FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**MAN/00BY/HMF/2022/0019**
Property	:	**56 Falkner Street, Liverpool, L8 7QA**
Applicants	:	**(1) Caleb Gunn** **(2) Tristan Harris** **(3) Charlotte Baker** **(4) Roberta Foley** **(5) Molly Harrison** **(6) Grace Hartley** **(7) Henrietta Knight** **(8) Rachel Kaye**
Respondents	:	**(1) Nourish Garrett** **(2) Niall Garrett**
Type of Application	:	**for a Rent Repayment Order under s.41(1) of the Housing and Planning Act 2016**
Tribunal Members	:	**Judge P Forster** **Mr J Faulkner FRICS**

DECISION

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Decision

The Tribunal is satisfied beyond reasonable doubt that Nourish Garrett and Niall Garrett committed an offence under s.72(1) of the Housing Act 2004.

The Tribunal makes a Rent Repayment Order under s.41(1) of the Housing and Planning Act 2016 and orders Nourish Garrett and Niall Garrett to pay £6,120.72 to (1) Caleb Gunn and (2) Tristan Harris and (3) Charlotte Baker and (4) Roberta Foley and (5) Molly Harrison and (6) Grace Hartley and (7) Henrietta Knight and to pay £5,610.16 to (8) Rachel Kaye.

Further, the Respondents shall pay the Applicants the costs of the application fee and the hearing fee in the sum of £300.00, £37.50 to each of the Applicants.

Introduction

1. The Applicants, (1) Caleb Gunn, (2) Tristan Harris, (3) Charlotte Baker, (4) Roberta Foley, (5) Molly Harrison, (6) Grace Hartley, (7) Henrietta Knight and (8) Rachel Kaye applied to the Tribunal for a Rent Repayment Order ("RRO") under s.41(1) of the Housing and Planning Act 2016 ("the 2016 Act").

2. The first seven Applicants were tenants of 56 Falkner Street, Liverpool, L8 7QA ("the Premises") under an assured shorthold tenancy agreement dated 1 September 2020 for a term of 48 weeks from 1 September 2020 to 1 July 2021 at a rent of £545.45 per month per person. All eight Applicants were tenants of the Premises under an assured shorthold tenancy agreement dated 1 September 2021 from 1 September 2021 to 31 July 2022 at a rent of £545.45 per month per person.

3. The Respondents, Nourish Garrett and Niall Garrett are registered as the proprietors of the Premises at HM Land Registry and they were the landlord under tenancy agreements. They were the "person managing" the Premises at the relevant time for the purposes of the Housing Act 2004.

4. The Application was received by the Tribunal on 12 August 2022. The Tribunal issued directions on 14 October 2022 and identified the issues to be considered. The parties were directed to provide full details of their case together with supporting documentation. The Tribunal directed that the application should be determined after a video hearing. The hearing was conducted by video on 28 April 2023. The Applicants were represented by Christopher Daniel instructed by "Justice for Tenants". The Respondents represented themselves.

The Applicant's case

5. The Premises is a house in multiple occupation and was required to be licenced under s.61 of the Housing Act 2004. The previous licence issued on 31 October 2017 was for a period of 3 years and expired on 30 October 2020. The Premises was unlicensed between 31 October 2020 and 27 September 2022 when a new licence was issued. No application was made for a licence during this period. The Respondents thereby committed an offence under s.72(1) of the 2004 Act.

6. The Applicants say that the Respondents failed to keep abreast of their obligations as to be expected of a professional landlord; that there were no smoke alarms in each of the bedrooms; no "stable hot water" was available throughout the tenancies, the Respondents failed to ensure that a gas safety certificate was obtained and provided to the occupants; failed to ensure that an electrical safety certificate was obtained and provided to the occupants; gas rings on the hob in the kitchen malfunctioned; the Premises was infested by mice and rats; in breach of various statutory duties imposed on them.

7. Seven of the eight Applicants seek to recover £6,545.40 for the rent paid between 1 July 2021 to 31 July 2021 and between 1 September 2021 and 31 July 2022. The eighth Appellant, Rachel Kaye seeks to recover £5,999.95 for the rent paid between 1 September 2021 and 31 July 2022.

The Respondents' case

8. The Premises has been run as an HMO by the Respondents for seven years. The Premises had a licence issued on 31 October 2017 for a period of 3 years to 30 October 2020. Liverpool City Council's previous practice was to send a reminder to the Respondents to renew the licence but this was not done in 2020. As a result, the licence was not renewed. As soon as the Respondents became aware of this, they attempted to apply for a licence using the Council's online portal, on 1 February 2022 and 7 February 2022, but on both occasions the application was rejected. After a meeting between the Respondents and the Council on 2 August 2022, the Council agreed on 12 August 2022 accept a new application and a licence was issued on 27 September 2022 for a period of 12 months.

9. The Respondents say that the Premises was not intentionally without a licence and this is simply a case of human error. The situation has been resolved and there was no detriment either physically or financially to the Applicants. The Respondents state that in all other respects complied with their obligations under the tenancy agreement. At all times relevant gas and electricity certificates were in place and any repairs of maintenance that was required was done as soon as the need became apparent.

The law

10. The relevant law is set out in the annex below.

The decision

11. The Tribunal finds that the Premises required a licence under s.61 of the 2004 Act 2004 and that the Premises was unlicenced between 31 October 2020 and 12 August 2022 when an application was made for a new licence. The Tribunal finds that the Respondents, being the landlord under the tenancy agreement, were in control of and managing the Premises during this period.

12. The Respondents say that the Premises was not intentionally without a licence and this is simply a case of human error. This does not provide them with a defence because it was their statutory responsibility to ensure that the Premises had a licence. Lack of intention and human error does not provide them with a reasonable excuse. None of the other statutory defences has been asserted.

13. The Tribunal is satisfied beyond reasonable doubt that the Respondents committed an offence under s.72(1) of the 2004 Act, being a person having control of or managing the Premises which was required to be licensed and was not licenced.

14. The policy underpinning Part 2 of the 2016 Act is to deter the commission of housing offences by the imposition of stringent penalties. An unlicensed HMO may be a perfectly satisfactory place to live despite its irregular status but the main objective of the provisions is deterrence rather than compensation.

15. The amount of the RRO is determined in accordance with s.44 of the 2016 Act. The Upper Tribunal in Vadamalayan v Stewart [2020] UKUT 183(LC) set out the approach to be adopted. The starting point is the rent for the relevant period of up to 12 months. The RRO is not tempered by a requirement of reasonableness. It is not appropriate to calculate a RRO by deducting from the rent everything the landlord has spent on the property during the relevant period. This expenditure would have enhanced the landlord's own interest in the property and enabled them to charge rent for it. Much of the expenditure would have been incurred in meeting the landlord's obligations under the lease. There is no reason why the landlord's costs in meeting their obligations should be set off against the cost of complying with a rent repayment order. The only basis for deduction is s.44 itself. There might be cases where the landlord's good conduct or financial hardship justified an order of less than the maximum. In addition, there might be a case for deduction where the landlord paid for utilities, as those services were provided to the tenant by third parties and consumed at a rate chosen by the tenant. In paying for utilities the landlord was not maintaining or enhancing his own property. There is no justification for deducting either a fine or a financial penalty

imposed on the landlord for the offence because Parliament's intention was that the landlord should be liable to pay both a fine or penalty and a RRO.

16. Vadamalayan must be read together with the subsequent decisions in Ficcara & Others v James [2021] UKUT 0038 (LC) where it was held that the sum repayable should not be the same irrespective of the seriousness of the offences committed by the landlord. The requirements in ss.44(4) and 45(4) for tribunals to have particular regard to certain matters indicates that the RRO should not necessarily be for the maximum amount. In Awad v Hooley [2021] UKUT 0055 (LC) the Upper Tribunal endorsed the tribunal's room for manoeuvre when exercising its discretion. In Williams v Parmar [2021] UKUT 244 (LC) the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed in ss.44(4) and 45(4) of the 2016 Act.

17. The Tribunal must take into account the conduct of both the parties. On the evidence, the Applicants paid the rent that was due and abided by the terms of the tenancy agreement. There is no reason to criticise the Applicants. On the other hand, the Respondents can be criticised for their failure to meet some of their statutory obligations. The Tribunal particularly notes the problems experienced by the tenants over the period of the tenancies caused by vermin. This could have been dealt with more quickly and more effectively. The lack of hot water at times was also a problem that should have been resolved. However, this is not a case about disrepair and overall, the Tribunal found that the Respondents were responsible landlords who generally took their obligations seriously.

18. The Tribunal, exercising its discretion, finds that it would not be reasonable to adjust the amount of the RROs for reasons attributable to the conduct of the parties.

19. The Applicants paid the rent that was due in full and none of them was in receipt of Universal Credit at the relevant times. The Tribunal takes as a starting point the rent paid by the Applicants of £545.45 per month.

20. The Respondents seek to reduce the amount of the RROs by the deducting the expensed they incurred in respect of management charges, mortgage payments, the provision of appliances, the gas safety contract and insurance. These expenses were incurred either for their own benefit or in the performance of their obligations under the tenancy agreements. As such, applying the principles in Vadamalayan these expenses are not deductible from the rent paid by the Applicants.

21. Under the terms of the tenancy agreements, utility charges for gas, electricity and water are included in the monthly rent. These costs relate to the services enjoyed and consumed by the Applicants and stand to be deducted from the rent paid in order to calculate the amount of the RROs.

22. The Respondents have provided details of the amount expended over a period of 11 months for gas and electricity totalling £2,625.00. The figure for water and sewage for the same period is £489.00. The combined sum is £3,114.00. Expressed as a monthly amount is £383.09 or £35.39 per tenant.

23. The cost of the utility charges of £35.39 per month stands to be deducted from the monthly rent of £545.45. This produces a net figure of £510.06 per month.

24. The first seven of the eight Applicants paid 12 months' rent totalling £6,545.40 for the periods between 1 July 2021 to 31 July 2021 and between 1 September 2021 and 31 July 2022. The utility costs of £424.68 for the same 12 months are to be set off against the rent reducing the amount paid to £6,120.72.

25. The eighth Appellant, Rachel Kaye, paid a total of £5,999.95 for the period between 1 September 2021 and 31 July 2022. The utility costs of £389.29 for the same 11 months are to be set off against the rent reducing the amount paid to £5,610.66.

26. The Tribunal makes RROs against the Respondents under s.43 of the 2016 Act and orders the Respondents to pay each of the first seven Applicants the sum of £6,120.72 and the eighth Applicant £5,610.66.

27. The Tribunal orders the Respondents to pay to the Applicants the application fee of £100.00 and the hearing fess of £200.00.

Judge P Forster
10 May 2023

ANNEX

Housing and Planning Act 2016

Section 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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 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.

Section 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.

Section 44 Amount of order

(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	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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.