



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

Case Reference : **MAN/00BY/HMF/2019/0055**

Property : **30 Molesworth Grove, Liverpool L16 3NB**

Applicants : **Julie Jane Homan**

Respondent : **Irene Baum**

Type of Application : **Rent Repayment Order**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

**Date of
Determination:** : **16 April 2020**

Date of Order : **7 July 2020**

ORDER

1. The Respondent's application to strike out the Applicant's claim for a Rent Repayment Order is dismissed.
2. The Respondent is ordered to repay rent to the Applicant in the sum of £2130.
3. The Respondent is ordered to reimburse the application fee of £45 paid by the Applicant.

REASONS

Background

1. The Applicant was the Respondent's tenant at 30 Molesworth Grove, Liverpool ("the Property") from 1st December 2016 to 4th September 2019 or thereabouts. The Property was let at a rent of £665 per month. Information provided to the Tribunal indicates that the rent was paid by the Applicant, and that she was not in receipt of universal credit.
2. In the last 12 months of her tenancy, the Applicant was in arrears with her rent, having paid £4,260 of the £7,980 which was due.
3. The Property was within an area designated by Liverpool City Council ("the Council") as requiring landlords to hold selective licences.
4. During August 2019 the Council served on the Respondent an abatement notice requiring her to provide heating and hot water at the Property and an Improvement Notice setting out a number of category 1 and 2 hazards which she was required to rectify by 1st November 2019.

The parties' cases

5. On 22 July 2019 the Applicant lodged an application for repayment of rent pursuant to section 44 of the Housing and Planning Act 2016 ("the Act"). The reasons given in her application were that the Respondent had not supplied a gas safety certificate or smoke alarms at the Property, and that she had not held a selective licence for the Property during the tenancy.
6. The Respondent opposed the application on the ground that the Applicant had provided no evidence that an offence had been committed. She pointed out that failure to comply with an abatement notice was not an offence listed at section 40 of the Act, and that because the Applicant had vacated the property some 7 weeks before the deadline she was unable to prove that the Improvement Notice had not been complied with by 1st November 2019.

7. Alternatively, the Respondent claimed that her financial circumstances and the conduct of the Applicant justified a reduction in the amount of rent repayable, if any.
8. The Application was first considered by the Tribunal on 5 March 2020, when it was adjourned and further directions were given.

The law

9. Section 41 of the Housing and Planning Act 2016 (“the Act”) enables a tenant to apply to this Tribunal for an order for repayment of rent by a person who has committed any of the offences listed at section 40 of the Act, including the control or management of privately rented accommodation by an unlicensed person, and failure to comply with the requirements of an improvement notice. The Tribunal must be satisfied beyond reasonable doubt that the Respondent has committed an offence, and has discretion as to whether to make a rent repayment order and as to the amount of any repayment.
10. Section 44 of the Act sets out the basis on which any repayment of rent is to be calculated. The amount may not exceed the amount of rent paid in the period, not exceeding 12 months, during which the offence was being committed. In determining the amount, the Tribunal must “in particular” take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has been convicted of the offence. Other relevant circumstances may be taken into account.

The evidence

11. The application came before the Tribunal for a paper determination on 5 March. The Tribunal noted that the only offence effectively alleged against the Respondent was failure to hold a selective licence for the Property contrary to section 95(1) of the Act. The Applicant, who was unrepresented, had not produced evidence either that a selective licence was required or that the Respondent had failed to obtain one. There was, however, in the file an email from Ms Jennifer Driscoll of the Council addressed to the Applicant, dated 23 July 2019 stating:
“If you email me the application number and the dates between which you are claiming rent repayment order, I will provide a witness statement for you as evidence to say whether the property was licensed or not during those dates. You can then provide this to the Tribunal as part of your claim.”
12. In the interests of the overriding objective pursuant to Rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Rules”) the Tribunal adjourned the decision and issued a direction that the Applicant must within 14 days after receipt of the order file and serve any written evidence from the Council as to whether an offence had been committed and if so between which dates.

13. After the expiry of 14 days, when nothing had been received from the Applicant, she was contacted by telephone and it was established that, having changed her address, she had not received the directions order of 5 March. A further 14 days was permitted for the production of evidence from the Council.
14. On 7th April the Applicant lodged a statement made by Ms Driscoll dated 7 April 2020. The statement of truth appended to the statement does not comply with current requirements, but the statement has been accepted by the Tribunal as evidence of its contents.
15. In her statement Ms Driscoll confirmed that the area in which the Property is situated became subject to selective licensing on 1 April 2015, and that no selective licence was held by the Respondent for the Property during the Applicant's tenancy. The Respondent first applied for a licence on 25 September 2019.

Financial circumstances and conduct

16. On careful consideration of the statements made by and on behalf of each party, the Tribunal concludes that there was an element of poor conduct on the part of both the Applicant and Respondent. The Respondent claims that the Property was left in a poor condition when the Applicant vacated it, and states that her financial situation is precarious. The Applicant alleges incidents of bullying behaviour by the Respondent. These allegations of the parties are not supported by independent evidence.
17. The Tribunal has taken into account the fact that the Respondent owns various rented properties on which she relies for her income, that she should have been aware of the licensing requirements, and that the Property was found by the Council to be sub-standard in August 2019.

Decision

18. The application to strike out is dismissed following the Applicant's production of evidence.
19. The Tribunal finds that an offence under section 95(1) of the Act was committed by the Respondent throughout the last 12 months of the Applicant's tenancy. Taking all circumstances into account, the rent to be repaid is 50% of the rent paid by the Applicant during that period. The Respondent must also reimburse the £45 application fee paid to the Tribunal.