



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

- Case Reference** : CHI/00HB/HMF/2023/0012 (1)
CHI/00HB/HMF/2023/0013 (2)
CHI/00HB/HMF/2023/0014 (3)
- Property** : 47B, Zetland Road, Redland, Bristol BS6 7AJ
- Applicant** : Kane Eddy (1), Christopher Down (2),
George Martin (3)
- Respondent** : Mr Ramiz Kafai
- Type of Application** : Applications for a rent repayment order by
tenants ; sections 40-43 and 45 of the
Housing and Planning Act 2016
- Tribunal members** : Judge David Clarke
Michael Ayres FRICS
Michael Jenkinson
- Date of Hearing:** : 19 October 2023

DETERMINATION AND STATEMENT OF REASONS

Determination

The Tribunal determines that it is satisfied beyond reasonable doubt that the Respondent has committed an offence, namely the control of or managing a House in Multiple Occupation (HMO), which was required to be licensed under the Housing Act 2004 but which was not so licensed.

The Tribunal determines that the grounds for making a rent repayment order under Chapter 4 of the Housing and Planning Act 2016 are satisfied.

After due consideration of the relevant factors and in accordance with section 44 of the Housing and Planning Act 2016, the Tribunal makes a rent repayment order in favour of the Applicants (constituting together the Tenant of 47B Zetland Road, Bristol, BS6 7AJ during the period 1 April 2022 to 31 July 2022) in the sum of £9,600 (Nine Thousand Six Hundred Pounds).

By virtue of paragraph 13(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal makes an order requiring the Respondent to reimburse to the Applicants the whole of the fees paid by them in respect of these Applications.

Statement of Reasons

Relevant Facts

1. This case concerns three conjoined applications (“the Applications”), each being for a rent repayment order under the Housing and Planning Act 2016 (“the 2016 Act”) in respect of rent paid by them as Tenant or tenants of the Property known as 47B Zetland Road Bristol, BS6 7AJ (“the Property”) during the period 1 April 2022 and 31 July 2022. The Applications were made on 15 June 2023.

2. The Property is a four-bedroom maisonette with a separate kitchen, two bathrooms, and a living room. The legal title is vested in a Mrs Seval Ozay Kafai, who is the spouse of the Respondent to the three Applications, namely, Mr Ramiz Kafai. The Property was let on a new assured shorthold tenancy from 1 April 2022 to four individuals. These included the three Applicants, Kane Eddy, Christopher Down and George Martin. The fourth individual was a Mr Joe Pincombe. The Applicants and Mr Pincombe together will be referred to in this determination as “the Tenant”.

3. The relevant Assured Shorthold Tenancy Agreement was produced to the Tribunal in the bundle of documents. It is in a standard form and is dated 14 March 2022. It is made between Ramiz and Sefa Kafai as Landlord and the three Applicants and Joe Pincombe who are together described as ‘the Tenant (jointly and severally)’. It provides for a tenancy period of six months from 1 April 2022 at a monthly rent of £2,400 payable to Mrs Kafai (bank account details were supplied). It is signed by all four individuals constituting the Tenant and by Ramiz Kafai stated to be Landlord.

4. The Tribunal issued Directions on 14 August 2023. As is usual, the Directions clearly explained what the case was about, provided for a hearing in due course, and set out what each party was required to do. The Directions were a formal order which had to be complied with. The Applicants complied with the Directions, producing a statement of truth, written evidence from the local authority and a copy of the tenancy agreement together with further evidence discussed below. The Respondent did not comply with the Directions. No evidence was forthcoming from the Respondent at all and in particular there was no statement of truth, no evidence of financial circumstances and nothing to contradict the evidence supplied by the Applicants.

5. The case was listed for hearing at 10am on 19 October 2023 at the Bristol Magistrates Court and Tribunal Hearing Centre. The Respondent did not appear and there was no representative on his behalf. The Tribunal therefore proceeded to a hearing with the Applicants alone and concluded the hearing and made its determination. (There is a postscript at the end of this determination making reference to an email received from the Respondent after the hearing was concluded and the determination made.)

The Evidence Submitted

6. In addition to the tenancy agreement, the Applicants gave oral evidence. They first occupied the Property on 1 July 2021 when it was managed by a Mr Connor Chaplin on behalf of the Respondent and his spouse who were then apparently out of the jurisdiction. The Respondent took over management in February 2022 and the Applicants were given notice to quit. They were unable to secure alternative accommodation so they accepted the offer of the six-month tenancy from 1 April 2022.

They remained in occupation under a rolling contract until vacating the property early in 2023.

7. The tenancy agreement required, and the Respondent insisted, that the monthly rent should be paid as a single sum of £2,400 and not as four separate payments of £600. Consequently, the rent was paid in full by Chris Down and he was reimbursed each month with payments of £600 by each of the other three occupants of the property.

8. During their occupation, in response to questions from the Tribunal, the Applicants stated that they always regarded the Respondent as their landlord who was taking responsibility for managing the Property. If there was a problem, they rang the Respondent – although he often took some time to respond to issues raised. They said that they had no dealing at all with Mrs Kafai, and Chris Down only spoke to her once, after the tenancy had ended and after the Applications had been issued which resulted in an unpleasant telephone altercation.

9. It was not until June 2022 that the Applicants were made aware of the issue of the requirement to license an HMO. This was because they had a visit from representatives of Bristol City Council. It was however only on 15 March 2023 that Mr Jason O’Neill-Blake of Bristol City Council informed Chris Down of the possibility of applying for rent repayment order. This resulted in the three Applications in this case. Joe Pincombe, the Tribunal was told, did not get around to making his application.

10. The Applicants produced a full and comprehensive Statement of Witness made on 27 April 2023 in reference to the Property by Jason O’Neill-Blake, a qualified private housing case worker with Bristol City Council. In summary, this cited evidence and confirmed the following facts. He was an authorised officer under the Housing Act 2004 (“the 2004 Act”). Bristol City Council had designated a Central Additional Licensing Scheme on 8 July 2019 and the Property was within the area designated. Information about the designation and the need to licence by 8 October 2019 was promulgated. Licensing was required and applied to Houses in Multiple Occupation where at least three tenants were forming more than one household with shared facilities.

11. Mr O’Neill-Blake records that investigations in 2022 revealed that the Property was an unlicensed HMO. He sent a letter to the Respondent and Mrs Kafai on 17 June 2022 advising them that the Council believed that the Property required a licence and that an application should be submitted within 28 days. No application was made within the time limit but after a follow-up letter a licence application was received from Mrs Kafai.

12. In due course, but not until June 2023, a licence was issued by Bristol City Council for the Property, backdated to the date of the application, namely 1 August 2022. The Applicants were advised of their right to apply for a rent repayment order on 15 March 2023.

13. The Applicants produced evidence in the form of copy bank statements of Chris Down showing monthly payments of £2,400 to Mrs S Kafai and three receipts each month for £600 from his fellow tenants. They also produced evidence of their occupation in the form of council tax and utility bills paid.

Decision and reasons

14. On the evidence supplied, the Tribunal determines that the Property was, between 1 April 2022 and 31 July 2022, a House in Multiple Occupation that required to be licensed and was not so licensed.

15. The Tribunal is satisfied, beyond reasonable doubt, that the Respondent has committed an offence within s72(1) of the 2004 Act as a person having control of or managing an HMO which is required to be licensed but was not so licensed. Although the Respondent is not the registered owner of the Property at HM land Registry, and although the rent was paid to his spouse, Mrs Kafai, the registered proprietor, the Respondent is named on the tenancy agreement as landlord and signed that agreement on behalf of himself and his spouse. The Tribunal accepts the clear evidence given by all three Applicants that it was the Respondent who managed the Property and who dealt with matters that arose. The Tribunal therefore has jurisdiction by virtue of Chapter 4 and s 43(1) of the 2016 Act to make a rent repayment order in favour of the Applicants.

16. No evidence was presented to the Tribunal by the Respondent or the Council that a financial penalty had been imposed in relation to the offence under s 72 of the 2004 Act.

17. The Tribunal is satisfied that the requirements of section 41 of the 2016 Act have been met. The offence under s72 of the 2004 Act relates to housing, in this case, the Property, that was let to the Tenant. The offence was committed in the period of 12 months ending with the day, 15 June 2023, the day that these Applications were made.

18. The Tribunal must comply with s44 of the 2016 Act in making any rent repayment order. For an offence under s72 of the 2004 Act, the amount must relate to rent paid within a period, not exceeding 12 months during which the landlord was committing the offence. In this case, the period is four months and this requirement is satisfied.

19. The amount of rent that the Tribunal can order to be repaid cannot exceed the rent paid in respect of that period. The maximum amount that the Tribunal can order is therefore £9,600. However, the Tribunal may award a lower sum.

20. In determining the amount of the order, the Tribunal first considered whether the maximum amount should be reduced to £7,200 since Joe Pincombe had not made an application. However, it is abundantly clear from the tenancy agreement that the Tenant in this case is a single joint tenancy consisting of four individuals. Each individual was made jointly and severally liable for the rent which was paid as a single sum by Chris Down. For those reasons the maximum payable is £9,600.

21. The Tribunal then considered section 44(4) of the 2016 Act. The Tribunal must take into account all factors in any individual case but in particular the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has been convicted of an offence to which Chapter 4 of the 2016 Act applies. However, the Respondent gave no evidence so the Tribunal cannot take his financial circumstances into account. No evidence of any conviction was supplied to the Tribunal. The conduct of the tenants appears to be above reproach.

22. There was little evidence of the conduct of the landlord except evidence at the hearing that the Respondent was slow to respond to issues that needed to be addressed and that the Property had some issues with mould. The decision of the Respondent and Mrs Kafai to apply for a licence indicates that they accept the need for a licence and the fact that the Property was previously unlicensed. The Respondent then chose not to respond in any manner at all to the Applications. By declining to engage with the Tribunal process, the Respondent chose not to take his opportunity to give evidence of why the property was unlicensed or evidence of his financial circumstances. The Tribunal therefore determined that there was no reason not to award the maximum sum permissible.

22. In the light of all these factors, and in accordance with section 44 of the Housing and Planning Act 2016, the Tribunal makes a rent repayment order in favour of the Applicants (namely Kane Eddy, Christopher Down, and George Martin jointly and severally as the Tenant of 47B Zetland Road, Bristol, BS6 7AJ during the period 1 April 2022 to 31 July 2022) in the sum of £9,600 (Nine Thousand Six Hundred Pounds).

Costs

23. By virtue of paragraph 13(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal makes an order requiring the Respondent to reimburse to the Applicants the whole of the fees paid by them in respect of these Applications.

Postscript

24. After the hearing had been commenced and concluded on 19 October 2003, and after the Tribunal had concluded its determination, an email was received by the Tribunal office later in the morning and forwarded to the members of the Tribunal. In the email, the Respondent requested a delay in the hearing of these cases following the death of his son in this past week. He also said that he wished to enter a defence. A reply was sent to him indicating that the case had been heard and concluded and that it was too late to consider his request for a postponement.

Right of Appeal

25. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the [Regional office](#) which has been dealing with the case (RPSouthern@justice.gov.uk). 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.

26. 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.

27. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

October 2023