



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

Case Reference : **MAN/00CJ/HMK/2023/0001**

Property : **112 Tosson Terrace,
Newcastle upon Tyne NE6 5LW**

Applicant : **Mr Andras Adok**

Respondent : **Mr Mohammed Nasir**

**Respondent's
Representative** : **Mincoffs Solicitors LLP**

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

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

Date of Decision : **24 October 2023**

DECISION

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DECISION

The tribunal makes a rent repayment order against the Respondent in favour of the Applicant in the sum of £4,200.

REASONS

The Application

1. By an application dated 24 January 2023 ('the Application'), the Applicant seeks a Rent Repayment Order pursuant to section 41(1) of the Housing and Planning Act 2016 ('the 2016 Act') in relation to his tenancy at 112 Tosson Terrace, Newcastle upon Tyne NE6 5LW ('the Property'). The Respondent Mr Mohammed Nasir was the Applicant's landlord.
2. Pursuant to directions short statements of case and accompanying documents were submitted on behalf of both parties. A hearing was arranged for 9 October 2023 which was changed to a video-hearing a few days in advance with the concurrence of the Applicant owing to difficulty in booking an Hungarian interpreter. On the day various technical difficulties were encountered by the Applicant however the hearing proceeded, albeit 45 minutes late, with a satisfactory audio connection and with the benefit of the interpreter.
3. The Respondent and his representative chose not to attend the hearing because it was not in issue that an offence had been committed and submitted further brief written comments 'in mitigation' on the morning of the hearing. These were admitted by the tribunal and the Applicant commented on these during the hearing, with the assistance of the interpreter.
4. The Tribunal considered it unnecessary, in view of the matters in issue, to conduct an inspection and was content that proceeding with the hearing in the manner that has been described was in the interests of fairness and justice in accordance with the overriding objective of the tribunal set out at Rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
5. Following the hearing the tribunal issued Directions requiring the Applicant to confirm the position concerning any Housing Benefit or Universal Credit (Housing Component) received during the relevant period. The Applicant did not have the requisite information available to answer the tribunal's question in this respect during the hearing. The tribunal went on to reach its decision once it received the Applicant's response to this further direction.

The Law

6. 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.
7. Section 40 identifies the relevant offences, including an offence under Section 95(1) of the 2004 Act (control or management of unlicensed house). Section

95(1) provides that an offence is committed if a person is a person having control of or managing a house required to be licensed under that Part of the Housing Act 2004 which is not licensed. That 'Part' relates to selective licensing schemes for houses other than those in multiple occupation.

8. 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.
9. 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

10. 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)
11. Row 6 in the table describes an offence under section 95(1) of the 2004 Act, generally described as the control or management of an unlicensed house. The Tribunal finds (beyond reasonable doubt) that an offence under Section 95(1) of the 2004 Act was committed. This is not in issue between the parties. The Applicant is not aware of the Respondent committing any of the other offences described in the table, nor is there any evidence before the tribunal to suggest that he has. Having determined that an offence under section 95(1) of the 2004 Act was committed, the Tribunal finds that the requirements of section 41(1) of the 2016 Act have been met.
12. It is not in issue between the parties that the Property was let to the Applicant at the time of the offence, and that the Respondent failed to apply for the necessary licence. The tribunal established independently that selective licensing requirements for the area were introduced on 6 April 2020. The tribunal finds that the tenancy commenced on 17 January 2018, as per the copy of the tenancy agreement supplied, therefore it was unnecessary to apply for a licence at the time of the letting, this requirement arose later. The tribunal accepted the Applicant's oral evidence that the tenancy ended on 15 December 2022, the date he moved out according to copies of phone messages supplied by the Applicant. The Application was therefore submitted within 12 months after the tenancy expired and the tribunal finds that the requirements of section 41(2) of the 2016 Act have been met. Accordingly, the Applicant was entitled to make the Application
13. 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.

14. 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.
15. 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.
16. 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 determines that for the period 6 April 2020 to 15 December 2022 the Applicant was a tenant at the Property and the selective licensing requirements had been introduced but not been met. The tribunal accepted the Applicant's oral evidence that the rent had been £650 pcm initially, rising to £700 pcm from 17 September 2021. It was not in issue that the rent had been paid and the £700 figure had been raised in the papers and not disputed by the Respondent.
17. Whilst it was acknowledged by the Applicant at the hearing that he had been in receipt of Housing Benefit or the Housing Component of Universal Credit, in response to the tribunal's further direction in this respect documentary evidence was submitted to show that this pre-dated the last 12 months of the Applicant's tenancy. The tribunal considered it to be in the interests of fairness and justice, in accordance with Rule 3 of its procedure rules, to calculate the 12 months rent referred to at section 44(2) of the 2016 Act by reference to the last 12 months of the tenancy, i.e. the period 16 December 2021 to 15 December 2022. The rent throughout this period was £700 pcm, giving a total rent of £8,400.
18. The tribunal finds, based on the oral evidence of the Applicant, that no element of these rental payments represented utility costs.
19. 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 the offence in the present case related to a self-contained flat occupied by a single family as their home. The tribunal also took into consideration its finding that at the time of letting there was no licensing requirement. The Respondent runs a restaurant and although there is mention that he owns other investment property there is no evidence that he is a professional landlord or the owner or manager of an extensive portfolio. Additionally, there is no evidence to suggest that the Property was dangerous or unsafe, although there were no gas safety certificates, electrical safety report or fire alarm checks during the tenancy. Issues with the shower and boiler were addressed once they were reported and gas and electrical safety documents were supplied to the tribunal, albeit post-dating the Applicant's occupancy.

20. Taking all of these factors into account the tribunal considered it appropriate to apply a 50% adjustment to the total rent of £8,400, giving a potential rent repayment of £4,200.
21. 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.
22. In relation to tenant conduct, the tribunal finds no misconduct. In relation to landlord conduct, as has previously been noted, the flat was not subject to licensing at the time of letting, the Respondent did not arrange the necessary safety checks but there is no evidence that the Property was unsafe, documents have subsequently been obtained and issues raised by the Applicant were addressed. Whilst the Applicant submits that the level of viewings endured by his family when the Respondent put the Property on the market for sale was unreasonable, he was unable to give a clear response to the tribunal's questions as to the frequency or volume of these. In these circumstances the tribunal makes no adjustment for tenant or landlord conduct.
23. The tribunal has no information as to the Respondent's financial circumstances and has no reason to believe the Respondent would be unable to fund a rent repayment.
24. 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).
25. Overall therefore the tribunal considers it appropriate to make a rent repayment order against the Respondent, in favour of the Applicant, in the sum of £4,200.

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 6 an offence contrary to s95(1) of the Housing Act 2004 “control or management of unlicensed house”

Section 95(1) provides that an offence is committed if a person is a person having control of or managing a house required to be licensed under that Part of the Housing Act 2004 which is not licensed.

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 6 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.