FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/45UC/HMF/2022/0023**
Property	**:**	**23 Bonham Road, Bognor Regis PO21 5BP ("the premises")**
Applicant	**:**	**Olga Pawlak** **Jacek Sosnierz**
Representative	**:**	**Mr Neilson,** **Justice for Tenants**
Respondent	**:**	**Daniel Eugeniusz Chodak**
Representative	**:**	**None**
Type of Application	**:**	**Applications for a Rent Repayment Order by Tenant – Sections 40, 41, 43 44 & 45 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge HD Lederman** **C Davies FRICS** **M Jenkinson**
Date and Venue of Hearing	**:**	**14 March 2023** **Remote hearing by Cloud Video platform**
Date of Decision	**:**	**13 June 2023**

DECISION AND REASONS

Decision of the Tribunal

The Tribunal:

a. Orders the Respondent to make payment of a total amount of £2096.97 to both Applicants jointly as a Rent Repayment Order ("RRO") under section 43 of the Housing and Planning Act 2016 ("the 2016 Act") for the period 26th October 2020 to 7th March 2021 (inclusive).

b. Orders the Respondent to make payment of a total amount of £4670.75 to both Applicants jointly as a Rent Repayment Order ("RRO") under section 43 of the 2016 Act for the period 27th March 2021 to 12th November 2021 (inclusive).

c. Orders the Respondent to reimburse the Applicants application and hearing fees amounting to a total of £300.00 within 14 days of the date of this Decision.

Reasons

Preliminaries

1. In these reasons, references to the page numbers in the Applicants' Bundle (consisting of 266 numbered pages) are described as A [ ]. That bundle also contained lengthy legal submissions. That bundle contained a witness statement from Chantalle Bashford a Houses in Multiple Occupation Officer working for Arun District Council dated 8th August 2022 at pages [257-266]. That statement referred to 21 exhibits most of which could (with some difficulty) be referenced in other parts of the bundle. Ms Bashford was not called to give evidence and the Tribunal was careful not to place undue reliance upon her statements unless it was corroborated by other evidence, such as exhibits or Council records.

Further Documentary evidence

2. The Respondent submitted a bundle of 106 (unpaginated) documents including various utility bills relating to the premises, a copy of a letter dated 02 08 2022 apparently written by the Respondent to Bognor Regis Town Council ("BRC") confirming that the weekly payment for the Applicants' room at the premises was £170 from 26 02 2022, a bank statement showing 2 payments from Ms Pawlak, and a letter from West Sussex Magistrates Court entitled "Notice of fine and collection Order" showing that on 20 09 2022 he was convicted of the offence of being a in control of or a manager of a house in multiple occupation without a licence as required by section 61 of the Housing Act 2004 ("the Act"). The period(s) to which the offence related was not stated. These were submitted in breach of the Tribunal's directions.

3. The Respondent also submitted a copy of a witness statement from Ms

Pawlak dated 12th January 2023 and exhibit in Case no J3PP6929 in proceedings for possession of a room at the premises brought by the Respondent against the Applicants. None of the Respondent's documents were paginated and no statements complying with paragraph 13 of the Tribunal's directions issued on 13th January 2023 were supplied. This hearing was listed as a "fast track" case for 5 hours. In the event there was sufficient time.

Translation of Applicants' oral evidence

4. The Applicants whose first language was Polish were assisted in giving their evidence by an interpreter Mr Piotr Hargot, accredited with the National Register of Public Service interpreters and register with the Polish Ministry of Justice. The Tribunal found his assistance to be invaluable. He had a very good recall of sometimes several sentences. He was also familiar with legal concerts and educated to degree level. Ms Pawlak's English was much better than Ms Sozsnierz who had very little spoken or written English. Ms Pawlak's English was sufficient for a solicitor who assisted her in preparing a written statement for County Court proceedings J3PP6929 to review a draft and prepare a final version based upon that draft.

5. Perhaps the acid test of Mr Hargot's abilities as a translator was that the Respondent, whose first language was Polish and was potentially disadvantaged by the oral evidence given by the Applicants, only "corrected" the translation on one or two occasions, both of which appeared to be very minor points. The Respondent's understanding of spoken and written English was excellent and commensurate with that of an experienced businessman.

6. Where narrative, facts or descriptions are recited, they should be treated as the Tribunal's findings of fact unless stated otherwise. These reasons address in summary form the key issues raised by the application. They do not rehearse every point raised or debated. The Tribunal concentrates on those issues which go to the heart of the application.

7. The Tribunal Judge ensured before and during the hearing that all parties could see and hear the other parties and that the cloud video connection was satisfactory during active parts of the hearing. All parties were offered the opportunity of a short adjournment during the hearing and before closing submissions (closing summaries).

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<u>The Application</u>

8. The Tribunal is required to determine an application received on 6th October 2022 under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a Rent Repayment Order ("an RRO") in respect of ("the premises"). It is common ground the premises comprised a two storey (ground and first floor) house with 7 bedrooms, a shared kitchen, and bathrooms: see the Applicants' submissions paragraph 6 [2].

<u>The Hearing and the participants</u>

9. The Tribunal checked that all parties had the same copies of the bundle

and documents before the hearing started. Mr Chodak was able to fully participate by asking and answering questions. The hearing was punctuated by translations of questions and answers by Mr Hargot.

10. The Tribunal Judge checked throughout the hearing that the Applicants and Respondent understood the issues. The Respondent although intelligent and articulate was a litigant in person with little legal expertise and did not have to hand some of the documents which he referred to or wanted to refer to. The Tribunal made sure the Respondent understood the questions and the issues and full participated in the hearing. The Respondent was informed that he did not need to give evidence about whether the circumstances gave rise to an offence. He was told he could confine his evidence to the issue of quantum of any RRO and simply comment upon the evidence produced by the Applicants. The Respondent chose to give evidence about some of the issues.

11. In general, with some exceptions the evidence of the Applicants was supported by and consistent with records from Arun District Council ("the Council") and their officers. The Respondent did not give evidence about many of the earlier allegations of misconduct made against him. As he produced very few records or documents to support his recollection, the Tribunal was hesitant to accept his evidence where it conflicted with that of the Applicants or that of Council records, unless it was supported clearly by documents or other evidence. The Respondent did not allege the Council's records were inaccurate or incomplete.

12. The following issues arose:

a. Can the Applicants satisfy the Tribunal beyond reasonable doubt (so that the Tribunal is sure) that the Respondent had committed the criminal offence of being a person having control of or managing the premises when they were a House in Multiple Occupation (an "HMO") was required to be licensed but was not so licensed contrary to section 72(1) of the Act *during the relevant periods*;
b. If any of the above were established, should the Tribunal exercise its discretion to make an RRO.
c. If so what should the amount of the RRO be (by reference to any offence or offences found to have been committed) taking into account:

   (a)the conduct of the landlord and the tenant,

   (b)the financial circumstances of the landlord, and

   (c)whether the landlord has been convicted of an offence.

   (d) the period during which any relevant offence was found to have been committed (if applicable)

   d. the offence must have been committed in the 12 months ending on the day when the application for an RRO was made: see section 41(2)(b) of the Act.

Inspection

13. None of the parties contended the Tribunal needed to inspect the premises. The Tribunal considered an inspection was not proportionate or necessary to determine the issues.

Was the offence under section 72(1) of the Act committed by the Respondent?

14. The Respondent conceded that he had pleaded guilty and had been sentenced for the offence of controlling or managing the premises as an HMO. He was however unable to provide the Tribunal with information as to the period of time to which the conviction related. Neither the "Notice of fine and collection Order" or other documents provided that information.

15. The Applicants' representative alleged the Respondent had committed further offences relating to the management and operation of the HMO and the Respondents in written submissions: see for example paragraphs 54-58 of their submissions at [11] and paragraphs 63-64 on page [13]. The Tribunal did not read those submissions as arguing that it should consider whether for example an offence under section 1 of the Protection from Eviction Act 1977 had been committed by the Respondent (as alleged in paragraph 63) as a pre-condition for the making of an RRO under section 40 of the 2016 Act. Rather, these were examples of conduct of the Respondent which the Applicants wished the Tribunal to take into account in determining the amount of any RRO under section 44(4)(a) of the 2016 Act. This is the only reading of the submissions which is consistent with the Application for the RRO at [29].

The period(s) of time when the offence was committed

16. The Tribunal considered this issue initially to see if the offence was committed in the 12 months ending on which the application for an RRO was made within section 41(2)(b) of the 2016 Act. The application was received by the Tribunal on 06 October 2022.

17. The Applicants submit the premises were occupied by at least 5 unrelated individuals in separate rooms sharing kitchen and/or bathroom facilities at the premises and accordingly required a mandatory licence under the Licensing of Houses in Multiple Occupation Order 2006 ("the 2006 Order"): see [2]. The 2 periods they rely upon are 26th October 2020 until 9th March 2021 and 27th March 2021 to 12th November 2021: see [4]

18. It is assumed that the reference to the 2006 Order was in error as this was repealed and replaced by the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 ("the 2018 Order"). By article 4 of the 2018 Order an HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate

households; and
(c) meets—
(i) the standard test under section 254(2) of the Act;”

Was the section 72 offence committed between 26th October 2020 and 9th March 2021?

19. The Applicants relied upon Chantalle Bashford’s statement and exhibits as evidence of the commission of the offence for the periods in issue. Ms Bashford’s evidence was relied upon by the prosecution leading to the Respondent’s conviction of the offence under section 72 of the Act in September 2022.

20. Making allowance for the fact that Ms Bashford was not called to give evidence, the Tribunal finds her statement and exhibits are a very detailed, professional and balanced analysis of her investigations and that of her colleagues into the occupancy of the premises, the Respondent’s role, management, inspections and conversations with him about its occupancy and use as an HMO from October 2020.

21. Key parts of Ms Bashford’s findings and witness statement were put to the Respondent by Mr Neilson during the hearing. The Tribunal is satisfied the Respondent was intellectually capable of disputing her statement and understood its significance. He said on one or two occasions in answer to questions from Mr Neilson, he accepted his “guilt”. As English was not the Respondent’s first language, the Tribunal does not treat this term as an unqualified admission of everything in her statement, but he did not put forward an alternative version of events on most occasions. He did so largely in relation to the amount of rent received by him from the Applicants.

22. Olga Pawlak’s recollection of the individuals occupying the premises as from October 2020 prepared in November 2021 is exhibit CB-3 to Ms Bashford’s statement: see paragraph 5 at [254] and the exhibit is at [166]. When she moved into the premises on 26th October 2020 (later corrected to 23rd October 2020) with Jacek Sosnierz, according to that table the premises were also occupied by Genowefa Bywalec, Jan Kotrik and Mateus Zientarski.

23. That exhibit has to be read together with paragraph 16 of Ms Bashford’s statement at [261] which records Olga Pawlak’s responses to her questionnaire received on 17th December 2021 at exhibit CB-11 [202—204]. This stated that in October 2020 6 other people unrelated to Olga Pawlak and Jacek Sosnierz were living at the premises sharing bathroom toilet and kitchen facilities (except that the Applicants had their own bathroom/toilet).

24. Although one individual (a Mr Aleksander) left in December 2020, it is clear from the document at page [166] that until April 2021 it appears that from May 2021 the same 5 individuals from different households were occupying the premises. The Tribunal is satisfied beyond reasonable doubt that this was an unlicensed HMO between 23rd October 2020 and 9th March

2021 when an application for an HMO licence for the premises was made by the Respondent: see [107].

25. The Tribunal notes that the Council's records showed that in February 2021 when investigations into a complaint of overcrowding at the premises were made, the Respondent was recorded as claiming that all occupants were members of his family and signed 2 separate declarations as to the mode of occupation of the premises: see [192] and [259]. These were clearly inaccurate. The Respondent did not repeat that explanation at the hearing.

Was the section 72 offence committed between 26th March 2021 and 12th November 2021?

26. Olga Pawlak's table of persons occupying the premises prepared in November 2021 (exhibit CB-3 to Ms Bashford's statement at [166]) shows the premises were also occupied by Genowefa Bywalec, Jan Kotrik, Mateus Zientarski (Beatus's son), Beata Szozda (Mateus's mother), Krystian(in the pantry room) and Beatrycze Lewkonowicz . It appears from her email of 17 12 2021 that Olga Pawlak temporarily left the premises on 26 09 2021 but was due to return in very late December 2021. During her absence Jacek Sosnierz was in occupation. His responses dated 21st December 2021 to the questionnaire at [216] from Ms Bashford (translated into English) are at [219]. They confirm that 6 occupants used a shared bathroom/toilet and 8 occupants used a shared kitchen. There are some minor differences from Ms Pawlak's statement which are of no significance.

27. Ms Bashford noted that in February 2021 the Council had received emails from the Respondent in which he claimed to be living at the premises with his family (brother, partner and 3 cousins): see paragraph 21 at [263]. The Tribunal does not accept the truth of the assertion in that email which was not defended or repeated by the Respondent at that hearing.

28. Ms Pawlak recounts in her statement dated 12th January 2023 (J3PP6929) how she and Mr Sosnierz were harassed and coerced by the Respondent into providing incorrect information to a Council officer who carried out an inspection of the premises in March 2021.

29. That account is consistent with a purported tenancy agreement produced by the Respondent ostensibly dated 8 March 2021 referred to in Ms Bashford's statement at paragraph 10 [260] a copy of which is at CB-9 [195-198]. This is drafted and signed as if there were only four tenants of the premises were Genowefa Bywalec, Jan Kotrik, Mateus Zietarski and Ms Sosnierz. The Council's Council tax officials were provided with information indicating only 4 individuals were living there.

30. On 9th March 2021 Council tax officials were informed that the Respondent had "vacated" the premises: see the Council's letter of 10 02 2022 at [291] and an HMO licence fee of £950.00 was paid. On 26th March 2021 the Respondent was recorded as advising the Council that he was no longer applying for an HMO licence as all "5 residents were related to each other": see the Council's letter of 10 02 2022 at [292].

31. On 22nd April 2021 the Respondent was recorded as signing a Declaration

of Property Status Form declaring the premises were rented to a single household and he had no intention of letting it as a licenseable HMO. He also declared the premises were not occupied by 5 or more persons forming 2 or more separate households sharing basic amenities.

32. The Tribunal is satisfied so that it is sure that the Respondent's statements made in these forms to the Council were false and an attempt to deflect the Council from ascertaining the correct position about who was occupying the premises. The Respondent did not attempt to justify these statements to the Tribunal. He admitted to the Tribunal that he gave the March 2021 contract to the Council "to keep them happy". The Respondent accepted in answers to question from Mr Neilson that in February 2021 the answers he gave to Mr Hill of the Council were incorrect. At one stage during questioning he sought to say he did not know the exact details of what amounted to an HMO in law in 2021. Whilst on a superficial level that may have been true, the Tribunal finds that the Respondent was sufficiently intelligent and capable to have a detailed tenancy agreement drawn up in March 2021 and could have obtained and sought advice from the Council or a professional, had he wanted to do so.

33. On 7th December 2021 Ms Bashford inspected the premises pursuant to power of entry in the presence of the Respondent and found multiple physical indication of use of the premises as an HMO: see paragraph 8 of her statement at [259]. At that inspection the Respondent was asked about the occupants and stated that 7 individuals lived there all of whom were relate to each other as "one family" indicating which rooms they occupied and produced the 8th March 2021 agreement : see paragraph 9 of her statement at [259] and the table exhibited as CB-8 [194]. The Respondent later accepted in a statement under caution that that he did not perform any checks to verify the relationships: see paragraph 12 of her statement at [260].

34. In cross examination by Mr Neilson the Respondent agreed that the answers he gave to Ms Bashford in December 2021 were false.

35. The Tribunal is satisfied beyond reasonable doubt that the premises were an unlicensed HMO between 27th March 2021 and 12th November 2021 and that during that period an offence under section 72 of the Act was being committed. The Tribunal also finds that the configuration of the premises and defects observed by Ms Bashford in December 2021 reflected the state of the premises from late March 2021.

Discretion to make an RRO

36. It is clear that in most cases where a relevant housing offence has been found to have been committed by a landlord an RRO will be made. There is very limited scope for exercise of discretion not to make an order: *LB Newham v Harris* [2017] UKUT 0264 under the parallel provisions of section 97 of the 2004 Act.

The amount of the RRO

37. This was the main contested issue at the hearing between the parties. There was disagreement as to the amount paid as rent. The Applicants contended they paid a total of £9540.00 which was "reclaimable", calculated as in the table on page [40]. The Respondent's statement of case dated 05 02 2023 said the amount paid was £7910.99 without giving any breakdown. Separately the Respondent relied upon a schedule of payments at page 80 of his bundle which he said were made by the Applicants as rent (and alleged arrears). The Respondent's table referred to some payments such as the deposit which the Applicants did not reclaim.

38. For the period 23rd October 2020 to 4th December 2020 the Respondent alleged the rent payable was £190 per week and that no payments were made for the dates 30th October and 6th November 2020. The Applicants contend that the rent payable and paid from the start of the tenancy to and including 21st January 2020 was £220.00 per week: exhibit D page [40]. The Respondent's case has some support from the document at page [43] which showed a payment of £190.00 on 31 11 2020 to the Respondent by Faster payment (i.e. direct transfer).

39. In paragraph 16 of Ms Pawlak's witness statement of 12th January 2023 (in the County Court she said as follows:

> "Turning now to the payment of the rent, as I stated before we have paid the rent every week. There are many inaccuracies in the information that he has provided to the Court. When we moved in to the property on October 23, 2022, we paid the amount of £570 to the Claimant's account. The amount of £170, as claimed by the Claimant, is incorrect because it was a weekly fee of £190 plus a 2-week £190 deposit, which is exactly £570."

40. Ms Pawlak said something to similar effect in paragraph 8f of the same statement. In the application form the Applicants said the rent was £170.00 per week: see page [32]. This is the figure given in the table collated from replies to Ms Bashford's enquiries at [165] and confirmed in Ms Bashford's witness statement at paragraph 16 [261].

41. As most of the rental payments were made in cash, at the Respondent's insistence according to the Applicants, the main evidence of payments consisted of their oral evidence and evidence of cash withdrawals. The Applicants' case was the Respondent attended each week to collect rent from them and other occupants. Jacek Sosnierz who was in occupation of the premises for the entirety of the relevant period explained that the cash withdrawals evidence by copies of the Revolut statements in the bundle did not correspond exactly with amounts of rent payable each week as he would only withdraw an amount necessary to "top up" the cash which he had left each week. The Tribunal accepts that explanation as credible and consistent with the remainder of the Applicants' evidence.

42. The Respondent asserted the Applicants could pay by bank transfer if they wanted. Having heard the evidence of the Applicants and considered the

witness statement of Ms Bashford, the Tribunal rejects the Respondent's evidence on this issue. At the inspection of the premises in December 2021 the Respondent was asked how much the rent was paid for the whole house. He told Ms Bashford it was £150.00 per month and gave a false explanation for this: see paragraph 11 of her statement at [260]. In February 2022 when she visited the premises and had the opportunity to speak with the occupier of the pantry room (leading off the kitchen) Ms Bashford was told he paid £60.00 per week to occupy the room.

43. The Respondent says that the amount due was £190.00 per week between 23rd October 2020 and 11th December 2020 £220.00 per week between 11th December 2020 and 22nd January 2021,£10 per week January to April 2021 £170 per week April to August 2021, £150 per week September to December 2021 and £140 per week January to February 2020 – see his table of amounts due and paid at page 80 of his pdf bundle. He has not produced any records to support his figures despite the fact that (so he told the Tribunal) he gave figures to his accountant to assist with preparing his return to HMRC.

44. When the Respondent produced the March 2021 agreement to Ms Bashford this showed a figure of £150 per month for 4 occupants.

45. In December 2021 Ms Bashford was told falsehoods about all of the occupiers being in one family by the Respondent.

46. The Tribunal cautions itself against inferring that one or more falsehoods by the Respondent about issues concerning the identities of the occupants of the premises means that the Respondent is necessarily to be disbelieved in relation to amount of rent. The absence of any contemporaneous records or records prepared for purpose of declaring income for tax purposes to support his account of the rents paid does however, undermine any claim to accuracy that the figures in his table at page 80 might have – except insofar as they are consistent with Ms Pawlak's evidence about the amount of rent given in her witness statement.

47. The Tribunal was unpersuaded by the Respondent's claim that he was unaware of the need for written receipts for rent as he had access to accountancy advice. He kept records of utility payments and bills and would have been warned of the need to have records of income for HMRC purposes. He previously ran companies which supplied nurses.

48. He was sufficiently aware of the laws relating to HMO to take steps to change the door handles on some of the doors prior to inspection of Mr Bashford in December 2021. This suggests a degree of knowledge and planning which is inconsistent with ignorance of the kind which he suggested in evidence.

49. On the other hand the evidence of Olga Pawlak and Jacek Sosnierz was consistent with their contemporary emails to Ms Bashford in December 2021 such as those at [219] and [202-204] and very broadly is consistent with the evidence of regular cash debits at [44-101] – except as to the initial rents paid. The difference in the Applicants' figure may be

explained by the fact that their daughter came to stay for a short period and they have to pay an additional sum for her.

50. The Tribunal accordingly accepts the figures advanced by Applicants in the figure of £190.00 per week for the first week, for the deposit and a week's rent – as these are evidence by the Respondent's bank statement – showing a payment of £190 and £570.00 in October 2020. That comes to 4 weeks @ £190.00 and thereafter at £190.00 per week until 31st January 2021. The figures in the Applicants' table from 31st January 2021 are more likely to be reliable evidence of the sums paid in the 2 periods of claim. That is 13 weeks @ £190 = £2470.00 and thereafter 36 weeks @ £170.00 per week = £6120.00. This comes to a grand total of £8590.00.

Conduct of the Respondent as landlord

51. The Tribunal finds the circumstances in which the offence was committed were towards the higher end of the scale of seriousness particularly after the intervention by the Council in February 2021, but even before that as the Respondent was a professional landlord, targeting a potentially vulnerable group of occupants in the sense that they may not have had good English. The initial deception of the Council about the status and identity of the occupants suggesting they were all his family are aggravating factors.

52. The following features support such a view:

    a. Declarations by the Respondent in February 2021 that he was in occupation with his family: see Ms Bashford's statement at [259]
    b. Production of a false or misleading tenancy agreement CB-9 [195-198]
    c. Applying for an HMO licence in March 2021 and then withdrawing the application on the ground that all 4 occupants were related: paragraphs 21A, 21B and 21C of Ms Bashford's statement at [263]
    d. The (unchallenged) existence of multiple Category 1 fire hazards observed by Ms Bashford on inspection – see paragraph 13 of her statement at [260] – these included absence of fire door and absence of a fire blanket in the kitchen. The final exit door was locked. High-risk items such as a fridge freezer were present within the escape route.
    e. Changing of door handles and removing ned from the pantry room is an attempt to mislead the Council following the inspection: see paragraph 14 of Ms Bashford's statement at[261]
    f. The admitted failure to protect the deposit of £570.00 paid by the Applicants
    g. Encouraging and inciting occupants to tell untruths to Council officers to the effect that they were all one family

53. The Tribunal leaves to one side the allegations of unlawful eviction in February 2022 as they post-date the period during which the offence

alleged was being committed. The allegations of overcrowding and insufficient room sizes do not directly relate to the Applicants' occupation of the premises and are of little weight in the Tribunal's overall assessment.

54. There is no evidence of previous convictions, cautions or previous misconduct by the Respondent.

55. The *Acheampong* decision requires the Tribunal to leave out of account (and not deduct) any expenditure of the Respondent landlord on the premises, except for the cost of utilities supplied to the lessees paid for by him.

Deduction for utilities

56. The *Acheampong* decision requires the Tribunal to consider the seriousness of the Respondent's conduct in the context of the factors in section 44(4) of the 2016 Act (which include the financial circumstances of the landlord and the tenants).

57. Ms Pawlak was not in occupation for all of the relevant period. In particular she left the premises on 26 09 2021 and returned in late December 2021: see her email at [204]. The utility bills produced by the Respondent in his bundle appeared to provide some support for his contention he expended between £600 and £800 per year on utilities for each person. The bills produced included water, gas electricity. A bank statement addressed to 1 Hambledon Place the Respondent's residential address appeared to show debits presumably for internet use of about £38.48 per month. A total of 8 individuals occupied the premises over the relevant periods and it is unlikely that the use the Applicants made of these utilities was double that of each of the others. Taking that into account the Tribunal allows £800.00 per annum apportioned to the 49 week period of occupation at £750.00 (rounded down). This leaves a net figure for rent received as £7840.00.

Financial circumstances of the landlord

58. The Respondent gave evidence that he had lost his job some 3 weeks earlier, partly as a result of the circumstances giving rise to the claim and the conviction. He was in the middle of a divorce and trying to arrange for contact with and financial support for his children. He said that the Hambledon Place property was in the name of his wife. He said that the premises were subject to a mortgage loan of about £300,000.00. No document or other supporting evidence was provided to confirm these statements. He thought the premises might be worth £400- 450,000 if sold. The absence of any documentary or other evidence to support the Respondent's assertions about his financial circumstances means the Tribunal places very little weight on his evidence about this.

Conduct of the applicants

59. The Respondent did not allege the amount payable should be reduced on account of the Applicants' conduct.

Overall evaluation

60. The Tribunal has found that the section 72 offence was committed and the purpose of the provisions in the 2016 Act is partly deterrent, punitive and to disgorge profit.

61. In the light of the foregoing, the Tribunal takes a figure of 85% of the rent received (net of the value of utilities provided by the Respondent) as the amount of the rent repayment order, for both Applicant, for the following periods when the offence was committed:

    a. £2096.07: 26th October 2020 to 7th March 2021 - 13 weeks @190 per week £2470.00 less £274.03 for utilities (at the rate of £750 per annum £14.42 per week @ 19 weeks) £2465.97 @ 85%
    b. 27th March 2021 to 12th November 2021 - 36 weeks @£170.00 = £6120 less £519.12 for utilities 5600.88@ 85% = £4670.75

Reimbursement of fees

62. The Tribunal considers it just and equitable to order the Respondent to reimburse the Applicants for the application fee and the hearing fee. No offer of settlement appears to have been made and it was necessary for the Applicants to give evidence an incur the hearing and application fees.

This has been a remote hearing in part which has been consented to by the parties. The form of remote hearing was CVPREMOTE. All issues could be determined in a remote hearing in that application. The documents that we were referred to are set out above

H Lederman

Tribunal Judge

13 June 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. 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.

Appendix relevant legislation

Section 72(1) of the 2004 Act provides that a person who has control of or manages an HMO required to be licensed under section 61 of the 2004 Act commits an offence if it is not so licensed. Section 72(5) of the 2004 Act provides that "In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that [the person accused] 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." (Tribunal's insertions)

Section 61(1) of the 2004 Act provides that "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."

The relevant part of the 2004 Act is Part 2. Section 55 of the 2004 Act is entitled "Licensing of HMOs to which this Part applies". Sections 55(1) and 55(2) of the 2004 Act (in their relevant parts) provide:

"(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(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, and
(b)..................................."

Article 4 of Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 provides that "An HMO is of a prescribed description

for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets—

(i) the standard test under section 254(2) of the Act;
(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
(iii) the converted building test under section 254(4) of the Act."

References to "the Act" in that Order are to the 2004 Act: article 3.

1. Section 62(1) provides: "This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed."

2. Sections 62(6) and 62(7) of the 2004 Act provide:

"62(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of—

(a)the decision,
(b)the reasons for it and the date on which it was made,
(c)the right to appeal against the decision under subsection (7), and
(d)the period within which an appeal may be made under that subsection.

(7)The person concerned may appeal to [the FTT] against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made."

3. Section 72(4) of the 2004 Act provides: "In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time— a notification had been duly given in respect of the house under section 62(1),..... and that notification .... was still effective (see subsection (8))."

4. Section 72(8) of the 2004 Act provides "For the purposes of subsection (4) a notification .... is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or….."

Section 254(2) of the 2004 Act. This sets out what constitutes an HMO, falling within the "standard test":

"A building or part of a building meets the standard test if

(a) it consists of one or more units of living accommodation not consisting of self-contained flats;
(b) the living accommodation is occupied by persons who do not form a single household;
(c) the living accommodation is occupied by the tenants as their only or main residence;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable in respect of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet. "