



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

Case References : **CHI/00ML/HMF/2022/0022
CVP/video**

Property : **8 New Steine Mansions Devonshire
Place Brighton BN2 1QJ**

Applicants : **Elliott Barrowcliffe
Emilie Risi
Lara Crofton**

Representative : **Mr C Neilson , Justice for Tenants**

Respondent : **Homemakers Property Ltd**

Representative : **Ms C Whiteman , Dean Wilson LLP**

**Type of
Application** : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM
Mr C Davies FRICS ACI Arb
Mr E Shaylor MCIEH**

Date of hearing : **21 March 2023**

Date of Decision : **30 March 2023**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicants jointly and severally in the sum of £8,400 (40%)**
- 2. Additionally, the Tribunal makes an order against the Respondent and in favour of the Applicant in the sum of £300 in repayment to them of their application and hearing fees.**
- 3. The total award to be paid by the Respondent is therefore £8,700.**

Reasons

- 1 The Applicants made an application to the Tribunal under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as Flat 8 New Steine Mansions Devonshire Place Brighton BN2 1QJ (the property) for the period of their occupation of the property (as detailed below) during which time the property was unlicensed.
- 2 Rent for the property was payable to the Respondent as landlord and superior leaseholder.
- 3 The Respondent is a limited company whose principal business is dealing with property. The Tribunal was told that the Respondent owns and manages a substantial portfolio of property; on this basis the Tribunal considers its behaviour in the context of a professional landlord acting as such.
- 4 The hearing of this matter took place via a CVP video link which had been agreed to or not objected to by the parties. At the hearing on 21 March 2023 the Applicants were represented by Mr C Neilson of Justice for Tenants and the Respondent by Ms C Whiteman Solicitor.
- 5 Ms Whiteman told the Tribunal that owing to a fall which required a hospital visit her witness was unable to attend the hearing. No medical evidence was provided in support of this statement and no application for an adjournment was made.
- 6 An agreed bundle of documents had been filed for the hearing and, in the Respondent’s case, a skeleton argument. Prior to the hearing the Tribunal had read the documents supplied in the bundle. The Respondent’s skeleton argument which had only been received by the Tribunal on the morning of the hearing was read by them during a short adjournment of the hearing. Relevant documents are referred to below by their page numbers.
- 7 Shortly before the hearing each party had filed an application requesting permission to file additional evidence. A procedural judge had directed that this issue should be dealt with at the

hearing. Both parties asserted that their additional evidence had been necessitated by allegations made by the other in evidence previously filed with the Tribunal. The Tribunal adjourned briefly to permit the parties' representatives to discuss whether a compromise situation could be reached by each agreeing to withdraw or not pursue specific allegations in their evidence. On resumption the representatives agreed that they had reached an agreement over the disputed areas and the hearing proceeded without admitting the additional witness statements.

- 8 The Tribunal understands that the subject property comprises a three bedroomed flat which, during the entire time to which this claim relates, was occupied by three people from separate households who shared common facilities.
- 9 The property is one of two flats on the first floor of a five story block where the ground floor comprises commercial premises. The block contains 24 residential units on its four upper floors which are served by a lift and staircases.
- 10 With effect from 1 March 2018 the property became subject to an additional licensing scheme run by Brighton and Hove City Council (the Council). It is common ground between the parties that the property did not have a licence for the entire period of the Applicants' occupation between 01 July 2020 and 31 July 2022 when their tenancy came to an end.
- 11 A landlord who fails to obtain a valid licence is committing a criminal offence under s72(1) Housing Act 2004.
- 12 Owing to restrictions imposed under current Tribunal Practice Directions, the Tribunal was unable to carry out a physical inspection of the property but had the benefit of viewing the property and its location via Google and of photographs supplied by the parties in the bundle (see page 58).
- 13 No representative from the Respondent company was present to give evidence to the Tribunal. Their statement of case (page 149) had, with their authority, been signed on their behalf by Ms Wiseman.
- 14 All three Applicants were present at the hearing, confirmed the contents of their written witness statements and were cross-examined on their evidence by the Respondent's representative.
- 15 On the Respondent's behalf, their representative said that on 22 May 2020 prior to the commencement of the tenancy (page 157), the Respondent had checked via the Council housing department web site whether or not a licence was required for this property and owing to an error made by them in inputting the required information, received a response leading them to assume that no licence was needed.
- 16 No further check was made by the Respondent with the housing department until after the Applicants had pointed out to them that a licence was required (see page 241) and a further search made on 06 July 2022 confirmed that situation (page 159).
- 17 At this point the Respondent reacted quickly and made an application for a licence which was granted on 27 September 2022 (page 163). As a condition of grant of the licence the Respondent

had been required to upgrade the fire precautions at the property together with some minor improvement works. These were all carried out to the Council's satisfaction.

- 18 In relation to the 2020 'negative' search, the Respondent's employee who entered the information on the Council's web site appears to have made two unforced errors which led to the erroneous result. First, in answer to a question on the website, the Respondent had said that no part of the block contained a commercial unit. This was not true because the ground floor of the block comprised commercial premises (page 58). If unsure of the correct response the person who entered that information should have checked that the correct response had been entered before submitting the form. Second, in answer to a question asking how many storeys the flat contained the answer '0' was given. Since no representative of the Respondent company was present at the hearing the Tribunal was unable to enquire further into this curious answer. Logically, the flat, occupying part of one floor of a five storey block, must occupy one storey. If it occupies zero storeys it cannot exist. The numbers 1 and 0 are at opposite ends of a standard UK keyboard, it is therefore difficult to understand how a simple mis-keying could have produced this result.
- 19 For the Respondent it was suggested that the wording of the Council website or the construction of its questionnaire matrix were misleading or faulty and had contributed to the errors. This argument was not pursued and the Tribunal is not persuaded by it.
- 20 Although the Tribunal accepts that the errors which led to the erroneous negative result were innocent in that they were not deliberately made it does not consider that this type of mistake is acceptable in the case of a professional landlord who owns and manages a significant portfolio of property.
- 21 As a professional landlord the Respondent should have been aware that property of this type in a city with a predominant student population was likely to be subject to licensing and have made more extensive enquiries. They should also have been aware that licensing requirements change periodically so that regular re-checks of the licensing status are desirable. Despite this, the Respondent has not produced evidence that they made any further checks against this property until prompted to do so by the tenants' discovery in 2022 that the property should have been but was not licenced.
- 22 The Respondent, seeks to rely on their own mistake as a defence to an offence of strict liability in circumstances where the errors were unforced, avoidable and careless, if not negligent. As a professional landlord this conduct is unacceptable and in the Tribunal's view does not constitute a justifiable defence of reasonable excuse under s72(5) of the Act.
- 23 The Applicants have demonstrated to the Tribunal's satisfaction that the property required a licence during the whole period covered by this application and that it did not have one. The Respondent accepts this factual situation.

- 24 The Tribunal was therefore, satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72 (1) of the Housing Act 2004 (as amended), namely, that, it had been in control or management of an unlicensed house.
- 25 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Housing & Planning Act 2016. The Applicants make a claim for the period 01 July 2021 to 30 June 2022. Any award made by the Tribunal could not exceed the total rent received by the Respondent for this period of time (£21,000).
- 26 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 27 The Respondent company is a property professional which employs a management company to carry out routine work. They should therefore have been aware of their responsibilities as a landlord and of the need to licence the property.
- 28 There is no evidence that the Respondent had previous convictions of this kind or that the Council had considered the Respondent's offence to be sufficiently serious to prosecute it. However, in assessing the award to be made to the Applicants, the Tribunal does have regard to the parties' conduct.
- 29 The Applicants produced evidence to demonstrate that they had regularly paid the rent in full and on time (page 47). The rent was paid exclusively from Ms Crofton's account, the other two Applicants paid their share into her account each month. None of the Applicants had received any universal credit during the period which is the subject of this claim.
- 30 No issues relating to the Applicants' conduct were raised by the Respondent.
- 31 The Applicants raised a number of issues about the Respondent's conduct mainly relating to minor repairs. The Respondents had a contact App through which tenants could log requests for repairs. The Applicants' own evidence demonstrated that this system was both functional and efficient with most issues being dealt with very promptly. The majority of the repair requests related to minor repairing issues and the Tribunal gained the impression that the flat was generally in good condition and well maintained. The block (as opposed to the individual flat) was maintained by a management company controlled by the superior landlord and the Applicants had no complaints about upkeep of the common parts.
- 32 The Applicants expressed concern that the fire precautions at the property were inadequate. While it is true that the Council, as one of the conditions of granting a licence to the Respondent, did require some extra fire precautions to be installed, the work was not extensive and was carried out promptly by the Respondent. The block itself had a wired-in fire alarm system which would have afforded additional protection to the Applicants. This does not detract from the Respondent's deficiencies in this area but may have the effect of lessening the severity of them.
- 33 The Respondent also emphasised that no harm had been suffered by the Applicants through the lack of a licence.

- 34 The Tribunal notes however, that the offence had been continuing for over two years and might have continued longer had the Applicants not brought it to the Respondent's attention.
- 35 The Tribunal observes that the notice to quit served on the Applicants appears to have been triggered by the latter's note to the Respondent about the licence and that despite the Respondent refusing the Applicants' request for an extension of their tenancy on the grounds that they no longer wanted to let the property to three persons, their application for a licence (the granting of which would allow them to continue to let to three persons) was dated shortly after the Applicants had raised the licence issue with them.
- 36 The Tribunal also noted the policy objectives of the legislation relating to this offence which are at least in part to provide a disincentive to unsuitable landlords by depriving them of the profit which they make out of poorly equipped and maintained property. The Respondent accepted that their outgoings on the property were not deductible from any potential award but provided a list of regular outgoings such as mortgage, ground rent and service charge in order to demonstrate that their profit from this property was only about £4,000 per annum. The sums cited as expenses were not supported by bills or receipts. No plea of financial hardship was made on behalf of the Respondent.
- 37 The Applicants jointly paid £1,750 per month as rent which sum was exclusive of all outgoings.
- 38 In assessing the award the Tribunal also had regard to the guidelines set out in *E Acheanpong v Roman & Others* [2022] UKUT 239 (LC).
- 39 The period for which rent must be repaid by the Respondent is 01 July 2021 to 31 July 2022 (12 months). This amounts to a maximum award of £21,000.
- 40 The conduct of the respective parties is discussed above and the Tribunal has heard no evidence relating to the Applicants' conduct which would adversely affect the amount of any award to be made to them.
- 41 Apart from the lack of the licence itself, and the Respondent's reaction by serving notice to quit on being informed of the need for a licence both the Respondent's conduct and the state and condition of the property itself appear to have been reasonable.
- 42 This finding does not condone or lessen the importance of the offence which has been committed but does go towards mitigating the effect of any penalty to be imposed on them by the Tribunal.
- 43 As noted above, the maximum possible award in this case could be £21,000 but in circumstances where the Respondent's conduct has generally been good, the Tribunal considers that an award of 40% of the maximum, £8,400, would be appropriate and orders the Respondent to pay that sum to the Applicants forthwith.
- 44 The Applicants also request the Tribunal to order the Respondents to repay their application and hearing fees (£300). This application is granted.

45 Relevant Law
Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 (“the Act “)
provides:

“(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);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Amount of order: tenants

16. Section 44 of the Act provides:

(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.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

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.”

Name: Judge F J Silverman as
Chairman

Date: 30 March 2023

Note:
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 Second-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made 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.

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.