



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

Case Reference : **MAN/32UD/HMF/2023/0006**

Property : **4, Bedford Street, Lincoln, LN1 1NA**

Applicant : **Tyler Kent**

Respondent : **C Student Services Limited**

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

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

Date of decision : **25 October 2023**

DECISION

Decision

1. By reason of the Respondent having submitted an application to renew the HMO licence in respect of the Property on 28 April 2022 (during the currency of the pre-existing licence) and that application remaining effective within the meaning of s.72(8) of the Housing Act 2004 until the new licence was granted on 10 January 2023, the Tribunal finds that the statutory defence set out at s.72(4)(b) of the Housing Act 2004 applies.
2. The Application is dismissed.

The Application

3. On 02 August 2022, Tyler Kent (“the Applicant”) became a tenant, together with 4 others in separate bedrooms at 4, Bedford Street, Lincoln, LN1 1NA (“the Property”) pursuant to a joint, written assured shorthold tenancy agreement for the period 02 August 2022 until 31 July 2023.
4. C Student Services Limited, the Respondent, is named in the said tenancy agreement as the landlord of the Property.
5. The Applicant made an application (“the Application”) to the Tribunal on 07 February 2023. The Application originally misnamed the Respondent as “Lincoln Co Living Ltd (Live With Us)”, but it was subsequently amended to name the correct Respondent.
6. By his application, the Applicant seeks a rent repayment order relating to his 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 Respondent did not have such a licence for the period 02 August 2022 to 10 January 2023 in breach of section 72(1) of the Housing Act 2004.
7. Directions were issued by the Tribunal on 20 March 2023, requiring the Applicant to file a bundle of relevant documents within 28 days of the date of the directions and the Respondent to file its bundle 28 days thereafter. The directions permitted the Applicant to file a reply 14 days after receipt of the Respondent’s bundle.
8. The directions further set out that the Tribunal considered the matter appropriate for determination on the papers and indicated that any request for an oral hearing should be made within 42 days of the date of the directions. No such request was received from either party.
9. Pursuant to the directions, the Applicant submitted his bundle to the Tribunal by email on 17 April 2023.
10. By letter dated 17 May 2023, the Respondent’s solicitor informed the Tribunal that the Respondent had not received the Applicant’s bundle but nonetheless submitted various documents in defence of the Application. The Tribunal forward a copy of the Applicant’s bundle to the Respondent’s on 04 July 2023

and directed that the Respondent file its own bundle by no later than 4.00pm on 02 August 2023, which the Respondent did by way of email dated 01 August 2023.

11. No reply was filed by the Applicant.

The Law

12. 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.

...

(8) For the purposes of subsection (4) a notification or application 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

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

13. 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
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.

The Applicants' Evidence

14. As noted above, the Applicant moved into the Property, described in the Application as a '5 bedroom semi-detached HMO', together with 4 others, each occupying separate bedrooms, on 02 August 2022 pursuant to a joint, written assured shorthold tenancy agreement which ran from that date until 31 July 2023.

15. The Tribunal has been provided with a copy of the tenancy agreement, which sets out the rent payable by each tenant by way of a schedule at clause 3.1. The rent is payable in advance and each tenant was obliged to pay £411.67 on 02 August 2022, £1504.92 on 10 October 2022, £1504.92 on 10 January 2023 and £1504.92 on 10 April 2023. By virtue of clause 9.9 of the tenancy agreement, the rent included electricity, gas, water, broadband and the television licence costs.
16. It is correct that, on 02 August 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, and that would remain the case for so long as the Property remained so occupied.
17. The Applicant has provided a copy of an HMO licence which was granted to the Respondent in respect of the Property for five years from 02 May 2017. That licence expired on 01 May 2022.
18. The Applicant states that, having discovered the expiry of this licence, he made enquiries and ascertained that a new HMO licence had not been issued until 10 January 2023. He has provided a copy of the new licence as part of his bundle.
19. Accordingly, the Applicant says, the Property was not licensed for the first 5 months during which he occupied and paid rent for it.
20. The Applicant has provided copy bank statements showing that he paid the rent as follows: £411.67 on 02 August 2022, £1504.92 on 10 October 2022, £1504.92 on 10 January 2023.
21. The Applicant seeks repayment of these sums by way of a rent repayment order by reason of his contention that the Respondent failed to have an HMO licence in place for the period 02 August 2022 (when he and his co-tenants moved into the Property) until 10 January 2023 (when the new licence was granted).

The Respondent's Evidence

22. The Respondent has provided a bundle of documents which also includes a copy of the tenancy agreement, the HMO licence dated 02 May 2017, the HMO licence dated 10 January 2023 and confirmation of the rent payments made by the Applicant.
23. The Respondent has also provided a witness statement dated 01 August 2023 from Josef Dolan, the Respondent's property manager.
24. Mr Dolan states that, on 28 April 2022, prior to the expiry of the licence dated 02 May 2017, an application was made to renew the HMO licence for the Property. In support of this, he has provided proof of payment of the fee of £556.20 being made on the gov.uk website for HMOs on 28 April 2022. Mr Dolan has also provided a copy of a letter dated 04 May 2022 from City of

Lincoln Council confirming “that a complete licence application has been submitted” in respect of the Property, initial administrative checks have been completed and “no decision has yet been made whether or not to grant a licence”.

25. Mr Dolan confirms that the licence application was successful, resulting in the licence being granted for the Property on 10 January 2023.
26. Mr Dolan states that the Respondent’s solicitor subsequently contacted the Council by telephone on 31 March 2023 and was informed that the Council considered the Property to remain licenced between the date of the expiry of the first licence and the grant of the renewal licence, as the application to renew had been made before the expiry of the first licence on 01 May 2022. Mr Dolan provides a copy of a telephone attendance note made by the Respondent’s solicitor following that call as part of his bundle.
27. Mr Dolan comments that the Respondent owns and manages a large portfolio of properties, including HMOs, and that significant delays are encountered in applications for HMO licences.
28. Mr Dolan concludes by stating that, as a valid renewal application had been lodged prior to the expiry of the previous HMO licence, no offence was committed by the Respondent. This is elaborated upon by the Respondent’s solicitors in their letter to the Tribunal dated 17 May 2023, in which they make specific reference to s.72(4)(b) of the Housing Act 2004.

Determination

29. There is no dispute that the Respondent controlled and managed the Property.
30. The Tribunal is satisfied that, from 02 August 2022, and for so long as the Property was being occupied by 5 or more persons in 2 or more households, the Property was an HMO that required a licence to be operated as such.
31. The Tribunal notes that the Applicant states that, as at the date of the Application, he continued to occupy the Property. The Applicant does not state that the Property remained occupied by 5 persons in 2 or more households until 10 January 2023, although, equally, the Respondent does not suggest that it did not.
32. The Tribunal is satisfied that, 02 May 2017 until 01 May 2022, the Property was being operated with a valid licence in place.
33. The Tribunal is also satisfied that, on 28 April 2022, prior to the expiry of that licence, the Respondent submitted an application to renew that licence and paid the requisite fee for that application. That application was acknowledged by the letter dated 04 May 2022 from City of Lincoln Council, which confirmed that a complete application had been submitted, initial administrative checks had been completed and that no decision had at that time been made regarding whether or not to a licence should be granted.

34. It is not disputed that, on 10 January 2023, the Respondent's renewal application was granted, and that a new and valid licence was in place from that date.
35. It is an offence for a person to have control or manage an HMO which is required to be licenced without having it so licensed (s.72(1) Housing Act 2004).
36. This offence is, however, subject to the statutory defence set out at s.72(4)(b) of the Housing Act 2004, namely that, at the material time, an application for a licence had been duly made in respect of the Property, and that application was still effective.
37. An application remains 'effective' for these purposes if it has not been withdrawn and the local authority has not decided whether to grant a licence pursuant to the application (s.72(8) of the Housing Act 2004).
38. The Tribunal finds that the statutory defence set out at s.72(4)(b) of the Housing Act 2004 applies, by reason of the Respondent having submitted an application to renew the licence on 28 April 2022 (during the currency of the pre-existing licence) and that application remaining effective within the meaning of s.72(8) of the Housing Act 2004 until the new licence was granted on 10 January 2023.
39. Accordingly, the Application is dismissed.

Tribunal Judge J James-Stadden
25 October 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).