



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

Case Reference : **BIR/00FY/HMK/2020/0054-59P**

Property : **8a Gamble Street, Nottingham,
NG7 4EY**

Applicants : **Nicole Goulding (0054) 1
Jed White (0055) 2
Beatrice Rose Hill (0056) 3
Charlotte Louise Crowder (0057) 4
Sydney Worrall-Soper(0058) 5
Philippa Lowery (0059) 6**

Applicants' Representative : **Kelly Lowery**

Respondent : **Claudine Skinner And Claire Jackson
As Personal Representatives of
Ashley Fletcher Deceased**

Respondent's Representative : **None**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for a
rent repayment order**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Mr R.Chumley Roberts
Tribunal Member Mr V Chadha**

Date of Hearing : **18 November 2020**

Date of Decision : **10 December 2020**

DECISION

- a. The Respondent was guilty of a housing offence namely having control of or managing a house, which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed***
- b. The Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)***
- c. The period for which rent is repayable is 2 September 2019 to 16 August 2020***
- d. The sum payable after applying the principles described in s44 of the 2016 Act is £4559.75***
- e. Applicant 1 Nicole Goulding is entitled to a rent repayment order of £4559.75***
- f. Applicant 2 Jed White is entitled to a rent repayment order of £4559.75.***
- g. Applicant 3 Beatrice Rose Hill is entitled to a rent repayment order of £4559.75.***
- h. Applicant 4 Charlotte Louise Crowder is entitled to a rent repayment order of £4559.75***
- i. Applicant 5 Sydney Worrall-Soper is entitled to a rent repayment order of £4559.75***
- j. Applicant 6 Philippa Lowery is entitled to a rent repayment order of £4559.75***

Introduction and Background

1. This is an application for a rent repayment order under s41(1) and Chapter 4 Part 2 Housing and Planning Act 2016 (the 2016 Act) and the Housing Act 2004 (the 2004 Act). The Applicants were all tenants of a property known as 8a Gamble Street Nottingham NG7 4EY (the Property) from 2 September 2019 to 16 August 2020 pursuant to an assured shorthold tenancy agreement made on 3 December 2018 (the Agreement). The Applicants were all named in the Agreement as joint and several tenants.
2. The Applicants issued their respective applications on 28 August 2020 in the same or substantially the same terms. Although six separate applications were issued, as the same issues arise in each case, they are listed together for determination.

3. The Respondent is named in the applications as Claudine Skinner and Claire Jackson (Ashley Fletcher).
4. At the time the Agreement was made the Property was owned by Mr Ashley Fletcher. He died on 7 March 2019. By his will made on 20 April 2011 his daughters Claudine Skinner and Claire Jackson were appointed executors and trustees of the estate on 16 January 2020. According to the evidence of Mrs Skinner administration of the estate has not yet been concluded. Accordingly, this is an application against the estate of the late Ashley Fletcher by its personal representatives Mrs Skinner and Mrs Jackson.
5. The grounds for the application are that the Property is a house in multiple occupation and that throughout the tenancy there was no HMO licence pursuant to s 61 of the 2004 Act.
6. The person having control of or management of an HMO which is required to be licenced and is not so licenced commits an offence. By s 41(1) of the 2016 Act a tenant may apply to this Tribunal for a rent repayment order against a person who has committed an offence when at the time of the offence it was let to the tenant.
7. In this case it is admitted by the Respondent that the Property being let to six people was an HMO and that at the time of the tenancy and throughout its term it was unlicenced. Nottingham City Council the local housing authority, interviewed the Respondent Mrs Skinner but decided not to prosecute her for the offence.

The Tenancy Agreement.

8. The Agreement made on 3 December 2018 had a summary sheet setting out the principal terms. Rent is stated as £99.00 inclusive per week. The start date and end date are recited as 2 September 2019 and 16 August 2020. The rent payable over the term is calculated in four periods: 29 August for four weeks £396.00; 30 September 2019 for 15 weeks £1,485.00; 13 January 2020 for 16 weeks £1584.00; 4 May 2020 for 15 weeks £1485.00.
9. The total rent payable over the tenancy of 50 weeks is £4950.00. In addition, the Applicants were required to make a pre-payment of £100.00 each in anticipation of utility charges exceeding the sum allowed for utilities in the tenancy agreement.

10. At paragraph 6 of the Agreement it is provided:

“If this tenancy agreement is inclusive of utilities then the Landlord agrees to pay the suppliers of gas, water, electricity, internet and TV licence for the Property. “

It further provides a “covenant on the part of the Tenants to ensure that a fair usage policy of 5181Kwh for electricity and 18032 Kwh for gas for the services adopted throughout the tenancy.

If in the reasonable opinion of the Landlord, the cost off the services used the Tenant exceeds thar which would normally be expected at the Property as per the above usage, the excess will be charged to the Tenant and any arrears may be deducted from the Deposit”

The Parties Submissions

11. The Applicants’ submissions were short and to the point that the Property was an unlicensed house in multiple occupation throughout the tenancy. The Applicants submitted a letter from Nottingham City Council which provided the Property was a licensed HMO but that the licence ceased on the death of Ashley Fletcher. The lack of a licence is a strict liability offence entitling the Applicants to repayment of all rent paid. In addition to rent the Applicants were required to pay a deposit against utility bills in the sum of £100.00 each.
12. Each Applicant provided evidence of making payments of rent as it fell due and the additional payment of £100.
13. The Applicants also adduced evidence of difficulty in obtaining information about the name of the landlord of the Property.
14. The Respondents evidence was given in a statement by Mrs Skinner who is the daughter of Ashley Fletcher. The Property was built by Mr Fletcher in 1996. He had let the Property since construction. He retained Uni2Rent as managers of the Property in 2015. Mr Fletcher held an HMO licence in respect of this and other properties owned and let by him.
15. Mr Fletcher died in March 2019. His will named Mrs Skinner and her sister Claire Jackson as executors and trustees of his will which was made in April 2011. Mrs Skinner and Mrs Jackson are the beneficiaries of the estate. Probate was granted in January 2020. The net value of the estate was stated in the Grant of Probate as £1,641,652. At the date of the hearing the estate is still held by the Respondents in their capacity as executors. The freehold title has not been sold or transferred.

16. Mrs Skinner submits that she trusted the managers Uni2Rent. The Property was built with letting in mind, it was well maintained, there were no complaints from tenants, there was no contact with council and no advice from the letting agent. Accordingly Mrs Skinner considered the management of the Property was in order.
17. Mrs Skinner is the only person dealing with Probate as her sister the co-Respondent is resident in the United States. She expressly states that she had to rely on the agent as the role of landlord was new to her and guidance was needed with matters which Mr Fletcher would have handled. Her reliance on Uni2Rent was such that she was unaware of a request for a rent reduction by one of the Applicants because of the effect of covid19. More particularly she was unaware of this application until notified by Uni2Rent on 3 September 2020 as it was served on the agent.
18. Upon receiving information about this application Mrs Skinner contacted the Nottingham City Council and immediately applied for a licence. The application was submitted to Nottingham City Council on 21 September 2020. An HMO specialist employed by Uni2Rent assisted her with the application.
19. Mrs Skinner was interviewed by Nottingham City Council which decided not to prosecute her for the failure to licence the Property.
20. The Respondents provided no information about the cost of services provided under clause 6 of the Agreement. Also they provided no information about their financial circumstances save that Mrs Skinner a single mother of a university aged son, submitted that her part of the inheritance is her livelihood now that she no longer works as a site manager of a bigger portfolio. Her small business is alleged to be unable to cope with the financial demands of the Applicants. Her description of herself as a site manager refers to her role in the management and maintenance of her father's property portfolio.

The Property

21. This is a matter which is determined on papers. The Tribunal did not inspect the Property. There was no dispute of the Respondents' description of it being built in 1996. There were no issues relating to the condition of the Property.

The Statutory Framework

22. The Act of 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing an unlicensed HMO. Chapter 4 of the Housing and Planning Act 2016 replaced the jurisdiction to make a rent repayment order where a landlord has committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.

23. S40(2) defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides

“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” and at item 5 of the table in subsection 3 having control or management of an unlicensed HMO contrary to s72(1) of the 2004 Act is identified as behaviour amounting to an offence.

By s41 of the 2016 Act

(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.

24. S43 Provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

25. S44 provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicensed period and 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 been convicted of an offence to which the Chapter applies.
26. S68(6) 2004 Act provides that an HMO licence may not be transferred to another person..
27. It is a defence to a charge of letting an unlicensed HMO that the person had applied for a licence or had a reasonable excuse for having control or managing the house without a licence (s72(5) and s95 (4) 2004 Act).

The Decision

28. In coming to its decision, the Tribunal first determines whether the property is a house in multiple occupation which should be licensed under the relevant legislation. It then identifies the person who has the control or management of the property and whether they have a licence. If the person having control or management of the property does not have a licence is there either a reasonable excuse for not having one or is there an application for a licence.
29. It must then be satisfied beyond reasonable doubt that a landlord has committed an offence whether or not the landlord has been convicted of an offence. It must also have regard to any explanation offered by the landlord for their failure to obtain a licence because *“Tribunals should consider whether any explanation given by a person managing an HMO amounts to a reasonable excuse whether or not the appellant refers to the statutory defence”* per Martin Rodger QC (Deputy Chamber President Upper Tribunal (Lands Chamber) in *IR Management Services Limited v Salford City Council [2020] UKUT 81 (LC)*.
30. In *Sutton v Norwich City Council 2020 [UKUT] 0090(LC)* Martin Rodger QC said in relation to the defence of reasonable excuse *“It is possible to conceive of circumstances in which a lack of knowledge of the facts which caused a house to be an HMO might provide a reasonable excuse for non-compliance..”* with the obligation to licence a property but in *Thurrock Council v Daoudi [2020] UKUT 209 (LC)* Martin Rodger QC held that a genuine lack of awareness of the need to obtain a licence was irrelevant in deciding whether the landlord had a reasonable excuse for not obtaining a licence.

31. Where the Tribunal decides to make a rent repayment order in favour of the tenant the amount is to be determined in accordance with s44 2016 Act in particular taking into account the conduct of the landlord and tenant, the financial circumstance of the landlord and whether there has been a conviction of the landlord at any time of an offence to which the 2016 Act applies.
32. In *Vadamalayan v Stewart & Others [2020] UKUT 0183(LC)* HHJ Cooke said at paragraphs 15 &16:
“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.

In cases where the landlord pays for utilities, as he did in Parker v Waller, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord’s costs in calculating the amount of the rent repayment order should cease.”
33. Further in *Chan v Bilkhu [2020] UKUT 289(LC)* HHJ Cooke said *“a landlord with a portfolio of properties is to be expected to keep abreast of their professional and legal responsibilities. I do not regard inadvertence as a mitigation in such a case.”*
34. In this case it is apparent the Property is ordinarily suitable for multiple occupation typically by students. It was previously the subject of an HMO

licence. However, on the death of Mr Fletcher the licence holder the licence lapsed. From March 2019 the Property was unlicensed. The managing agent failed to advise the estate that a new licence was needed and neither of Mrs Skinner nor Mrs Jackson considered the implication for the licence of the death of the holder. Their inadvertence is not a mitigation or a defence in this case. Unit2Rent took no part in these proceedings consequently the Tribunal is unable to determine the extent of the Respondents' reliance upon their advice.

35. The Tribunal is satisfied beyond reasonable doubt that after considering the explanation for the lack of a licence the Respondents acting in their capacity as executors of the will of Ashley Fletcher have committed an offence even though the Nottingham City Council decided to take no action against them.
36. As far as the conduct of the landlord and their financial circumstances are concerned there were no complaints about the landlord other than a failure to deal with a request for a renegotiation of the rent by the Applicant Philippa Lowery. Also the Tribunal accepts that the Applicants had considerable difficulty in identifying their landlord. Email request for this information were answered with evasions and equivocations by Unit2Rent on behalf of the estate. From the Grant of Probate, the estate appears to be solvent although Mrs Skinner stated there had been some sales of the estate's assets to discharge business loans incurred by Mr Fletcher.
37. The Tribunal intends will make a rent repayment order in favour of each Applicant after making an allowance for consumable services provided by the Respondent under the terms of the Agreement calculated as set out in the table below as an Appendix.. The table sets out the sum each Applicant is entitled to receive.
38. In making this determination the Tribunal was not given any information about the cost of services supplied. It has used its experience to decide fair figures for the cost of such services in making a deduction from the figure for rent. However, as there is no evidence regarding the tenants' consumption of gas or electricity the Tribunal orders that in addition the rent repayment order is adjusted by the addition of £100.00 paid by each tenant against anticipated consumption.

Appeal

39. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Tribunal Judge PJ Ellis

APPENDIX

8a Gamble Street		
Clause 6 Services		
	PCM	per Week
Electricity	75	18
Gas	95	22.8
Water	27	6.48
Broadband	35	8.4
TV licence	13.125	3.15
	245.125	58.83
Tenants Share per person		9.805
Rent Repayment Order		
Rent per week		99
Landlord's permitted Deductibles		9.805
Less Pre-payment £2.00 pw		7.805
Repayment per week		91.195
Repayment for term		4559.75
Total sum due		4559.75