



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

Case reference : **BIR/00FY/HMJ/2022/0006**

Property : **82 Crusader House, Thurland St,
Nottingham NG1 3BT**

Applicant : **Ms Karin Patel**

Representative : **Mrs Trusha Patel**

Respondent : **RCC Property Solutions Ltd**

Representative : **Mr Roy Faulkner**

Type of application : **Application for a Rent Repayment Order
pursuant to the Housing and Planning
Act 2016**

Tribunal member : **Judge C Goodall
Mr R Chumley-Roberts MCIEH, JP**

**Date and place of
hearing** : **9 February 2023 by Video Hearing**

Date of decision : **3 March 2023**

DECISION

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Background

1. The Applicant applies for a rent repayment order in respect of a flat at 82 Crusader House, Thurland St, Nottingham NG1 3BT (“the Property”). The application was dated 27 May 2022.
2. The application was originally issued against Haart Property Management, the agent for the owner of the Property. As a rent repayment order can only be made against a landlord, directions were issued requiring this Tribunal to determine as a preliminary issue who the appropriate Respondent to this application should be, and thereafter to determine the application.
3. The Directions allowed the parties to provide statements of their cases and provided that an oral hearing should then take place. The hearing was arranged as a video hearing.
4. The hearing took place on 9 February 2023. The Applicant did not attend; she was represented by her mother, Mrs Trusha Patel. Mr Roy Faulkner attended for the Respondent. The Tribunal considered the contents of the application form (with attached documents) and the email accompanying it. It also considered the statement provided by Mr Faulkner in response to the Directions. Both Mrs Patel and Mr Faulkner gave oral evidence to the Tribunal.
5. This document sets out the Tribunal’s determination on the application and our reasons for that determination.

Law

6. The relevant provisions of the Housing Act 2004 (“the 2004 Act”), so far as this application is concerned are as follows-

79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
 - (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
 - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
 - (b) the whole of it is occupied either—

- (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
 - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or...
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

...

- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

- (4) In proceedings against a person for an offence under subsection (1) ... 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

.....

- 7. The relevant provisions of the Housing and Planning Act 2016 (“ the 2016 Act”), so far as this application is concerned, are 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 ...
- (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.

	Act	Section	General description of offence
6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

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);

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.

<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>
<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.
7. In *Williams v Parmar* [2021] UKUT 0244 (LC) the President of the Upper Tribunal addressed the question of what discretion the Tribunal possessed when deciding how much rent to order a landlord to repay. In paragraph 50, he said:

“I reject the argument of Mr Colbey that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the

landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.”

8. In the Upper Tribunal case of *Aytan v Moore* [2022] UKUT 27 (LC), concerning a factual situation involving failure to licence a property on the basis of relying on an agent, the Upper Tribunal said:

“40. We would add that a landlord’s reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

Facts

9. We find the facts as set out below.
10. On 1 August 2018, Nottingham City Council designated an area in their district as an area subject to selective licensing, pursuant to section 80 of the 2004 Act.
11. The Property is within the designated area and so is subject to compulsory selective licensing (subject to any exemptions). We are satisfied that no exemptions apply to it.
12. Mr Roy Faulkner is a business development manager who also invests in buy to let properties. He had two properties in 2019 and decided to purchase a third. He was advised that it was more tax advantageous to purchase through a company, so he set up RCC Property Solutions Ltd as the medium through which he would purchase. He is the director and shareholder in that company.
13. The Property was purchased by RCC Property Solutions Ltd (“RCC”) in September 2019. It had an existing tenant and RCC decided to engage the existing managing agent, Haarts, to continue to manage it for him, particularly as in July 2019 Mr Faulkner moved to Australia and could not manage the Property himself.
14. Mr Faulkner had taken professional advice when purchasing and carried out what he considered to be appropriate due diligence before purchasing and he said he had not been aware of the selective licensing designation by Nottingham City Council. He did not live in the Midlands at the time. He said his appointment of Haarts was on a full management basis and he expected them to advise him of all statutory requirements he had to comply with.

15. The Property became vacant in the summer of 2021 and Haarts sourced a new tenant.
16. On 27 July 2021, the Property was let to the Applicant for a fixed term of 12 months commencing on 30 July 2021 at a monthly rent of £895.00. The landlord in the tenancy agreement was stated to be Mr RCC Property Solutions. The agreement was signed on behalf of the landlord by Rami Hariri. We find that the agreement was drafted and executed by the landlord's agent, described in the agreement as "haart lettings Nottingham".
17. The Applicant's mother, Trusha Patel, told us that the Applicant moved in to the Property at around the end of August 2021 in readiness for her studies in Nottingham. She said there were problems with the Property at the outset arising from:
 - a. A leak from the flat above into all three rooms (bedroom, lounge/diner/ kitchen, and bathroom) which had caused damp and mould and the laminate flooring to warp;
 - b. An unpleasant smell permeating the Property;
 - c. A wobbly table and set of shelves;
 - d. A blocked kitchen sink; and
 - e. Inadequate fixing of the toilet and sink to the walls.
18. Mrs Patel said that she accepted the leak had occurred before her daughter's tenancy had started, but its consequences were still in evidence. She agreed that the fixings for the toilet and sink had been remedied, the table had been repaired and the shelves removed (at her request), but she said the bad smell and mould continued during her daughter's occupation. She said the blocked sink did in fact drain, but more slowly than it should have. She had tried to resolve this by using a proprietary drain unblocker.
19. The Applicant was unfortunately not well during the first months of her tenancy, and at some point in October, decided to leave university for a period. Mrs Patel therefore requested her daughter be released from her tenancy. A negotiated termination of the tenancy on 31 December 2021 was agreed. Mr Faulkner said it was expressly agreed on the basis that on termination there should be no further consequential claims. He was not able to produce any written documentation to support this agreement.
20. The Applicant requested a rent repayment order in the sum of £3,786.53. It was not clear how this sum had been calculated until oral evidence was given. Mrs Patel told us that she had fully funded her daughter's

accommodation and had made an initial payment to Haarts to register an interest in accommodation in June 2021 of £206.53. She produced her bank statements which showed four payments of the monthly rent of £895.00 on respectively 13 September, 27 September, 27 October, and 29 November 2021, totalling £3,580.00. It thus became clear that the rent repayment requested was the total of these four payments plus the registration fee.

21. The Tribunal enquired about any rent arrears, as only four payments of rent had been evidenced for a five month tenancy. At the hearing, Mr Faulkner accepted that there were no rent arrears. It appeared that a fifth monthly rent payment had been made in around August 2021, but the Applicant had not provided evidence of this payment, which she accepted.
22. Mr Faulkner gave evidence of his financial position. He is in reasonably well paid employment. He had been able to re-let the Property in early 2022, but had bad tenants, who left in the summer. The property was then vacant until January 2023 during which he carried out a significant amount of work on it. It has now been re-let. The Respondent company has no cash; Mr Faulkner is funding outgoings out of his personal income. The rent barely covers his mortgage payments at present. Crusader House is blighted by problems with its cladding, and the Property is unsaleable and impossible to remortgage at present.
23. Mr Faulkner has three other properties in his own name, but he says his rental income is wholly subsumed by his mortgage payments at present, due to the recent rise in mortgage interest rates. He has some savings which are to go towards a deposit for a purchase of a house for him to live in. He is currently in rented accommodation.
24. Mr Faulkner provided evidence to us of expenditure on the Property both during and after the tenancy, which he said he had largely funded personally. £714.00 had been spent during the tenancy on repair items, including carrying out the repairs to the basin and removing the unwanted shelving. £1,840.00 had been spent in 2022, and £477.00 had been spent prior to the Applicant's tenancy starting.
25. So far as the failure to licence the Property is concerned, Mr Faulkner was quite clear that had he known of the need to register, he would have done so straight away, and he is highly critical of his agent for failing to inform him of the company's obligation to do so. He only became aware of the requirement in November 2021. An application for a licence was submitted on 8 February 2022. A licence was issued on 6 April 2022 to Spicerhaart Group Limited and Mr Faulkner jointly, with Spicerhaart Group Limited being named as the manager.
26. The Tribunal explained that it was a defence to the offence of failure to licence if there was a reasonable excuse for the failure. Mr Faulkner asked

us to accept that the failure of his agent to inform him of the licensing requirement and to make the application was his reasonable excuse.

27. Mr Faulkner had provided copies of a financial penalty final notice issued by Nottingham City Council dated 5 August 2022 for £3,000.00. The notice contained details of the Council's attempts to contact the landlord of the Property which had been ongoing since April 2021. The detailed account of the Council's attempts to contact the Respondent confirms that a letter was sent to the Respondent's registered address in April 2021, but all other attempts to contact the Respondent were dealt with through Haarts.
28. Mr Faulkner informed the Tribunal that Nottingham City Council had withdrawn this financial penalty. A letter confirming, dated 2 November 2022, was provided to the Tribunal. No reasons were given in the letter.

Discussion

29. The first issue for us is the preliminary issue of identification of the appropriate Respondent. Mr Faulkner confirmed that the Property is owned by RCC Property Solutions Ltd, which was the landlord intended to be named in the Applicant's tenancy agreement. We direct, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2103 that RCC Property Solutions Ltd be substituted as the Respondent in this case.
30. Our next issue is to decide whether an offence has been committed by the Respondent under section 95 of the 2004 Act.
31. There are 5 elements to the offence:
 - a. That the Property must be a "house";
 - b. That the Property must be in an area which the local authority has designated as an area of selective licensing;
 - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
 - d. That the Property is not licensed;
 - e. That the Respondent is "a person having control" of the Property;
32. These five elements must be proved beyond reasonable doubt, but in our view they are not in any serious doubt. The Property is part of a building, consisting of a dwelling, which therefore falls under the definition of "house" in section 99 of the 2004 Act. The Tribunal accepts the email evidence from Nottingham City Council that the Property was both within a selective licensing area as from 1 October 2018, and that no application for a licence was made until 8 February 2022. The copy tenancy

agreement provided to us in the bundles of documents confirms that the Property is let under a single tenancy. The Respondent receives the rack rent, meaning that by virtue of section 263 of the Act he is a person in control of the Property. This applies even though the rent is in fact initially received by the Respondent's agent.

33. There is a defence to a section 95 offence; whether there is a reasonable excuse for the Respondent having control of the Property without it being licensed (which has to be proved by the Respondent on the balance of probabilities).
34. We do not consider that the Respondent does have a reasonable excuse for failure to licence. We have sympathy with Mr Faulkner, who feels that his agent should have informed him of his obligation. But the obligation to licence is his, not his agents and we have to consider whether the evidence establishes that he could not have made himself aware of his obligations as a property investor. Although not a fully professional property investor, he might at least be described as a serious amateur. He had at least a little knowledge of licensing requirements, for he told us he was aware of the need to licence houses in multiple occupation. He proposed investing in Nottingham City some time after the Council had made their selective licence designation. He was still in the United Kingdom shortly before he bought the Property. In our view, he both could, and should, have made himself aware of his regulatory obligations before purchasing the Property.
35. We also note (from the Financial Penalty Notice) that Nottingham City Council informed the Respondent, by writing to its registered office address, of its obligation to licence the Property in April 2021. Even if Mr Faulkner was in Australia at the time, he should have made arrangements for post to his companies registered office to be dealt with. That correspondence, had it been actioned on receipt, would have prevented any application for a rent repayment order being made.
36. In the light of this evidence, and applying *Aytan v Moore* (see paragraph 8 above), we determine the Respondent cannot avail himself of the reasonable excuse defence.
37. Our task now is to determine whether to make a rent repayment order. We have discretion to do so under section 43(1) of the 2016 Act. There is no good reason we can see for us to determine not to make an order; an offence has been committed and the purpose of the 2016 Act is to allow tenants to pursue the rent repayment remedy.
38. In determining the amount of the order, we note that the amount must relate to rent paid in a period of 12 months during which the Respondent was committing the offence. The offence ceased to be committed on 8 February 2022, the date of the application for a licence, and had been

continuously committed since the date of purchase of the Property until that date.

39. The Applicant's tenancy lasted some 5 months so any amount we order relates to the rent paid during that 5 month period. However, the registration fee of £206.53 was not rent, and the Applicant has only proved that £3,580.00 rent was paid during the tenancy, so that is the maximum sum we could order should be repaid.
40. Following the approach in *Williams v Parmar*, we must now decide what proportion of this maximum sum we consider is appropriate in all the circumstances, paying particular regard to the conduct of the parties, the Respondent's financial circumstances, and whether any previous offences have been committed by the Respondent. This process is usually dealt with through the terminology of a percentage deduction from the maximum sum that can be awarded.
41. We consider that we should take account of the following circumstances:
 - a. That the Respondent has no previous convictions of an offence referred to in chapter 4 of the 2016 Act;
 - b. An offence under section 95 of the 2004 Act is not the most serious of the offences which could result in a rent repayment order;
 - c. That the Respondent is closely associated with Mr Faulkner, who is a multiple property buy to let investor;
 - d. That the Respondent and Mr Faulkner do have financial pressures, but their combined financial position is not such as causes us to doubt that they can afford any financial penalty we impose;
 - e. The Property had some issues when the tenancy started but we consider that the Respondent sought to address those issues appropriately;
 - f. A licence was granted without any suggestion that the Property was not suitable for occupation;
 - g. Nottingham City Council did not pursue the financial penalty, indicating that they had a degree of sympathy for the difficulties the Respondent had with its agent;
 - h. That the Respondent had engaged a professional agent who had let it down;
 - i. There are no issues with the tenant's conduct.

42. Our view, balancing all of the above circumstances, is that the appropriate discount is 50%. **We order that the Respondent repay the Applicant rent in the sum of £1,790.00.**

Appeal

43. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)