



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

Case reference: MAN/00CA/HMF/2023/0003

Property: Flat 1, 12 Victoria Road, Waterloo, Sefton,
Liverpool, L22 1RP

Applicant: Mark Mayhew

Respondent: Helen Raw

Type of Application: Application for a rent repayment order
under Section 41 of the Housing and Planning
Act 2016

Tribunal Members: Judge J.M. Going
I. James MRICS

**Date of Hearing
and Decision:** 1 December 2023

Date of Reasons: 4 December 2023

DECISION AND REASONS

The Decision, which was given orally at the hearing, is that it has not been proved that the property required a licence during the relevant period. Accordingly, the Tribunal has no jurisdiction to make a rent repayment order and, the Application is rejected.

The Tribunal also decided that there should be no order for costs.

Background

1. By an Application (“the Application”) dated 30 January 2023 the Applicant (“Mr Mayhew”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”) in respect of rents paid to the Respondent (Ms Raw”) as the landlord of the property.
2. The Tribunal issued Directions to both parties on the 14 March 2023 setting out the issues for it to consider, confirming how they should prepare, and timetables for the provision of relevant documents.
3. The documents supplied by Mr Mayhew included representations, copies of his Assured Shorthold Tenancy Agreement, bank statements, a tenancy deposit protection certificate, emails, screenshots, letters, a schedule, and reports on and photographs of issues relating to the property.
4. Ms Raw provided her response, together with copies of advice from Sefton Council as to when a mandatory licence would be required, plans and gas safety records.
5. A Full Video Hearing was held on 1 December 2023.

The Property

6. The property is a ground floor flat within a 2/3 storey Victorian townhouse which has been converted into 6 flats. A description from the case papers states that “The internal entrance is off a common landing and the property includes a hallway, front bedroom, living room, kitchen and the bathroom off the kitchen at the rear”. It also has a cellar.

Facts and chronology

7. None of the following matters, which are evident from the papers, have been disputed.
8. The Assured Shorthold Tenancy of the property began on 24 January 2020 and referred to a term of a “Minimum of 6 months – monthly rolling thereafter” stating “it has been agreed between tenant and landlord that the tenant pays six months’ rent in advance, totalling £3570... Thereafter, rent is payable in advance and due on the 10th day of each month by standing order...”

9. Copies of Mr Mayhew's bank statements show that after the payment of the deposit and the initial six months' rent, and payments for July, August and September 2020, he then made consecutive monthly rental payments of £595 to Ms Raw from October 2020 up to and including November 2022. There is no payment shown in December 2022, but a further payment was made on 9 January 2023.

Mr Mayhew's written submissions

10. Mr Mayhew stated that the grounds for making the application were "control or management of an unlicensed HMO" i.e. House in Multiple Occupation.

11. His case papers included copies of 3 screenshots:

- the first, (but not clearly dated) of the Public Register referring to Ms Raw and 12 Victoria Road, Waterloo where the status is quoted as being "Not licensed – application under review".
- the second, of an email from D Campbell, a Senior Housing Practitioner in the Housing Standards team of Sefton Council dated 19 January 2023 stating (inter alia) "I can advise that our team has received an "Additional Licence" application which is currently being processed...", and
- the third, (again not apparently dated) headed Search Public Register – Register of Housing Licences referring to a postcode search showing "No matching results found for L22 1RP".

12. Mr Mayhew also provided a copy of or extracts from a report presumed to have been completed by an Environmental Health officer with the Council following an inspection on 13 December 2022 which had identified various issues relating to gutters and damp. It concluded "the flat appears severely damp due to the unresolved disrepair issues, which have caused extensive damp conditions in the bedroom and living room. Though the flat on the surface appears reasonable there are obviously serious health implications for continuing living in such damp conditions".

Ms Raw's written submissions

13. Ms Raw stated in an email dated 18 May 2023 (inter alia) "I'm afraid Mr Mark Mayhew has not told the truth about the flat rental. I have emails from Sefton council stating that they have no problem over the condition Mark had complained about and do not wish to visit the property anymore. He has falsely accused me so many times to exchange for reduction of rent.... I have not increased rent since he moved in January 2020. I refused his request for rent reduction because he complained there was a damp patch. I offered to repair but he refused access. Mark has wasted so many people time with his groundless accusations..."

14. She provided a copy of Sefton Council's online description of when "a property must be licensed under the mandatory licensing scheme if it has:

- 5 or more occupants (who comprise two or more separate family units or "Households")
- Shared amenities such as bathroom, kitchen, or toilet facilities where all the units of accommodation are not fully self-contained..."

15. In support of her submission that the individual flats within 12 Victoria Road are all self-contained she provided plans and copies of a separate “Domestic Landlord Gas Safety Record” report for each of the 6 flats.

16. She confirmed that the property did not require a mandatory HMO licence being “a self-contained flat with no shared kitchen bathroom or wc”, “rented to one person from one household”, and submitted that the application should be dismissed because it did not “show any details of any alleged offence”.

Mr Mayhew’s response

17. Mr Mayhew referred to Ms Raw’s email of 18 May 2023 as “defamation of character” and referred to his claim that the property is unfit for human habitation and that Ms Raw had “already tried to take me to court under the section 8 notice proceedings which was discontinued”. He also included copies of a letter of claim relating to housing conditions dated 13 March 2023 from his solicitors, Cook Legal, a draft expert witness report on the condition of the property prepared at their request, various photos, and a Notice dated 11 May 2023 of the discontinuance of a claim made by Ms Raw in the Liverpool County Court.

18. Mr Mayhew also later submitted partial copies of emails from Sefton Council and a redacted copy of a letter issued on 3 October 2023 referring to its assessment of 12 Victoria Road using the Housing Health and Safety Rating System and detailing the need to take steps to remove or reduce the hazards which it had identified.

The Hearing

19. Mr Mayhew represented himself. Ms Raw was also in attendance and represented by her solicitor, Mr Green.

20. The beginning of the hearing was delayed because of internet connectivity issues.

21. The Tribunal began by thanking the parties for their written submissions which had been carefully considered, and by explaining the limits of its jurisdiction.

22. Both Mr Mayhew and then Mr Green were asked to and made opening submissions.

23. There was no dispute as to the terms of the tenancy agreement, or of Mr Mayhew’s payments of rent as detailed in the papers.

24. The description of the property was confirmed, and it was readily agreed that it is a self-contained flat with exclusive use of its own toilet, personal washing facilities and cooking facilities.

25. Mr Mayhew’s confirmed that he has been the sole permanent occupier of the property, with his children visiting at weekends, and that there was no question of it being occupied other than by a single household.

26. The Tribunal alluded to the relevant, albeit not always easy to understand, statutory definitions of a HMO explaining that not all HMOs are required to be licensed, and that its focus needed to be on whether it had been shown, beyond all reasonable doubt, that the property required a HMO licence during any part of the 12 months prior to the Application.

27. Mr Mayhew confirmed that he had no other evidence as to the need for a licence, beyond that which had been included within his written submissions, which was then discussed in detail. He confirmed that his belief that the property required a licence prior to the Application had been prompted by advice from a council officer.

28. The Tribunal referred to the distinctions between a mandatory HMO licence (and when one might be required) and a licence required because of a local Additional licensing scheme. The nature of Additional licensing was also referred to.

29. Having ascertained that neither party wanted to make any further submissions or present any further evidence as to the alleged offence, the Tribunal withdrew before returning to give its decision on jurisdiction.

30. Mr Green then made an application for costs. The Tribunal considered that before returning and confirming that there should be no such order.

The Law

31. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

32. The list, repeated in the Directions, includes the offence under Section 72(1) of the 2004 Act of a person having control or managing a HMO which is required to be licenced but is not. Section 72(4)(b) states that it is a defence if, at the material time, an application for a licence had been duly made. Section 72(5) confirms that it is also a defence if he had a reasonable excuse.

33. The law concerning RROs is set out in Sections 40 – 52 of the 2016 Act.

34. Section 41(2) provides that a tenant may apply for a RRO 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.

35. Section 43 of the 2016 Act provides that the Tribunal may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

36. When the Tribunal decides to make a RRO in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

37. 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 the offence (section 44(2)).

38. Section 44(3) confirms that 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 and the tenancy during that period.

39. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it 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 any of the specified offences.

The Tribunal's review and reasons for its decision

40. It is a necessary precondition to the making of any RRO that the Tribunal first satisfies itself, beyond any reasonable doubt, that the property was, at the relevant times, unlicensed when it was required to be licensed.

41. The Tribunal is not satisfied that that is the case.

42. Mr Mayhew's shorthand description of the offence has possibly led him to erroneously assume that all HMOs require to be licensed. Such an assumption would not be correct. Not all HMOs have to be licensed, only those to which Parts 2 or 3 of the Housing Act 2004 ("the 2004 Act") applies.

43. It is hoped that the following explanations assist.

44. Since April 2006 it has been a national legal requirement for specified HMOs meeting certain designated tests to be licensed with a mandatory HMO licence. These initially included houses with 3 storeys, occupied by 5 or more people, living as 2 or more households containing shared facilities such as the kitchen, bathroom and toilet.

45. On 1 October 2018 the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extended, nationwide, the types of buildings requiring a mandatory HMO licence to include those with less than 3 storeys, occupied by 5 or more people, living as more than 1 household, and containing shared facilities.

46. Sections 55- 60 of the 2004 Act also include provisions whereby a local housing authority can, but only after satisfying the necessary statutory requirements, designate a specific area within its district for Additional licensing. Such a designation allows it to then require additional HMOs, other than those already requiring a mandatory licence, to be licensed. An Additional licensing scheme, unless later extended, cannot last for more than 5 years.

47. The only evidence that Mr Mayhew has produced to support his assertion that the property did not have a HMO licence when it should have done are the 3 screenshots which have been previously referred to.

48. What those screenshots show is that an application for an Additional licence had been made but had not by 19 January 2023 been fully processed or decided.

49. In that context, it is important to remember that the defence set out in Section 72(4)(b) confirms that no offence is committed at a time where an application for a licence has been duly made. The screenshots do not prove that an offence was being committed. On the contrary, they are compelling evidence that no offence was being committed on 19 January 2023.

50. The screenshots are also supportive of Ms Raw's contention that the property did not require a mandatory HMO licence, because an Additional licence is only appropriate for HMOs that do not otherwise require a mandatory licence.

51. It is also of note that any Additional licensing scheme is limited to a particular period. Local authorities must go through the required steps before a designation comes into force. It is an essential practical prerequisite of those processes that time is allowed for applications to be made in advance of the start date. Otherwise, all those managing properties requiring an Additional licence would, through no fault of their own, be immediately and inevitably in breach as soon as a scheme comes into force.

52. No written evidence was put before the Tribunal as to the commencement date of the Additional licensing scheme referred to in the screenshot. Nevertheless, because of the nature of the process the Tribunal was always aware of the possibility that when Mr Campbell wrote his email on 19 January 2023 the scheme may not by then have come into force.

53. Subsequent research confirms that to be the case. Sefton Council's website, where the relevant information is publicly available, now refers to it having on 18 October 2022 "approved the designation of an Additional (HMO) Licensing scheme for privately rented "Houses in Multiple Occupation" within parts of Seaforth, Waterloo, Brighton -le- Sands and Southport" and that "the designation came into effect on 1 March 2023 and will last for a period of five years up to 29 February 2028."

Conclusions and determination

54. In summary, the Tribunal found no compelling evidence to support the assertion that Ms Raw required a HMO licence at the relevant times.

55. Because it has not been shown or proved beyond any reasonable doubt that the alleged offence has been committed, the Tribunal has no jurisdiction to make a rent repayment order. Consequently, the Application must be rejected.

Costs

56. As was explained, the Tribunal is first and foremost a “no costs” jurisdiction; there is no general rule that an unsuccessful party will be ordered to pay the costs of the successful party; the Tribunal’s jurisdiction derives from rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and is limited to where a person has acted unreasonably in bringing, defending or conducting proceedings.

57. The finding of some “unreasonable” conduct is therefore an essential precondition to the power to order costs, and where the test is whether the conduct permits of a reasonable explanation.

58. The Tribunal accepts that it was not unreasonable for Mr Mayhew to believe that the property required licensing based on his understanding of discussions with council officers.

59. It had no difficulty in concluding that, whilst and in the event the Application has been found to have been misconceived, Mr Mayhew did not act unreasonably in firstly bringing or thereafter in conducting the proceedings.

60. The Tribunal decided therefore that there should be no order for costs.

Tribunal Judge J Going
4 December 2023