



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

Case Reference : **BIR/44UF/HMF/2022/00029 and 31-38**

**HMCTS code
(paper, video,
audio)** : **Remote Video Hearing**

Property : **6 and 7 Market Corner, Tachbrook
Street, Leamington Spa, CV31 3BH**
Alexander Miah(1)
Lucy Hathaway (2)
Harry Ogden (3)
Jay Kavaija(4)

Applicant : **George Jacquinot (5)**
Tehan Kirihene (6)
Chloe Watts (7)
Adam Hoyle (8)
Jamie Marshall (9)

Representative : **Alexander Miah (Litigant in Person)**

Respondent : **Herminder Singh Cheema**

Representative : **Kulwant Singh Manak,
Maya & Co Solicitors**

**Type of
Application** : **Applications for Rent Repayment Order
by a Tenants under sections 40, 41, 43
and 44 of Chapter 4 of Part 2 of the
Housing and Planning Act 2016**

Tribunal Members : **Judge C Payne**
Mr D Satchwell FRICS

Date of Hearing : **21 December 2022**

Date of Decision : **17 February 2023**

DECISION

Decision of the Tribunal

1. The Respondent has not committed an offence under section 72(1) of the Housing Act 2004. Therefore, the Applications are dismissed.

Introduction

1. On the 8 August 2022, the Mr Miah applied on behalf of the 9 Applicants for a rent repayment order against the Respondent under section 41 of Chapter 4 of Part 2 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The Applicants claimed that the Respondent was controlling and/or managing a house in multiple occupation (“**HMO**”) which was required under Part 2 of the Housing Act 2004 (“**the 2004 Act**”) to be licensed at a time when it was let to the Applicants but was not so licensed and that he was therefore committing an offence under section 72(1) of the 2004 Act.
3. The Applicants’ claim is for repayment of rent paid during the period from 11 September 2021 to 31 July 2022 in the amount of £37,125 or for such period as the Property has been unlicensed.

Applicant’s Submissions

4. The Applicants described the Property as three floors of residential accommodation situated above a Chemist Shop, accessed through a common entrance and stairwell. On the first floor is a self-contained flat with its own lockable door containing 4 bedrooms, a kitchen, a living room and 2 bathrooms (“**Flat 1**”). On the second floor is a self-contained flat with its own lockable door containing 4 bedrooms, a kitchen, a living room and 2 bathrooms (“**Flat 2**”). On the third floor is a self-contained studio flat with its own lockable door containing a bedroom, a kitchen and a bathroom (“**Flat 3**”). There are communal bins to the rear of the Property. The first floor flat pays for electricity and gas separately. The second floor flat and third floor studio flat are on the same utility meter for electricity. The second floor flat pays for its own gas.
5. In January 2021 Mr Alessandro De Marchis responded to an advert on Zoopla for a 10 bedroom property. That property was not available. The Respondent’s agent showed the Property that is the subject of this application to Mr De Marchis. It was clear from the photographs on the advert that it was not the same 10 bedroom property referred to in the initial advert.

6. On 14 January a draft tenancy agreement was provided by the Respondent's agent which lists 8 individual tenants; Alessandro de Marchis, Adam Hoyle, Alexander Miah, Chloe Watts, George Jacquinot, Jamie Marshall, Jay Kavaiya and Lucy Hathaway. This tenancy agreement was not completed. Mr De Marchis told the Tribunal that he was advised by the Respondent's agent that the property could accommodate another 2 tenants, making a total of 10.
7. In August 2021, Mr De Marchis contacted the Respondent's agent to add Harry Ogden and Tehan Kirihene to the property reservation, bringing the total tenants up to 10. They each paid a deposit of £375. The deposits appear to have been protected but the paperwork was not provided to the tenants until the end of the tenancy in July 2022. Mr De Marchis confirmed the tenancy start date of 1 September 2021. The Respondent's Agent did not confirm the check in arrangements.
8. No tenancy agreement was completed prior to 1 September 2021. On that day when the Applicants sought to move into the Property, they had to spend a significant period of time trying to contact the Respondent's Agent, who did not appear to be expecting them that day. When they finally gained access to the Property, they noted there were still works being completed in the first floor flat and that there were only 9 bedrooms available in total at the Property, across the 3 flats. No evidence of the condition of the Property or works being carried out on 1 September 2021 was provided to the Tribunal. However, the Applicants submitted that they were such that they could not move into the Property on 1 September and had to be accommodated elsewhere for the first few days of September.
9. A period of discussion then took place with the Respondent's Agent and it was agreed that Mr De Marchis would be accommodated in another local property owned by the Respondent. Mr De Marchis' deposit was transferred to that Property. The 9 Applicants were then split between 3 tenancy agreements for the 3 flats within the Property.
10. Flat 1 on the first floor was let to Jay Kavaiya, Tehan Kirihene, Chloe Watts and Alexander Miah. Rent for the 11 month terms is noted as £16,500. That is £4,125 each.
11. Flat 2 on the second floor was let to Harry Ogden, Adam Hoyle, Jamie Marshall and Lucy Hathaway. Rent for the 11 month terms is noted as £16,500. That is £4,125 each.
12. Flat 3 on the third floor was let to George Jacquinot. Rent for the 11 month terms is noted as ££4,125.
13. The total rent paid by the Applicants was £32,125. Copies of bank statements were provided for each of the Applicants showing payment

had been made in full. During the period from 1 September 2021 – 31 July 2022, the Property was let to the 9 Applicants under 3 separate tenancy agreements.

14. Upon moving into the Property, the Applicants did not occupy the flats in accordance with the 3 tenancy agreements. Notably, Mr Jacquinet moved the bedroom from Flat 3 into Flat 2. Flat 3 was then used by the Applicants as a communal common room. This was in breach of the tenancy agreements for Flat 2 and Flat 3, but the Respondent raised no objection.
15. The Applicants provided a copy of a letter from Rebecca Frazer, Student Housing Enforcement Officer for Warwick District Council, dated 24 August 2022. In that letter Ms Frazer confirms that the Property was inspected on 30 September 2021. At that time the Property as a whole was occupied by 9 tenants, consisting of 8 different households. There were four tenants with bedrooms on the first floor, five tenants with bedrooms on the second floor and a communal room on the third floor. The 3 flats were being treated as if they were one communal property by the Applicants.
16. Ms Frazer goes on to confirm that the Respondent made an application for an HMO Licence on 1 December 2021, but that the application was declined on 7 December 2021 as the Property did not have planning permission to operate as an HMO. At the date of the letter, 24 August 2022, Ms Frazer confirmed that no application for planning permission had been submitted by the Respondent.
17. A copy of the freehold title of the Property, WK435291, shows Cheema Singh Limited as the proprietor. Herminder Singh Cheema is the sole director and owner of that company.
18. A copy of a list of works provided by Ms Frazer following her inspection, dated 9 November 2021, was provided. The Applicants confirmed that most, though not all, of these works were completed promptly. Witness Statements were provided by Jay Kavaiya, Chloe Watts, Alexander Miah, Tehan Kirihene and Alessandro De Marchis. In those statements the individuals describe issues with disrepair at the property including faulty heating and leaks. They mention receiving abuse from the Respondents agents, who they claimed regularly let themselves into the property outside of normal working hours and without notice.
19. At the start of their occupation, the Applicants submitted that they were not provided with copies of any gas and electrical safety certificates, an EPC, a How to Rent Guide or any Tenancy Deposit Protection Scheme prescribed information.

Respondent's Submissions

20. The Respondent submitted that the property consists of 3 separate flats, two with 4 bedrooms and 1 studio flat. As they are 3 separate self-contained flats, they do not require an HMO Licence when properly occupied.
21. The draft agreement in January 2021 was provided to show the terms the flats would be let on and the deposits were paid in August 2021 to secure reservation of the property. However, the Respondent submitted that the tenancy agreements could not be completed until September as his agent needed to know which specific tenants were going to be living in each flat to issue the final tenancy agreements.
22. The tenancy agreements were read carefully by the tenants who raised queries about GDPR and Television Licences before signing. The Property was let on 3 separate tenancy agreements, one for each of the self-contained flats. He did not let the Property as a 9 bedroom property. He let 3 separate flats, with a common entrance hall. Therefore, no offence under s72(1) of the Housing Act 2004 has been committed.
23. An issue only arose with Flat 2 at the point that the Applicants moved Mr Jacquinot from Flat 3 to Flat 2, taking the occupation of that flat up to 5 people. It was, therefore, the actions of the Applicants that gave rise to circumstances under which it might be said an offence was committed under s72(2) of the Housing Act 2004.
24. Upon learning that Mr Jacquinot had moved into Flat 2, to try to accommodate the Applicants, the Respondent made enquiries regarding what would be required to obtain an HMO licence for Flat 2 to allow the arrangement to continue. He was told that specific planning permission would need to be obtained. The Respondent and his agents then had difficulty gaining access to prepare the necessary planning application. The matter dragged on into 2022, with the relationship between the Applicants and the Respondent becoming increasingly strained until the Applicants vacated at the end of their tenancies in July 2022, at which point the matter resolved itself as there were no longer 5 parties residing in Flat 2.
25. The property has not been let for the academic year September 2022-July 2023 due to purported issues around viewings towards the end of the Applicants' tenancies.
26. The Local Authority has not taken any enforcement action and has confirmed that there is no need for the Property to have an HMO licence as it consists of three self-contained flats. The issue only arose during the Applicants' occupation of the Property due to the manner in which they chose to occupy Flat 2 and utilise Flat 3.

27. The Respondent is a professional landlord. He owns 12 properties and 3 of those are licenced HMOs. He has had no previous convictions.
28. No evidence was provided from the Respondent's agent regarding the tenancy arrangements, the paperwork provided to the Applicants or the other issues they had raised.

The Law

29. Housing Act 2004

Section 55 Licensing of HMOs to which this Part applies

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO ...

Section 61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

Section 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.

...

(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.

Housing and Planning Act 2016

Section 40

- (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 ...
- (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.

5		section 72(1)	control or management of unlicensed HMO
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Section 41

- (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

- (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 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) ...

Section 44

- (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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

Determination

30. While there were issues with the administration of the tenancies, the Applicants and the Respondent all agree that the Property consists of two 4-bedroom flats and a studio flat, which were all self-contained units with lockable doors and a communal stairway. The flats were let on separate tenancy agreements. None of the flats individually meet the criteria to require an HMO Licence. They are all capable of being let separately, notwithstanding the utility arrangement made for the electricity to the second floor flat and third floor studio flat. Despite the bizarre use of a draft tenancy agreement by the Respondent's Agent to note the reservation of the three flats, the Property is not a 9 bedroom HMO which would require a licence and was not let as such. Therefore, no offence under section 72(1) of the 2004 Act has been committed.
31. The second floor flat only became an HMO requiring a licence as a result of the Applicants' actions. The Respondent could have required Mr Jacquinot to move back into Flat 3 but did not ask him to do so. Instead, he looked into whether he could obtain an HMO Licence for the Property for the remainder of the academic year to accommodate the Applicants preferred living arrangements.
32. For completeness, the Tribunal notes that the failure of the Respondent to require Mr Jacquinot to move back into the studio flat may give rise to an offence under s72(2) of the 2004 Act. However, the Tribunal also notes the defence which would be available under s72(5) of the 2004 Act as the Respondent has the reasonable excuse that the Applicants created the situation that gave rise to the offence and that the reason he delayed the rectification of the situation was that he was exploring the possibility of obtaining an HMO licence to facilitate the Applicants' actions.
33. While the Applicants submissions regarding tenancy deposit protection and disrepair are noted, they are not matters which the Tribunal has jurisdiction to determine in relation to this application, which is for a rent repayment order.

Rights of Appeal

34. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
35. 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.
36. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
37. 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.

Judge C Payne
Chairman
First-tier Tribunal (Property Chamber) (Residential Property)