



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

Case Reference : **MAN/00FF/HMF/2020/0055/P**

Property : **Dovecote House, 44 Wiggington Road, York,
North Yorkshire YO31 8HT**

Applicants : **Luke Smith, Benjamin Joseph Frew,
Samantha Jackson, Robbie Parker,
Daniel Monaghan, Elliott Tivey and
George Taylor**

**Applicants’
Representative** : **Evans & Co Solicitors**

Respondents : **Victoria Cain, Colin Henry Cain and
Jacqueline Cain**

Type of Application : **Application for Rent Repayment Order by
Tenants**
Housing and Planning Act 2016 - Section 41(1)

Tribunal Members : **Mr S Moorhouse LLB
Mr J Platt FRICS FIRPM**

Date of Decision : **30 November 2020**

DECISION

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The tribunal makes a rent repayment order against the Respondents Colin Henry Cain and Jacqueline Cain in favour of each of the seven Applicants in the sum of £4,000 (total £28,000).

REASONS

The Application

1. By an application dated 26 June 2020 ('the Application'), the Applicants 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 Dovecote House, 44 Wiggington Road, York, North Yorkshire YO31 8HT ('the Property'). The respondents Colin Henry Cain and Jacqueline Cain were the freehold proprietors of the Property, and therefore the landlords, and the respondent Victoria Cain managed the Property on their behalf. The tenancy was for a fixed term of 12 months from 1 July 2018.
2. Pursuant to directions written statements of case and accompanying documents were submitted on behalf of both parties. It was confirmed in directions that the case appeared to be suitable for paper determination and that it would proceed on this basis unless either party requested a hearing. No request for a hearing having been received, the Tribunal convened (remotely by telephone) on 19 November 2020 to consider the written representations and supporting evidence contained in the parties' submissions. 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. The Tribunal considered it unnecessary, in view of the matters in issue, to conduct an inspection.

Submissions

3. The Applicants seek a rent repayment order in the sum of £40,350, plus interest, costs and such further relief as the Tribunal may grant. The sum of £40,350 is made up of £40,000 in rent and £350 in administration charges. The rent was paid equally (£5,714.28 each) by the seven tenants. Copy Notices of Intention to impose Financial Penalties issued by York City Council to Victoria Cain and Colin Cain are supplied. Both relate to the control or management of a House in Multiple Occupation required to be licensed under section 61(1) of the Housing Act 2004 ('the 2004 Act') and not so licensed, contrary to section 72 of the 2004 Act. Victoria Cain's penalty (as manager) is £20,000 and Colin Cain's penalty (as owner) is £10,000.
4. The Respondents state that they do not oppose the Application in its entirety, only in the procedure of payment methods. Various mitigating points are raised (considered later). The Respondents state they have sought to reach a settlement with the Applicants however they lack available funds with which to repay the Applicants.

The Law

1. 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.
2. 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.
3. Section 44(4) lists considerations which the tribunal must 'in particular' take into account in determining the amount to be repaid - 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 may take into account.

Findings and determination

4. Section 40(3) of the 2016 Act sets out in a table the offences which would entitle a tenant (or local housing authority) to apply to the First-tier Tribunal for a rent repayment order against the offender pursuant to section 41(1).
5. Row 5 in the table describes an offence under section 72(1) of the 2004 Act, generally described as the control or management of an unlicensed HMO. The Tribunal finds (beyond reasonable doubt) that an offence under Section 72(1) of the 2004 Act was committed. This is not in issue between the parties. There is no specific allegation by the Applicants, nor is there evidence before the Tribunal, that the Respondents have committed any of the other offences described in the table. 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 2016 Act have been met.
6. It is not in issue between the parties that the Property was let to the Applicants at the time of the offence, and that the Property was unlicensed throughout the tenancy. The Application was submitted within 12 months after the tenancy expired. The Tribunal finds therefore that the requirements of section 41(2) of the 2016 Act have been met. Accordingly, the Applicants were entitled to make the Application.
7. Having found beyond reasonable doubt that an offence listed in section 40(3) has been committed, the requirements of section 43(1) of the 2016 Act are met and the Tribunal may make a Rent Repayment Order.
8. In this case the Tribunal considers that it is appropriate to make a Rent Repayment Order on the ground that the Respondents committed an HMO licensing offence. In reaching this decision the Tribunal is mindful of the purpose behind such an Order recorded in Hansard, namely (1) to provide for further penalty additional to any fine, (2) to help discourage illegal letting; and (3) to resolve problems that would arise from a tenant withholding rent.

9. The amount of any repayment is to be determined by the Tribunal pursuant to section 44. Provisions within section 46 of the 2016 Act requiring a maximum repayment in the event that the Tribunal makes an order do not apply in the present case because the offence is not one of those specified at section 46.
10. Section 44(2) of the 2016 Act prescribes that (for the type of offence in the present case) any repayment must relate to rent paid by the tenant in respect of a period (not exceeding 12 months) during which the landlord was committing the offence. Having regard to its earlier findings the Tribunal determines this period to be 1 July 2018 to 30 June 2019. It was not disputed that the rent had been paid (albeit with some leniency as to payment deadlines).
11. The particular considerations at section 44(4) of the 2016 Act relate to conduct of both parties, landlord's financial circumstances and any conviction(s) to which that Chapter of the 2016 Act applies.
12. In relation to tenant conduct, a number of issues are raised by the Respondents including smoking, triggering the fire alarm, a small fire and late payments. However the Tribunal considers there to be nothing in the papers to support a finding of misconduct on the part of any particular Applicant.
13. In relation to landlord conduct, the Tribunal finds that there is no complaint as to the accommodation provided, York City Council have not had to raise any issues formally concerning the standard of accommodation and Victoria Cain appears to have been an attentive manager. The Respondents state that they were badly advised. Having realised their error in not seeking an HMO licence the Respondents have accepted responsibility for this and, in principle, a requirement to repay rent.
14. The Respondents state that they lack funds to repay rent. There is no information before the tribunal as to the financial circumstances of the Respondents at the time of the offence. The Tribunal notes that utilities were payable by the Applicants during the tenancy. The Respondents were not professional landlords with a wider property portfolio. They were in receipt of £40,000 in rent from the Property in relation to the duration of the offence. There is nothing before the Tribunal to suggest that the financial penalties of £20,000 and £10,000 were unduly lenient or excessive.
15. On the issue of whether the landlord has been convicted of an offence to which Chapter 4 of the 2016 Act applies, there has been no conviction in relation to the failure to license the HMO, nor has there been a conviction on any other matter. The Respondents are the very opposite of serial offenders flouting the law - this one-time offence occurred by mistake, through naivety as to legal requirements.
16. Overall the Tribunal considers there to be no justification for an adjustment to the amount of rent to be repaid as a consequence of the financial circumstances of the Respondents or the conduct of the Applicants. The above findings concerning the Respondents' good conduct and clean history justify a discount to the rent to be repaid. The tribunal considers a discount in the order of 15% in each of these areas to be appropriate, giving rise to a repayment of 70% of the total rent.
17. The Application is made under section 41(1) of the 2016 Act. No provision is made for the repayment of administration charges, or for interest. The Application is denied insofar as it relates to these items.

18. The Respondents have indicated that they would like the Tribunal to address payment methods, suggesting that the Tribunal might consider not only amounts but timescales and/or manner of payment. The tribunal's jurisdiction has already been described. Where a rent repayment order is made, any accommodation as to payment terms or enforcement procedure is beyond the Tribunal's jurisdiction.
19. A rent repayment order may only be made against a landlord. Therefore no order is made against Victoria Cain.
20. The Tribunal makes a rent repayment order against Colin Henry Cain and Jacqueline Cain in the total sum of £28,000, being 70% of the total rent of £40,000. The order is made in favour of the seven Applicants (in the sum of £4,000 each).

Costs and other relief

21. The Applicants have applied for costs and any other relief the Tribunal may grant. The Tribunal is a 'no costs' regime, in that costs do not automatically follow the cause.
22. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 makes provision for an order for costs where a person has acted unreasonably in bringing, defending or conducting proceedings. This is not the case here. The Respondents have accepted their mistake and have not opposed the principle of a rent repayment order. They have provided a written submission to allow the Tribunal to reach a determination on the papers, minimising the cost incurred by the Applicants in the proceedings. For this reason the Tribunal makes no order for costs.
23. Rule 13(2) provides for an order for the reimbursement of any fee paid by a party, such as an application fee. For the reasons given in the preceding paragraph, no such order is given in this case. No other relief has been specified and none is granted.

S Moorhouse

Tribunal Judge

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.