FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00ML/HMF/2020/0038
Property	:	Flat 1, 20-22 Gloucester Place, Brighton BN1 4AA
Applicant	:	Johnathan Jones
Representative	:	Mr Matthew Withers of Counsel, instructed by Edward Harte Solicitors
Respondent	:	Rachid Louarradi
Representative	:	-
Type of Application	:	Application by tenant for rent repayment order: sections 40-46 Housing and Planning Act 2016
Tribunal Members	:	Judge E Morrison Mr M Woodrow MRICS Mr M R Jenkinson
Date of Hearing	:	16 March 2021 (by video)
Date of decision	:	19 March 2021

DECISION

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The application

1. By an application dated 10 December 2020 the Applicant tenant applied for a rent repayment order ("RRO") against the Respondent landlord on the grounds that the Respondent had committed an offence under section 1 of the Protection from Eviction Act 1977 (eviction of occupiers), and/or an offence under section 72 of the Housing Act 2004 (control or management of unlicensed HMO).

The law and jurisdiction

2. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 ("the Act"), reproduced in full in the Appendix to this Decision.

3. Section 41 permits a tenant to apply to the first-tier tribunal for a RRO against a person who has committed a specified offence, which include those offences mentioned at paragraph 1 above, if the offence relates to housing rented by the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made.

4. Under section 43, the tribunal may only make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed one of the specified offences.

5. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 relates to the amount of a RRO. Where an offence under the PEA has been committed, the amount must relate to the period of 12 months ending with the date of the offence. Where an offence under section 72 of the Housing Act 2004 has been committed, the amount must relate to a period, not exceeding 12 months, during which the landlord was committing an offence. It must not exceed the amount of rent paid less any universal credit paid in respect of the rent. In determining the amount of a RRO the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant (b) the financial circumstances of the landlord.

Procedural background, representation and evidence.

6. Upon receipt of the application, the Tribunal served the application on the Respondent and issued Directions dated 8 January 2021, which provided for exchange of statements of case, to be followed by an oral hearing. The Respondent did not respond to the application or comply with the directions. He provided no evidence whatsoever and did not attend the hearing.

7. The hearing bundle provided by the Applicant included his detailed statement with supporting documentation, and he attended the hearing, represented by Mr Withers. The bundle also contained witness

statements from five other individuals. Three of these – Peter Gibbons, Sean Burdett and Gavin Bellis – attended the hearing, but were released upon the non-attendance of the Respondent and upon the Tribunal confirming it did not need to ask any questions of them. Caroline Boles, a Senior Environmental Health Officer with Brighton and Hove City Council, had provided a statement but not offered to attend.

8. The Applicant told the Tribunal that the fifth witness, Loreen Hau, who occupied a room at the Property between August 2017 and early May 2019, had informed him on 2 March 2021 that she was no longer willing to attend, having been contacted by two other previous occupiers, Rene and Fariss, and been put under pressure by them not to do so. The Applicant said that he had never informed Rene or Fariss of the proceedings, and that they had a close relationship with the Respondent. He therefore concluded they could only have known about the proceedings from the Respondent.

9. Accordingly the only oral evidence at the hearing was given by the Applicant, but the Tribunal was asked to also rely on the written evidence of the other five witnesses.

The Applicant's case

(i) The identity of the landlord

10. The Applicant provided a plethora of written evidence supporting his claim that he occupied Room 2 at the Property from 7 December 2017 to 18 December 2019. He had exclusive possession of that room and shared a kitchen and bathroom with the other occupiers of the flat. He initially found the accommodation by responding to an online advertisement placed by SB Lets Ltd. Tenant checks and negotiations followed. The Applicant agreed to pay rent of £600.00 per month, inclusive of utilities and bills, for an initial period of 6 months. The amount included within the rent for utilities was never specified or broken down. He paid a deposit and the first month's rent to SB Lets. He was not given a written tenancy agreement and at no time during the negotiations was he told the identity of the landlord.

11. On 7 January 2018, the day on which the second month's rent was due, the Respondent sent him a text message chasing the rent and providing details of his bank account. Thereafter all rent was paid by the Applicant into that account.

12. On 9 January 2018 the Applicant messaged the Respondent asking for a new chest of drawers, and the Respondent replied that "I will get u one this week". Further texts followed about the chest of drawers, and on 29 January 2018 the Applicant informed the Respondent about a broken window. On 23 February 2018 the Respondent replied "Hi ok I will come to take it off and glaze it".

13. On 24 January 2018, in response to an email from the Applicant asking for a tenancy agreement, SB Lets said:

Please ask to the landlord and he will sort it out for you

Fawzi: 07882221528

Email: rachid_louarradi@hotmail.fr

14. The Applicant said that "Fawzi" was one of several aliases used by the Respondent, and his case was that the Respondent was his landlord throughout his period of occupation. He paid rent direct to the Respondent's bank account and it was the Respondent, and no-one else, who dealt with all matters, e.g. repairs, that arose in relation to the flat and the tenancy. As well as the texts referred to above, the Applicant provided a printout of WhatsApp messages between him and the Respondent covering the period 17 December 2018 – 26 December 2019. These messages show the Respondent set rules for "all tenants" about what guests were allowed in the property, and they include the Respondent's communications in November 2019 regarding his demand that the Applicant should vacate his room.

15. The Applicant told the Tribunal that the mobile number used by the Respondent for text and WhatsApp messages was the same as that provided by SB Lets on 24 January 2018.

<u>Alleged offence under section 1 of the Prevention from Eviction Act 1977</u>

16. The Applicant says that he was unlawfully evicted on 18 December 2019, contrary to section 1 of the Protection from Eviction Act 1977.

17. The Applicant's evidence as to the events leading up to this can be summarised as follows:

- On 11 November 2019 the Respondent sent a WhatsApp message to him as follows: *Hi Joni, I have to do work at the top. We go other flor and I have to empty the flat as we have to do big job at the flat we start in 4 weeks*. Subsequent communications confirmed that the Respondent wanted to develop the building to make more rooms to rent out.

- The Applicant asked the Respondent to delay the work, and when the Respondent did not agree to this, he wrote to the Respondent on 20 November 2019 attaching "the laws relating to the eviction process". The Respondent replied that the Applicant must move out by 1 December. On 21 November the Applicant messaged the Respondent telling him that he had a verbal tenancy agreement, and that he had spoken to a solicitor about illegal eviction. He said he would only agree to move out if the Respondent paid him compensation of £4700.00. Later that day the Applicant found the following typed but unsigned Notice dated 29 October 2019 under the door of his room, with another copy left on the kitchen table:

Tenancy Termination Notice

Dear all Tenants

As there will be work going at the property by the end of this year, for that reason you are hereby notified and required to vacate the property by 11/12/2019. You're welcome to leave earlier, but everyone needs to leave by the date giving.

Thank you for your collaboration.

Yours Sincerely

The Applicant had not previously seen this. He messaged the Respondent asking him to confirm if it was from him; there was no response.

- On 23 November 2019 the Applicant told the Respondent he was reporting matters to the Council and the Police (which he did), and on 6 December 2019 he wrote to the Respondent as follows:

  Just to ensure there can be no misunderstanding come the 11th of December, I intend to remain in my home, being Flat 1, 20-22 Gloucester Place until the proper eviction process is complete.

  The Applicant also said he would pay December's rent as usual, and reminded the Respondent that illegal eviction is a criminal offence. There was no reply from the Respondent.

- On 12 December Shadi, of SB Lets, telephoned the Applicant and told him that the Respondent intended to forcibly remove him and "make [his] life hell".

- On 18 December the Applicant went to work as usual. While he was out his belongings were moved to the lobby outside the flat. When he returned, with his friends Sean Burdett and Peter Gibbons, the locks had been changed and he could not get into the flat. Having collected the belongings in the lobby, assisted by Gavin Bellis, and stayed with a friend, the Applicant realised some of his belongings were missing. He messaged the Respondent who told him he could collect them the following morning (21 December). The Respondent was present and would not allow the Applicant, who was accompanied by Gavin Bellis, back into the flat.

18. The evidence of Sean Burdett, Peter Gibbons and Gavin Bellis, as set out in their witness statements support the Applicant's evidence as to the eviction on 18 December 2019 and subsequent attempts to collect belongings.

Alleged offence under section 72(1) Housing Act 2004

19. The Applicant's evidence is that Flat 1, 20-22 Gloucester Place is a self-contained maisonette ("the flat") on the second and third floor of a purpose-built block containing five flats. The entrance to the Flat 1 is

on the second floor. On the lower floor of the flat there is a shared kitchen and toilet, and two rooms, one of which, Room 2, was the Applicant's room. On the upper floor are four more rooms and a shared bathroom. Each of the six rooms has a lock; only the tenant of each room has the key. In the kitchen the cupboards are numbered 1-6 for each tenant. This evidence was supported by photographs.

20. The Applicant prepared a table showing who had occupied each of the six rooms during his residence. According to this table although people came and went, each room was used by only one person, and there were at least five occupiers, usually six, until 19 November 2019, when the number dropped to four. However, the table is not fully consistent with paragraph 20 of the Applicant's witness statement, where he says that the number of occupiers was down to four by 11 November 2019, and two of those remaining then moved out (on unspecified dates) prior to 18 December 2019. Although the Applicant does not explicitly say so, it is implicit from his evidence that none of the tenants were related and that they were all separate households.

21. The Applicant's case about the layout of the flat and the occupancy of the rooms is supported by the evidence of his friends Gavin Bellis, Peter Gibbons and Sean Burdett, who had all visited the flat on multiple occasions while the Applicant lived there. It is also supported by the written evidence of Loreen Hau, who was the tenant of Room 6 from 14 August 2017 to 2 May 2019.

23. The written evidence of Caroline Boles states that Brighton and Hove City Council introduced an Additional HMO Licensing Scheme on 1 March 2018, which applied across the city, and required landlords of two storey properties housing three or more unrelated tenants who share facilities to apply for a HMO licence. Then, on 1 October 2019, the definition of a HMO under the Housing Act 2004 was amended so that properties occupied by five or more people, forming two or more separate households, required a licence. Flat 1, 20-22 Gloucester Place did not have a licence for the period 7 December 2017 to 18 December 2019. On about 18 November 2019 the Council wrote to "the landlord" asking them to make an application if the property required a licence. A reply was received by email on 2 December 2019 from a E Barakat stating that the property was not a HMO and that it had been let to the Respondent for the last 2+ years. Ms Boles said that the Council had so far been unable to investigate further, largely due to the Covid pandemic.

Discussion and determination

24. The first issue for the Tribunal is to consider whether the Applicant has proved that the Respondent was his landlord. Although the Respondent does not appear to have put his name to anything formal in respect of the tenancy, the Tribunal is satisfied that this was a deliberate tactic on his part to try to avoid responsibility It is clear that he was identified as the landlord by the letting agents, that he received

the rent, and that he alone dealt with matters arising during the tenancy. There is no evidence suggesting that anyone else might be the Applicant's landlord, and the Respondent has not denied the matter. The Tribunal is in no doubt that he was the Applicant's landlord.

25. The Tribunal is also satisfied that the Applicant occupied as a tenant, under an oral assured shorthold tenancy. He paid rent of £600.00 every month and had exclusive occupation of Room 2 at the flat. The Applicant explained that the application was not made earlier because he and his solicitors have been focussing on a separate claim in the county court for damages arising out of illegal eviction, proceedings with which the Respondent has engaged to some extent.

26. The next issue is whether the Applicant has proved, beyond a reasonable doubt, that the Respondent has committed a specific offence.

27. Section 1 of the Protection from Eviction Act 1977 provides, at section 1(2):

If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

28. Section 3 of the 1977 Act deals with prohibition of eviction without due process of law and provides (in relevant part):

(1) Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and—

(a) the tenancy (in this section referred to as the former tenancy) has come to an end, but

(b) the occupier continues to reside in the premises or part of them,

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

29. The Housing Act 1988 governs security of tenure for assured shorthold tenancies. An assured tenancy (of which an assured shorthold is a subset) cannot, subject to exceptions which do not apply here, be brought to an end by a landlord unless and until he obtains a court order for possession. In most situations, a notice in a prescribed form setting out the ground for possession must be served before court proceedings can begin.

30. There is overwhelming evidence that the Respondent failed to comply with any part of the legal requirements for eviction. He deliberately acted entirely outside the legal process and there is not an iota of evidence to support the only possible defence, namely that he believed, or had reasonable cause to believe, that the Applicant had moved out. To the contrary the Applicant had made it crystal clear that he had not and would not move out. The Respondent, despite

having been warned about the possible legal consequences, took matters into his own hands and either personally, or with the assistance of others, unlawfully evicted the Applicant on 18 December 2019. This offence has been proved.

31. Under section 72(1) of the Housing Act 2004 a person commits an offence if he is a person having control or managing an HMO which is required to be licensed but is not licensed. Under section 72(4) it will be a defence if, at the material time, an application for a licence had been made and was still effective. Section 72(5) provides for a defence of reasonable excuse.

32. The Tribunal accepts the Applicant's evidence, corroborated by four others, that his room was within a two- storey self-contained unit housing three or more unrelated tenants who shared facilities throughout his period of occupation, which means that the property fell with the Council's Additional HMO Licensing Scheme as from 1 March 2018 until the numbers of occupiers reduced to below three, at some point after 11 November 2019. There was probably also a short period between 1 October 2019 and a date in early November 2019 when the property also fell within the normal HMO licence requirements because it was occupied by five or more people, forming two or more separate households, but the evidence about the number of occupants after 1 October 2019 is not sufficiently clear that we can be satisfied beyond a reasonable doubt about this.

33. The Respondent has not denied an offence under section 72(1), nor put forward any defence of reasonable excuse. The Respondent was a "person having control" of the property as that term is defined in section 263 of the Act. The Tribunal is satisfied, beyond a reasonable doubt, that the Respondent has committed an offence under section 71(1) of the Housing Act 2004 between 1 March 2018 and 11 November 2019 by failing to obtain an Additional HMO Licence.

34. However, the Applicant cannot be awarded a RRO on the basis of this offence because there is no evidence that it was committed in the period of 12 months ending with the day on which the RRO application was made. Therefore, the only relevant offence for the purposes of this application is the offence of unlawful eviction. This took place on 18 December 2019, within the period of 12 months prior to the application.

35. Having made these findings, the Tribunal has a discretion both as to whether to make a RRO and as to the amount. Part 2 of the Act, which includes the RRO provisions, is "about rogue landlords and property agents" (section 13). RROs are one measure intended to discourage and penalise the activities of such landlords. In our view it is wholly appropriate to impose a RRO on a landlord who has so deliberately disregarded the protection that the law affords to tenants in respect of their home.

36. Section 44 of the Act requires us to take into account, in particular, the parties' conduct, the landlord's financial circumstances, and whether the landlord has at any time been convicted of a relevant offence. The

Respondent has not been convicted and therefore issues of double penalties do not arise. There is nothing in the Applicant's conduct which would militate against awarding a RRO for the maximum amount of 12 months' rent, referable to the period 19 December 2018 - 18 December 2019. Nor is there any mitigating conduct on the part of the Respondent that might justify a reduction in the award from the maximum; indeed, the seriousness of the unlawful eviction is in our view an aggravating factor. Nor has the Respondent provided any evidence of his financial circumstances. Had he provided evidence of the cost of utilities paid out of the rent, a reduction to take account of that would have been appropriate, see *Vadammalayan v Stewart* [2020] UKUT 0183 (LC). However, the Respondent has not done so and the Tribunal cannot be expected to hazard a guess.

37. Taking all the circumstances into account, the Tribunal concludes that this is a case where it is appropriate to make a **rent repayment order for the maximum permitted sum of £7200.00** to be paid by the Respondent to the Applicant by 16 April 2021.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

Sections 40 – 46 Housing and Planning Act 2016

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.

	Act	section	general description of offence
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).

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.

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.

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

In the order is made on the ground that the landlord has committed	*the amount must relate to universal credit paid in respect of*
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.