



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

Case reference : **MAN/00BN/HMF/2020/0048**

Property : **29 Ladybarn Lane, Fallowfield,
Manchester, M14 6NG**

Applicant : **Naomi Croft
Dillon Creedon
Annabel Garrood
James Laing
Lara Prince
Clare Turton
Emma Poole
Cleodie Oliphant**

Representative : **Naomi Croft (litigant in person)
Dillon Creedon (litigant in person)**

Respondent : **Sentinel Property Management Ltd**

Representative : **Stewart Pailthorpe (Director)**

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

Tribunal member(s) : **Tribunal Judge L. F. McLean
Tribunal Member Mr J. Faulkner**

**Date and Venue of
Hearing** : **23rd August 2022
HMCTS Video Hearing Service**

Date of Decision : **23rd August 2022**

DECISION

Decision of the Tribunal

(1) The Tribunal refuses the Application for a Rent Repayment Order.

The application

1. The Applicants applied for a Rent Repayment Order (“RRO”) against the Respondent company, pursuant to s.41(1) Housing and Planning Act 2016. The Applicants’ case was that on dates between 1 July 2018 and 30 June 2019, the Respondent had permitted 8 people to reside in 29 Ladybarn Lane, Fallowfield, Manchester, M14 6NG (“the Property”), whereas only 7 persons were allowed to reside there during the period in question, pursuant to the specifications of an HMO Licence issued by Manchester City Council. The Respondent opposed the application.

Background

2. The Applicants were the tenants of the Property by virtue of an assured shorthold tenancy agreement granted by the Respondent and made on 26th January 2018 for a term commencing on 1st July 2018 and ending on 30th June 2019.
3. The Property was, at all material times, a House in Multiple Occupation (“HMO”) within the meaning of the Housing Act 2004. As such, it was a mandatory legal requirement for the Respondent to hold a licence from Manchester City Council to control or manage the Property as an HMO.
4. Pursuant to Directions issued by the Tribunal, Naomi Croft (on behalf of the Applicants) sent a statement of case and supporting documents to the Tribunal office by email on 28th January 2021; and the Respondent’s statement of case and supporting documents were sent to the Tribunal office by Mr Pailthorpe by email on 16th February 2021.
5. On 17th August 2022, Naomi Croft sent a witness statement of Grace Crampton (Housing Compliance and Enforcement Officer for Manchester City Council) to the Tribunal Office, in support of the Applicants’ case. Despite being directed by a Tribunal Officer to send a copy to the Respondent as well, she did not do so and the Respondent did not have the opportunity to read the additional statement against him prior to or during the hearing.
6. The hearing took place on 23rd August 2022 through the HMCTS Video Hearing Service. Naomi Croft and Dillon Creedon appeared in person. Stewart Pailthorpe, a director of the Respondent company, appeared on its behalf.

Issues

7. The issues which the Tribunal had to decide were:-
- a. Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the offences referred to in s.40 of the Housing and Planning Act 2016?
 - b. Did the offence relate to housing that, at the time of the offence, was let to the tenants?
 - c. Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
 - d. What is the applicable 12-month period?
 - e. What is the maximum amount that can be ordered under section 44(3) of the Act?
 - f. What account must be taken (under section 44(4) of the Act) of:
 - i. The conduct of the landlord?
 - ii. The financial circumstances of the landlord?
 - iii. Whether the landlord has at any time been convicted of an offence shown above?
 - iv. The conduct of the tenants?
 - v. Any other factors?

Relevant Law

8. The relevant sections of the Housing and Planning Act 2016 read as follows:-

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)	unlawful 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	Housing and Planning Act 2016	Section 21	breach of banning order

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.

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.

(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);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

(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 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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.

9. Section 72 of the Housing Act 2004, so far as is relevant, reads as follows:-

72 Offences in relation to licensing of HMOs

(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.

(2) A person commits an offence if—

- (a) he is a person having control of or managing an HMO which is licensed under this Part,
- (b) he knowingly permits another person to occupy the house, and
- (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
- (b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

- (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition, as the case may be.

Procedure at the Hearing

10. Before the start of the hearing, the members of the Tribunal had taken the opportunity to read both statements of case.
11. The Tribunal reminded all parties, at the start of the hearing, that it could only make a RRO if it was empowered to do so under the relevant legislation, cited above.
12. At the start of the hearing, the Tribunal made an observation to the parties that the facts described in the Applicants' statement of case did not appear to disclose the commission of any offence under Section 72(1) Housing Act 2004, inasmuch as it appeared to be common ground that the Respondent at all material times held an HMO licence from Manchester City Council. Instead, the matters complained of by the Applicants consisted of an alleged contravention of Section 72(2). However, the Tribunal can only make a RRO if a contravention of Section 72(1) could be proved beyond reasonable doubt; otherwise the whole application must be dismissed.
13. Naomi Croft stated that the Applicants had been verbally advised by an employee of the Council, during a home visit, that the Respondent "had the wrong licence" as it only covered 7 people rather than 8, and that more bathrooms and other facilities were needed for an 8-person licence; and that they were entitled to apply for a RRO. She also asserted that the Council had won their own case against the Respondent in separate proceedings which related to the same issues, and questioned how this could be if the Tribunal considered that no RRO could be made. The Tribunal members explained that they could not comment on the basis for or outcome of any other proceedings before another Tribunal panel or in a different jurisdiction, and also observed that the Council is not a judicial authority.
14. Stewart Pailthorpe asserted that the Property was "fully licensed" during the relevant periods. He explained that on 28th May 2019, he applied (by email) for a variation to the existing licence, so that 8 people were permitted to reside at the Property, and this application was subsequently approved. He also asserted that he had been verbally advised by an employee of the Council, on an earlier date, that the Property was already suitable for occupation by 8 people. When questioned, he confirmed for

the avoidance of doubt that the application made on 28th May 2019 was for a variation of an existing HMO licence rather than for the granting of a new licence. He also asserted that in relation to the other proceedings brought against him by Manchester City Council, he was appealing a decision to the Upper Tribunal (Lands Chamber) albeit that the appeal was lodged out of time.

15. Naomi Croft referred to a guidance document which she said she had received from Manchester City Council regarding RROs, in which it was said that the Tribunal must make a RRO if the landlord has been convicted of a relevant offence. She suggested that this provision applied, although she did not know whether the Respondent had been convicted in a criminal court (i.e. a Magistrates Court or Crown Court). Stewart Pailthorpe said that the Respondent had never received a criminal conviction, i.e. in a Magistrates Court or Crown Court, in relation to the matters alleged.
16. Naomi Croft suggested that permitting too many people to occupy the Property under an HMO licence might invalidate the licence, thus leading to the commission of an offence under Section 72(1) Housing Act 2004. However, the Tribunal's view was that whilst such conduct might constitute an offence under Section 72(2), it would not invalidate the licence itself.
17. The Tribunal explained that, it being clear that no offence had been committed under Section 72(1) Housing Act 2004, the Tribunal had no jurisdiction to entertain the application and there was no merit in considering the remaining issues. For completeness, the Tribunal also confirmed that to the extent any application for permission to rely upon the additional witness statement of Grace Crampton had been made before the Tribunal, this was refused as the statement also did not disclose the commission of any offence under Section 72(1) Housing Act 2004. The hearing concluded at that point.

Determination

18. The Tribunal determines the issues as follows:-
 - a. *Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the offences referred to in s.40 of the Housing and Planning Act 2016?*
No. There was no evidence at all of any such offence(s) having been committed at any relevant time.
 - b. *Did the offence relate to housing that, at the time of the offence, was let to the tenants?*
Not applicable. There was no offence committed as referred to under s.40 Housing and Planning Act 2016.

- c. *Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?*
No.
- d. *What is the applicable 12-month period?*
Not applicable. There was no offence committed as referred to under s.40 Housing and Planning Act 2016.
- e. *What is the maximum amount that can be ordered under section 44(3) of the Act?*
Not applicable. There was no offence committed as referred to under s.40 Housing and Planning Act 2016.
- f. *What account must be taken (under section 44(4) of the Act) of:*
- i. *The conduct of the landlord?*
 - ii. *The financial circumstances of the landlord?*
 - iii. *Whether the landlord has at any time been convicted of an offence shown above?*
 - iv. *The conduct of the tenants?*
 - v. *Any other factors?*
- Not applicable. There was no offence committed as referred to under s.40 Housing and Planning Act 2016.

19. Accordingly, the application is refused.

Tribunal Judge L. F. McLean
23rd August 2022

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).