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

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| **Case Reference** | : | CHI/00ML/HMF/2022/0027 |
| **Property** | : | 7B Madehurst Close, Brighton BN2 0YR |
| **Applicant** | : | Taelor Hamblett-Weaving<br>Rory Bell<br>Sophoulla Gibson<br>Connor Crowe |
| **Representative** | : | Justice for Tenants |
| **Respondent** | : | Mr Louis Rogerson<br>Rogerson Investment Limited |
| **Representative** | : | |
| **Type of Application** | : | Application for a rent repayment order by Tenant<br>Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016 |
| **Tribunal Members** | : | Judge D Whitney<br>Mr M J F Donaldson FRICS MCIArb MAE<br>Mr E Shaylor MCIEH |
| **Date of Hearing** | : | 31st January 2023 |
| **Date of Decision** | : | 22nd February 2023 |

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**DECISION**

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## Decision

**The Respondent shall repay rent in the sum of £6,804 to the Applicants within 28 days. The Tribunal makes an order requiring the reimbursement by the Respondent to the Applicants of the Tribunal fees in the sum of £300.**

## Reasons

## Background

1. On 5th September 2022 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the 2016 Act) from the Applicant tenants for a rent repayment order (RRO) against the Respondent landlord.

2. Directions were issued on 28th November 2022. The matter was listed for hearing at Havant Justice Centre on 31st January 2023.

3. The Applicants' representative produced an electronic bundle of 1493 pages. References in [ ] are to pdf pages within that bundle.

4. The Respondent on 30th January 2023 provided what was called "Final Supplementary Bundle" running to a further 80 pages. This was admitted in evidence.

5. The Applicants all attended in person and were represented by Mr Neilson. Mr Rogerson attended in person in his personal capacity and as a director of Rogerson Investment Limited. He was represented by Mr Walker, directly instructed barrister. Both representatives had supplied a skeleton argument which the Tribunal had received.

6. The hearing was recorded.

7. At the start of the hearing the Tribunal informed the parties that it had read the bundles save for over 1,000 pages containing images of electronic messages within the main bundle and the parties must direct the panel to any and all documents they wished to rely upon.

8. Mr Walker on behalf of the Respondents helpfully conceded it was admitted that an offence had been committed in that neither Respondent held an HMO Licence for the Property, although there was an issue over the period of such offence as the Respondent contended he had applied for a Temporary Exemption Notice ("TEN").

9. The parties were in agreement that the issues for determination were:

   - Who was the correct Respondent?

   - What was the period of the offence and had a valid TEN been applied for?

- Had the First Applicant, Ms Hamblett-Weaving made her application within the statutory time limit?

- If a rent repayment order was to be made, for what amount?

10. We refer throughout this decision to the Applicants by their first names for ease and no discourtesy is intended. Likewise we refer to Mr Rogerson and in so doing we reference that this is both in his personal capacity and as a director of Rogerson Investment Limited.

**Law**

11. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.

12. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.

13. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

14. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

    a) the rent paid in respect of the period in question, less

    b) any relevant award of universal credit paid (to any person) in

respect of rent under the tenancy during that period.

15. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

    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 any of the specified offences.

**Evidence**

16. Mr Neilson confirmed at the outset of the hearing the periods of occupation relied upon by each of the Applicants and the period for which they were seeking repayment of their rent:

    Taelor

    Period of occupation: 20/10/2019 to 2/5/2021
    Rental: 1/5/2020 to 30/4/2021 £8,115

    Rory

    Period of occupation: 3/5/2021 to 28/11/2021
    Rental: 1/5/2021-28/11/2021 £4,160

    Connor

    Period of occupation: 20/10/2019 to 12/12/2021
    Rental: 7/9/2020 to 6/9/2021 £6,650

    Sophoulla

    Period of occupation: 15/5/2020 to 26/4/2022
    Rental: 1/9/2020 to 31/8/2021 £7,200

17. Copies of their respective tenancy agreements were within the bundle [43, 39, 45, 41]. Each referred to the landlord as Louis Rogerson and were for differing rentals but had required payment of a deposit equivalent to one calendar month's rent.

18. Each of the Applicants had provided a witness statement and gave oral evidence confirming the statement of truth of their statement. Mr

Walker cross examined each on their statements and the Tribunal asked various questions.

19. At the conclusion of the Applicants' evidence there was a short adjournment.

20. Upon resumption Mr Rogerson gave his evidence relying upon his witness statement [1432-1438]. He confirmed the statement of truth and Mr Walker was allowed to ask supplemental questions prior to cross examination.

21. The cross examination had to be paused for the luncheon adjournment and was concluded after the break. The Tribunal also questioned Mr Rogerson.

22. After Mr Rogerson gave his evidence, Mr Neilson and Mr Walker made their respective legal submissions based upon the skeleton arguments filed.

**Has an offence been committed?**

23. Mr Walker conceded that an offence had been committed.

24. The situation is perhaps slightly more complex than might appear at first sight. Taelor and Connor initially both lived at Number 11 Madehurst Close, another property owned by Mr Rogerson. Number 7 (at that time one single house) was acquired by Rogerson Investment Limited (see [85] Land Registry entries) in February 2019. Mr Rogerson began renovation works and then persuaded Connor and Taelor to move to Number 7. Both began occupying Number 7 on 20th October 2019. It was agreed other persons were also in occupation such that an HMO licence was required, given that there were 5 of more occupants (sometimes as many as 8) not all of the same household.

25. The property was divided to create 7A and 7B Madehurst Close with planning permission, the division being said to have been completed in March 2021 when separate electricity supplies were created. Mr Rogerson in his evidence confirmed it had been his intention upon completion of the sub-division to seek HMO licences but before he could do so Brighton Council had made an Article 4 direction which meant he was unable to let the properties as HMOs without further planning consent which he did not have and was advised he would be unlikely to obtain.

26. The council became aware of the use as an HMO in or about Summer 2021 and thereafter Mr Rogerson took steps to reduce the occupation of the Property so that a licence was not required. This was achieved on 28th November 2021 when Rory left leaving only Connor and Sophoulla in occupation.

27. We are satisfied that as from 20th October 2019 the Property required a licence. Mr Rogerson said he had known about the requirement for HMO licences for some time, but wanted to wait until the conversion into two flats was completed because if he had obtained a licence for number 7 as one house it would not have been transferrable to the new addresses and he would have had to submit fresh applications.

28. Mr Rogerson suggested that the need for a licence ended on 1st October 2021 when he applied to Brighton Council for a TEN. He relied upon an email [1442] sent to Brighton Council. It appeared to be accepted that Brighton Council never made a decision on the request but Mr Rogerson withdrew the request once the number of occupants was reduced to a level that a Licence was not required.

29. Mr Neilson suggests such request is defective since in his submission "unlawful" Section 21 Notices had been served by Mr Rogerson and were referred to within his request to the council. He suggests that the service of Section 21 notices which he contends are unlawful prevents the Respondent seeking a TEN as in so doing he is relying upon an unlawful act.

30. We do not accept Mr Neilson's submission. There are no requirements as to the form in which an application for a TEN should be made. We are satisfied that an email of the type relied upon by Mr Rogerson is sufficient to amount to an application. We do not accept that the section 21 notices are unlawful. The notices are invalid due to the statutory requirements. Mr Rogerson made it clear that he was seeking a TEN so that he could reduce the number of tenants at the Property so that a licence was not required. This is, in our determination, a legitimate reason for an application for a TEN, because section 62 Housing Act 2004 (the 2004 Act) states that a TEN may be granted where a person having control of or managing an HMO which is required to be licensed but is not so licensed notifies the local housing authority of intention to take particular steps with a view to securing that the house is no longer required to be licensed. If a TEN was granted Mr Rogerson could then have served further Section 21 Notices. Beyond service of the invalid section 21 notices it was not suggested that he took any further steps to force the tenants to leave.

31. Mention was made that Brighton Council said they would not grant a TEN in these circumstances. That may or may not be the case, but no evidence from Brighton Council to this effect was produced although all parties appeared to accept no actual decision upon the application was made and communicated to Mr Rogerson, as would have been required under section 62(6) of the 2004 Act if the council had refused the application.

32. We are satisfied that he made an application for a TEN on 1st October 2021 and that the period of the offence ended upon making such

application given by the date when he withdrew it is accepted that the Property no longer required an HMO Licence.

33. Connor moved out in December 2021. We take note of the evidence of Sophoulla who told us that initially Mr Rogerson verbally asked her to leave. When she did not he served her with a section 21 notice on or about February 2022 and she vacated upon the expiry of the same. Mr Rogerson said that since then the Property has been let as a single family dwelling.

**Who is the correct Respondent?**

34. We note that at all material times the Property was owned by Rogerson Investment Limited. Mr Rogerson is the sole director and principal shareholder of the company. He indicated he signed the tenancy agreements but did so on behalf of the company. All rents were paid to the company.

35. We are satisfied in this current instance it is the Company who is the correct Respondent against whom a rent repayment order should be made.

**Has the application been made in time?**

36. The Application was made on 5th September 2022. It appears to be accepted by the Respondents that Connor, Sophoulla and Rory were all in occupation of the Property as at 5th September 2021 and their tenancies did not end until dates after. Further, given our findings that the offence did not end until the application for a TEN on 1st October 2021, we find that the applications by the Second, Third and Fourth Applicants were made in time.

37. We find that in respect of the First Applicant (Taelor Hamblett-Weaving) the application was not made in time.

38. Her tenancy ended on 2nd May 2021. Each Applicant had an individual tenancy agreement. We determine that the offence must be committed in connection with the particular tenancy agreement. It is correct that there was a continuing offence committed by the Respondent of not having an HMO Licence. However this offence cannot be said to be in connection with a tenancy agreement held by the First Applicant as her tenancy had ended. We find that to have made a claim, the First Applicant should have lodged her application by 2nd May 2022.

**Should we exercise our discretion to make an order?**

39. We considered the decision in The London Brough of Newham v John Francis Harris [2017] UKUT 264 (LC). We have found that an offence has been made out and this was conceded by the Respondents. Taking

account of all the facts we are satisfied that this is a case where we should exercise our discretion to make an order.

**What order should we make?**

40. The Applicants each paid differing amounts however it is accepted these amounts included various bills. We are told the letting included all household bills (gas, electricity, council tax, wifi and cost of certain household cleaning products and toilet roll).

41. Mr Rogerson provided various bank accounts showing payments made. He suggested that the account for which he had produced statements related to only this Property. He had not produced bills (beyond a Council Tax bill in the name of the tenants [48]) as he said he did not have copies. When questioned by the Tribunal he stated his accountant did not require these and he did not keep them for his tax affairs.

42. Mr Rogerson produced spreadsheets [1452-1454] which he said listed the amounts paid. In giving evidence he accepted that the gas and electricity charges pre November 2021 related to the whole of number 7 and so these amounts should be divided by two and then by 4 to give the figure per tenant. This was not however what he had done in completing his own calculations.

43. We accept that the cost of utilities being gas, electricity, council tax and wifi should be deducted from the rental for each. Mr Neilson claimed that council tax should not be deducted as it benefits the landlord (due to increased amenity of the Property) as well as the tenants. The Tribunal does not accept this, as tenants benefit from services provided by the local authority and in most cases occupiers are liable to pay council tax (whether directly or as part of rent). If one takes the spreadsheet relied upon by Mr Rogerson [1452] the "All bills" column for the period 4/2020 until 9/2021 totals £8,706.57. Mr Rogerson accepted this was for the whole of number 7 and so should be halved and then divided equally between the 4 tenants. If one calculates the average for the 18 month period this gives a monthly figure per tenant of about £60.

44. We find that the monthly rental for each of the Applicants should be reduced by £60 to cover the utility costs paid by the Respondent.

45. We must now consider the particular circumstances of this case and the conduct of the parties.

46. We are satisfied that the offence we have found to be committed is less serious than other offences for which a rent repayment order may be made. This being said we accept that Parliament in passing the legislation to allow the making of a rent repayment order considered it desirable to penalise landlords who had committed such offences, so as

to assist in improving housing standards and so as to act as a deterrent to landlords in committing housing offences.

47. It is not suggested that the Respondent has any relevant criminal convictions which we should take account of.

48. The Respondent makes no allegations as to conduct of Rory, Connor or Sophoulla. The Respondent indicated that at certain points Taelor had accrued rent arrears but it was accepted these were cleared before her tenancy ended. We are satisfied that there are no issues of negative conduct by the Applicants.

49. The Applicants do raise various issues as to the conduct of the Respondent. The matters relied upon were set out in paragraph 42 of Mr Neilson's skeleton argument. We have considered all the matters he raised.

50. We take account of the fact that Rogerson Investment Limited is a company which lets property it owns. Mr Rogerson appears to make his living from the letting of property. Both he and the company can be fairly described as professional landlords in our judgment and the Respondent did not challenge such assessment.

51. We found that Mr Rogerson both personally and as a director of his company knew that a licence was required. We find on his evidence he deliberately chose not to apply for a licence at a time when he could have obtained one in 2019 or 2020. The omission of a licence was not due to a lack of knowledge. That being said, when he did decide to apply for a licence, in 2021, it was denied to him because of a requirement for planning consent due to the Article 4 direction, and he then began a process of reducing occupant numbers below where a licence was required, given that his tenants had tenancy agreements which were required to be respected.

52. Further we are satisfied that Mr Rogerson conducted works relating to the separation of the Property into two flats whilst the Applicants were living at the same. He accepted in evidence that on occasion he would visit and enter the Property without proper notice being given and that tradespeople carrying out construction and alterations worked in the Property during the occupiers' tenancies. He accepted these were wrong although we do take account of the fact that it did appear in the main the Applicants and Respondents enjoyed a cordial relationship until towards the end of their respective tenancies.

53. We find the Respondents did serve notices which were invalid. They also failed to properly protect deposits taken from the tenants or comply with other statutory requirements.

54. Overall we are satisfied that the Respondent's conduct was poor. We categorise the Respondent's conduct as being naïve and reckless as to the obligations a landlord has. Mr Rogerson admitted this whole

experience had been a salutary lesson for him and we sincerely hope he has learnt from it.

55. We are satisfied that rent repayment orders should be made reflecting 45% of the rent paid net of the utilities we have allowed which gives figures of:

| | |
|---|---|
| Connor | £2691 |
| Sophoulla | £2,916 |
| Rory | £1,197 |

All such sums to be paid to the Applicant's representative within 28 days of this decision.

56. Taelor's application is dismissed.

57. We have considered whether or not we should exercise our discretion to order the Respondent to reimburse the Applicants for the fees paid to the Tribunal of £300. The making of such an award is always at the discretion of the Tribunal. In this case we have found substantially for the Applicants. Taking account of our findings and the facts of this case we make an order that the Respondent shall pay to the Applicants representative the sum of £300 within 28 days.

## RIGHTS OF APPEAL

1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2.The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3.If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

**Explanation of the Tribunal's jurisdiction to make a rentrepaymentorderrent repayment order**

1. The **issues** for the Tribunal to consider include:

**Whether** the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

| | *Act* | *Section* | *General description of offence* |
|---|---|---|---|
| 1 | Criminal Law Act 1977 | s.6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | s.1(2), (3) or (3A) | unlawful eviction or harassment of occupiers |
| 3 | Housing Act 2004 | s.30(1) | failure to comply with improvement notice |
| 4 | Housing Act 2004 | s.32(1) | failure to comply with prohibition order etc. |
| 5 | Housing Act 2004 | s.72(1) | control or management of unlicensed HMO |
| 6 | Housing Act 2004 | s.95(1) | control or management of unlicensed house |
| 7 | Housing and Planning Act 2016 | s.21 | breach of banning order |

**Or** has a financial penalty[1] been imposed in respect of the offence?

(i) What was the date of the offence/financial penalty?

(ii) Was the offence committed in the period of 12 months ending with the day on which the application made?

(iii) What is the applicable twelve-month period?[2]

(iv) What is the maximum amount that can be ordered under section 44(3) of the Act?

(v) Should the tribunal reduce the maximum amount it could order, in particular because of:

[1] s.46 (2) (b): for which there is no prospect of appeal.
[2] s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

(a) The conduct of the landlord?

(b) The conduct of the tenant?

(c) The financial circumstances of the landlord?

(d) Whether the landlord has been convicted of an offence listed above at any time?

(e) Any other factors?

2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

**Important Note: Tribunal cases and criminal proceedings**

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.