



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

Case Reference : **CHI/00HN/HMF/2023/0019**

Property : **11 Carlton Road, Bournemouth, BH1
3TF**

Applicant : **Kimberley Riolo**

Respondent : **Dale Rickard**

**Type of
Application** : **Application for Rent Repayment Order
under the Housing and Planning Act
2016**

Tribunal Members : **Tribunal Judge H Lumby
Mr M J F Donaldson FRICS
Ms J Dalal**

Venue : **Havant Justice Centre (via VHS)**

Date of Hearing : **15th February 2024**

Date of Decision : **2nd April 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal orders the Respondent to repay to the Applicant the sum of £864.29 by way of rent repayment.
- (2) The tribunal also orders the Respondent to reimburse to the Applicant one half of each of the application fee of £100 and the hearing fee of £200 (amounting to £150 to be reimbursed in total).

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Respondent was controlling and/or managing an HMO which was required to be licenced under Part 2 of the Housing Act 2004 (“**the 2004 Act**”) at a time when it was let to the Applicant but was not so licensed and that he was therefore committing an offence under section 72(1) of the 2004 Act.
3. The application also referred to an offence under section 1 (2), (3) or (3A) of the Protection from Eviction Act 1977 and a failure to comply with an Improvement Notice in breach of section 30(1) of the 2004 Act. It further referred to other grounds, being that the garden was used as a tip, there was no working fridge and freezer and encounters with bailiffs.
4. The Applicant’s claim is for repayment of rent and bills paid during the period from 4 August 2022 to 17 June 2023, amounting to £5,222.
5. The tribunal was provided with a bundle running to 75 pages. Two days before the hearing, the Respondent applied for the admission of further evidence, comprising a response to the Applicant’s statement of case together with supporting evidence, consisting of photographs of the Property and utilities information. This was considered by the tribunal at the start of the hearing who agreed to its admission, with the consent of the Applicant. The contents of all these documents were noted by the tribunal.
6. The hearing was conducted using the VHS video service. Each of the Applicant and the Respondent joined in this manner. No one else was in attendance.

Relevant statutory provisions

7. The relevant statutory provisions are set out in the Schedule to this decision.

Alleged Offences

House in Multiple Occupation

8. The parties agree that the Property comprises a five bedroom house with one shower room, two separate toilets and a kitchen. There is no lounge area but there is a small garden.
9. The Applicant rented a room in the Property from 4 August 2022 until 17 June 2023. The amounts she says that she paid during that time are not disputed by the Respondent.
10. The Applicant argues that the Property was an unlicensed HMO on the basis that it was rented to five or more people who form more than one household. It is accepted that the tenants shared toilet, bathroom and kitchen facilities and that the Applicant paid rent. The Respondent accepts that he did not have an HMO licence at any time during the Applicant's occupation of part of the Property.
11. The dispute between the parties was in relation to the dates when there were five or more people in occupation. The Respondent accepted that there were at least five people in occupation between 12 August 2022 and 1 December 2022. The Applicant accepted that there were not five people in occupation after that date.
12. The Respondent therefore accepted that he was controlling and/or managing an HMO which was required to be licensed under Part 2 of the 2004 Act but was not so licensed between 12 August 2022 and 1 December 2022 and that he was therefore committing an offence under section 72(1) of the 2004 Act during that period. By admitting the offence, the tribunal determines beyond all reasonable doubt that an offence was committed and this occurred between those dates.

Protection from Eviction

13. The Applicant also claimed that there was a breach of the Protection from Eviction Act 1977. She cited as evidence the fact that when she first moved in, the oven did not work for around four or five months. She also encountered various bailiffs who visited the Property seeking to recover monies owed by a previous tenant. She was told by the bailiffs to produce her contract and she asked the Respondent for assistance. She contends that the Respondent refused to assist, saying that the bailiffs had no right

to enter. As a result, she gave her notice, arguing that she was indirectly evicted by the Respondent not helping her.

14. The Respondent denied that the Applicant was harassed or evicted from the Property. The issue with the oven was at the start of the tenancy, it was difficult to find a replacement because it was not a standard size but was replaced within three months. In the meantime, the tenants could use the top of the cooker and the grill. On the issue of the bailiffs, he denies refusing to assist. He argued that the Applicant had a copy of her contract (she included it in the bundle) but that he had explained that the bailiffs did not have a right to take property belonging to others or of unknown ownership. The Respondent contended that the bailiffs had been given the wrong address.
15. The tribunal finds no evidence of harassment or any form of eviction by the Respondent. The oven issue was at the beginning of the tenancy and the Applicant did not leave as a result. The bailiffs were not sent by the Respondent and were not his responsibility. His argument that they could not take the Applicant's property was correct. As a result, it finds that the Respondent has not committed an offence under the Protection of Eviction Act 1977 and so dismisses the claim for a rent repayment order on this ground.

Other grounds

16. The Applicant has not provided evidence that an Improvement Notice was served in relation to the Property. She accepted this and withdrew her claim for a rent repayment order on this ground.
17. The Applicant had mentioned various other matters in her application to the tribunal but accepted that these did not constitute grounds for a rent repayment order to be made.

Consideration of grounds

18. The Respondent has accepted that he committed an offence under section 72(1) of the 2004 Act between 12 August 2022 and 1 December 2022. The tribunal is satisfied beyond all reasonable doubt that the offence was committed and that the relevant dates when the offence was committed were between 12 August 2022 and 1 December 2022.
19. The other grounds contended for the making of a rent repayment order in the Applicant's application have either been withdrawn or dismissed.

Reasonable excuse

20. Accordingly, having established the ground for potentially making a rent repayment order, the tribunal considered whether the Respondent had a reasonable excuse for committing the offence. This would operate as a defence to the claim and mean that a rent repayment order could not be made.
21. The Respondent explained that he had not applied for an HMO licence as he thought it applied to properties containing more than five separate households. He had read about HMOs generally but was not a professional landlord; this was the only property he rented out. He has no prior convictions.
22. The tribunal considered the Upper Tribunal guidance on what amounts to a reasonable excuse defence in the cases of *Marigold & ors v Wells* [2023] UKUT 33 (LC) and *D'Costa v D'Andrea & ors* [2021] UKUT 144 (LC). The offence in question here is managing or controlling an HMO without a licence, not the failure to apply for a licence. Mistake as to what constitutes an HMO will rarely if ever amount to a reasonable excuse, although may impact on the level of any subsequent rent repayment order.
23. As a result, the tribunal finds that the Respondent does not have a reasonable excuse to the offence.

Rent Repayment Order

24. Section 43 of the 2016 Act provides that where a tribunal is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, it may make a rent repayment order. The tribunal does therefore have a discretion as to whether to make an order although it has been established that it would be exceptional not to make a rent repayment order (*Wilson v Campbell* [2019] UKUT 363 (LC)).
25. In this case, the tribunal is satisfied beyond reasonable doubt that an offence has been committed and that there is no reasonable excuse for the offence. It does not consider that there are any exceptional circumstances preventing it making an order and therefore determines that a rent repayment order should be made.

Submissions on quantum

26. Having determined that a rent repayment order should be made, the tribunal next considered the quantum of such order.
27. The Applicant argued that the full rent paid by her for the period 12 August 2022 to 1 December 2022 should be repaid to her. She accepted that no repayment should be made in respect of other periods during her tenancy. She believed she should have a full repayment as a result of the

harassment she alleged she had received; she referred to the broken oven and to the Respondent entering the Property without telling her in advance (she accepted that he was entitled to do this as it was his house and he occasionally stayed in the spare room). She accepted that amounts paid towards energy costs were not repayable.

28. The Respondent said that he did not have full time employment but was living off his savings whilst he sorted out his late parents' affairs. He tried to provide good accommodation for his tenants and was sorry she felt there were issues with it. He always tried to be courteous to his tenants but did say that the Applicant had used some very abusive language to him on occasion. This was apparent from emails in the bundle.
29. The Applicant acknowledged that she had used abusive words and apologised for this, saying that she should not email when angry.

Method of assessing quantum

30. Section 46 of the 2016 Act specifies circumstances where a tribunal is obliged to make a rent repayment order in the maximum amount (subject to exception circumstances). These do not apply where the tenant is seeking to rely on offences under section 72(1) of the 2004 Act, as is the case here. The tribunal therefore has discretion as to the percentage of the rent it can order be repaid.
31. Section 44 of the 2016 Act specifies the factors that a tribunal must take into account in making a rent repayment order. This has been qualified by the Upper Tribunal in guidance given in the case of *Acheampong v Roman* [2022] UKUT 239. That guidance is summarised as follows:
 - (i) ascertain the whole of the rent for the relevant period;
 - (ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;
 - (iii) consider how serious the 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?
 - (iv) finally, 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), namely the matters the tribunal must 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 identified in the table at section 45 of the 2016 Act.

Tribunal assessment of quantum

- 32. The tribunal calculated that the period when the offence had occurred (12 August 2022 to 1 December 2022) amounted to 15 weeks and 5 days. The Applicant paid rent at the rate of £100 per week. Accordingly the rent paid for the relevant period amounted to £1571.43.
- 33. There were no utilities to deduct from this as they were billed separately. Payments for utilities were outside the scope of a rent repayment order and so the separate payments for these should not be taken into account in ascertaining the total paid for the relevant period.
- 34. The tribunal did not consider that the offence was a serious one, compared to the other offences in respect of which a rent repayment order could be made. It had occurred inadvertently, due to a misunderstanding of the law. He was not a professional landlord.
- 35. The tribunal considered the conduct of the Respondent and the Applicant. The tribunal found no evidence of poor conduct by the Respondent and did not accept the Applicant's arguments of harassment. It noted the abusive emails sent by the Applicant. It also considered the Respondent's financial circumstances and noted that this was his principal income at present and that he was otherwise living off his savings. Finally, the tribunal noted that he had not been convicted of an offence identified in the table in section 45 of the 2016 Act (which is set out in the Schedule to this decision).
- 36. Taking all these factors into account, the tribunal determined that the amount payable by the Respondent should be reduced by 45%, leaving the amount to be repaid as £864.29.

Tribunal determination

- 37. The tribunal determines that it is satisfied beyond all reasonable doubt that the Respondent was controlling and/or managing an HMO which

was required to be licenced under Part 2 of the 2004 Act but was not so licensed between 12 August 2022 and 1 December 2022 and that he was therefore committing an offence under section 72(1) of the 2004 Act during that period. It also determines that the Respondent had no reasonable excuse for that offence.

38. The tribunal has determined that it should make a rent repayment order for it and has calculated the quantum of that order as £864.29.
39. Accordingly, the tribunal orders the Respondent to repay to the Applicant the sum of £864.29 by way of rent repayment.

Cost applications

40. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100.00 and the hearing fee of £200.00.
41. As the Applicant has been partially successful in this claim, the tribunal is satisfied that some level of reimbursement of these fees should be made. However, it notes that the offence committed was an inadvertent one and that the Applicant also pursued her application on different grounds that were not successful. The tribunal therefore concludes that these fees should be split between the parties in equal proportions.
42. The tribunal therefore orders the Respondent to reimburse to the Applicant one half of each of the application fee of £100 and the hearing fee of £200 (amounting to £150 to be reimbursed in total).

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 rpsouthern@justice.gov.uk
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.

SCHEDULE

Relevant statutory provisions

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 ...
- (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.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO

6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41

- (1) A tenant or a local housing authority 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 satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) ...

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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

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

Housing Act 2004

Section 95

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part ... but is not so licensed.
- (4) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1)