6 January 2019 until 14 July 2020
 - d) the Property was unlicensed from 6 January 2019 until 27 January 2020, this being the date from which the licence dated 14 July 2020 was valid.
27. The Offence under section 72(1) of the Housing Act is subject to the statutory defences of (1) that at the material time an application for a licence had been duly made, and (2) a reasonable excuse.
28. Defence (1) seemingly applies to the circumstances of this case in that the application for a licence was not made during the period of occupation by the Applicants. Whilst the Applicants have not specified the period for which they are claiming a Rent Repayment Order it is clear that the statutory defence applies from 27 January 2020 onwards.
29. Respondent's excuse for not applying for a licence until January 2020 was that of oversight coupled with a lack of reminder from the Council for differing expiry dates of the multiple managed properties, and a period of ill health on the part of the Respondent.
30. Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Respondent had a reasonable excuse for the

offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally, there have to be reasonable grounds for the holding of that belief (objective). Ignorance of the law cannot amount to a reasonable excuse.

31. The Tribunal finds there were no reasonable grounds for the Respondent not renewing the licence. The Respondent was an experienced agent acting for a commercial landlord and on her own admission she did not make any enquiries that the property required a licence after January 2019. The Tribunal has found that a diligent agent acting for a diligent landlord would have had a system to ensure that they were aware of the requirement to licence the property from 6 January 2019 notwithstanding the differing end dates of the various licences and the absence of reminders from Newcastle City Council. The Tribunal is, therefore satisfied that the Respondent did not have a reasonable excuse for the offence of having no licence contrary to section 72(1) of the 2004 Act.
32. 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 September 2019 to 27 January 2020.
33. 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 September 2019 to 27 January 2020. The Applicants were therefore entitled to make the Applications. The Tribunal has considered section 41(2)(b) in respect of the undated application by Tirion Parkman, noting that even if the application by this Applicant was received immediately prior to the issuing of the Tribunal directions dated 21 August 2020, the requirements of the section that the offence was nevertheless committed in the period of 12 months ending with the day on which the application is made would still be made out.

The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent committed the offence of a person having control of or managing a HMO which is required to be licensed but is not so licensed from 1 September 2019 to 27 January 2020 (inclusive) pursuant to section 72(1) of the 2004 Act.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act)?

34. The amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondent committed the offence from the 1 September 2019 to 27 January 2020.

35. The Applicants should have paid to the Respondent rent of £1671.59 per person or £8357.92 during the period from 1 September 2019 to 27 January 2020. This is calculated as follows:

4 months at £1710, plus 27 days in January (£1517.92) = £8357.92

In fact the Applicants did not pay this full amount in some case, as set out in the table below.

Applicant	Maximum possible Claim for 1 Sept 2019 to 27 January 2020	Rent Paid by each Applicant for period 1 Sept 2019 to 27 January 2020
Tirion Parkman	1671.59	1671.59
Caitlin Stiles	1671.59	1671.59
Lucy Stones	1671.59	1368.00
Erin Dent	1671.59	1671.59
Alexandra Ream	1671.59	1026.00

These figures are based upon the calculation is set out at page 107 of the Respondent's bundle, and represent a more generous set of figures to the Applicant than their own documentary evidence for the period 1 September 2019 to 27 January 2020 and the Tribunal finds the Respondent's evidence to be persuasive in this regard, save that the Respondent has incorrectly calculated the total sum by wrongly transposing the figures in respect of Tirion Parkman, The total payments received for the period in question are £7408.75.

36. The Tribunal, therefore finds that the maximum amount that the Respondent can be ordered to pay under an RRO is less than £8357.92 of the rent payable for that period, as it cannot exceed the amount of rent actually paid. The maximum amount that the Respondent can be ordered to pay is therefore £7408.75.

What is the Amount that the Respondent should pay under a RRO?

37. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.
38. The Applicants did not consider the Respondent to be an exemplary agent acting for an exemplary landlord and they state in their witness statements that the Respondent or her contractors entered the property without notice and provide text conversations to support this. All five applicant provide identical statements which set out that there were property improvements recommended by the council which were not made by the landlord including

fire proofing on the downstairs bedroom door, replacement hinges and a broken window pane. Correspondence from Newcastle City Council dated 25 February 2020 to Sunil Maini is provided by the applicants, which states that if the works set out in the schedule have not been completed by the reinspection date of 24 March 2020 then a civil penalty may result. There is no evidence provided of the outcome of any such reinspection.

39. The Respondent contends that she has conducted the management of the Property in exemplary fashion, and that any breaches of the lease in entering without the specified notice period were as a consequence of an understanding that things would be dealt with rapidly and informally. She cites the portfolio of other properties which she states are well managed, but does not provide information about relevant financial circumstances for the Tribunal to take into account.
40. The parties exhibited photographs of the condition of the property and texts between one another regarding the property. The Tribunal concluded on the evidence before it that the property was of reasonable/good letting standard and provided adequate facilities for five persons operating as separate households. The evidence from the Council about a schedule of works which needed to be carried out were works of relatively minor nature which the Tribunal is satisfied have now been rectified, and at the point where they were notified to the Respondent were unable to be swiftly rectified due to restrictions related to the Covid19 pandemic. The Tribunal does not find evidence from the Applicants that there were problems during the tenancy due to the landlords neglect, but that there were exchanges of messages regarding repairs which were of the sort which routinely occurred with properties. The messages exchanged between the parties showed that the Respondent replied promptly and that she took steps to address the Applicants' concerns. We do however accept that the Applicant should have either given the specified notice in the lease, or ensured that the Applicants were happy with contractors visiting the property sooner to achieve a rapid repair, and that a failure to do so could have caused the Applicants concern, particularly if individual applicants were in the property alone.
41. The Tribunal starts its consideration on the size of the RRO by considering the decision of the Upper Tribunal in *Mr Babu Rathinapandi Vadamalayan v Edward Stewart and others* [2020] UKUT 0183 (LC). Judge Cooke at [11] observed that there was no requirement that a payment in favour of Tenant in respect of RRO should be reasonable, and at [12] that this meant the starting point for determining the amount of rent is the maximum rent payable for the period in question. Judge Cooke went on to say at [14] and [15] that

“It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament’s intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord’s profits was – as the President acknowledged at his paragraph 26 –not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to

the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

"That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced

the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order".

42. Judge Cooke concluded at [19]

"The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence".

43. The 2016 Act extended the scope of rent repayments orders with an emphasis upon rogue landlords not benefiting from the letting of sub-standard accommodation and it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.

44. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to decide the actual amount payable by taking into the circumstances of the case, having particular regard to the specific factors in section 44 of the 2016 Act.

45. The Tribunal finds in relation to the Respondent's conduct and financial circumstances that (1) The Respondent was a professional landlord. (2) The property was unlicensed throughout part of the period of the Applicants' occupation from the 1 September 2019 to 27 January 2020 (3) The Respondent should have known that the property required a renewal of a previous HMO licence but the system of administration was inadequate to alert the Respondent to this fact. (4) The property was of reasonable/good letting standard, although there was some evidence that it did not meet the safety standards expected of licensed HMOs in some relatively minor respects. (5) Apart from her failure to licence the property, the Respondent performed

her duties as a landlord in a professional and responsible manner. (6) The Respondent was of good character and had no previous convictions known to the Tribunal. (8) The Tribunal have not been provided with any evidence to suggest that Newcastle City Council chose to take enforcement action against her in relation to the offence of having no licence. (9) The mortgage payment is not an appropriate deduction to make against the RRO (see *Vadamalayan*). (10) The Respondent adduced no evidence to suggest that she would experience undue financial hardship as a result of an RRO.

46. The Tribunal is satisfied that the Applicants did not by their conduct contribute to the offence. The Tribunal considers that the Applicants were respectful in their dealings with the Respondent. This is not a relevant fact in determining the size of the RRO.
47. In this case the Tribunal determines that the maximum amount payable by the Respondent under a RRO is £7408.75. The Tribunal then has to consider whether the findings on the Respondent's conduct and financial circumstances, and the Applicants' conduct merit a reduction in the maximum amount payable.
48. This is not a case which justifies an award of the maximum amount of £7408.75. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description, indeed the Tribunal concluded that the Respondent was responsible for a well-managed property, for which she responded in a timely fashion to the usual enquiries about repairs. We do not find that this is a case at the upper end of the scale of the sort referred to by Judge Cooke in *Vadamalyan*.
49. The Tribunal here is in our view, and on the basis of the specific evidence in this case, dealing with two sets of decent honourable persons who are separated by the fact that the Respondent failed to licence the HMO and thereby committed an offence.
50. The Tribunal holds that the Respondent was a professional landlord who through an unfortunate combination of ill health and poor administration omitted to notice the fact that the property required re-licensing. The property was without a licence throughout the period from the 1 September 2019 to 27 January 2020. These facts together with the finding that the Applicants did not by their conduct contribute to the offence are weighed against the facts that the Respondent apart from her failure to licence the property was a responsible landlord who provided accommodation of reasonable/good standard with adequate facilities, the Respondent was, with the exception of the isolated offence remains of good character who co-operated with Newcastle City Council regarding their investigation of the offence and the Respondent has now applied for an HMO licence. Having regard to all the circumstances the Tribunal considers an order of 40% of the maximum sum

of £7408.75 is the appropriate sum balancing the objective of a “fiercely deterrent scheme”, the status of professional landlord and the length of the offending against the mitigating circumstances found in favour of the Respondent.

51. The Tribunal determines that the rent repayment order should be 40% of the maximum amount, of £7408.75. Tribunal notes that not all Applicants have paid their rent in full for this period, and therefore the 40% RRO would be appropriately applied as follows:

Applicant	Rent payable for 1 Sept 2019 to 27 January 2020	Rent Paid by each Applicant for period 1 Sept 2019 to 27 January 2020	40% of Rent paid repayable under RRO
Tirion Parkman	1671.59	1671.59	668.64
Caitlin Stiles	1671.59	1671.59	668.64
Lucy Stones	1671.59	1368.00	547.20
Erin Dent	1671.59	1671.59	668.64
Alexandra Ream	1671.59	1026.00	410.40

52. As the Applicants have been successful with their Application for a RRO, the Tribunal considers it just that the Respondent reimburses the Application fee totalling £500.00 (£100 per Applicant)

Decision

53. The Tribunal orders the Respondent to pay the Applicants the sum of £2963.52 by way of a rent repayment order and to reimburse the Applicants with the application fee in the sum of £500.00 within 28 days from the date of this decision.

K Southby
Tribunal Judge
3 November 2020

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)