



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

Case Reference : **MAN/36UD/HMG/2022/0002**

Property : **10/12 STRAWBERRY DALE, HARROGATE,
HG1 5EF**

Applicant : **ROBBIE DEAN EVANS**

Respondent : **MICHAEL HARVEY WELLS**

Type of Application : **Rent repayment order, section 41 Housing and
Planning Act 2016**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Decision : **4 July 2023**

Date of Issue : **10 July 2023**

DECISION

The Respondent shall pay the Applicant £3000 in part repayment of rent paid for a room in 12 Strawberry Dale, Harrogate in the 12 months to 31 July 2022.

REASONS

1. On 16 June 2021 the Applicant rented a room in a shared house at 10/12 Strawberry Dale, Harrogate (“the Property”). He occupied the room as his sole residence and paid rent of £500 per month. He was not in receipt of any benefits.
2. The Property was owned by the Respondent, who had bought it as two adjoining houses and had knocked through the party wall to create a 9 bedroomed property occupied by 9 different households as defined at section 258 of the Housing and Planning Act 2016 (the 2016 Act). The occupants shared kitchen and other facilities, and the Property was therefore a House in Multiple Occupation for which an HMO licence was required from Harrogate Borough Council (now North Yorkshire Council). The Respondent did not apply for an HMO licence.
3. In August 2022 the Property was inspected by a Council officer, who found that there were hazards present including inadequate fire prevention and detection systems. The Council issued a Prohibition Notice with effect from 4 August 2022. The occupants, including the Applicant, remained in occupation of their rooms at the Property while the work required by the Council was carried out by the Respondent. By the end of August 2022 the connecting doorway between the two houses had been blocked up and 12 Strawberry Dale – which included the Applicant’s room – became a property no longer in need of an HMO licence because the number of households in it was less than 5.

4. The Tribunal understands that the Council was considering imposing a Financial Penalty on the Respondent in relation to his operation of the Property without an HMO licence.

THE LAW

5. Section 41 of the 2016 Act enables a tenant to apply to the Tribunal for an order for repayment of rent (RRO) against a person who has committed one of the offences listed, including the offence of controlling or managing an unlicensed HMO.
6. Section 44 of the 2016 Act provides that if the Tribunal decides to make a rent repayment order, the amount to be paid may not exceed 12 months' rent and shall be determined after taking into account the conduct of the landlord and tenant, the financial circumstances of the landlord, and whether the landlord has been convicted of a relevant offence.
7. Guidance as to calculation of the rent repayment is provided by the case *Williams v Parmar & Others [2021] UKUT 244 (LC)*, where the President of the Upper Tribunal said at paragraph 5 "It is implicit...in section 44that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type....the amount of the RRO may appropriately be less than the maximum amount... On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities.....will generally justify an order for repayment of at least a substantial part of the rent." The President went on to consider the facts of that particular case and how they affected the RRO calculation.
8. The Applicant has applied for an RRO pursuant to section 41 of the 2016 Act in the sum of £6000, representing the rent he paid from 1 August 2021 to 31 July 2022.

THE HEARING

9. The Tribunal did not inspect the Property, but had the benefit of the parties' written statements and documents. A hearing was held by video link. The Respondent represented himself (having previously had legal advice) and the Applicant attended with his mother Mrs Evans.

10. The Respondent admitted that an offence had been committed. The circumstances were that he had purchased the two adjacent properties at Strawberry Dale at a young age, and had knocked a gap through the party wall to make them one property in the belief that this would benefit the occupants. He himself lived at the property with his tenants for some 4 years. He told the Tribunal that he had been unaware of his legal responsibilities as the owner and controller of an HMO, and that when the local housing authority inspected and issued a Prohibition Order he took immediate steps to comply with their requirements.
11. The Respondent produced extracts from his bank statements in order to demonstrate that the rent he was receiving included the cost of services provided to the tenants, and Council Tax. He argued for a reduction in the penalty equivalent to the total cost of the services and Council Tax he paid for the Property, divided by 9 tenants leaving a net rent of approximately £360 per month paid by the Applicant.
12. Finally, the Respondent said that he had been a good landlord, and that he had received no complaints from the tenants until the Prohibition Notice was served. He had provided the services of a cleaner once a fortnight. Although the Applicant had raised the possibility of rats being present in the house, he had put down a rat trap and no animals had been caught. He pointed out that the tenants had all elected to stay while work to the Property was carried out.
13. The Applicant told the Tribunal that he had tried to find alternative accommodation when the Prohibition Notice was served, but had not been able to find anything suitable. He agreed that he had texted the Respondent to confirm that he was happy to stay, but said that (once he was aware of it) the non-compliance with fire regulations had made him anxious. He had also believed that there might be rats in the kitchen, and felt unable to use the living room while paint pots and ladders were stored there temporarily. In the event, the Applicant continued to occupy his room in 12 Strawberry Dale until April 2023.

FINDINGS

14. The Tribunal makes an RRO but finds that the Respondent's failings were due to a lack of awareness of his responsibilities rather than a decision to ignore them. There were no serious deficiencies at the Property save for fire safety issues, and remedial work was undertaken without delay. The conduct of the Respondent does not warrant any addition to the RRO. There is no relevant conduct on the part of the Applicant. The Respondent has not been convicted of any other relevant offence. This is by no means the most serious type of case and a 40% reduction from the rent is appropriate following the guidance in *Williams v Parmar & Others*.

15. The net rent is calculated by reference to the service costs applicable to 12 Strawberry Dale. The monthly figures are approximately £61.25 for WiFi and £39 for water. Council Tax is not considered deductible. The cost of utilities rose sharply in March 2022 and the monthly cost has been taken as £148 from August to February and £302 from March to July, giving an average figure of about £212. These costs, totalling about £312 per month on average, were shared equally between the 4 occupants of 12 Strawberry Dale. As a result of these deductions, the occupation rent paid by the Applicant was approximately £420 per month in round figures, or £5050 over the 12 month period.

16. A 40% reduction has been applied and rounded down leaving a RRO of £3000.

Tribunal Judge A Davies

4 July 2023