



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

Case Reference : CHI/00HN/HMF/2023/0007

Property : 38 Sedgley Road, Winton, Bournemouth,
BH9 2JW

Applicant : Megan Jones
Emily Turner
Mikaella Piotrowicz
Katie Forbes
Hollie Altman
Molly McCormick

Representative : Justice for Tenants

Respondent : Bridgette Roxanne Barker

Representative : DWF law LLP

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal : Judge D Whitney
Mr P Smith FRICS
Miss T Wong

**Date and Venue of the
Hearing** : Havant Justice Centre, Elmleigh Road,
Havant PO9 2AL
5th September 2023

Date of Decision : 6th October 2023

DECISION

Decision

The Respondent shall pay to the Applicant the sum of £7,385.42 within 28 days.

The Respondent shall reimburse the Tribunal fees paid by the Applicant of £300 to the Applicant within 28 days.

Reasons

Background

1. On 24 February 2023 the Tribunal received an application under section 41 of the 2016 (the Act) from the Applicant tenants for a rent repayment order (RRO). The total amount claimed by lead tenant Megan Jones on behalf of the Applicants was £12,309.04 in respect of rent paid from 1 September 2021 to 17 March 2022.
2. The Applicants state that the Respondent committed the offence of having control of, or managing, an unlicensed HMO or house, under sections 72(1) of the Housing Act 2004 (2004 Act).
3. The Applicants' case was that 38 Sedgley Road, Winton, Bournemouth, a six bedroom property organised over two floor was let to the six Applicants under an assured shorthold tenancy for a period of 12 months from 1 September 2021 for a rent of £2,700 per calendar month. The six Applicants occupied the property as more than two households.
4. The Applicants rely on an email from Sarah Pemberton, Private Sector Housing Support Officer at Bournemouth Christchurch Poole Council dated 8 November 2022 confirming that an application for an HMO licence was received by the Council on the 18 March 2022. The licence was granted on 27 June 2022 for a period ending 14 May 2027. The Applicants state that the information from the Council demonstrates that the property did not an HMO licence for the period from 1 September to 17 March 2022.
5. The freehold title of the property was held in the joint names of the Respondent and her late mother who was also originally named as a Respondent.
6. Ms Zena Baker, was named as the Landlord on the tenancy agreement which was signed with her electronic signature and dated 17 September 2021.
7. The Respondent, Mrs Brigitte Kotokowski (nee Baker) is the daughter of Ms Zena Baker. The Applicants allege that the Respondent was also

the Landlord of the property with her mother because she received the rent from the Applicants.

8. Ms Z Baker died on 6 July 2022 at the age of 91. As a preliminary issue a differently constituted Tribunal by written decision dated 31st August 2023 dismissed the proceedings against Ms Z Baker or her estate. The proceedings against her daughter, the Respondent fell to be determined on 5th September 2023.
9. The Applicant produced an electronic bundle of 630 pages. References in [] are to pdf pages within that bundle. Each party had also supplied a skeleton argument and copies of authorities relied upon.
10. The hearing took place at Havant Justice Centre. Ms Jones attended for the Applicant's and were represented by Mr Neilson of Justice for Tenants. Ms Sarah Platts counsel from DWF Law LLP appeared for the Respondent who also attended. The Respondent is referred to by her maiden name as Ms baker in these proceedings.
11. The hearing was recorded.

Law

12. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.
13. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
14. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
15. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the

ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

- a) the rent paid in respect of the period in question, less
- b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

16. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

- 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 any of the specified offences.

HEARING

17. At the start of the hearing the Applicant's confirmed the only submission as to poor conduct by the Respondent they sought to rely upon was in relation to the various conditions which were attached to the HMO Licence when it was granted [607 and 608].
18. Further the Applicant's had not submitted any witness evidence and did not seek to rely upon the same.
19. The Respondent conceded that the Property was not licensed as alleged by the Applicants until application was made to the Council on 17th March 2022. The Respondent would seek to rely upon a defence of reasonable excuse.
20. Further it was agreed by both parties that the Applicants had paid rent totalling £12,309.04 during the period of the offence and this was the maximum figure for which a rent repayment order could be made.
21. Mr Neilson made his submissions. He relied upon the tenancy agreement [280]. This named all six Applicants and was in the name of Zena Baker and had her electronic signature dated 17 September 2021.

The tenancy was for a term of 12 months from 1st September 2021. It appeared to be a standard template provided by mystudentpod.com.

22. The Applicants rely on an offence under the requirements for mandatory licensing in that this was residential accommodation occupied by 5 or more unconnected persons. It is agreed that an application for a licence was made on 18th March 2022 and so any offence ended upon that step being undertaken.
23. Mr Neilson suggests that the Respondent is liable to pay a rent repayment order. He relies on Section 263(1) of the Housing Act 2004 which states: *“Meaning of “person having control” and “person managing” etc. (1)In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.”*
24. Mr Neilson submitted all rent was paid to an account in the name of the Respondent. Further she was at all material times a joint proprietor with her late mother. Land Registry entries were included within the bundle. [568-587]. He suggests that there was a contractual relationship of landlord and tenant. He relied upon his arguments within his skeleton argument and the authorities referred to including Cabo v Dezotti [2022] UKUT 240 (LC).
25. Ms Platts submitted that given the Supreme Court decision in Rakusen v Jepsen & Ors [2023] UKSC 9 the respondent was not a Landlord against whom an RRO could be made. This was her principal submission.
26. She submitted the landlord was Mrs Zena Baker who had now died. Whilst the Respondent accepted rent for her mother this was to pay care home fees on her late mother’s behalf.
27. The Respondent then gave evidence. She confirmed her witness statement was true and accurate.
28. Mr Neilson then cross examined her.
29. Ms Baker did not know whether there were written terms of business with mystudentpod.com and if they referred to her.
30. She explained that mystudentpod.com dealt with the letting every year and prior to her mothers stroke in 2019 they would have dealt with her mother.
31. She explained mystudentpod.com drafted the tenancy agreement and they had no correspondence as such over the terms of the same. It was a standard form they produced.

32. Ms Baker confirmed she had communications with the tenant, including via Whatsapp.
33. Ms Baker accepted she may have had an email re HMOs and their regulation from the council in 2017 referred to in an email from the council to her dated 30th June 2023 [619].
34. Ms Baker accepted she would have “clicked” to apply what was said to be her mother’s signature to the tenancy agreement to the Applicants. She referred to having a power of attorney for her mother and stated she had no choice given her mothers strike.
35. She was referred to an email from a Mr Richard Bray [614]. She explained everything to do with the letting of Property was new to her. Mr Bray carried out electrical tests. She was only a joint owner with her mother on paper.
36. Ms Baker accepted she had previously heard about HMO Licensing. She confirmed she was first contacted by the council in December 2021 or January 2022 and started then sorting out what needed to be done. Once provided with the draft licence she took steps to complete the works required [607 & 608].
37. The Tribunal questioned Ms Baker.
38. She confirmed she owned her own home. The subject Property had been bought as an investment jointly with her mother and had always been let. Her Mother had control of the letting.
39. She explained she also owned a 40% share in a bungalow which had been bought for her mother to live in after her stroke although she only lived in it for about 3 ½ months before going into care. This was let. She acted under the Power of Attorney in respect of this.
40. She explained her mother had other properties with 6 in total. None of the other properties were HMO’s.
41. She confirmed mystudentpod.com acted on a tenant find only basis. All rents were paid in to her Bank account. The other tenants were all long term lets and so no agents were involved and so if issues arose after her mother’s stroke they would approach her.
42. On re-examination Ms Baker stated that she was responsible for her mother’s affairs once she went into the care home. Her mother had made the arrangements for the various lettings including the agent in respect of the subject Property and tenancy. She believed she had told mystudentpod.com and the tenants that her mother was unwell. She stated all of the rents went to cover her mother’s care home costs.
43. Ms Platts submitted that prior to her stroke it was clear that the late Ms Baker had been in control. Only following her stroke did the

Respondent have to step in and deal with matters on her mother's behalf. As soon as she became aware for the need to licence the Property she took action. She worked with the Council to rectify the issues and the work required was modest.

44. Ms Platts suggested there were no convictions and Ms Baker has never been before the Tribunal. It is clear she was acting as her mother's carer and this was not a "sham". She submitted the starting point if the Tribunal felt an order should be made should be no more than 50% of the agreed rent.
45. In reply Mr Neilson reminded the Tribunal the purpose of the RRO legislation is to punish and deter the Respondent and others.
46. As to the defence of reasonable excuse he suggests this is not new legislation. The Property would have required a licence since October 2018. Ms Baker accepts an agent has been used for the lettings although no terms and conditions of business have been provided. There is no evidence as to what steps Ms Baker took to ensure she was complying with her statutory obligations when she took responsibility for this Property.
47. He suggested limited financial disclosure has been made so no reduction should be made in respect of Ms Baker's means.
48. Mr Neilson stated that in his view an order for 75% of the agreed rent would be appropriate.

Is the Respondent a Landlord against whom an Order can be made?

49. We are satisfied that Ms Baker is a person who commits an offence pursuant to Section 72(1) of the Housing Act 2004.
50. We are satisfied that in respect of the tenancy at issue Ms Baker had control and was managing the house. Further that Ms Baker was an undisclosed principal. We are satisfied that we should make this finding and reply upon Cabo v Dezotti [2022] UKUT 240 (LC).
51. We find that Ms Baker was a joint owner with her mother. It was Ms Baker who actually signed the tenancy agreement by as she said "clicking" the link sent to her email by the agent. We accept her evidence she may have discussed the letting with her late mother but all actual steps were undertaken by her and we find it was the Respondent who communicated with the agent to agree the letting to the Applicant's.
52. After the tenancy commenced, all rental payments, were made to her personal bank account. This is admitted by Ms Baker. It was Ms Baker who was collecting and receiving the rack rent. Further it was Ms Baker with whom the Applicant's communicated. She accepted that the

agents who set up the tenancy acted on a “tenant find” only basis. It was Ms Baker who dealt with any matters raised by the tenants throughout the tenancy and who managed the Property and the tenancy.

53. We prefer the arguments of the Applicant’s. Taking account of all such matters we are satisfied that Ms Baker is a landlord for the purpose of making a rent repayment order on the facts of this case.

Has an offence been committed?

54. The Respondent conceded that until she made application to the Council on 18th March 2022 that the Property had not had a licence and was a Property for which a licence should have been in place.

55. Ms Baker suggests she has a reasonable excuse.

56. We accept that prior to her mother’s stroke in 2019 it was her mother who dealt with the letting of this and the other properties that her late mother owned. However it seems clear that the Respondent assisted her mother with the lettings of at least this Property. It was to her email address that the council sent information about HMO regulation in 2017 (see email at [619]) as Ms Baker admitted in evidence.

57. Further Ms Baker had on her own case managed her mother’s affairs for about 18 months prior to this letting. This was a portfolio of 6 properties. Ms Baker had access to an agent who had provided a tenant find only service and continued that arrangement. She produced no evidence as to what steps she had taken to familiarise herself with her obligations as a landlord. The Respondent could and we find should have taken advice to satisfy herself as to her statutory and legal obligations relating to the letting of her mother’s property portfolio given she choose to manage this herself.

58. We remind ourselves ignorance is not of itself a defence. The requirement for a licence of such Property arose prior to her mother’s stroke. It appears the property was unlicensed for about 3 years prior to the commencement of this tenancy.

59. We find on the facts of this case that the Respondent does not have a reasonable excuse defence and we find beyond reasonable doubt that the offence pursuant to Section 72(1) of the Housing Act 2004 is proven for the period of 1st October 2021 to 17th March 2022.

Has the application been made in time?

60. The Application was made on 24th February 2023. We are satisfied that the application for an RRO was made in accordance with the statutory time limits.

Should we exercise our discretion to make an order?

61. We considered the decision in The London Borough of Newham v John Francis Harris [2017] UKUT 264 (LC). We have found that an offence has been made out. Taking account of all the facts we are satisfied that this is a case where we should exercise our discretion to make an order.

What order should we make?

62. The parties agreed that the maximum amount of any order was £12,309.04. It is not suggested there are any sums which should be deducted from this amount.

63. All offences for which rent repayment orders can be made are serious. However offences of not holding a licence are not the most serious offences for which an order may be made in this Tribunal's determination.

64. For the Applicant's we are invited to consider the list of works which the Council required to be undertaken in granting a licence. No other conduct is relied upon.

65. The Respondents invite us to take account of the fact that they say the rental monies received were used to fund the Respondent's mother's care fees. Details of the care fees are within the bundle [624-628]. However we do not have any further details as to the Respondent's means, other income her mother had or details of her or her mother's assets. Further whilst there is reference to a power of attorney no evidence of the same has been produced.

66. It is not suggested that any aggravating factors in respect of the Applicant's conduct should be taken into account.

67. We note that rent repayment orders are meant to be punitive in nature.

68. In our judgment we are satisfied that on the facts of this case there is no specific need to adjust any amount upwards on the basis of the landlord's conduct. Likewise given what we heard about the number of properties owned by the Respondent's mother and the lack of information as to the Respondent's own means and assets we are satisfied no reduction should be applied to take account of any impecuniosity.

69. We are satisfied that given the offence found proven and the period of the offending the correct starting point is 60% of the rent paid. We find that there should be no upward or downward movement from this level. We determine that a rent repayment order of 60% of the agreed rent should be made in the sum of £7,385.42.

70. We have considered whether or not we should exercise our discretion to order the Respondent to reimburse the Applicant's for the fees paid

to the Tribunal of £300. The making of such an award is always at the discretion of the Tribunal. In this case we have found for the Applicant. Taking account of our findings and the facts of this case we make an order that the Respondent shall pay to the Applicants representative the sum of £300 within 28 days.

RIGHTS OF APPEAL

- 1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.

Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

	<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

Or has a financial penalty¹ been imposed in respect of the offence?

- (i) What was the date of the offence/financial penalty?
- (ii) Was the offence committed in the period of 12 months ending with the day on which the application made?
- (iii) What is the applicable twelve-month period?²
- (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (v) Should the tribunal reduce the maximum amount it could order, in particular because of:

¹ s.46 (2) (b): for which there is no prospect of appeal.

² s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (a) The conduct of the landlord?
 - (b) The conduct of the tenant?
 - (c) The financial circumstances of the landlord?
 - (d) Whether the landlord has been convicted of an offence listed above at any time?
 - (e) Any other factors?
2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

Important Note: Tribunal cases and criminal proceedings

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.