



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

Case Reference : **MAN/00CJ/HMF/2023/0007**

Property : **11 Deuchar Street, Jesmond, Newcastle upon Tyne NE2 1JX.**

Applicants : **Chloe Gallagher (lead Applicant),
Eleanor Kent, Amy Jackson**

Respondents : **The Trustees of the Vij Settlement Trust**

Respondents' Representative : **Hardings Solicitors**

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

Tribunal Members : **Mr S Moorhouse LLB
Mr C Snowball MRICS**

Date of Decision : **23 November 2023**

DECISION

DECISION

The tribunal makes a rent repayment order against the Respondents in the sum of £3,906, to be divided equally between the three Applicants.

REASONS

The Application

1. By an application dated 22 February 2023 ('the Application'), Chloe Gallagher, Eleanor Kent and Amy Johnson ('the Applicants') seek a Rent Repayment Order pursuant to section 41(1) of the Housing and Planning Act 2016 ('the 2016 Act') in relation to their tenancy at 11 Deuchar Street, Newcastle upon Tyne NE2 1JX ('the Property'). The Respondent landlords are the trustees of the Vij Settlement Trust established under the Will of the late Devinder Vij and the appointed letting and managing agent is Great North Lettings & Sales Ltd.
2. Pursuant to directions a statement of case (described as 'expanded reasons for the application') and accompanying documents were submitted by the Applicants. A statement of case in response was submitted by the Respondents' representative including further documentation and a witness statement of Mr Praveen Kumar Vij, the son of the late Mr Devinder Vij and one of the trustees. A brief reply was submitted by the Applicants.
3. Whilst the Applicants had indicated that they would be content with a determination on the papers, the case was listed for a hearing. This is the usual practice where a tribunal is required to determine whether an offence has been committed. The hearing took place on 21 November 2023 by video-conference. It was attended by two of the Applicants Chloe Gallagher and Eleanor Kent, the Respondents' representative Mr Askins of Hardings Solicitors and, Mr Praveen Kumar Vij.
4. The Tribunal considered it unnecessary, in view of the matters in issue, to conduct an inspection.

The Law

5. The relevant statutory provisions relating to Rent Repayment Orders are contained in sections 40, 41, 43 and 44 of the 2016 Act, extracts from which are set out in the Schedule.
6. Section 40 identifies the relevant offences, including an offence under Section 72(1) of the Housing Act 2004 ('the 2004 Act') (control or management of unlicensed HMO). Section 72(1) provides that an offence is committed if a person is a person having control of or managing an HMO which is required to be licensed under that Part of the 2004 Act but is not so licensed. That 'Part' relates to the licensing of houses in multiple occupation.

7. Section 44(4) lists considerations which the tribunal must 'in particular' take into account in determining the amount to be repaid - conduct of the landlord and tenant, financial circumstances of the landlord and whether the landlord has been convicted of an offence to which that chapter of the 2016 Act applied. The use of the words 'in particular' suggests that these are not the only considerations the tribunal may take into account.
8. The case of *Acheampong v Roman [2022] UKUT 239 (LC)* sets out a four stage test: (1) ascertain the whole rent for the relevant period; (2) subtract any element of that sum representing payment for utilities that only benefit the tenant; (3) consider seriousness, and (4) consider deductions or additions as per section 44(4).

Determination

9. Section 40(3) of the 2016 Act sets out in a table the offences which would entitle a tenant (or local housing authority) to apply to the First-tier Tribunal for a rent repayment order against the offender pursuant to section 41(1)
10. Row 5 in the table describes an offence under section 72(1) of the 2004 Act, generally described as the control or management of an unlicensed HMO. It is not in issue between the parties that an HMO licence was required. Nor is it in issue that there was no HMO licence for the Property from the commencement of the Applicants' tenancy on 1 July 2022 until a licence was issued with the effective date of 30 November 2022, this being the date of the Respondents' licensing application.
11. Section 72(5) of the 2004 Act provides a defence of 'reasonable excuse'. The Respondent submits that this defence applies in this case.
12. The tribunal acknowledges that circumstances were difficult for the trustees following the death of Devinder Vij on 2 February 2021 and his wife on 22 April 2022. Praveen Kumar Vij took the lead role as a trustee in relation to the property portfolio, the other trustees being his wife Namrta Vij and a friend of his late father, Stuart Cairns. The Settlement Trust included a total of 9 investment properties, 6 of which were residential houses or HMO's which required licences.
13. The HMO licence for the Property, and those for 5 other properties were revoked, and Mr Vij testified in the hearing that the local authority had indicated that only the registered proprietor could hold a licence. At the date of the hearing, on the testimony of Praveen Kumar Vij, the registered proprietor of the Property was still shown as Devinder Vij. Praveen Kumar Vij testified that he had instructed Searle Planning to assist in connection with the transfer of the licences into his name, but the local authority would not agree to this.
14. However the Property and others continued to be let in the absence of necessary licences and Mr Vij arranged the appointment of new managing agents Great North Lettings & Sales Limited who, inter alia, arranged in March 2022 the letting of the Property to the Applicants, commencing on 1 July 2022 at the expiration of the previous tenancy. It was not argued for the Respondent that the agents were responsible for licensing matters, nor was there any evidence before the tribunal to suggest that this formed part of the agents' remit.

15. None of the trustees were experienced property investors or managers. Praveen Kumar Vij had assisted his father back in 2020 at the time the Property was refurbished and prepared for letting by completing licensing applications on the computer. Praveen Kumar Vij testified that letting the Property had been essential as this and other properties were subject to mortgage and the rental income was necessary in order to meet the payments.
16. Notwithstanding the difficulties faced by the trustees the tribunal considered that the known licensing issues had been set aside whilst the trustees had continued to let unlicensed properties and, at least in the case of the Property, re-let to new tenants (the Applicants) without the necessary licence having been obtained. When the licensing issue was raised by Chloe Gallagher's father Praveen Kumar Vij responded quickly and found that he was able to complete the licensing application. Prior to this the appointment of letting agents to secure rental income (including the receipt of financial reports from the agents) had been pursued with the necessary diligence, whilst the licensing requirement, of which the trustees were aware, was not.
17. In these circumstances the tribunal does not accept that the Respondents had a reasonable excuse for having control of an unlicensed HMO required to be licensed but not so licensed. The tribunal accordingly determines that the Respondents committed an offence under section 72(1) of the 2004 Act.
18. Having determined that an offence under section 72(1) of the 2004 Act was committed, the Tribunal finds that the requirements of section 41(1) of the 2016 Act have been met.
19. The tribunal further finds that the offence was committed in the period of 12 months ending with the date of the Application. The requirements of section 41(2) of the 2016 Act have therefore been met. Accordingly, the Applicant was entitled to make the Application.
20. Having found beyond reasonable doubt that an offence listed in section 40(3) has been committed, the requirements of section 43(1) of the 2016 Act are met and the Tribunal may make a Rent Repayment Order.
21. In this case the Tribunal considers that it is appropriate to make a Rent Repayment Order on the ground that the Respondents committed a licensing offence. In reaching this decision the Tribunal is mindful of the achievement of the statutory objectives of punishing defaulters and deterring future offences.
22. The amount of any repayment is to be determined by the Tribunal pursuant to section 44. Provisions within section 46 of the 2016 Act requiring a maximum repayment in the event that the Tribunal makes an order do not apply in the present case because the offence is not one of those specified at section 46.
23. Section 44(2) of the 2016 Act prescribes that (for the type of offence in the present case) any repayment must relate to rent paid by the tenant in respect of a period (not exceeding 12 months) during which the landlord was committing the offence. Having regard to its earlier findings the Tribunal determined this period to be 1 July 2022 to 29 November 2022 (inclusive). It was common ground that the rent for the Property was £1,430 pcm and that this had been paid by the three Applicants in equal shares. The total rent for the period 1 July 2022 to 29 November 2022 (inclusive) was

calculated by the tribunal to be £7,102 (being 4 months rent at £1,430 pcm and 29/30 of November's rent of £1,430).

24. Council tax, broadband and utility costs were payable by the Applicants under the terms of the tenancy agreement therefore no deduction arises in relation to these. On the testimony of the Applicants present at the hearing none of the Applicants were in receipt of Housing Benefit.
25. Turning to the issue of the seriousness of the offence, the tribunal took into consideration that licensing offences are generally less serious than other RRO offences, and that there were mitigating factors in that the trustees had become responsible for the late Devinder Vij's portfolio only as a consequence of his death, none of them were professional investors or managers and there had been further bereavement with the loss of Praveen Kumar Vij's mother. The trustees had arranged for the Property to be managed by professional letting agents who, whilst not always responding quickly, had addressed any issues raised by the Applicants in relation to the Property. The Property had been let at a high standard and kept in repair and no safety issues were found, save that a licensing requirement for a thumb-turn lock had not been met and was remedied.
26. The trustees had been aware of the licensing requirement and had continued to let the Property to the previous tenants, as well as continuing to let other residential properties in the portfolio after all of the HMO and selective licences were revoked. One of the trustees had experience of completing licensing applications and the trustees as a whole allowed the licensing issue to be sidelined whilst allowing the letting of the Property to the Applicants to proceed in order to secure the rental income.
27. Taking all of these factors into account the tribunal considered it appropriate to apply a 45% deduction to the total rent of £7,102, giving a potential rent repayment of £3,906.
28. The particular considerations at section 44(4) of the 2016 Act relate to conduct of both parties, landlord's financial circumstances and any conviction(s) to which that Chapter of the 2016 Act applies.
29. In relation to tenant conduct, the tribunal finds no misconduct. This was not in issue. In relation to landlord conduct, having considered the standard of the Property, the appointment of professional managers and their performance, the tribunal finds no significant misconduct on the part of the landlord. Therefore the tribunal makes no adjustment for tenant or landlord conduct.
30. In relation to the Respondent's financial circumstances, the settlement trust appears to relate to 9 properties subject to mortgage. It is argued for the Respondents that the rental income is only £6,000 per month gross, that due to mortgage payments and expenses the portfolio runs at a loss, that Praveen Kumar Vij has loaned personal funds to support the operation and that any rent repayment would have to be funded through further borrowing. However no evidence has been put forward as to the capital value of the portfolio or the value of the equity in the properties within the settlement trust. In these circumstances the tribunal makes no adjustment for the financial circumstances of the landlord.

31. On the issue of whether the landlord has been convicted of an offence to which Chapter 4 of the 2016 Act applies, there was no evidence before the tribunal of any conviction or financial penalty in relation to the failure to license the Property, nor has there been a conviction on any other matter. The tribunal makes no adjustment therefore under section 44(4)(c).
32. Overall therefore the tribunal considers it appropriate to make a rent repayment order against the Respondents in the total sum of £3,906, to be divided equally between the three Applicants.

S Moorhouse
Tribunal Judge

Schedule

Housing and Planning Act 2016

Section 40

(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).....

(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.

The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 “control or management of unlicensed HMO”

Section 72(1) provides: (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.

Section 72(5) provides: In proceedings against a person for an offence under subsection (1) 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)

Section 41

(1) A tenant.....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.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (whether or not the landlord has been convicted).

Section 44

(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.

The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.

(3) The amount that the landlord may be required to pay 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.