



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

Case Reference : **MAN/00BY/HMF/2022/0033**

Property : **9 Highgate Street, Liverpool L7 3ET**

Applicants : **Oliwia Kozłowska**
Faye Roddy
Chloe Leitch
Lesley Dolan
Alfie Bryce-Clegg
Jack Roberts

Representative : **Justice For Tenants**

1st Respondent : **Trophy Homes Ltd**

2nd Respondent : **West Village Liverpool Ltd**

Type of Application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal member(s) : **Tribunal Judge Jodie James-Stadden,
Tribunal Member Di Latham**

Date of decision : **08 August 2023**

DECISION

The Application

1. On 01 September 2021, Oliwia Kozłowska, Faye Roddy, Chloe Leitch, Lesley Dolan, Alfie Bryce-Clegg and Jack Roberts (“the Applicants”) became tenants in separate bedrooms at 9, Highgate Street, Liverpool, L7 3ET (“the Property”) pursuant to a joint, written assured shorthold tenancy agreement for the period 01 September 2021 until 30 June 2022.
2. Trophy Homes Limited, the First Respondent, is named in the said tenancy agreement as the landlord of the Property.
3. West Village Liverpool Limited, the Second Respondent, was at all material times the registered proprietor of the Property.
4. The Applicants made a joint application (“the Application”) to the Tribunal which they signed on various dates in September 2022, and which was sent to the Tribunal by email on 09 November 2022. By their application, the Applicants each seek a rent repayment order relating to their tenancy of the Property on the ground that it was a house in multiple occupation (“an HMO”) which required a licence in order to be operated as such and that the Respondents did not have such a licence in breach of section 72(1) of the Housing Act 2004.
5. The Application was copied to the Respondents by the Applicants’ representative at the time that it was submitted to the Tribunal.
6. Directions were issued by the Tribunal on 28 February 2023. The Applicants complied with those directions by submitting their bundle to the Tribunal on 28 March 2023. The Respondents were to provide their bundle to the Tribunal 28 days thereafter. They did not do so, despite the Tribunal contacting them by email on 10 May 2023, permitting them a further period, until 17 May 2023, to comply.
7. The Tribunal wrote to the parties on 08 June 2023 indicating that, as the Respondents had failed to comply with the Tribunal’s directions to provide a response to the Application, the Application would be determined solely on the basis of the written representations and evidence already provided by the Applicants. An oral hearing was accordingly dispensed with, and the matter listed for determination on 08 August 2023.

The Law

8. Section 72 of the Housing Act 2004 states (so far as is relevant):

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.

(3) A person commits an offence if—

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
- (b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

- (a) a notification had been duly given in respect of the house under section 62(1), or
- (b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(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.

9. The Housing and Planning Act 2016 states:

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.

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that 5 section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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.

- (3) A local housing authority may apply for a rent repayment order only if—
- (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

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.

- (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).

Section 44 Amount of order: tenants

(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
<p>an offence mentioned in row 1 or 2 of ending the table in section 40(3)</p>	<p>the period of 12 months with the date of the offence</p>
<p>an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</p>	<p>a period, not exceeding 12 months, during which the landlord was committing the offence</p>

- (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.

The Applicants' Evidence

10. The Respondents have not responded to the Application or sought in any way to challenge any of the evidence that the Applicants have filed in support of it. That evidence includes a detailed statement of case, which is certified by statements of truth signed by each of the Applicants individually, together with various exhibits and written, signed witness statements from each of the Applicants.
11. The Property is a 3 storey, terraced house, with a communal kitchen/living space and 2 shared bathrooms on the ground floor, 3 bedrooms and a shared w/c on the first floor and 3 bedrooms and a further shared w/c on the second floor. The Property accordingly has 6 bedrooms available for occupation by 6 separate tenants.
12. The joint written tenancy agreement is at Exhibit C of the Applicants' bundle. It names each of the Applicants as tenants of the Property for the period 01 September 2021 to 30 June 2022. It provides for the Applicants to pay rent of £98 per person per week for a total of 44 weeks. The rent is payable in advance by 3 instalments, with payment for 16 Weeks due on or before 01 October 2021, payment for a further 16 weeks due on or before 01 January 2022 and payment for the final 12 weeks due on or before 01 April 2022. A separate one-off fee of £98 is specified as being payable in respect of utilities, to be paid on or before 01 July 2021 i.e. before the tenancy commenced.
13. In their witness statements, which appear at Section C of their bundle, the Applicants confirm that they each moved into the Property on various dates between 31 August 2021 and 21 September 2021. They each occupied a separate bedroom, and they were each living as separate households.
14. All 6 of the Applicants occupied the Property until 05 December 2021, when Ms Kozłowska moved out. Thereafter, the Property was occupied by all 5 of the remaining Applicants until 23 May 2022, when Mr Roberts and Ms Dolan also moved out. Ms Roddy remained until 27 June 2022, Ms Leitch until 28 June and Mr Bryce-Clegg until 01 July 2022.
15. Thus, from 01 September 2021 until 23 May 2022, the property fell within the definition of an HMO which requires a licence, pursuant to article 4 of the

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, it being occupied by 5 or more persons in 2 or more households.

16. The Applicant's bundle of evidence also contains at Exhibit K evidence in support of the alternative contention that the Property, being situate in Wavertree, falls within the area of selective licensing as designated by Liverpool City Council on 24 December 2020 and effective with effect from 01 April 2022 until 31 March 2027.
17. Accordingly, the Property, being occupied under a single tenancy which was not exempt, would have required a licence in any event with effect from 23 May 2022, pursuant to sections 79 and 85(1) of the Housing Act 2004. By section 95(1) of the Housing Act 2004, it is an offence for a person who has control of or manages a house to do so without a licence where that house is required to be licensed.
18. The Applicants' bundle includes at Exhibit G a copy of an email thread between their representatives, Justice for Tenants, and Liverpool City Council showing that the Council was asked on 22 March 2023 whether or not the Property currently, or had ever, had a licence under any of its licensing schemes. In reply, the Council confirmed that there was no licence for the Property, although an application for an HMO licence had been submitted and withdrawn on 29 March 2022.
19. Paragraph 19 of the Applicants' statement of case sets out the rent payments made and reclaimed by each of the Applicants, with a breakdown provided in spreadsheet form at Exhibit D of the bundle. The amounts reclaimed are as follows:

a. Ms Kozłowska	£1,568.00
b. Ms Roddy	£4,257.23
c. Mr Roberts	£3,136.00
d. Ms Dolan	£3,580.62
e. Mr Bryce-Clegg	£4,312.00
f. Ms Leitch	£4,276.56
20. Exhibit E of the Applicants' bundle contains proof of all of these payments having been made by each of the Applicants directly to the First Respondent, Trophy Homes Limited.
21. None of the Applicants was in receipt of Universal Credit or Housing Benefit.
22. The amounts reclaimed do not include utilities which, as noted above, were paid for separately by way of an initial payment of £98 per person in advance of the commencement of the tenancy.
23. The Applicants' witness statements confirm that, during the course of their occupation of the Property, they had cause on numerous occasions to contact their landlord regarding the condition of the Property and the

bundle contains copies of various emails and text messages between the Applicants and various representatives of ‘.House’.

24. The tenancy agreement states that “.House Student Lettings [is] a trading style of Trophy Homes Limited”. All of the Applicants dealings were thus with Trophy Homes Limited and it was this company to which they each paid their rent.
25. In their statements, the Applicants give evidence and exhibit photographs of various issues with the Property which they state they raised with Trophy Homes Limited throughout the currency of the tenancy.
26. The Applicants state that an extension to the Property, which was to be completed before they moved in to form a communal living area, remained under construction for several months following the commencement of their occupation of the Property. They state that the Property was insecure by reason of an unlocked back gate, to which they were never provided keys. They state that the boiler was faulty, leaving them without heating or hot water on numerous occasions during the winter months and that the windows on the first and second floor stairs would not close properly, and that these issues contributed to damp and mould in the Property. They state that the fire doors in the Property did not close properly, there was no carbon monoxide alarm and that a number of cables and loose wiring were left hanging from walls following the completion of the extension. They also state that they were never provided with a gas safety certificate, an electrical safety certificate or an energy performance certificate.

Determination

27. The Tribunal is satisfied that, from 01 September 2021 until 23 May 2022, the Property was an HMO that required a licence to be operated as such and that, thereafter, until 30 June 2022, it was being operated as a licensable property, being in a selective licensing designated area.
28. The Tribunal is satisfied that, from 01 September 2021 until 30 June 2022, the Property was being operated without a licence at all.
29. Accordingly, the Tribunal is satisfied, beyond a reasonable doubt, that an offence was committed under both sections 72(1) and 95(1) of the Housing Act 2004 in relation to housing which, at the time of the offences was let to the Applicants.
30. The Tribunal is satisfied that the First Respondent, Trophy Homes Limited, described in the tenancy agreement as “the landlord”, being in direct receipt of the rent paid under the tenancy agreement and having day to day management and control of the Property, committed the offences.

31. The Tribunal is satisfied that the Second Respondent, West Village Liverpool Limited, being the registered freehold proprietor of the Property, was a landlord of and had control of the Property, and committed the offences.
32. Neither Respondent has sought to challenge the Application or the evidence filed in support of it.
33. The Tribunal finds there to have been no reasonable excuse for allowing the Property to be, and to remain, unlicensed at the material times.
34. The Applicants have made an application for rent repayment orders, which Application was sent to the Tribunal on 09 November 2022. The offence contrary to section 72(1) of the Housing Act 2004 was being committed up to 23 May 2022 and the offence contrary to section 95(1) of the Housing Act 2004 was being committed up to 30 June 2022. Accordingly, the Application was made within 12 months of the offences being committed. Section 41(1)(b) of the Housing and Planning Act 2016 is thus satisfied and the Applicants may apply for a rent repayment order.
35. Section 44 of the Housing and Planning Act 2016 permits a rent repayment order to be made for a period, not exceeding 12 months, during which the offence was being committed. It thus permits a rent repayment order to be made for the full period of 01 September 2021 to 30 June 2021, which would be a maximum of £4,312.00.
36. As noted at paragraph 19 above, however, other than Mr Bryce-Clegg, the Applicants have limited their claims to the following amounts:
- | | |
|-------------------|-----------|
| a. Ms Kozłowska | £1,568.00 |
| b. Ms Roddy | £4,257.23 |
| c. Mr Roberts | £3,136.00 |
| d. Ms Dolan | £3,580.62 |
| e. Mr Bryce-Clegg | £4,312.00 |
| f. Ms Leitch | £4,276.56 |
37. There is no deduction to be made in respect of payment for utilities as the evidence shows, and the Tribunal finds, that utilities were paid by way of a separate payment prior to the commencement of the tenancy.
38. In reaching its decision, the Tribunal takes account of the Applicants' evidence regarding the condition of the Property (as set out at paragraph 26 above) and of the numerous complaints made by them to the First Respondent.
39. The Tribunal takes into account, too, that the Respondents have previously been found, by a differently constituted Tribunal and in respect of a different property, to have committed an offence under section 72(1) of the Housing Act 2004, which finding was communicated to them by a determination dated 15 November 2021 i.e. during the early part of the currency of the Applicants' occupation of the Property.

Decision

40. The Tribunal finds that both Respondents are jointly responsible for the payment of the rent repayment orders that the Tribunal makes. This responsibility is severable, such that payment of the full amount by one Respondent will satisfy the orders made.

41. The Tribunal makes the following rent repayment orders:

- a. to Ms Kozłowska, the sum of £1,568.00;
- b. to Ms Roddy, the sum of £4,257.23;
- c. to Mr Roberts, the sum of £3,136.00;
- d. to Ms Dolan, the sum of £3,580.62;
- e. to Mr Bryce-Clegg, the sum of £4,312.00;
- f. to Ms Leitch, the sum of £4,276.56.

42. Each of the aforesaid rent repayment orders is payable in full within 28 days of the date upon which this Decision is sent to the parties.

Tribunal Judge Jodie James-Stadden
08 August 2023