



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

Case Reference	:	CHI/00HB/HMF/2023/0020
Property	:	22 Robertson Road, Bristol, BS5 6JY
Applicant	:	William John Osbourne Daniel Enrique Callejo
Representative	:	Represent Law Ltd
Respondent	:	Elite Properties Bristol Ltd
Type of Application	:	Application for a rent repayment order by Tenant Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016
Tribunal members	:	D Banfield FRICS, Regional Surveyor C Davies FRICS Mrs J Playfair
Date and place of Hearing	:	25 January 2024 at Havant Justice Centre and online
Date of Decision	:	31 January 2024

DECISION

The Tribunal makes a rent repayment order in the rounded sum of £6,160.00 for the rent paid for the 12 month period ending on 30 June 2022.

The Tribunal makes an order that the Respondent shall within 28 days of this Order reimburse the Applicant with the hearing and application fees in the sum of £300.00.

Background

1. On 29 June 2023, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The amount claimed is £7,800.00 (£650.00 per month) for the period 30 June 2021 to 30 June 2022.
2. The Applicant states that the property in question was licensed as an additional HMO during the period of the Applicants' occupation which permitted 4 occupiers but the property was occupied by 5 or more persons in 2 or more households.
3. The Applicant provided its' grounds for the application in the additional statement along with supporting documentation. A copy of an email chain has been provided between the Applicant's representative and Bristol City Council stating that a licence was issued on 29 November 2017, the licence permitted 4 occupants and expired on 28 November 2022. It also states that a licence application for 5 occupants was submitted on 6 April 2023.
4. The Tribunal sent the Respondent a copy of the application with supporting documents.
5. The Tribunal will decide (a) whether to make a rent repayment order and, if so, (b) for what amount.
6. Directions were issued on 21 November 2023 setting a timetable for the exchange of documents preparatory to a final hearing on 25 January 2024.
7. Paragraph 18 of those Directions required the Applicant to submit the bundle for the hearing by 12 January 2024.
8. Paragraph 20 stated 'If the hearing bundle is not sent to the Tribunal by the said date or not in the required format, the Application will be struck out without further notice.'
9. The hearing bundle was not received by the Tribunal by the said date in accordance with the Directions and struck out in accordance with Rule 9 3 (a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
10. Following receipt of the hearing bundle an application to reinstate the application was granted and the arranged hearing proceeded on 25 January 2024.
11. References to page numbers in the bundle are shown as [*]
12. Prior to the hearing the Tribunal examined the Tribunal's correspondence folder and satisfied itself that documents sent to the Respondent had used the correct email address.

Law

13. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.
14. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
15. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
16. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed an offence under the Protection from Eviction Act 1977, the amount must relate to rent paid in respect of the period of 12 months ending with the date of the offence (section 44(2)). However, by virtue of section 44(3), 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 under the tenancy during that period.
17. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:
 - 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 Hearing

1. The hearing took place at Havant Justice Centre with Mr Davies and Ms Playfair together with the parties attending remotely. In attendance was Mr Clark Barrett of Represent Law Ltd, Mr William Osbourne, Mr Daniel Callejo and Ms Laura Mateos.
2. Mr Barrett referred to his skeleton argument and said that the landlord had contravened S. 72(1) of the Housing Act 2004 by letting an HMO to more occupants than the licence permitted.
3. In this case there had been seven occupants whereas the licence was for four.
4. He confirmed that the Applicants had occupied the room from 18 August 2020 until 30 June 2022 at a rent of £650 per calendar month. Throughout that period the property was licensed as an HMO by Bristol City Council for occupation by 4 persons and this was confirmed by the Council in correspondence.[74]
5. The property was not in good order and had problems with the electrical supply, heating breakdowns and rat/mice infestation. Evidence given by Mr Osbourne referred to exposed wires running at floor level through the kitchen and providing a supply to the boiler. Mr Osbourne had seen rats and mice and one dead rat was found. [25]
6. Ms Mateos said that she had brought the matter to the landlord's attention but that no action had been taken.
7. Mr Osbourne was able to confirm that the list of 7 tenants on Ms Mateos' message of 19 May 2021 was accurate and identified the rooms that they occupied. It was confirmed that all occupied the property full time although Mr Shagari visited his family in Nigeria for 20 days or so.
8. Mr Osbourne described the accommodation as a terraced house with 2 bedrooms, a kitchen and bathroom on the ground floor with 3 bedrooms and a bathroom on the first. There was a garden at the rear.
9. Mr Osbourne and Ms Mateos confirmed that the rent they paid included all costs and that this included electricity, gas, water and broadband.
10. Mr Osbourne said that the deposit they had paid had been returned but that it had been confirmed that it had not been placed in one of the Tenancy Deposit Schemes as required. The Tribunal also noted that when a tenancy was first granted it had purported to be a Non Assured Tenancy, a device sometimes employed to avoid the obligation placed on parties to an Assured Shorthold Tenancy.

11. Mr Barrett referred to the Upper Tribunal case of *Williams v Parmar* [2021] UKUT 0244 (LC) in which it was determined that the tribunal could, in an appropriate case, order a lower than maximum amount of rent repayment if the landlord's offence was relatively low in the scale of seriousness.
12. In this case however there was a high level of culpability. The accommodation was in potentially dangerous condition due to the wiring and vermin and this was a corporate landlord who should have been aware of its' responsibilities. Other than a deduction for the cost of services provided the Tribunal should award the maximum.

Decision

13. The Tribunal thanks Mr Barrett and the Applicants for the clear and helpful evidence and submissions. It is regretted that the Respondent was not present to challenge the evidence but that was a matter of their choice.
14. The Tribunal is satisfied that it has sufficient evidence to determine that an offence has been committed under Section 72(1) of the Housing Act 2004 and that a Rent Repayment Order should be made.
15. Turning now to the amount of the order; the Tribunal reminded itself of the Upper Tribunal's decision in *Acheampong v Roman* [2022] UKUT 239 (LC) where Judge Cooke gave the following guidance at paragraph 20: "The following approach will ensure consistency with the authorities:
 - a. Ascertain the whole of the rent for the relevant period.
 - b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available and experienced tribunal will be able to make an informed estimate.
 - c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment made by made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors, but it may be higher or lower in light of the final step.
 - d. Consider whether any deduction from, or addition, to that figure should be made in the light of the other factors set out in section 44(4).

16. Following this guidance the whole of the rent for the period is £7,800. The Respondent has not provided details of costs incurred in providing services and the Tribunal is left with making an estimate of a reasonable sum which it determines as follows;

Gas and Electricity	£5,500.00 pa
Water	£450.00 pa.
Internet	£240.00 pa
Council Tax	£2,000.00
<u>Total</u>	<u>£8,190.00 pa or £1,638 per room per annum</u>

17. Deducting £1,638 from the total rent paid leaves the sum of £6,162 as the maximum amount of any Order to be made.
18. The Tribunal has considered whether any deduction should be made and decided that it should not. The state of repair, exceeding the permitted number of occupants by 3 people and the use of an incorrect tenancy agreement leads the Tribunal to consider that this is a serious offence that should receive the maximum penalty.
19. Taking all of the above into account **The Tribunal makes a rent repayment order in the rounded sum of £6,160.00 for the rent paid for the 12 month period ending on 30 June 2022.**
20. **The Tribunal makes an order that the Respondent shall within 28 days of this Order reimburse the Applicant with the hearing and application fees in the sum of £300.00.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpcsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.

4. 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 the party making the application is seeking.

Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

	<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

Or has a financial penalty¹ been imposed in respect of the offence?

- (i) What was the date of the offence/financial penalty?
- (ii) Was the offence committed in the period of 12 months ending with the day on which the application made?
- (iii) What is the applicable twelve-month period?²
- (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?

¹ s.46 (2) (b): for which there is no prospect of appeal.

² s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (v) Should the tribunal reduce the maximum amount it could order, in particular because of:
 - (a) The conduct of the landlord?
 - (b) The conduct of the tenant?
 - (c) The financial circumstances of the landlord?
 - (d) Whether the landlord has been convicted of an offence listed above at any time?
 - (e) Any other factors?
- 2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

Important Note: Tribunal cases and criminal proceedings

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.