



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

Case Reference : **MAN/00BY/HMF/2019/0102P**

Property : **Windsor House, 72 Durning Road,
Liverpool L7 5NG**

Applicant : **Seren Gomez-Jones**

Respondent : **Trophy Homes Limited**

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

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

**Date of
Determination** : **2nd December 2020**

Date of Decision : **17th December 2020**

DECISION

Decision

1. Trophy Homes Limited is ordered to repay rent to Ms Gomez-Jones in the sum of £3379

Background

1. On 26th November 2019 Ms Seren Gomez-Jones (“Ms Gomez-Jones”) applied to the First-tier Tribunal for a Rent Repayment Order (RRO) pursuant to Section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The application relates to Windsor House Deluxe Studio, 72 Durning Road, Liverpool (“the Property”).
3. The Respondent to the application is the Landlord Trophy Homes Limited (“Trophy Homes”).
4. The tenancy agreement, dated 28th August 2018 granted Ms Gomez-Jones a tenancy of the Property from 12th September 2018 to 30th June 2019.
5. On 30th January 2020 the Tribunal issued directions to the parties providing for the filing of statements, outlining how the Tribunal must approach the application and thereafter for the matter to be listed for a paper determination. The directions confirmed the Tribunal would endeavour to deal with the application after 19th February 2020.
6. However, due to the Covid19 outbreak the determination could not take place at that time. This has now been a paper hearing on the papers that has not been objected to by the parties and is not provisional. A face-to-face hearing was not held because it was not practicable to do so and all issues could be determined on paper. The documents referred to in this decision are those contained in the papers submitted by the parties to the Tribunal.
7. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.
8. Ms Gomez-Jones provided the papers directed by the Tribunal. Trophy Homes did not respond to the application and provided no information to assist in the determination of the application.

The Law

9. A RRO is an order that the Tribunal may make requiring a Landlord to repay rent paid by a tenant. In order for such an order to be made the Landlord must have committed one of the offences set out in Section 40(3) of the 2016 Act. Those offences were set out in the Tribunal’s directions referred to in paragraph 5 above.
10. One of those offences, as set out in Section 72(1) of the Housing Act 2004, (“the 2004 Act”) is controlling or managing an unlicensed property in multiple-occupation.
11. Section 41(2) of the 2016 Act provides a tenant may apply for a RRO only if:
 - (a) the offence related to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period 12 months ending with the day on which the application is made.

12. Section 43 of the 2016 Act provides that, in order to make a RRO, the Tribunal must be satisfied beyond reasonable doubt the Landlord has committed one of the offences specified in section 40(3) (whether or not the Landlord has been convicted).
13. Section 44 of the 2016 Act thereafter provides that if the Tribunal determines a RRO should be made then it must calculate the amount as prescribed. If the Landlord has committed the offence of controlling or managing an unlicensed HMO, then the amount must relate to the rent paid by the tenant during a period, not exceeding 12 months, during which the Landlord was committing the offence. However, the amount to be repaid must not exceed the rent paid in that period, less any relevant awards of universal credit or housing benefit.
14. Section 44(4) of the 2016 Act requires the Tribunal to take into account the conduct of both the Landlord and tenant, the financial circumstances of the Landlord and whether the Landlord has been convicted of any of the specified offences.
15. Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) Order 2018 sets out those properties that must be licensed as follows:
 - (a) the property is occupied by five or more persons;
 - (b) it is occupied by persons living in two or more separate households;
 - (c) it meets the “standard” test for an HMO under section 254(2) of the 2004 Act.
16. Prior to 1st October 2018, a property was only a mandatory HMO if it fulfilled the conditions referred to in paragraph 14 and it was a property of three floors or more. This latter requirement was removed from 1st October 2018.
17. A property meets the standard test if it fulfils the following requirements:
 - (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;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are treated as so occupying;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable in respect of at least one of those persons’ occupation of the living accommodation;
 - (f) two or more of the households who occupy the living accommodation share one of more basic amenities.

18. From 1st April 2015 Liverpool City Council issued a city-wide selective licensing requirement for privately rented properties in accordance with Part 3 of the 2004 Act. Consequently, all privately rented properties within the City, to which the legislation applies, must be licensed and an offence is committed if it is not.

The Property

19. The Property is a studio within a building converted into a number of studios/flats.
20. Ms Gomez-Jones provided a letter from Christopher Williams of the Private Sector Housing at Liverpool City Council to confirm the Property is one that is required to be licensed under the City's selective licensing scheme. He confirmed that, as of 19th February 2020, no application for a licence had been made.

Submissions

21. Ms Gomez-Jones confirmed she sought a RRO. She provided details of her tenancy and had paid rent of £5076. This had been paid in three equal instalments on 8th October 2018, 23rd January and 9th April 2019. She advised there had been several issues during her tenancy and consequently there had some periods of time when she had not been at the Property. She had finally left the Property on 12th June 2019, before the tenancy ended.
22. The tenancy included an allowance the provision of electricity "equivalent to 10% of the annual contracted rental income (for avoidance of doubt the energy allowance s £360 per person)" and water rates.
23. Ms Gomez-Jones provided the Tribunal with issues relating to the Property to include:
 - (1) There were problems with the internet connection and kitchen equipment at the outset of the tenancy.
 - (2) The laundry facilities included within the tenancy were not in operation when the tenancy commenced resulting in Trophy Homes paying £10 per week to Ms Gomez-Jones until the laundry was in working order.
 - (3) In October 2018 animal noises could be heard under the kitchen floor.
 - (4) In November 2018 a further complaint was made about a drain smell that had already been reported.
 - (5) On 19th February 2019 human faeces emerged from the drain into the toilet and was reported to Trophy Homes. MetroRod attended the Property but the outcome was not reported to Ms Gomez-Jones.
 - (6) In March 2019 after further contact with Trophy Homes, a maintenance engineer called on another matter but lifted the cover of the shower where a decomposing rat was found.
 - (7) On 24th April 2019 Ms Gomez-Jones returned to the Property to find water seeping from under the front door of the Property. The cause was a blocked toilet that had overflowed causing human waste to contaminate the Property. At this point Ms Gomez-Jones was moved to Studio 4 at the development and did not return to the Property.
24. Ms Gomez-Jones provided a statement from Ian Humphreys of Liverpool Student Homes through which she had let the Property. He explained the attempts made to remedy the issues.

25. Mr Williams of Liverpool City Council confirmed that when the Council became aware the Property was unlicensed, confirmed he had written to Trophy Homes advising it of the need for a licence and the consequence of its failure to do so could be prosecution.
26. It was confirmed to the Tribunal that Trophy Homes had not been prosecuted.

Determination

27. In order for the Tribunal to make a RRO, it must first be satisfied, beyond reasonable doubt, Trophy Homes has committed an offence as set out in section 40(3) of the 2016 Act.
28. The Tribunal relied upon the evidence provided by Mr Williams to determine the Property is in an area of selective licensing and does not have the necessary licence.
29. The Tribunal is therefore satisfied, beyond reasonable doubt, that Trophy Homes has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the period of the tenancy from 12th September 2018 to 30th June 2019.
30. Ms Gomez-Jones made her application to the Tribunal on 26th November 2019. This is within 12 months of the end of the relevant period and the Tribunal can therefore make a rent repayment order, as asked.

Rent Repayment Order

31. The maximum amount of the rent repayment order is £3750. This is Ms Gomez-Jones' rent for the period of 12 months prior to the filing of the application and therefore represents the rent paid for the period 27th November 2018, to 30th June 2019. The Tribunal must take into account any housing benefit or universal credit paid during the same period, but there is no evidence any such payments have been made.
32. Section 44(4) of the 2016 Act provides that when making an order the Tribunal must also take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence.
33. Trophy Homes has not been convicted of a relevant offence. The Tribunal has no other information relating to Trophy Homes to enable it to make any further determination relating to its financial circumstances.
34. The Tribunal is entitled, however, to consider the benefit to Ms Gomez-Jones of the services included within her rent when making a RRO. It would be inequitable for the RRO to include the cost of those services used.
35. The Tribunal noted the allowance for energy of £360 and, apportioning that over the relevant period is £212. The amount for water rates is £159. The total to be deducted from the RRO is £371.
36. The Tribunal therefore determines Trophy Homes is to repay rent to Mrs Gomez-Jones the sum of £379, being the sum of £3750, less the amount allowed for bills of £371..