



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

Case Reference : **MAN/00BN/HMF/2020/0076V**

Property : **42 Furness Road, Fallowfield, Manchester,
M14 6LX**

Applicant : **Joseph Thomas**

Respondent : **MAP Property Holdings Ltd.**

Type of Application : **for a Rent Repayment Order under s.41(1) of
the Housing and Planning Act 2016**

Tribunal Members : **Judge P Forster
Mr I D Jefferson FRICS**

Date of Decision : **10 August 2021**

Date of Determination : **18 August 2021**

DECISION

Decision

The application is refused.

Introduction

1. The Applicant, Joseph Thomas, has applied to the Tribunal for a Rent Repayment Order (“RRO”) under s.41(1) of the Housing and Planning Act 2016 (“the Act”). The application was originally made by the Applicant and three other tenants who subsequently withdrew their claims. The application proceeds in the Applicant’s name alone.
2. The Applicant was one of six tenants of 42 Furness Road, Fallowfield, Manchester, M14 6LX (“the Premises”) under an assured tenancy agreement for a term of 12 months from 1 July 2019. The rent payable under the agreement was £1,450.00 in the first month, followed by 11 monthly payments of £2,900.00. The Respondent, MAP Property Holdings Ltd, was the landlord.
3. The Tribunal issued directions on 21 January 2021 and identified the issues to be considered. The parties were directed to provide full details of their case together with supporting documentation. The Tribunal initially considered that the application could be determined on the documents without a hearing. However, following the Upper Tribunal’s decision in Raza v Bradford MBC [2021] UKUT 0039 (LC) the Tribunal decided that there should be a hearing. The hearing was conducted by video and telephone on 10 August 2021. The Applicant represented himself and Respondent was represented by Margaret Maguire, a director of the Respondent Company.

The Applicant’s case

4. 42 Furness Road is a house in multiple occupation and was required to be licenced under s.61 of the Housing Act 2004. The Applicant’s tenancy commenced on 1 July 2019 and ended on 30 June 2020. The Respondent failed to obtain a licence and therefore the Premises was unlicenced from the start of the tenancy until 1 December 2019 when an application was made for a licence. The Respondent thereby committed an offence under s.72(1) of the 2004 Act. The Applicant seeks a RRO for his share of the rent for the period July to November 2019 in the sum of £2,182.00.

The Respondents’ case

5. In February 2019, the Respondent submitted two applications for an HMO licence to Manchester City Council in respect of two different properties. One of the applications was in respect of 42 Furness Road. The Council did not acknowledge receipt of either application. The application in respect of the other property resulted in a licence being issued several months later. In November 2019, the Council notified the Respondent that 42 Furness Road was unlicenced and the Respondent immediately made a second application online. A licence was subsequently issued on 10 November 2020.

The law

6. The relevant law is set out in the annex below.

Reasons for the decision

The offence

7. It is not in dispute that the Premises required a licence under s.61 of the Housing Act 2004. The Respondent agrees that the Premises was unlicensed during the relevant period, July to November 2019. The Respondent accepts that it was in control of and managing the Premises during that period. A person commits an offence under s.72(1) of the 2004 Act if he is a person having control of or managing an HMO which is required to be licensed and is not licensed.
8. It is a defence under s.72(4)(b) that an application for a licence had been duly made in respect of the Premises and was still effective. Under s.72(8), an application is still effective at a particular time if it has not been withdrawn. On the evidence, the Premises was unlicensed during the full term of the tenancy, July 2019 to June 2020. The Respondent applied for a licence on 1 December 2019 which provides it with a statutory defence. This is acknowledged by the Applicant who limited his claim to the period July to November 2019.
9. It is a defence under s.72(5) for there to have been a reasonable excuse for failing to obtain a licence. The Tribunal accepts the Respondent's evidence that an application for a licence was made in February 2019. The Respondent was aware that the licencing process could take many months and therefore failed to make enquiries when nothing was heard from the Council. The second application that was made at the same time for another property did result in a licence being issued, albeit not until November 2019. The Tribunal finds that the Respondent had no reason to believe that the licence application in respect of 42 Furness Road was not proceeding. When notified by the Council that the Premises was unlicensed, the Respondent acted promptly and submitted an application for a licence. The Tribunal finds that the Respondent has a reasonable excuse for failing to obtain a licence.

Conclusion

10. The Respondent has a statutory defence under both s.72(4)(b) and (5) of the 2004 Act and therefore did not commit an offence under s.72(1).

Judge P Forster
10 August 2021

ANNEX

Housing and Planning Act 2016

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
 - (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

Section 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.

Section 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.