



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

Case Reference : **MAN/00BN/HMF/2020/0047**

Property : **445 Parrs Wood Road,
Manchester, M20 5NE**

Applicants : **Mr Matthew Franks (Lead Applicant)
Mr Andrew Crabtree
Mr Timothy Frizelle
Mr Luke Price**

Respondents : **Mr Jay Patel and Ms Sheila Patel**

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

Tribunal Members : **Tribunal Judge C.Wood
Tribunal Member P.Mountain
Tribunal Member A.Hossain**

Date of Determination : **19 April 2021**

Date of Decision : **7 May 2021**

DECISION

Decision

1. The Tribunal orders the Respondents to pay the following amounts by way of rent repayment orders to each of the Applicants:
 - 1.1 Matthew Franks: £5264.14
 - 1.2 Andrew Crabtree: £4949.14
 - 1.3 Timothy Frizelle: £3379.37
 - 1.4 Luke Price: £3210.91

Background

- 2.1 By an application dated 20 May 2020, (“the Application”), the Applicants applied to the Tribunal for rent repayment orders pursuant to section 41 of the Housing and Planning Act 2016, (“the 2016 Act”).
- 2.2 Pursuant to the Directions dated 16 February 2021, both parties made written submissions in advance of the hearing which was scheduled for Monday 19 April 2021 at 10:30.
- 2.3 The hearing took place as a remote hearing, at which the following parties were in attendance:
 - (i) Applicants: Mr. Matthew Franks
Mr. Patrick Franks (Representative)
Mr. Andrew Crabtree
 - (ii) Respondents: Mr. and Mrs. J Patel
Mr. Sasaha Charles (Representative)
 - (iii) Observer: Mr. J. Gallagher (co-owner of the Property)

The Law

- 3.1 The provisions of the 2016 Act, so far as relevant, are as follows –
 - 3.1.1 Section 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 ...

- (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
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

3.1.2 Section 41 provides –

- (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. ...

3.1.3 Section 43 provides -

- (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); ...

3.1.4 Section 44 provides-

- (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 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.
4. Section 72(1) of the Housing Act 2004, (“the 2004 Act”), provides as follows:
- (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.

The Hearing

5. In accordance with Rule 14(5) of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013, the Tribunal consented to Mr. Patrick Franks acting as Mr. Matthew Franks’ representative or otherwise assisting him in presenting his case at the hearing. The Respondents’ representative, Mr.Charles, confirmed that he had no objection to this.
6. The Applicants’ oral submissions were made by Mr. Matthew Franks, Mr.Patrick Franks and Mr. Andrew Crabtree. No specific submissions were made on behalf of the co-Applicants, Mr. Timothy Frizelle and Mr. Luke Price.
7. The Applicants’ submissions are summarised as follows:
 - 7.1 all of the Applicants were good tenants who paid their rent on time. Mr. Franks and Mr. Crabtree each referred to written acknowledgments of this from the Respondents. Both Mr. Franks and Mr.Crabtree lived in the Property for at least 4 years;
 - 7.2 the relationship between Mr.Franks and the Respondents deteriorated over the question of the return of Mr.Franks’ deposit. The Respondents had sought to recover expenses incurred on various repairs to the fixtures and fittings in the communal areas at the Property from all of the tenants, and then from Mr.Franks solely by retaining his deposit after he had vacated the Property. The dispute was ultimately resolved by the Deposit Protection Service which determined that the repairs were “fair wear and tear” and ordered repayment in full of Mr.Franks’ deposit;

- 7.3 reference was made to the ongoing lack of planning permission for the Property;
 - 7.4 the HMO licence was granted in 2021. Reference was made to a fire safety inspection report, (pages 23-25 of the Applicants' bundle), which the Applicants believed to have been carried out by Firefly, who they considered to be a reputable company, and required as part of the HMO licence application. They were not aware of any fire inspection having been undertaken during their period of occupation of the Property. The inspection report identified 12 matters which required immediate attention;
 - 7.5 the Applicants confirmed that they had never referred to the Respondents as "rogue" landlords;
 - 7.6 Mr. Patrick Franks referred to the statements in the Respondents' witness statements regarding their financial circumstances, to the suggestion that the making of a rent repayment order would cause them financial hardship and to the lack of any evidence to support these claims. Mr. Franks referred to the Respondents' failure to provide copies of utility bills which he claimed was in breach of the Directions. Mr. Franks further suggested that the Respondents' statements were misleading as to their financial circumstances.
8. Mr. Charles requested confirmations from both Mr. Franks and Mr. Crabtree of the truth of their statements (which were given), and of various details of the history of their tenancies, including the usual number of tenants, (6, although there had been 7 on occasions), the condition of the Property, (good), the protection of their deposits under the Deposit Protection Scheme, (confirmed), and the dates when each moved out of the Property, (February 2020).
 9. Mr. Charles then made submissions on behalf of the Respondents, which are summarized as follows:
 - 9.1 with regard to the calculation of the amount of a rent repayment order, reference was made to the Upper Tribunal, ("UT"), decision in *Vadamalayan v Stewart* [2020] UKUT 0183 which Mr. Charles said had been made "per incuriam" allowing the First-tier Tribunal to depart from it;
 - 9.2 specifically, in its decision the UT had "disapplied" section 74(4) of the 2004 Act which it was not entitled to do;
 - 9.3 reference was also made to the extracts from Hansard in the Respondents' bundle comprising parliamentary debates relating to the Housing Act bill (which subsequently became the 2016 Act), from which it was clear that the intention of the legislation was to put "rogue landlords" out of business;

- 9.4 with regard to the “alleged” offence, Mr. Charles submitted that it was an “unfortunate oversight” on the part of the Respondents who are not professional landlords. The Property is their only rental property. Specifically, they are not “rogue” landlords, but “inexperienced and unprofessional”, who chose not to use a letting agent;
 - 9.5 the issue of the planning permission was not relevant to the question of a rent repayment order;
 - 9.6 the HMO licence application was made on 17 March 2020; the fire risk assessment, (“FRA”), was carried out on 8 July 2020. Mr.Charles did not know the reason for the delay between the licence application and its grant on 22 March 2021, but it was suggested that the restrictions introduced because of the covid-19 pandemic may have had an impact.
10. In response to questions from Mr.Charles, Mr.Patel provided the following information:
- 10.1 Mr.Patel is the manager of the Property, which is owned 50/50 by Mrs. Patel and Mr.Gallagher. There is an outstanding mortgage of c£242,000;
 - 10.2 he confirmed that this is the Respondents only investment property;
 - 10.3 he explained that the issue surrounding the planning permission for the Property brought him into considerable dialogue with the local authority in 2010/11. At the date of renovation of the Property, he anticipated that there might be a requirement for an HMO licence in the future and, as a result, effected certain works, eg fire alarms, intumescent strips on doors, emergency lighting etc, although not a legal requirement at that time;
 - 10.4 in 2015, when he converted the downstairs rooms into bedrooms, he again enquired of the local authority of the need for an HMO licence, but was advised that, as the Property is a 2-storey building, a licence was not required;
 - 10.5 although the requirement for an HMO licence was introduced in October 2018, he first became aware of this on 3 March 2020. The application was made as quickly as possible on 17 March 2020;
 - 10.6 he knew that a FRA was a necessary part of the HMO licence application but, due to covid-19 restrictions, it was not possible to arrange this until July 2020. Initially, he approached someone on an informal basis who produced the action list referred to by the Applicants in their submissions and which appears at pages 23-25 of their Bundle. He had posted this list up in the Property. Mr. Patel was clear that this was not an extract from the Firefly report. The FRA by Firefly, (which has not been produced in evidence), was undertaken on 8 July 2020 and only required 5 remedial actions which were relatively trivial in nature and all of which have been actioned;

- 10.7 the local authority inspection took place on 22 February 2021, following delays again caused by restrictions introduced in relation to the covid-19 pandemic, and the HMO licence was granted on 22 March 2021;
- 10.8 with regard to their financial circumstances, Mr.Patel confirmed that he has been on long-term sick leave since June 2019 but his employers are continuing to pay 60% of his salary. This could change. Mrs. Patel is employed by British Airways and her salary has recently been reduced by 17%. She is now in receipt of between c£1400 -1800 per month (variable as a result of shift pay);
- 10.9 Mr.Patel explained that the spreadsheet at page 20 of the Respondents' Bundle was compiled from information retained by him relating to expenditure on the Property, including the utility bills.
11. In questions to Mr.Patel by Mr.Patrick Franks, Mr.Franks asserted that it was clear that, going forward, it was not accurate to say that Mr.Patel's only income was the rental income from the Property. As at the date of the hearing, Mr.Patel confirmed that he was continuing to receive income from his employment, and that, on retirement, he would be in receipt of a company pension and his state pension.
12. In response to questions from Mr. Crabtree, Mr.Patel confirmed:
- (i) he was unable to confirm the annual rental income from the Property, but the current monthly rental income is as follows:
- Room 1: £715 pcm
Room 2: £600 pcm
Room 3: £600 pcm
Room 4: £475 pcm
Room 5: £450 pcm
Room 6: £500 pcm
- (ii) the Property was purchased for £205,000 in 2010, and c£170-200,000 was spent on its refurbishment.
13. In response to a question from the Tribunal, Mr. Charles acknowledged that, in view of the Respondents' written admission of having committed an offence under s72(1) of the 2004 Act, it was inappropriate to refer to "the alleged offence".

Tribunal's Determinations

14. The UT decision in *Vadamalayan v Stewart* is a binding decision on the Tribunal, unless and until it is reversed on appeal, or is distinguished on its facts before the Tribunal. The Respondents provided no evidence to distinguish the facts in this case from those in the *Vadamalayan* case.

15. Mr. Charles asserted that the Vadamalayan case had been decided “per incuriam” because the UT had “disapplied” s74(4) of the 2004 Act. S74(4) of the 2004 Act only applies to applications before the Tribunal where the offence in question was committed prior to 6 April 2017. In this case, the offence was committed during the period from 18 October 2018 – 21 March 2021. S74(4) of the 2004 Act is irrelevant to the determination of the Application.
16. In determining whether to make a rent repayment order, the Tribunal must be satisfied, beyond reasonable doubt, that the landlord has committed a relevant offence. In this case, the offence was the failure to obtain an HMO licence for the Property. Having regard to the Respondents’ written and oral submissions, the Tribunal is satisfied that the Respondents committed an offence under s72(1) of the 2004 Act by the failure to obtain an HMO licence for the Property, during the period from 18 October 2018 – 21 March 2021,.
17. The Tribunal noted that, for the purpose of making a rent repayment order, the 12 month period selected by the Applicants was from 13 February 2019 – 12 February 2020.
18. Having determined to make a rent repayment order, the Tribunal is required to determine the amount of the order in accordance with s44 of the 2016 Act. In summary, the amount of the order must not exceed the amount of rent paid in the relevant period, and the Tribunal must take into account the following:
 - (a) the conduct of the landlord and the tenant;
 - (b) the financial circumstances of the landlord; and,
 - (c) whether the landlord has ever been convicted of another relevant offence.

The Tribunal is satisfied that there was no evidence before it of the Respondents having been convicted of a relevant offence, and was therefore not a matter for its consideration.

19. The Tribunal determined that there was no conduct on the part of any of the Applicants which was relevant to their quantification of the rent repayment orders.
20. The Tribunal determined that there was conduct on the part of the Respondents which was relevant to their quantification of the rent repayment orders, as follows:
 - 20.1 in the written and oral submissions made by and on behalf of the Respondents, it was stated that they are not “professional landlords”, that they were “inexperienced and unprofessional”, that the failure to obtain the HMO licence was an “oversight”, and that they had not used a letting agent;

- 20.2 the Tribunal notes that in Mr.Patel’s oral submissions he provided a detailed narrative of his dealings with the local authority from 2010 regarding the planning permission for the Property. Mr.Patel told the Tribunal that in 2010 and again in 2015, he had checked with the local authority on whether there was a requirement for him to obtain an HMO licence for the Property. He further told the Tribunal that, in refurbishing the Property, he “future-proofed” it against the expectation of such a licence being required in the future;
- 20.3 the Tribunal was therefore satisfied that from 2010 Mr.Patel was aware of the HMO licensing regime, its possible applicability to the Property at some future date, and that he was also familiar with the local authority website as a source of relevant information, eg the requirement for a FRA as part of the HMO licence application;
- 20.4 the Tribunal noted the Respondents’ submissions that they were “inexperienced”, that the failure to obtain the HMO licence was merely an “oversight” and that their conduct was “unprofessional”. The Tribunal rejected the Respondents’ representative suggestion that the Tribunal’s powers to award a rent repayment order were only relevant in the context of “rogue landlords”. Although Part 2 of the 2016 Act is titled “Rogue Landlords and Property Agents in England”, specific reference to “rogue landlords” appears only in relation to the database of rogue landlords, (Chapter 3). Provisions such as rent repayment orders were introduced as part of the larger objective of raising standards within the rented sector. Lack of professionalism, as admitted by the Respondents, falls within the kind of conduct that rent repayment orders were intended to deter; it is not a mitigating factor;
- 20.5 the Tribunal also notes that the offence was committed for a period of almost 21/2 years. They accept that, on becoming aware of the requirement for a licence on 3 March 2020, Mr.Patel acted quickly. They accept that it is reasonable to conclude that the impact of covid-19 restrictions were a relevant factor in the delay between the date of application and the grant of the HMO licence. Nonetheless, a period of c17 months elapsed between the introduction of the licensing regime in October 2018 and the application for a licence in March 2020;
- 20.6 the Tribunal notes that, contrary to Mr. Charles’ oral submission made on the Respondents’ behalf, it is clear from the tenancy agreements that they had employed letting agents in the past, including after the date when the HMO licence became a legal requirement;
- 20.7 the Tribunal did not consider the issue regarding planning permission as relevant in itself to the quantification of the rent repayment orders, other than as set out in paragraphs 20.2 and 20.3 above.
21. For the reasons set out in paragraph 20, the Tribunal concluded that there was conduct on the Respondents’ part that should be taken into account in its quantification of the amount of the rent repayment orders.

22. The Tribunal notes the Respondents' written and oral submissions regarding their financial circumstances. The Tribunal also notes the Applicants' submissions regarding the lack of evidence to support those submissions. Whilst acknowledging that such evidence may have been of assistance to it, the Tribunal is satisfied that the Respondents did not intend to mislead the Tribunal in this respect, as suggested by Mr. Franks' representative. Further, the Tribunal was satisfied that the information provided by Mr. Patel in his oral evidence was sufficient to enable them to make an assessment of the Respondents' financial circumstances for these purposes.
23. The Tribunal concluded that the evidence of the Respondents' financial circumstances did not justify any increase or reduction in the amount of the rent repayment orders that would otherwise be determined.
24. The "starting point" for each rent repayment order is 100% of the rent paid by each Applicant during the 12-month period selected by the Applicants, namely, 13 February 2019 – 12 February 2020, as follows:
 - (a) Matthew Franks : £6000
 - (b) Andrew Crabtree: £5700
 - (c) Timothy Frizelle: £4050
 - (d) Luke Price: £3600.
25. From these amounts, the Tribunal has deducted a 1/6 share of the expenses paid by the Respondents in respect of water rates, gas, electricity, telephone/internet, council tax and cleaner. The Tribunal has calculated these amounts to be as follows:
 - (a) Matthew Franks: £986.53
 - (b) Andrew Crabtree: £986.53
 - (c) Timothy Frizelle: £831.55
 - (d) Luke Price: £541.99
26. The Tribunal has deducted the cleaning costs as, under clause 2.10 of the tenancy agreements, each tenant agrees to keep clean the Common Parts.
27. After deduction of these amounts, the following amounts are payable as rent repayment orders:
 - (a) Matthew Franks: £5013.47
 - (b) Andrew Crabtree: £4713.47
 - (c) Timothy Frizelle: £3218.45
 - (d) Luke Price: £3058.09

28. However, having regard to the Respondents' conduct, as detailed in paragraph 20, the Tribunal has determined to increase each of the above amounts by 5%. The final amounts determined to be payable as rent repayment orders are as follows:

(a) Matthew Franks: £5264.14

(b) Andrew Crabtree: £4949.14

(c) Timothy Frizelle: £3379.37

(d) Luke Price: £3210.91.

28. The Applicants made repeated submissions expressing concern at the Respondents' failure to produce to the Tribunal copies of the relevant utility bills. The Tribunal wishes to make it clear that the Directions do not require this, and, whilst this is often the easiest way of providing the relevant information, the Tribunal was happy to accept that the Respondents' spreadsheet was an accurate statement of the relevant expenditure for the period.

C Wood
Tribunal Judge
7 May 2021