FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HE/HMF/2022/0015
Property	:	Ocean House, 174 Treffry Road, Truro, Cornwall TR1 1UF
Applicant	:	Andrew Brine
Type of Application	:	Rent Repayment Order: s.41 Housing and Planning Act 2016
Representative	:	In person
Respondent	:	Jonathan Scott-Slater
Representative	:	In person
Tribunal Members	:	Judge M Loveday Mrs J Coupe FRICS Mr E Shaylor MCIEH
Date of hearing/venue	:	8 November 2022 (Remote hearing)
Date of decision	:	21 November 2022

DECISION

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Summary

1. For the reasons given above, the Tribunal makes a rent repayment order of £551 for breach of the requirement to have an HMO licence.

2. The Tribunal gives the further directions in the final paragraph of this decision.

Introduction

3. This is an application for a rent repayment order under s.41 Housing and Planning Act 2016 ("the 2016 Act"). The matter relates to the occupation of a room at Ocean House, 174 Treffry Road, Truro, Cornwall TR1 1UF. The Applicant is Andrew Brine, a former occupier. The Respondent is Jonathan Scott-Slater, the owner of the premises.

4. The application dated 18 June 2022 claimed £130 per week for the period from 28 February 2022 to 24 April 2022. There is no dispute that the Applicant moved out on 22 April 2022.

5. Directions were given on 7 September 2022, when it was ordered that the matter should take place by way of a remote hearing. These directions provided for statements of case and evidence, including a direction (at para 13(ii) and (iii)) that the Respondent should provide evidence of financial circumstances. The Respondent sent multiple emails to the Tribunal (predominantly irrelevant). By further directions given on 11 October 2022 (and confirmed on review on 26 October 2022), the Tribunal (i) refused the Respondent's application to adjourn until March 2023, and (ii) limited the Respondent's statement of case to the limited documentation provided.

6. The remote hearing took place on 8 November 2022. At the hearing, both the Applicant and Respondent appeared in person. It should be mentioned that part-way through the hearing, it emerged the Respondent had been unable to open the pdf bundle previously supplied to him. The Tribunal therefore adjourned the hearing for 20 minutes and emailed a further copy of the bundle. The Respondent confirmed he was now able to read it and was happy to proceed with the rest of the hearing. The Tribunal was therefore able to conclude matters on the day.

The offence

7. The offence itself is at section 72(1) of the Housing Act 2004:

> "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."

Section 72(4)(b) provides a special defence:

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

Section 72(5) provides that:

> "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."

8. Rent repayment orders are provided for in Chapter 4 of the 2016 Act. Section 40(3) applies them to certain offences "committed by a landlord in relation to housing in England let by the landlord" which expressly include offences under section 72(1) of the Housing Act 2004. Section 41 of the 2016 Act goes on to provide that:

> "(1) A tenant ... 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(1) of the 2016 Act then states that:

> "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)."

Section 44 is in tabular form. But the material provisions are as follows:

> "(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) ... If the order is made on the ground that the landlord has committed ... an offence [under s.72(1) of the 2004 Act] ... the amount must relate to rent paid by the tenant in respect of ... 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 …
> …
> (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. In the very recent decision in Hancher v David and others [2022] UKUT 277 (LC), Judge Elizabeth Cooke helpfully summarised the principles for assessment of a rent repayment order:

> "6. Following the decision in Williams v Parmar [2021] UKUT 244 (LC) it is now well-established that the FTT in assessing the amount of a rent repayment order is not to take the full amount of the rent (less payments for utilities) as a starting point, subject only to deduction for good conduct on the part of the landlord, poor conduct by the tenants, or the landlord's financial circumstances. That approach fails to consider the seriousness of the offence, which is of course is a crucial element of the landlord's conduct. Accordingly, in Acheampong v Roman and others [2022] UKUT 239 (LC) the Tribunal endeavoured to provide some practical guidance for the FTT. In paragraph 21 of Acheampong the Tribunal said that the following approach to the assessment of the amount of rent to be repaid would be consistent with the authorities:
> a. Ascertain the whole of the rent for the relevant period;
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
> d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)."

With that in mind the Tribunal can turn to the facts of the present case.

The Facts

10. Ocean House (174 Treffry Road) is a detached modern house on a private residential estate in Truro on ground and two upper floors. In essence, the house was originally laid out with two living rooms, a kitchen and WC on the ground floor, two bedrooms with ensuite bathrooms on the first floor and two bedrooms and a family shower room/WC on the top floor.

11. The Respondent's case is that at all material times he lived at the premises and began letting out rooms following the Covid-19 pandemic through websites such as Sparerooms.com. He used the larger living room as a bedsit to accommodate up to three people, let four other rooms as single bedsits, whilst retaining a first-floor bedroom himself. As a result, up to eight people shared use of the kitchen, whilst up to six shared the use of the family shower room on the top floor.

12. The Applicant occupied a furnished room on the top floor of the premises under a tenancy agreement dated 25 February 2022. The agreement itself is plainly not drawn up by a professional, and includes some highly unusual provisions. For example, the "House Rules" section of the agreement provides for "no fraternising with other tenants" and states that "if I ask you to do something more than three times this will be treated as a breach of this contract". However, for the purposes of this application, the material provisions are as follows:
    a. The agreement provides that it was a letting from "week to week", with rent of £130pw payable on a Monday.
    b. The "Rent is paid and includes all utilities".
    c. The agreement provides for payment of a security deposit of "three week's rent" and "key money" of £130, payable in advance or payment of "four weeks Security Deposit ... to hold the room".
    d. The agreement is endorsed in manuscript with a receipt for payment of £520 ("paid cash") and "£130 Weekly Rent paid on Monday".
    e. As to cleaning of rooms, the "House Rules" provide that "Everybody has to keep their room clean and I will vacuum once a month".

13. There are various photographs of the interior of the room at the start and end of the tenancy, showing the room in good decorative condition, with parts of the room with pitched ceilings and extending into dormer windows. The photographs show the room includes a divan bed, chest of drawers, chair, sofa, mirrors, fitted carpet and radiator. The Applicant said there was a ceiling light, bedside light and plug sockets – but he did not have a microwave, heater or any other high-consumption electrical item in the room. The Respondent provided wi-fi internet access.

14. The Applicant also produced bank statements showing eight payments of £130 to "Jonathan Scott-Slater (Weekly Rent)" dated 6 March, 13

March, 20 March, 27 March, 3 April, 10 April, 17 April and 24 April 2022. The Tribunal takes the handwritten endorsement on the Tenancy Agreement "£130 Weekly Rent paid on Monday" to mean paid on 28 February, being the first week's rent.

15. The Applicant produced an email from Mr James Fink, an Environmental Health Officer with Cornwall Council dated 13 July 2022. This confirmed that when Mr Fink visited the premises on 30 June 2022, it was apparent that the property was a "licensable HMO" and that it was "unlicensed" at that time. The Respondent said he has since been granted an HMO licence for the premises, although no copy was provided to the Tribunal.

The issues

16. It was not disputed by the Respondent that:
    a. The property was an HMO within the meaning of ss77 and 254-259 of the 2004 Act.
    b. They were required to be licensed under Part 2 of the 2004 Act
    c. They were not so licensed.

17. The Respondent's statement of case did not seek to advance any defence of reasonable excuse under s.72(4)(b) of the 2004 Act, and he confirmed this at the hearing.

18. The Tribunal therefore finds that an offence is made out beyond reasonable doubt under s.43(1) of the 2016 Act. The Tribunal further considers it is appropriate to make a rent repayment order.

19. The only issue is therefore the amount of the rent repayment order, applying the factors in s.44 of the 2016 Act and the guidance helpfully summarised in Hancher v David.

The case for each party

20. The arguments advanced by the parties largely (though not exclusively) relate to conduct under s.44(4) of the 2016 Act.

The Applicant's case

21. The Applicant referred to his written statement of case and response, which he elaborated upon at the hearing.

22. First, there had been threats and abuse from the Respondent, which the Applicant suggested amounted to harassment. In particular, the Applicant referred to exchanges of text messages dated 18 April 2022 (about pictures on the wall) and 20 April 2022 (about the garden gate). For example, the messages on 18 April 2022 included express threats, such as "DO NOT F*** WITH ME ANY MORE!". On 20 April 2002, the Respondent stated that "I want you to stay but I think you have to see a medic and get assessed for border-line Schizophrenia". A particularly

bizarre suggestion by the Respondent in texts dated 18 April 2022 was that the "house has a destructive spirit in it" which "does not like the tenants". The Respondent went on to say that the "destructive spirit … could be" the [Applicant's] mom" and that "the spirit may attack you". The Applicant explained at the hearing that this suggestion was particularly hurtful, since his mother had only passed away shortly before. The Respondent apparently sent over 50 abusive emails and messages. Moreover, he had made unfounded suggestions in the present proceedings that the Applicant was a drug addict and made allegations about his work. The Applicant provided several written references, including references from his current employer to refute these suggestions. The Applicant had reported the abuse to the police and to the Sparerooms.com website. He also mentioned similar allegations made by the Respondent about another tenant.

23. Secondly, hygiene in the kitchen was poor. The Respondent had a small pug dog as a pet which was allowed to lick plates and kitchen equipment before they went into the dishwasher. But there was also a "George Foreman"-style electric grill used by the occupiers. On one occasion, the Applicant saw the Respondent putting the grill on the floor for the dog to lick clean, which he said was disgusting. Other occupiers had seen the same thing.

24. Thirdly, there was an incident involving the locks to his room. The Applicant explained that the tenants were not issued with keys to any conventional individual mortice or deadlocks locks to the room doors. Instead, there were mortice bolts operated by standard hexagonal keys which opened everyone's bedroom door. The Applicant was uncomfortable with this, and fitted his own separate lock, apparently a deadlock. When the Applicant returned to his room on 18 April 2022, the lock he had fitted was open (it had not been tampered with), but the hexagonal key security bolt had been locked. He was unable to gain access until the Respondent opened it. The Applicant told the Tribunal that he believed either the Respondent or another tenant, "Ozzie", had been into his room. There was an exchange of text messages between the parties, further details of which are set out below.

25. Fourthly, when he moved into the property, the Applicant paid a cash deposit. The deposit was not secured in an authorised tenancy deposit scheme. The Respondent was now refusing to return the deposit, and the Applicant had been forced to issue separate proceedings in relation to the recovery of the deposit.

26. Fifthly, the Respondent had not co-operated with local authority enquiries about the breaches. He referred to Mr Fink's e-mail of the 13 July 2022, which suggested that he gave the Respondent a notice requesting information under s.16 Local Government (Miscellaneous Provisions) Act 1976 on 12 May 2022. This information was due by 27 May 2022, but no reply was received. A further s.16 reminder notice was sent on 9 June 2022, which required a written response by 17 June

2022. The Respondent only replied by telephone to the second notice on the afternoon of 17 June 2022.

27. Sixthly, the smoke alarms in the property had no batteries in them. The Applicant stated that the Respondent had said he didn't like the sound of the alarms and had deactivated them. He also referred to the email from Mr Fink, which stated that when he inspected on 30 June 2022, the EHO "discussed the works that would be required in line with future licence conditions including an upgrade of the fire alarm system".

28. Finally, on numerous occasions the Respondent refused to put the heating on in the house. At times, the Applicant had to wear two jumpers, and the Respondent provided him with a hot water bottle to warm up. The other tenants made complaints about being freezing in the house as well. In response to questions from the Tribunal, the Applicant stated he believed there was a gas boiler supplying the hot water radiator in his room.

29. The Tribunal took a great deal of care assisting the Respondent in formulating questions to the Applicant, although it found some difficulty in doing so. In particular, in seeking to formulate questions, the Respondent tended to use language which was quite inappropriate to the situation. For example, the Respondent started by twice asserting that the Applicant was "delusional". Another example is that early on, he described the Applicant (and another tenant) as having "the devil in him". But to summarise the answers given in cross-examination:
    a. As far as the alleged abusive behaviour was concerned, the Respondent put to the Applicant that he was not abusive. A person was only abusive if "one throws punches at the other". The Applicant did not agree.
    b. As to the dog, the Respondent suggested this was "totally untrue". The Applicant said he had seen the dog licking plates "many times" before the plates went into the dishwasher, but accepted he had not seen the incident with the grill. He had been told about this by another tenant called Brendan.
    c. The Applicant was asked questions about the door lock. He referred to the exchange of text messages on 18 April 2022 about the incident. The gist of the messages from the Applicant was that he was complaining that someone had entered his room without permission. The gist of the replies from the Respondent was that he treated any tampering with locks as a serious matter which should be reported to the police, and that he had not heard anyone tampering with the locks on that day. But in one part of this exchange (timed at 14:40 to 14:41) the Respondent stated that "I can go in to clean or to inspect as it is my house ... and I am trustworthy". The Applicant replied "No-one is allowed in without my consent" to which the Respondent said "I am ... My House, I am landlort [sic] ... I own property". It was put to the Applicant that no-one had gone into the room, because "no-one was interested" in doing so. But the Applicant maintained

his position that the Respondent may well have entered his room without permission.

d. As to the deposit, the Respondent put to the Applicant that he had returned the deposit in cash at the end of the tenancy, and there was a receipt for this in the bundle. The Applicant denied the receipt was genuine.
e. The Applicant was asked how he knew about the correspondence between the Respondent and the Council. He explained he had been told about it by Mr Fink, and referred to Mr Fink's email which explained the sequence of events.
f. The Respondent put to the Applicant that he was wrong about the heating. The Respondent had spent £3,000 on gas and electricity for the house, which did not suggest there was any economising on heating. But the Applicant maintained there were so many occasions when he was incredibly cold – and there had been complaints from other tenants. It was suggested the room was simply a cold room. The Applicant said there was a massive draft coming through one of the windows, but the Respondent had never dealt with this.

30. At the end of his submissions, the Applicant returned to some of the points made by the Respondent below. He was a care worker who worked long hours and could not understand how the Respondent could treat people in this way.

The Respondent's case

31. The Respondent relied upon his brief statement of case but expanded upon it orally to the Tribunal.

32. The Respondent submitted that the case was all about the Applicant. The Applicant saw the application as a revenue stream, and the chance to make a few thousand pounds by targeting a 63 year old man. What he was doing was "just criminal".

33. The Respondent relied on an undated letter from another tenant, "Ozzie", who said he had witnessed the Respondent handing back the £520 tenancy deposit to the Applicant in cash. Ozzie stated that the Applicant had later said he needed the money "because he owed his drug supplier thousands of pounds". Ozzie further stated that the Applicant had changed dramatically during his time in the premises, and had "told everyone he was a reincarnated Sherman [sic] Monk and could heal anyone from any mental disease known to mankind". Ozzie further stated that "I also know one Care Employment Agency sacked him". It should be said that Ozzie did not attend the hearing to give evidence.

34. The Respondent added to these allegations by alleging that the Applicant broke his bedroom window, and when he left he took away the window handle. The Respondent estimated the cost of repairs would exceed £1,000. He relied on a photograph of the handle in the statement of case. The Respondent further suggested the Applicant had

damaged the carpet in his room, adding that the damage was caused while the Applicant was "chanting in his many Monk Priest youtube sessions while under the influence of cocaine". An electrical socket had also been tampered with.

35. The Applicant took strong objection to these allegations. As explained above, there were several written references from colleagues, friends, his employer and a housemate to the effect that the Applicant was not a drug user, and that he was of good character.

36. In response to questions from the Tribunal, the Respondent stated he had not sought advice before renting out rooms. He had to make money to pay his mortgage, and therefore decided to turn the premises into a "boarding house". He was only informed that it was an HMO by Mr Fink of the local authority. The Respondent accepted one battery had run down in a smoke alarm, and he had not replaced it. But he had now replaced the battery alarms with mains operated smoke alarms. He had also now read all the guidance about HMOs thoroughly, since he did not want to fined. When asked about the alleged drug use, the Respondent said he had seen the Applicant wandering around the house with white powder under his nose. When the Respondent asked what this was, the Applicant had said "sherbet". The Respondent commented that "Bassetts don't make sherbet any more".

37. When questioned about his experience of lettings, the Respondent stated he had no other tenanted properties and had never let properties before. His financial circumstances were that he ran an international employment agency, which placed *inter alia* legal professionals. It now made no profit, although he had not yet completed his most recent tax return. He did not receive Universal Credit or any other benefits.

38. The Tribunal also asked about various text messages dated 22 April 2022 included in the Applicant's statement of case in response. By this stage, the Applicant had already moved out. The Respondent said in the texts that he was "missing you already" and wanted to "meet up for a beer". It was a "big shame you left". The Respondent went on to say that if the Applicant was ever in the USA, he could be the Respondent's "apartment mate" - and that the Applicant would have "passage and [a] place to stay". There were various descriptions of the Applicant as an "awesome guy" and a "superstar". The Respondent further offered to place the Applicant in a job as "head of care OAP home" and did a Tarot reading for him. The Respondent was asked how it was possible to reconcile these with the suggestion that the Applicant was a poor tenant and overt hard drug user. The Respondent said he was simply being kind to the Applicant in the text messages. But all of a sudden, the Applicant then changed into a "demonic creature".

The tribunal's findings

39. In relation to each of these issues, the Tribunal makes the following general observations in respect of the evidence. It found the Applicant a

truthful witness, who was, at least in part, able to support his oral evidence with documentary material. He has, throughout, remained measured in his dealings with the Respondent (for example, in the exchange of texts of 18 April 2022). By contrast, the Respondent's evidence was unrealistic. The exchange about alleged "spirits" in the house was bizarre, and the Respondent appears to have lacked any appreciation of the obvious hurt this would cause to someone who had lost their mother shortly before. Similarly, the contention that harassment was limited to physical abuse was unrealistic. Moreover, the extreme allegations made about the Applicant's supposed behaviour were neither supported by evidence nor capable of being reconciled with the text messages of 22 April 2022. "Ozzie" did not attend to support the most extreme allegations. Time and again, the Respondent proved capable of making the most damaging possible statements about the Applicant, without a shred of evidence in support, and apparently without recognising the hurt that some of these claims. In short, the Respondent was a wholly unsatisfactory witness, and the Tribunal prefers the evidence of the Applicant wherever there is a conflict between the parties.

40. Turning to each of the above issues, the Tribunal finds as follows:
    a. The Respondent has harassed the Applicant on occasion, in the sense that he used language in text messages which would make a reasonable tenant feel unsafe in the property. That harassment is also consistent with and exacerbated by the unfounded and hurtful personal allegations made against the Applicant in the proceedings themselves. However, the harassment was not calculated to make the Applicant leave the premises – indeed the text messages were occasionally accompanied by statements that the Respondent wanted the Applicant to stay. Moreover, the harassment did not extend to any physical interference with the Applicant. The Tribunal is satisfied the messages were explicable as part of a pattern of crass insensitivity on the part of the Respondent, rather than any deliberate intent to interfere with the Applicant's quiet enjoyment.
    b. The Applicant did not really object to the Respondent's dog being allowed to eat from plates before they went into the dishwasher. His main complaint was about the grill. But the Applicant accepted he had not witnessed the grill incident himself. The Tribunal therefore does not find this allegation proved.
    c. As to the locks to the room, the contemporary text messages provide powerful corroboration for the Applicant's evidence that someone entered the room without his consent. On balance, the Tribunal finds it was the Respondent who entered the room on 18 April 2022 without consent. The text messages show that at the time, the Respondent was asserting an unlimited right to enter the room without consent, which far exceeds the limited right to vacuum the room once a month set out in the tenancy agreement. This is quite contrary to the implied covenant for quiet enjoyment in the tenancy. But the contemporaneous assertion of right to enter is at odds with a denial that the Respondent was the one who went into the room.

d. The factual question whether the deposit was repaid is an issue to be decided in other proceedings. There is a question whether the Respondent was required to register the deposit under Ch.4 of Pt.I of the 2004 Act, since it is at least arguable the tenancy was not an assured shorthold by virtue of para 10, Sch.1 Housing Act 1988 (resident landlords). The legal point was not canvassed with the parties at the hearing, and the Tribunal does not therefore consider it appropriate to take the issue of the deposit protection into account when considering the level of the rent repayment order.
e. Although he did not provide a witness statement, the evidence in Mr Fink's email about notices under s.16 Local Government (Miscellaneous Provisions) Act 1976 is not challenged. The Tribunal finds the Respondent did not comply with original notice and responded by phone to the reminder on the last possible date.
f. As to the heating, the Tribunal accepts the Respondent unreasonably set the timer or thermostat on the central heating system so as to restrict hot water to the radiator in the room in the winter months. This is very much a matter of impression, and the Tribunal simply prefers the oral evidence of the Applicant to that of the Respondent. It appears that some space heating may well have been supplied, but not sufficient to compensate for the (unchallenged) evidence that a window was draughty.
g. The Tribunal again accepts the oral evidence of the Applicant that the Respondent removed (or did not replace) a battery or batteries in the smoke alarms. More significantly, there is the evidence of Mr Fink that works were required to upgrade the fire alarm system to meet HMO licence conditions. The maintenance of adequate fire safety systems is plainly an important object of HMO licensing.
h. As far as the cross-allegations are concerned, the Tribunal has no hesitation in rejecting all the allegations of drug taking and damage to the premises alleged by the Respondent. These allegations are not supported by any text messages or documentary evidence. "Ozzie" did not attend the Tribunal. More importantly, the text messages of 22 April are impossible to reconcile with the account given that the Applicant was a poor tenant who regularly took hard drugs. One does not offer to live in the USA with someone, or offer a senior job to that person, if they are "demonic", take Cocaine or have a track record of damaging property.

The whole of the rent

41. The first question in assessing the amount of the rent repayment order is the amount of gross rent paid. The application and the Applicant's Statements of Case do not specify the whole of the rent paid, merely the period of claim (28 February 2022 to 24 April 2022) and the weekly rent of £130 per week.

42. Neither party was of course represented at the hearing, and the Tribunal invited the parties to focus on the eight rent payments evidenced by the Applicant's Bank statements, amounting to £1,040. However, when considering its decision, the Tribunal noted that (i) the period of 28 February 2022 to 24 April 2002 is a period of 9 weeks, and that (ii) it was not disputed that the Applicant also paid £130 in cash for rent in advance on the day of the tenancy agreement (as endorsed in manuscript on the agreement itself). These two points suggest that the whole of the rent was in fact £1,170, rather than the £1,040 paid through the bank.

43. The Tribunal recognises that it did not refer to the additional cash payment of rent during the hearing. But it does not consider it would be fair or just under Rule 3 of the Tribunal Procedure (First-tier Tribunal) Rules 2013 to delay this decision whilst seeking confirmation from the parties about the correct figure to be adopted for the whole of the rent. It is unlikely that figure is disputed, the difference of one week is relatively modest and any further enquiries would simply delay the Tribunal's decision into the Christmas holiday period. Instead, the Tribunal makes a finding on the basis of the evidence before it that the whole of the rent paid was £1,170. But it gives permission to the Respondent to apply to set aside this part of the decision if he has evidence that the figures used by the Tribunal are wrong. The Tribunal therefore orders that the Respondent shall have leave to apply to set aside this part of the decision within 14 days.

The element of the whole rent relating to utilities

44. The tenancy agreement provides that the rent is inclusive of "all utilities", although these are not specified. However, the bank statements showed periodic payments by the Applicant to the Respondent of £2 and £4 for "washing". The Respondent confirmed at the hearing that he charged occupiers £2 per wash if they wanted to use the washing machine in the kitchen.

45. The Respondent was asked by the Tribunal about the services and utilities provided which benefitted the Applicant. There was space heating to the room and water heating in the bathroom and kitchen. There was electricity to light the room and common parts, electricity for the power sockets in the room and for the kitchen appliances, internet access and water charges for the kitchen and bathroom. Neither party provided any expert evidence about the value of these utilities, and the Tribunal therefore uses its own informed judgment to value them. It would ordinarily deduct £30pw for these utilities, but notes they did not include power for the washing machine, which was charged separately at £2 per week. The appropriate deduction is therefore only £28pw, suggesting a net rent of £102pw, or £918.

The seriousness of the offence

46. The Tribunal next considers how serious this offence was in the light of the guidance given above. It should, be said that neither party specifically addressed the issue of seriousness in oral submissions at the hearing.

47. The Tribunal considers an offence under s.72(1) of the 2004 Act is less serious compared to other types of offence in respect of which a rent repayment order may be made, see for example, Dowd v Martins and others [2022] UKUT 249 (LC) at [33] and Hancher v David at [19].

48. Within the scale of s.72(1) offences, the Upper Tribunal in Hallett v Parker [2022] UKUT 165 (LC) started with 25% of net rent to reflect the seriousness of the offence. The landlord employed an agent and relied upon that agent to let the landlord know when an HMO licence was needed. Further features of Hallett v Parker were that the premises were in "fairly good" condition, that the landlord applied for (and was granted) a licence as soon as the landlord became aware of the need for one, and that this was the first time the landlord let the premises to groups of tenants who did not form a single household. Higher up the scale of seriousness is Dowd v Martins, where the Upper Tribunal adopted a 45% starting point. The landlord self-managed the property and was "naïve" about his obligations. Again, she applied for a licence as soon as one was needed, and the new licence made no reference to any repair or other work being outstanding. Higher still is Hancher v David, where the Upper Tribunal adopted a starting point of 65% of the net rent. Improvements were clearly needed at the property although not the most serious (there was no evidence of fire hazards, for example) and the property would not have qualified for an HMO licence had one been sought. But it was clear from the FTT's findings about credibility that the offence was committed deliberately: the landlord chose not to apply for a licence even though she had been told by her architect that she needed one.

49. In the light of these previous decisions, the Tribunal adopts a starting point of 50% for the net rent to reflect how this offence sits within the general scale of similar s.72(1) offences. The offence sits above the seriousness of the offence in Dowd v Martins, because there is evidence that smoke alarms did not work and that the existing fire safety systems were inadequate to meet HMO licensing standards. But the level of seriousness sits somewhat below that in Hancher v David, where there was express knowledge of the need to license. Moreover, in this case, it seems the fire safety upgrade work has been carried out without too much difficulty, since the Respondent has apparently obtained an HMO licence.

50. It follows that the "starting point" for the rent repayment order is 50% of £918, or £459.

The s.44(4) factors

51. The Tribunal next considers whether there should be any deduction from, or addition to, that figure in the light of the other factors set out in s.44(4). Of these factors, the Tribunal attaches no weight to the evidence of the Respondent's financial circumstances: s.44(4)(b). He failed to comply with para 13(ii) and (iii) of the directions given on 7 September 2022 and his oral evidence of means was vague and unconvincing. The Tribunal also makes no change to reflect similar previous convictions, since this is a first offence: s.44(4)(c).

52. That leaves the conduct of the landlord and the tenant: s.44(4)(a) and (b), which took up most of the hearing before the Tribunal. The Tribunal has already rejected the criticisms of the tenant's conduct, so there is no downward adjustment to the rent repayment order on this basis. But the Tribunal does consider the Respondent's conduct should be reflected in the amount of the order. In particular, he was abusive and hurtful to the Applicant, even if the abuse was not deliberately aimed at getting the Applicant to leave, aggravated by the unsubstantiated allegations made in these proceedings. The Respondent also made living in the room difficult, by providing insufficient heating in winter months. Although not at the highest level of misconduct, the Tribunal considers these considerations merit an increase in the amount of the order to 60% of the net rent. The amount of the rent repayment order is therefore 60% of £918, or £551.

Conclusions

53. For the reasons given above, the Tribunal makes a rent repayment order of £551 for breach of the requirement to have an HMO licence.

54. The Respondent shall have permission to apply to set aside para 44 of this decision within 14 days of this decision being sent to the parties. If such an application is made, it should be accompanied by an application to extent the time for appeal under Rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Mark Loveday
21 November 2022

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. Subject to what is said above, 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 (or any further time limit set by this Tribunal), 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.