FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/HMF/2022/0003**
Property	**:**	**72- 74 Durning Road Liverpool, L7 5NG**
Applicants	**:**	**Jessica Chew, Fleur Keogh, Ellise Beswick, Joshua Whitehouse, Matthew Dawson, Amy Marsden, Christopher Edgar-Lane, Charlie Barlow, Joseph Mason**
Respondent	**:**	**Trophy Homes Limited**
Type of Application	**:**	**Rent Repayment Order, section 41(1) Housing and Planning Act 2016**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member J Elliott, MRICS**
Date of Decision	**:**	**25 January 2024**

DECISION

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1. The Respondent is Trophy Homes Limited.

2. Rent shall be repaid by the Respondent to the Applicants as follows:

J. Chew	£4,145.50
F. Keogh	£3,099.60
E Beswick	£3,880.80
J. Whitehouse	£4,233.60
M. Dawson	£3,880.80
A. Marsden	£4,233.60
C. Edgar-Lane	£3,880.80
C. Barlow	£3,880.80
J. Mason	£4,233.60

3. The Respondent shall reimburse to each Applicant the application fee of £100.

4. The Respondent shall reimburse the hearing fee of £200 to Justice for Tenants on behalf of the Applicants.

REASONS

THE TENANCIES

1. Between 14 April and 3 July 2020, the Respondent entered into Assured Shorthold Tenancy agreements with the Applicants, granting each of them a tenancy of a bedroom with shared communal facilities at 72 – 74 Durning Road, Liverpool.

2. The tenancies of 5 of the Applicants began on 13 July 2020. The remaining 4 tenancies began on 1st September that year. All the tenancies ended on 28 June 2021. Each applicant agreed to pay a rent of £98 per week. Of this rent, the tenancy agreements stated that 10% represented the cost of electricity, gas and water supplied by the Respondent landlord.

3. Through their representative Justice for Tenants, the Applicants applied under Rule 20 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order for the disclosure of information so as to establish the correct Respondent. A directions order was made on 23 May 2023 requiring the Respondent and West Village Liverpool Limited to provide information regarding their relationship to the property and to each other. No response was received. The Tribunal has determined that Trophy Homes Limited is the correct Respondent because it is named in the tenancy agreements and received rent from the Applicants. Accordingly, the Respondent meets the definition of "person having control" of the property set out at section 263 of the Housing Act 2004 ("the 2004 Act").

4. In July 2021 the Applicants ascertained from Liverpool City Council that the Respondent did not have, and had not applied for, an HMO licence for the property, contrary to s.72(1) of the 2004 Act.

THE LAW

4. Section 41 in Part 2 of the Housing and Planning Act 2016 ("the 2016 Act") enables a tenant to apply to the Tribunal for an order for repayment of rent (RRO) against a person who has committed one of the offences listed, including the offence of controlling or managing an unlicensed HMO.

5. Section 44 of the 2016 Act provides that if the Tribunal decides to make a rent repayment order, the amount to be paid (a) may not exceed the amount of rent received by the Respondent and (b) (at section 44 (4)) shall be determined after taking into account the conduct of the landlord and tenant, the financial circumstances of the landlord, and whether the landlord has been convicted of a relevant offence.

6. Guidance as to calculation of the rent repayment is provided by the case *Robert Hallett v Parker and others* [2022] UKUT 165 (LC) where the Deputy Chamber President at paragraph 22 endorsed the Tribunal's statement in *Rakusen v Jepsen* [2020] UKUT 298 (LC):

   "The policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties".

   This policy is underlined in the official guidance to local authorities, which identifies punishment, deterrence, and deprivation of financial benefits as considerations to be taken into account when assessing the quantum of RROs.

7. *Hallett v Parker* also warns, at paragraph 26: "Tribunals should also be aware of the risk of injustice if orders are made which are harsher then is necessary to achieve the statutory objective." And at paragraph 30: "an order requiring repayment of the full amount of the rent received by a landlord should be reserved for the most serious offences justifying the most exemplary sanction. Where the offence concerned is a failure to licence an HMO…. section 46 indicates that it was not Parliament's intention that the maximum penalty should usually be imposed. Circumstances may exist where such an order may be appropriate (for repeat offending, for example) but they will be the exception, not the rule."

8. In *Acheampong v Roman* [2022] UKUT 239 (LC) Judge Elizabeth Cooke confirmed that payment for utilities, when included in the rent, should normally be disregarded when assessing the amount of a rent repayment order in a case where (as here) the landlord has not been convicted of an offence. She set out the following procedure for assessment of a rent repayment order:

   " 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….

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of 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)."

THE APPLICATION

9. The Applicants applied for an RRO pursuant to section 41 of the 2016 Act in the full amount each of them had paid the Respondent. Each of them provided a witness statement and a schedule of the rent he or she had paid, with supporting documentation. The Respondent made no representations to the Tribunal.

THE HEARING

10. The case was heard by video link. The Applicants were present, save for Ms Keogh and Ms Marsden who were unable to attend. All Applicants were represented by Mr Neilson of Justice for Tenants. A comprehensive bundle of documents was supplied. Each of the Applicants present confirmed the truth of his or her statement, and the truth of the written evidence of Ms Keogh and Ms Marsden was accepted by the Tribunal.

11. Mr Neilson argued that subtraction of sums paid for utilities was in the discretion of the Tribunal. He said that "rent" meant the full amount of rent payable by the tenants and that there should be no deduction of sums paid for utilities in this case due to the exceptionally poor conduct of the Respondent.

12. The evidence seen by the Tribunal included a video tour of the property and a recording of a conversation Mr Whitehouse and other Applicants had had with an engineer from United Utilities who attended the property to examine and advise on the inadequate provision of hot water throughout the house. Also

provided were floor plans and photographs of the exterior and interior of the property.

FINDINGS

13. No defence having been raised by the Respondent, a section 72(1) offence has been committed.

14. Although failure to obtain an HMO licence can be regarded as less serious than other offences to which section 44 of the 2016 Act relates, in this case such a failure is exceptionally serious for the following reasons:
    (1) The Respondent is a repeat offender. Mr Neilson drew the Tribunal's attention to four other First-tier Tribunal cases, decided in 2019 and 2020, in which RROs were made against the Respondent. Further RRO claims were made in 2022 and 2023.
    (2) The Respondent failed to provide a safe property with adequate facilities for the tenants. The property would have required considerable improvement before it qualified for an HMO licence. In particular
    - Mice and rats were seen and heard in the property;
    - The hot water system was seriously inadequate so that not more than one hot water outlet could be used simultaneously;
    - Window coverings were inadequate;
    - Internal doors were flimsy, to the extent that the door handles failed;
    - Kitchen space and equipment was inadequate for use by 9 people;
    - Living room furniture was minimal, with insufficient seating for 9 tenants;
    - Fire safety measures were missing or inadequate: interior doors were not fire resistant, escape routes were not protected and there was no automatic fire detection system;
    - No gas safety certificate was provided.
    - Some of the bedrooms were particularly damp and cold.
    - The drains were defective.

    In numerous respects the property failed to meet the standards set out in guidance issued as part of the Housing Health and Safety Rating System.
    (3) Without informing the Applicants, the Respondent permitted strangers to remain living in the property at the start of the Applicants' tenancy,

although the property was let to the Applicants as a group of friends. These strangers, once moved into nearby accommodation, were permitted by the Respondent to continue to access the property and to use facilities within it.

(4) The Respondent failed promptly to secure the property against entry following a burglary in which the front door keys were stolen.

(5) The Respondent allowed utility bills to be addressed to one of the Applicants (Mr Whitehouse). These indicated that substantial sums were owed, and caused considerable anxiety.

15. The Respondent deliberately avoided its statutory obligations and cynically took advantage of the Applicants in cutting costs and providing substandard accommodation. In view of similar cases brought against the Respondent this appears to be a settled policy.

16. The rent included £9.80 per week per tenant for the provision of electricity, gas, water and internet access. The Respondent did not benefit from this element of the rent, which is therefore deducted.

17. The Tribunal has no information regarding the Respondent's financial circumstances.

18. There has been no adverse conduct on the part of the Applicants.

19. It is appropriate to order repayment of the entire rent (net of the service element) paid by the Applicants. The assessment for each Applicant according to *Acheampong v Roman* is

Applicant	Rent paid £	Less 10% service charge	Seriousness of offence/Respondent's conduct as % of rent	Any additional +/- factor?	Amount to be repaid £
J. Chew	4,606	4,145.50	100%	no	4,145.50
F. Keogh	3,444	3,099.60	100%	no	3,099.60
E Beswick	4,312	3,880.80	100%	no	3,880.80
J. Whitehouse	4,704	4,233.60	100%	no	4,233.60
M. Dawson	4,312	3,880.80	100%	no	3880.80
A. Marsden	4,704	4,233.60	100%	no	4,233.60

C. Edgar-Lane	4,312	3,880.80	100%	no	3,880.80
C. Barlow	4,312	3,880.80	100%	no	3,880.80
J. Mason	4,704	4,233.60	100%	no	4,233.60
Total					**35,469.10**

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