



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

Case Reference : CHI/00HA/HMF/2021/0017

Property : 41 West Avenue, Bath, BA2 3QD

Applicant : Awen Rhys, Andrew Morton, Rhiannon
Dubberley and Jefri Reci

Representative : Andrew Morton

Respondent : Alister Rollins

Representative :

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Members : Judge D R Whitney
Mrs J Coupe FRICS

Date of Hearing : 9th November 2021

Date of Decision : 17th November 2021

DECISION

Background

1. On 26 June 2021 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The amount claimed is £13,300.00 for the period 14 September 2020 to 31 March 2021.
2. The Applicant states that the property in question did not have an HMO licence and explains that a previous HMO licence for the Property had expired on 24 March 2020.
3. Directions were issued on 4th August 2021. These directions included the matter being listed for a remote hearing. Both sides submitted documents to the Tribunal in accordance with the directions.

The Law

4. The relevant law is contained within the Housing and Planning Act 2016 (“the Act”). The relevant sections are set out in Annex A.

Hearing

5. The below sets out the salient and important parts of the hearing of this matter.
6. The hearing was attended by Mr Morton on behalf of the Applicants and the Respondent. The hearing took place remotely by video and at the conclusion of the hearing both parties confirmed they had been afforded opportunity to make all submissions and statements they wished to make.
7. Mr Rollins accepted that there was not an actual HMO Licence in place for the period alleged but that he believed he had a reasonable excuse. He further accepted that rent had been paid by the Applicants as set out in their statements.
8. It was Mr Rollins’ case that his letting agent, Homelets of Bath had applied for a renewal of his HMO licence for the Property in or about December 2018. This was to renew his existing HMO licence for this Property which was due to expire on 24th March 2020. He stated that his agent lodged the renewal application for this Property together with another property he owned, 150 Coronation Avenue. The fee for the application was paid by Homelets of Bath on his behalf and deducted from his rental account.
9. Mr Rollins stated he believed he had done everything that was required. He did accept that on 7th May 2019 Homelets received an email from the Council advising that the application was being rejected as it had been made too far in advance of the renewal date and the fee would be refunded less an administration charge. Mr Rollins had not received any refund of the fee but he did not know if this fee had been refunded by the Council to Homelets.

10. Mr Rolins stated he believed he had complied with his requirements and it was only in March 2021 following enquiries by Homelets that it became clear no licence was in place. A completed application was accepted by the Council on 7th April 2021 but which had been lodged on 1st April 2021.
11. Mr Rollins suggested that it was Homelets who managed the Property and whom should have applied. No copy of his contract with Homelets was produced although Mr Rollins accepted he ultimately received the rent from Homelets and had produced a number of statements showing his rental income. Further he suggested he had a reasonable excuse as the application for a renewal had been made.
12. Mr Rollins went on to explain his finances had been affected by the pandemic. His income had reduced significantly from his employment. He was a director of the company he worked for and saw his pay reduce to 20% of its pre pandemic levels. He produced payslips showing the same. He explained he owned the subject Property with an interest only mortgage and had produced a copy statement. He also owned another HMO, 150 Coronation Avenue. He confirmed that he also owned a flat at Hampton Hall which had been his home at the time the application was made although he had recently also bought a house to which he had moved. He stated he intended to let the Hampton Hall flat ownership of which he had retained.
13. Mr Rollins stated that he was an alumni of Bath University and he let the properties as he was keen for students to have accommodation in houses rather than flats. He stated that his income from letting the two HMOs was limited when you factored in the costs of letting, mortgages and taxation. He produced statements from Homelets of Bath showing his rental income, mortgage statements and certain invoices for expenditure. Mr Rollins told the Tribunal he had not completed his tax return for 2020/2021.
14. Mr Rollins stated he believed he was a good landlord and always tried to do what was right. He had used Homelets of Bath as they were in his opinion the best agent in Bath.
15. Mr Morton explained he and his fellow Applicants entered into an 11 month tenancy beginning on 14th September 2021 at a rental of £1900 per calendar month payable on the 14th day of each month.
16. He explained it came as a shock when they were contacted by the Council in May 2021 in connection with a visit for the purpose of the licence renewal. Subsequently they obtained a statement from Mr Toporowski dated 16th June 2021 who had advised them of their right to apply for a Rent Repayment Order and that the Property had in the Council's opinion not had a licence between 25th March 2020 and 31st March 2021 with the application for a new licence having been made on 1st April 2021.
17. Mr Morton accepted that Homelets of Bath were a good agent and he had no adverse comments to make about the letting. In his words someone had dropped a ball in respect of the licensing. He accepted his application had

listed the maximum amount of rent and he left it up to the Tribunal to determine the amount.

Decision

18. The Tribunal thanks all parties for their assistance and the measured way everyone approached the case. The Tribunal has considered carefully all of the documents presented by the parties and the oral evidence which it heard.
19. Mr Rollins accepted that the licence was not renewed when it should. Firstly he suggested this was the responsibility of his agent. We are satisfied that as the person receiving the rent it is Mr Rollins who is the person responsible for having an HMO Licence in place being the person in control of the Property. It may be that his agent have some contractual responsibilities to him but this is a different matter. As the owner of the Property and the person receiving the rent as evidenced by the rental statements Mr Rollins disclosed he is the person who controls the Property for the purpose of the offence.
20. We considered carefully whether or not Mr Rollins has a reasonable excuse. We determine he does not. It seems the application for renewal was made very early by his agents. In our judgment it was not unreasonable for the Council to refuse this application given it was lodged some 15 months in advance of the expiry of the earlier licence. Further in the evidence disclosed by Mr Rollins the Council had advised his agents in May 2019 that the application was being refused and it should be re-lodged not more than 2 months prior to the renewal. It appears somehow the Respondent and his agent failed to diarise the need to re-apply and no application was lodged for renewal.
21. It is clear given the licenses Mr Rollins had previously held that he knew of his obligations to licence the Property and 150 Coronation Avenue. Mr Rollins did not produce a copy of his agreement with Homelets and we find it was his responsibility to ensure application for an HMO licence was made in a timely fashion. We find that Mr Rollins did not have a reasonable excuse for having failed to apply to renew the licence until 1st April 2021.
22. We are satisfied that Mr Rollins committed an offence of managing and controlling a house in multiple occupation being 41 West Avenue without the appropriate licence from the Council.
23. We are satisfied having regard to the statement of Mr Toporowski relied upon by Mr Morton that the offence ended on 31st March 2021 due to the lodging of an application on 1st April 2021. In respect of this application the period of the offence was 14th September 2020 until 31st March 2021.
24. We are satisfied that the application for a rent repayment order was made by the Applicants within 12 months of the offence ending.

25. We have considered whether we should exercise our discretion to make a rent repayment order. We are satisfied taking account of all of the evidence that we should make an order.
26. We turn now to the amount of any order. It was accepted by Mr Rollins that the Applicant tenants had paid their rent which was due on the 14 day of each month and so the total paid for the period when no licence was in place is £13,300. Each tenant paid £475 per calendar month.
27. Neither party raised the others conduct. To their respective credits both effectively acknowledged the other had complied with the respective obligations.
28. Mr Rollins suggests we should take account of his financial circumstances. We accept from his evidence that his income from his employment was affected by the recent pandemic. It appears however he remains in employment and has an interest in 4 separate properties in Bath or near vicinity. No valuations have been produced but we take account of the fact that he was able to purchase a new property to live in without selling his existing home. To do so we find he must have had sufficient capital to pay a deposit, costs and the like.
29. Mr Rollins has produced evidence of expenditure on the Property and his mortgage. We make no allowance for these costs. Ultimately the decision to take a mortgage to raise funds to purchase a property is a financial investment decision Mr Rollins has made. Likewise the expenses are those that we would expect any landlord to incur.
30. We take note that the Council issued a fresh licence promptly and it is clear that Mr Rollins takes his responsibilities as a landlord seriously employing managing agents who all accepted were highly reputable. However he did fail to have a licence, inadvertent though his failure may be. The purpose of the legislation is to act as a penalty and deterrent. We are satisfied however that this is not a case where we should award 100% of the rent paid and we determine that a discount of 40% of the rent paid during the period of the offence should apply.
31. This Tribunal makes a Rent Repayment Order in favour of the Applicants in the sum of £7,980 with each Applicant to be paid £1,995 such sum to be paid by the Respondent within 28 days of the date of this decision.
32. We further Order that the Respondent shall reimburse the Applicant for the Tribunal fees paid of £300 within 28 days of the date of this decision. Such sum to be paid to Mr Morton as the representative of the Applicants.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.