



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

Case Reference : **BIR/00CS/HMF/2022/0008**

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

Property : **6 Castle Road, Dudley, West Midlands,
DY4 8EA**

Applicant : **Mr Liam Tomlinson (Litigant in Person)**

Respondent : **Mr Leroy Dilworth (Litigant in Person)**

**Type of
Application** : **Application for Rent Repayment Order
by a Tenant under section 41(1) of
Chapter 4 of Part 2 of the Housing and
Planning Act 2016**

Tribunal Members : **Judge C Payne
Mr R Chumley-Roberts MCIEH, J.P**

Date of Hearing : **30 September 2022**

Date of Decision : **18 November 2022**

DECISION

Decision of the Tribunal

1. The Respondent committed an offence under section 72(1) of the Housing Act 2004 as he was controlling and/or managing a house in multiple occupation which was required under Part 2 of the Act to be licensed at a time when it was let to the Applicant, but was not so licensed
2. The tribunal orders the Respondent to repay to the Applicant by way of rent repayment the sum of **£4,067.25** within 28 days.

Introduction

1. On the 10 June 2022, the Applicant applied 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 Applicant claims 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 Applicant but was not so licensed and that he was therefore committing an offence under section 72(1) of the 2004 Act.
3. The Applicant’s claim is for repayment of rent paid during the period from 1 February 2021 to 31 December 2021 in the amount of £5,775 or for such period as the Property has been unlicensed.

Applicant’s Submissions

4. The Applicant provided the Tribunal with a 36-page Bundle, which included a copy of a Tenancy Agreement and bank statements with rent payments highlighted.
5. The Property is a house with 9-bedrooms split over 3 floors.
6. The Applicant and his partner, Ms Kirsty Beeke, occupied the Property under a tenancy from 1 February 2021 to 31 December 2021 (**‘Relevant Period’**). During that time, Ms Beeke paid funds to the Applicant, who then paid rent to the respondent. The rent was £525 per month. The total rent paid was £5,775. The Respondent agreed rent in this sum was paid.
7. The Tenancy Agreement confirmed that the rent included payments for electricity, gas, water, Television Licence Fee, Council Tax, Estate Management Charges, cleaning of common parts, property maintenance, annual gas and electricity checks, gardening, use of gated parking and garages, broadband and Sky television (**‘Services’**). No

breakdown of the cost of the Services is provided. They were simply included as part of the total monthly rental payment.

8. At the start of the Applicant's Tenancy, he was 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.
9. During the Relevant Period there were between 10 and 11 tenants in the Property from separate households. Throughout that time the Property did not have a licence to operate as an HMO.
10. During the Tenancy, the Applicant stated that the Property was kept in a good state of repair and that when anything was broken, it was fixed promptly.
11. No tenants were harmed during the course of the Tenancy but there was no reassurance that the Property was safe as regular checks did not appear to be carried out.

Respondent's Submissions

12. The Respondent provided a 104-page bundle to the Tribunal, which included one-page witness statements from 17 witnesses, which in the majority of cases, did not address the issues before the Tribunal. The Bundle also notably included an HMO Licence for the Property dated 12 August 2022, permitting 11 residents for occupation in 9 households.
13. The Respondent is a professional full-time landlord. He has 9 properties of his own and another 5 that he manages for third parties. He did own two other properties across the road from this Property that were also HMOs until approximately 6 years ago when they were sold. They were also operated without a licence.
14. The Respondent purchased the property in 2007 with a view to using it as an HMO. It was purchased using an HMO Mortgage. Prior to purchase he made enquiries with the local authority and was made aware it would require an HMO Licence. The local authority provided an application form to the Respondent, who never got round to filling it out. The Respondent does not deny that he has been operating an unlicensed HMO for 15 years, with full knowledge that it should have been licensed. He confirmed that he was aware of the need for a licence and the consequences of not having one.
15. In 2007 the local authority initially advised him that under the guidance at the time he needed to put wash basins in each room. However, after he had begun that work the guidance was changed so it was no longer required. This put him off cooperating with the local authority as he 'wasn't interested'. He felt the HMO Licensing requirements were just

'form filling' and 'costs'. He felt that the local authority should have chased him more to complete the application.

16. The Respondent has been a member of the National Landlords Association since 2013. He is aware of the requirements for operating a HMO and the statutory requirements for renting out residential property.
17. The Tribunal was provided with a copy of an EPC certificate dated 24 May 2016 rating the Property at band C and an electrical safety certificate dated 29 October 2020, both of which would have been valid during the Applicant's Tenancy.
18. The Tribunal heard from Ms Jade Candlin, who assisted the Respondent with the management of his properties until spring 2021. She advised the Tribunal that the Property had a gas safety certificate dated 12 January 2021 and a fire alarm certificate dated 13 January 2021 in place as she arranged the inspections, for these. She did not deal with tenancy deposits, licensing, or maintenance, these being dealt with directly by the Respondent.
19. The Tribunal also heard from Ms Anna Stec who is employed by the Respondent to undertake cleaning of the communal areas in his properties. She stated that she has been working with the Respondent since 2013 and that he is the best landlord she works with. He responds quickly to maintenance issues and goes above and beyond to keep his properties in good condition.
20. The Respondent finally made an application for the HMO Licence on 27 May 2022. The application was made after the local authority undertook an inspection of the property on 4 May 2022 (booked on 3 May 2022) and advised him again that the Property required an HMO Licence. In between the inspection and the application being made the Respondent obtained a Gas Safety Certificate on 4 May 2022, an Emergency Lighting certificate on 10 May 2022, a fire detection and alarm certificate on 10 May 2022. It appears the Respondent had let these checks lapse as they should have been renewed in January 2022. However, the Respondent did not have to do any works following the local authority inspection to obtain the licence. He just needed to get the safety certificates done in order to complete the application.
21. The Respondent confirmed that the Applicant had paid the rent in the sum of £5,775 during the Relevant Period. The Applicant was described as a 'good tenant'. He estimated that approximately £100 of the rent per month was for services. However, no reconciliation of the actual cost of Services during the Relevant Period had been undertaken so he was unable to provide any accuracy on the figure. The guess of £100 came from a review undertaken by Glide Utilities approximately 10 years ago.

22. The Applicant's deposit was not placed in a tenancy deposit scheme as the Respondent missed the 30-day cut off so held the deposit in a client account.
23. The Respondent was unable to provide any accurate details of his income. He stated that there were tenants with arrears in some of the properties. From the Property he confirmed he is receiving rent of approximately £3,500 per month. He also received rent from his other 8 properties and other investments, as well as management fees for the 5 properties he manages for third parties. He estimated that he had approximately £3,000 in bank accounts and approximately £20,000 equity in his home. There is also likely to be equity in his other properties.
24. The Respondent asked the Tribunal to note that, despite the licence not being in place and some certificates going out of date, the Property has been kept in good condition and safe. There was no harm or loss caused to any tenants. Other than not having a licence, he is a good landlord, and this would be his first offence.

The Law

25. 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

26. The Respondent confirmed that the Property was an HMO requiring a licence and, as such, has committed an offence under section 72(1) of the 2004 Act.
27. The Respondent purchased the Property with the intention of letting it as an HMO in 2007, utilising a specialist HMO mortgage to do so. When he purchased the Property in 2007 he spoke with the local authority who confirmed a licence was required and furnished him with the application forms for completion. He confirmed that he was aware of the need for a licence and the consequences of not having one. He did not apply for a licence as he was not interested in cooperating with the local authority and viewed the exercise as unwanted form filling and costs. The Tribunal determines that is not a reasonable excuse for not having obtained a licence that might give rise to a defence under section 72(5) of the 2004 Act.
28. The offence relates to housing that, at the time of the offence, was let to the Applicant, and the offence was committed within a period of 12 months ending with the day on which the application was made. Therefore, the Tribunal determined that the Applicant is entitled to apply for a rent repayment order under section 41 of the 2016 Act.
29. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the relevant offence has been committed. Section 44 states that the amount ordered to be repaid “must relate to the rent” paid during the period, not exceeding 12 months, when the landlord was committing the offence, and section 44(4) provides:

“(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.”

30. Following the decision in *Williams v Parmar* [2021] UKUT 244 (LC) it is now well-established that the Tribunal in assessing the amount of a rent repayment order should not just 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 a crucial element of the landlord’s conduct. In *Acheampong v Roman and others* [2022] UKUT 239 (LC) the following approach to the assessment of the amount of rent to be repaid was confirmed:

- (i) Ascertain the whole of the rent for the relevant period;
- (ii) 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.
- (iii) 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:
- (iv) 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).

31. The parties agreed that the rent paid for the Relevant Period was £5,775, being £525 per month.

32. The exact figures for the Services were not available. The Respondent estimated the cost at £100 per month, which would mean that approximately £12,000 per year was being spent on the Services for the Property. The Tribunal considered from its own experience the likely costs for the Services and estimated that they were unlikely to amount to more than £10,000 for the year. As such, a reduction of £90 per month is applied. This reduces the rent figure to £4,785.
33. The Tribunal then considered the seriousness of the offence and the appropriate percentage of the rent to reflect that seriousness, in order to generate a starting point. The offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made. During the relevant period there were up to date safety certificates in place, though it is noted this was not the case in the first five months of 2022 when the Respondent took over full responsibility for the management of the Property. The Respondent has kept the Property in good repair throughout and, but for the certificates needing to be brought up to date, there appears to be no reason a licence would not have been granted at an earlier juncture had the application been made. However, the Respondent openly admits to deliberately committing the offence over a period of 15 years with regards to this Property and committing similar offences in respect of two other properties he used to own and manage.
34. The Respondent has a generally poor attitude towards documentation and regulation. He notably did not place the Applicant's deposit into a Tenancy Deposit Scheme or provide copies of the appropriate documentation at the outset of the Tenancy. As a professional landlord, his attitude towards compliance with regulation is concerning. While the Property was found to be in good condition and well maintained and it is accepted that this reduces the likely risk to tenants, the risk of potential harm to tenants remains high where safety checks are not undertaken on an appropriately regular basis. Compliance with mandatory regulatory requirements are not optional, with good reason.
35. On that basis, the Tribunal takes the view that repayment of 85% of the rent is appropriate to reflect the seriousness of the offence.
36. The Tribunal then turns to consider the final steps, which is whether any adjustments are to be made in light of the other factors set out in section 44(4) of the Housing Act 2004.
37. The Respondent is a professional landlord earning a living from the letting and management of residential property. During the course of the tenancy, save for the issues summarised in paragraphs 33 and 34 above, the Respondents conduct was described as good, and no issues were raised with the conduct of the Applicant. Although specific details were not put before the Tribunal, it is evident that the Respondent has a substantive income for the rental payments across his portfolio, income

from managing other properties, income from investments, savings, and substantive equity in his property portfolio. He would not have any difficulty in paying any order imposed. There is no evidence that the Respondent has any relevant convictions. However, given the evidence provided by the Respondent to the Tribunal, the absence of convictions may be attributed more to a lack of fervour on the part of the local authority, rather than the Respondent's conduct. The Tribunal takes the view, therefore, that none of these factors justify a further reduction in the amount paid.

38. Accordingly, an 85% reduction is applied to the rent of £4,785, giving a Rent Repayment Order of **£4,067.25**.

Rights of Appeal

39. 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.
40. 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.
41. 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.
42. 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)