



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/OOHB/HMF/2020/0029**

Property : **12 Whatley Road,
Bristol BS8 2PU**

Applicants : **Lauren Cole
Lorn Wickham**

**Respondents
Representative** : **(1) Tilat Siddiqui
Sufia Siddiqui (lay)**

Representative : **(2) Nadra Siddiqui
Luke Nelson, counsel (Henriques Griffiths)**

Application : **Application by tenants for a Rent Repayment
Order following an alleged offence committed by the
Respondent for having control or management of an
unlicensed House in Multiple Occupation (“HMO”)
– Section 43 of the Housing and Planning Act 2016
(“the 2016 Act”)**

**Date application
received** : **20th October 2020**

Tribunal : **Bruce Edgington (lawyer chair)
Paul Smith FRICS
Michael Jenkinson**

Date & place of hearing: **18th February 2021 as a video hearing
from Havant Justice Centre in view of
Covid pandemic restrictions**

DECISION

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1. The application for a Rent Repayment Order against the second named Respondent Nadra Siddiqui be and is hereby dismissed.
2. Tribunal makes Rent Repayment Orders against the first named Respondent, Tilat Siddiqui (1) in favour of Lauren Cole in the sum of £2,385.00 and (2) in favour of Lorn

Wickham in the sum of £3,100.00. These monies should be paid by 4.00 pm on the 18th March 2021.

3. The Tribunal also makes an order that the first named Respondent pay an additional £300.00 to the Applicants as reimbursement for fees paid to the Tribunal.

Reasons

Introduction

4. Rent Repayments Orders (“RROs”) require landlords who have broken certain laws to repay rent paid either by tenants or by local authorities and are intended to act as a deterrent to prevent offending landlords profiting from breaking such laws.
5. The orders were originally made pursuant to the **Housing Act 2004** (“the 2004 Act”) but this application is made under the later provisions contained in the 2016 Act. Section 41(1) of the 2016 Act says that “*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*”.
6. Section 40 of the 2016 Act sets out the offences and prefaces the definition by saying “*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*”. One of those offences described is under section 72(1) of the 2004 Act i.e. “*control or management of unlicensed HMO*” and this is the offence relied upon by these Applicants.
7. The Tribunal made a directions order on the 29th October 2020 recording the claims by the Applicant Lorn Wickham who lived at the property from 1st June 2018 to 31st March 2020 paying £700 per month and then Lauren Cole who lived at the property from 30th September 2019 to 31st March 2020 paying £795 per month. The joint claim is for a total of £13,965.00. Lauren Cole did say at the time that her claim was not exactly as stated in the order. At the hearing, she said that her claim was from 29th September 2019 to 3rd April 2020.
8. Further directions orders were made on the 13th November 2020, 25th November 2020 3rd December 2020 and 21st December 2020 partially caused by representations that the 2nd named Respondent, Nadra Siddiqui, did not receive any of the rent, has not been in control or management of the property and/or is in such a state that she is unable to engage in the proceedings. The last order also timetabled the case to this hearing which has been by way of a video hearing because of the Covid pandemic.
9. Based on the evidence filed, the Regional Surveyor, Dallas Banfield FRICS, when making his order of the 21st December 2020, said “*Given the above, the Tribunal is minded to discharge Nadra Siddiqui as a Respondent but before doing so wishes to give Tilat Siddiqui the opportunity of responding. The Tribunal is also prepared to give time to enable Tilat Siddiqui (sic) to make submissions in respect of the substantive application that she was in control of an unlicensed HMO*”. No response was filed or served by or on behalf of Tilat Siddiqui and no reason has been proffered as to why she should not have done so, given the clear instructions in the order as to how such a statement should be prepared.

10. When this hearing was arranged, the Tribunal case worker kindly put together an e-bundle of all the documents which had been submitted by the parties with numbered pages. Any page numbers mentioned in this decision are from that bundle.
11. Two days before the hearing, the Tribunal members were sent a lengthy statement from the Respondent Nadra Siddiqui and on the day before the hearing, they were sent a skeleton argument from counsel for the said Nadra Siddiqui. Whilst the Applicant Lorn Wickham has justifiably expressed dissatisfaction with having been met with the statement of evidence this late in the day, the parties should know that all of these documents and submissions have been carefully considered by the Tribunal members, subject to the comments made below.

Jurisdiction

12. Section 41 of the 2016 Act says that the Tribunal has jurisdiction if “*the offence was committed in the period of 12 months ending with the day on which the application is made*”. In this case, the evidence is that the offence was first committed on the 8th July 2019. However, until an application for a licence is made, the offence continues to be committed on a daily basis which, in this case, would be included within the period of 12 months ending with the date of this application. The Tribunal has to be satisfied that an offence has been committed using the criminal standard of proof i.e. beyond a reasonable doubt.
13. Section 44 of the 2016 Act says that the RRO can “*relate to rent paid during....a period, not exceeding 12 months, during which the landlord was committing the offence*”.

The Hearing

14. Those attending the hearing were the Applicants, Luke Nelson, counsel for the Respondent Nadra Siddiqui and, by telephone only, Sufia Siddiqui claiming to be a representative for Tilat Siddiqui. Mr. Nelson’s instructing solicitor and Nadra Siddiqui herself plus a young man, also attended. The Tribunal case officer introduced the attendees and then assisted everyone by giving technical advice as to how the hearing would proceed. The Tribunal chair then introduced himself and the Tribunal members.
15. He then said that he had some questions to raise on the papers filed. He would do that and then ask the parties to put their cases and, finally, he would ask the other Tribunal members to ask any questions they had. That is in fact how the hearing was dealt with although, at the end, he did ask any party if they had anything else to say. They said that they did not.
16. One unfortunate aspect of the hearing was that Tilat Siddiqui was not in attendance. Sufia Siddiqui had e-mailed the Tribunal office, less than half an hour before the hearing was due to start to say that Tilat Siddiqui was “*too unwell to attend*”. The 2 Respondents and Sufia Siddiqui are sisters. Sufia Siddiqui did not elaborate on what the illness was. Thus the Tribunal had the task of assessing representations from someone who had not been named by the party as being her representative. Sufia Siddiqui was very forceful in her comments and constantly interrupted other people who were speaking. She eventually had to be warned that if she continued in this fashion, she would be muted. This did not actually happen.

17. The 2nd named Respondent, Nadra Siddiqui, is the registered owner of the building according to a copy of the Land Registry title starting at page 124 in the bundle. The evidence of the Tenancy Relations Officer in the Private Housing and Accessible Homes Team of Bristol City Council, Mr. Kane Davis, starting at page 79 in the bundle is that the 2 sisters lived at the property when rooms were let. Mr. Davis was approached by Tilat Siddiqui in April 2020 who alleged that she had been evicted from the property by Nadra Siddiqui.
18. Following his investigation, it was Mr. Davis's opinion that Tilat Siddiqui was the person managing and in control of the property and that all the rent had been paid to her personally by the Applicants. These conclusions and the facts to support them are contained in Mr. Davis's statement to the county court at page 81 in the bundle.
19. The evidence of the 2 Applicants set out at pages 91 and 92 of the bundle at least partially corroborates Mr. Davis's opinion and confirms that all their rent was paid to Tilat Siddiqui personally. Mr. Lorn Wickham records that he brought county court proceedings against Tilat Siddiqui to recover the security deposit he paid. A forthwith judgment was made on 20th August 2020 which, as at the 22nd November 2020, remained unpaid. Lauren Cole records that she was drawn into constant arguments between the sisters.
20. There is much 'evidence' filed which includes:
 - 2 of the agreements allowing the Applicants to occupy their rooms are in the bundle at pages 11 and 13. The one in favour of Lorn Wickham states that Tilat Siddiqui is the 'householder' and the one for Lauren Cole states that T & N Siddiqui are the householders. However, only 1 is signed by the landlord and it would appear to be "Til" Siddiqui's signature.
 - Nadra Siddiqui allegedly registered lasting Powers of Attorney on 28th May 2019 in favour of her sisters Tilat Siddiqui and Sufia Siddiqui. Nadra disputes that and claims that they were improperly created by her sisters and she subsequently discharged them on 13th November 2020. A copy of a General Power of Attorney dated 27th February 2009 in favour of Tilat Siddiqui is at page 131 in the bundle. However, an exhibit to Nadra's statement is a copy of her library card. The signatures on the 2 documents are very different.
 - Sufia Siddiqui, has also written to the Tribunal and her letter is at pages 164-167 in the bundle. She claims that all allegations against her sister Tilat Siddiqui are wrong and that she is being 'targeted' by Nadra Siddiqui and her grown up children Alexi and Amber Siddiqui. She says that Nadra Siddiqui has been 'decreed and assessed by her GP as being of sound mind'. However, she provides no evidence to show that rent has been paid to anyone other than Tilat Siddiqui.
 - There is a letter from Nadra Siddiqui's GP, Dr. Joanna Walsh dated 28th November 2020, which confirms that Nadra Siddiqui has a significant history of mental health problems. She was a hospital in-patient from 5th-17 August 2020 'and is still struggling with her physical and mental health'. The letter goes on to

say “*She is neither currently fit to prepare for, or appear in, court and it would be appropriate to defer legal matters on the grounds of ill health*”.

- There are 3 letters from Bristol Mind, all signed by a senior mental health worker. They are dated December 2020 and record that Nadra Siddiqui has suffered long term mental health problems plus treatment for cancer over the previous year.
- The statement of evidence from Nadra Siddiqui can only really be described as a vitriolic attack on her sister Tilat which blames her for this whole situation and claims that she was intent on taking the building and all Nadra’s property from her.

Should the case against Nadra Siddique be dismissed?

21. It is clear from section 72 of the 2004 Act, that the person having control or management of the property commits an offence if the property comes within the definition of an HMO and does not have an HMO licence. Section 40 of the 2016 Act says that only a landlord can be the subject of an RRO. However, section 60 confirms that a ‘tenancy’ includes a licence. Thus, it is this Tribunal’s view that if someone grants a licence to occupy to someone in the knowledge of but without the objection of the owner of the freehold title, he or she becomes the landlord for this purpose.
22. It is clear that Nadra Siddiqui and her sister Tilat lived at the property for at least some time and that Tilat appears from the statements of the Applicants, the statement of Kane Davis and copies of e-mails created at the time, to have been dealing with the granting of the right to occupy to the Applicants, and, indeed, to other occupiers. At the hearing, Lorn Wickham said that he thought that Nadra had been present when he signed his agreements but agreed that all the rent was paid to Tilat’s personal bank account.
23. If the Tribunal should decide that the alleged offence has been committed, then it must also determine who was the landlord at the time. On the evidence presently available, the freehold owner i.e. Nadra Siddiqui was the primary landlord and knew about the licences. Thus she may well have been guilty of an offence. The validity of any Power of Attorney at the time is not really relevant because Tilat Siddiqui granted the licences and received all the rent. Nadra confirms that she did not receive any of the rent.
24. The Tribunal cannot conclude that Nadra was the ‘landlord’ to the licence holders. In any event, a rent ‘repayment’ order cannot be made against her in a situation where no rent was paid to Nadra Siddiqui. One cannot repay something which has not been paid in the first place. However, rather than just discharge her as a Respondent, the Tribunal takes the view that it should just dismiss the application for an RRO to be made against her.

Discussion as to Liability

25. The Applicants have produced written statements from Cara Guthrie and Kane Davis from Bristol City Council, both of which contain certificates of truth. Ms. Guthrie confirms that the property was in one of 12 wards in Bristol which were subject to additional licensing as from 8th July 2019 and should have an HMO licence, that notice was given to the property that a licence was required, that it does not have one and that this is an offence as set out in section 40 of the 2016 Act.

26. There was some discussion at the hearing as to whether the property was an HMO before the 8th July 2019 but Ms. Guthrie makes no mention of this and the Tribunal can only take the evidence as it stands. The only inference which the Tribunal can draw is that the property was not considered to be an HMO by Bristol City Council before 8th July 2019. Otherwise, there would have been no point in going through the inclusion procedure.
27. Mr. Davis confirms that, in his opinion, following investigations he has made, that Tilat Siddiqui was, throughout the relevant time, the person who was (a) in control of and managed the property and (b) received the rent from the Applicants in her personal bank account.
28. There is no evidence from Bristol City Council or either Respondent to show (a) that Nadra Siddiqui was managing or controlling the property, despite the fact that she owned it or (b) that an HMO licence has been applied for. The alleged Powers of Attorney, valid or not, would indicate that Nadra did not have control.
29. Sufia Siddiqui tried to give evidence at the hearing that Tilat had paid all the money she received towards the upkeep of the property. However, this was not the evidence of Tilat Siddiqui and no written statement or corroboration has been provided. Sufia simply said that the Tribunal should look at Tilat's bank account, which was not, of course, provided or available. Nadra's written statement, including a statement of truth, says that when she took over management of the property when Tilat left she found that gas, electricity and the mortgage payments were all substantially in arrears.

Conclusion as to Primary Liability

30. The Tribunal is reminded of the words of Judge Cooke in the Upper Tribunal case of **Paulinus Chukwuemera Opara v Marcia Olasemo** [2020] UKUT 96 (LC) when she criticised a First-tier Tribunal of being over cautious in considering the words 'beyond reasonable doubt'. She said this:

"...For a matter to be proved to the criminal standard it must be proved 'beyond reasonable doubt'; it does not have to be proved 'beyond any doubt at all'. At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells them that it is permissible for them to draw inferences from the evidence that they accept..."

31. On the evidence produced and discussed above, the Tribunal is satisfied beyond a reasonable doubt that an offence was being committed by the Respondent Tilat Siddiqui under section 72 of the 2004 Act as she was both in control and/or had management of the building at the relevant time and received all the rent. It is also satisfied that Tilat Siddiqui was a landlord at the relevant time and that a RRO should be made.

Discussion as to Amount Payable

32. On the question of quantum, the 2016 Act changed the way in which Tribunals should consider the calculation of an RRO. Under the 2004 Act, the Tribunal's calculation had to be tempered by a requirement of reasonableness. For example, the landlord should

only be ordered to repay any profit element from the rent. As was confirmed in the Upper Tribunal case of **Vadamalayan v Stewart** [2020] UKUT 183 (LC), section 44 of the 2016 Act says, in effect, that the Tribunal should no longer consider such matters as what profit would have been earned by the rent paid. In other words, expenses incurred by the landlord as a result of obligations to keep a property in repair, insured etc. under the terms of an occupancy agreement would have had to be incurred in any event and should not be deducted.

33. The starting point is therefore the actual rent paid during the relevant period. Such matters as the parties' conduct or the landlord's financial hardship can be used to assess any claim. There is no evidence of financial hardship on the part of Tilat Siddique, even though Sufia did try to give general and completely new 'evidence' that she was in receipt of benefits, but, again, this was without Tilat's evidence or corroboration.
34. Sufia Siddiqui was asked by the Tribunal chair if she would state what Tilat Siddiqui's address was. She was very vague about this. She said that Tilat stayed with her from time to time and did not have a permanent address. When asked whether Tilat was simply without a residence, she appeared to refuse to answer.

Conclusion as to the Amount of any Order

35. The Tribunal is aware of another First-tier Tribunal case relating to the top floor flat at 9 Dover Place, Bristol BS8 1AL. This is the case of **Ahmed and others v Rahimian** CHI/ooHB/HSD/2020/0002 which was determined by Regional Judge Tildesley OBE.
36. Another First-tier Tribunal decision is not binding on this Tribunal. However, this Tribunal agrees with that decision and reasoning. It sets out at length the law and reasons for a determination of about half of the maximum amount which could have been awarded i.e. £10,000 ordered as opposed to the maximum of £19,803 which could have been awarded. The £10,000 was split equally amongst the 3 Applicants and the Tribunal also ordered the Respondent landlord to reimburse the £300 in Tribunal fees paid.
37. Judge Tildesley OBE in **Ahmed** said, in awarding £10,000 (paragraphs 102 & 103);

“This is not a case which justifies an award of the maximum amount of £19,803.00. 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....The Tribunal here is 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...”

38. This Tribunal determines that a similar proportion of the rent paid should be ordered in this case. The Respondents did not behave in a particularly good way towards the Applicants but there is no question of their being rogue or criminal landlords letting out dangerous and sub-standard accommodation. The rent paid and claimed by Lauren Cole was for just over 6 months during which the First Respondent was committing the offence. She is awarded 3 months at £795.00 per month i.e. £2,385.00.

39. The rent paid by Lorn Wickham was £700.00 per month and he paid rent for more than 12 months. The offence was first committed on the 8th July 2019 and rent was paid up to 31st March 2020 i.e. almost 9 months. The amount for him will therefore be £3,100.00 i.e. almost 9 months divided in half.
40. In view of this decision, the Tribunal also orders Tilat Siddiqui to reimburse the fees paid to this Tribunal in the sum of £300.00.



.....
Judge Edgington
18th February 2021

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.