



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

Case References : **MAN/00BN/HMF/2023/0012**

Premises : **39 Ruskin Avenue, Manchester, M14 4DP**

Applicants : **(1) Rosemary Jane Tiffin
(2) Fredrick Louis Jones
(3) Stephanie Gabriella Jolliffe
(4) Niamh Maisie Collins
(5) Charlotte Elizabeth Maund
(6) Cinta Eldo**

Respondents : **(1) Asim Shahzad
(2) Aroon Shaheen Khan
(3) Ahmed Khokhar**

Type of Application : **for a Rent Repayment Order under s.41(1) of
the Housing and Planning Act 2016**

Tribunal Members : **Judge P Forster
Mr J Faulkner FRICS**

Date of Decision : **26 March 2024**

Decision

The Tribunal is satisfied beyond reasonable doubt that the Respondents, Asim Shahzad, Aroon Shaheen Khan and Ahmed Khokhar committed an offence under s.72(1) of the Housing Act 2004.

The Tribunal makes a Rent Repayment Order under s.41(1) of the Housing and Planning Act 2016 and orders the Respondents to pay to the Applicants, (1) Rosemary Jane Tiffin (2) Fredrick Louis Jones (3) Stephanie Gabriella Jolliffe Niamh Maisie Collins (5) Charlotte Elizabeth Maund and (6) Cinta Eldo each the sum of £2,220.00.

Introduction

1. The Applicants, (1) Rosemary Jane Tiffin (2) Fredrick Louis Jones (3) Stephanie Gabriella Jolliffe (4) Niamh Maisie Collins (5) Charlotte Elizabeth Maund and (6) Cinta Eldo applied to the Tribunal for a Rent Repayment Order (“RRO”) under s.41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The Applicants were the tenants of 39 Ruskin Avenue, Manchester, M14 4DP (the Premises) under an assured shorthold tenancy agreement dated 7 March 2022 for a fixed term of 12 months from 28 August 2022 to 27 August 2023 at a rent of £3,120.00 per month. The rent payable per person per month was £520.00. The rent included charges for water, electricity and broadband.
3. The 1st and 2nd Respondents, (1) Asim Shahzad and (2) Aroon Shaheen Khan purchased the Premises on 26 August 2022. They replaced the previous owner of the Premises as the landlord under the 2022 tenancy agreement. The 3rd Respondent, Ahmed Khokhar, of Buraq Estates, was the managing agent.
4. The Tribunal issued directions on 22 June 2023 and identified the issues to be considered. The parties were directed to provide full details of their case together with supporting documentation. The Tribunal directed that the application should be determined after a video hearing. The hearing was conducted by video on 26 March 2024. The Applicants were represented by Ms Tiffin and the Respondents by Mr Khokhar.

The Applicant’s case

5. The Applicants say that the Premises is a house in multiple occupation and was required to be licenced under s.61 of the Housing Act 2004. The previous licence issued on 23 January 2017 was for a period of 5 years between 23 January 2017 and 22 January 2022. The Applicants submit that the Premises was unlicensed when the 1st and 2nd Respondents purchased the Premises on 26 August 2022. It is said that the

Respondents did not apply for a new licence until 8 March 2023 and that a new licence was not issued until 12 June 2023 for the period 22 May 2023 to 21 May 2026. It is claimed that the Premises was unlicensed from the start of the tenancy agreement. The Applicants ask for RROs to the date of a successful licence application. It is submitted that the Respondents committed an offence under s.72(1) of the 2004 Act during the period the Premises was unlicensed.

6. The Applicants provided information about the state of the Premises and the conduct of the Respondents to be viewed as evidence of poor conduct on the part of the landlord.
7. The Applicants say that it is relevant to take into account the Respondents' conduct. They complain about a leak in October 2022 in a top floor bedroom ceiling. It is claimed that it was difficult to communicate with the Respondents and that they were slow in responding to the problem. It is stated that it took between three and four weeks to resolve matters. The Applicants complain that they were without hot water for about a week and again that the Respondents were slow to deal with the problem. Mention is made of the fire alarms which tripped on a number of occasions. Complaint is made about unannounced visits or the failure of contractors to attend as arranged.
8. Each of the Applicants seek to recover the rent they paid between the start of the tenancy on 28 August 2022 and the date of the successful application for a licence. They accept that the cost of the utilities included in the rent stands to be deducted. These costs were estimated to be between £20.00 to £50.00 per person per month.

The Respondents' case

9. The Respondents say that the Premises was licensed between 23 January 2017 and 22 January 2022. A further licence was issued to the former owner or his company on 3 May 2022 for the period 3 May 2022 to 2 May 2027. The 1st and 2nd Respondents purchased the Premises on 26 August 2022 subject to the Applicants' tenancy agreement. The 1st and 2nd Respondents applied on 12 September 2022 to vary the licence but were told by Manchester City Council that they needed to apply for a new licence because the previous licence could not be transferred to them. The 1st and 2nd Respondents say that they were told by the Council that the previous licence continued to be valid. The 1st and 2nd Respondents applied for a new licence on 2 February 2023. A new licence was issued on 12 June 2023 for the period 22 May 2023 to 21 May 2027.
10. The Respondents rebut the Applicants' claim that they were slow to deal with problems or difficult to communicate with. They rely on the copies of messages provided between them and the Applicants. It is said that problems arise in the usual course of managing any property and that they acted in reasonable time when told about any issues. It is said that it can take time to find and instruct contractors to carry out works.

11. The Respondents estimated that the costs of utilities amounted to between £22.00 and £24.00 per person per week (say £95.00 to £104.00 per month). These costs stand to be deducted from the rent paid by the Applicants when calculating any RRO.

The law

12. The relevant law is set out in the annex below.

The decision

13. It is not in dispute that the Premises is a house in multiple occupation and was required to be licenced under s.61 of the Housing Act 2004.
14. A licence was issued on 23 January 2017 to the previous owner for a period of 5 years between 23 January 2017 and 22 January 2022. A further licence was issued to the previous owner or his company on 3 May 2022 for the period 3 May 2022 to 2 May 2027. A licence is personal to the licence holder and is not transferable not least because the local housing authority must be satisfied that the licensee is a fit and proper person.
15. The 1st and 2nd Respondents purchased the Premises on 26 August 2022. On the transfer of the Premises, the 1st and 2nd Respondents became the “person having control” of the Premises as defined by s.263(1) of the Act. The 3rd Respondent was appointed as managing agent in about October 2022 and he became the “person managing” the Premises in accordance with s.263(3) of the Act.
16. The Tribunal finds that the Respondents were respectively, the person having control of the Premises and the person managing the Premises during the relevant period.
17. The Tribunal finds that the Premises required a licence under s.61 of the 2004 Act 2004.
18. A licence was issued on 12 June 2023 to the 1st Respondent for the period 22 May 2023 to 21 May 2026.
19. During the period 28 August 2022 to 8 March 2023 when the successful application was made for a licence none of the Respondents held a licence and the Premises was not licenced.
20. An offence is committed under s.72(1) of the Act, where a person having control of or managing the Premises which was required to be licensed and was not licenced. For the purposes of s.72 of the Act, more than one person may commit an offence.
21. S.72(4)(b) provides a statutory defence where at the material time an application for a licence had been duly made in respect of the house under s.62. In the present case, a

valid application was received by the Council on 8 March 2023. This provides a defence from that date.

22. S.72(5) provides a defence where the person charged with an offence had a reasonable excuse for having control of or managing the house.
23. The Respondents say that the Premises was not intentionally without a licence and that they acted in good faith. It is claimed that an application was made to revise the licence on 12 September 2022 shortly after purchasing the Premises, that they were told by someone working for the Council that the licence was still valid and that they applied for a new licence on 2 February 2023. The point is made that the Premises complied with all the licencing requirements and that after the Council carried out an inspection in about May 2023, a licence was issued to the 1st Respondent.
24. The evidence is that the 1st and 2nd Respondents' solicitors informed them before they purchased the Premises that they would need to apply for a licence. The Respondents claimed that they "reapplied for a variation of the licence to get it in their name on 12th September [2022]". They may have believed this was possible but it was not because the licence could not be transferred from the previous owner to them. The licence could not be varied in the way they wanted. It was the Respondents' statutory responsibility to ensure that they held a licence. Irrespective of any information the 1st and 2nd Respondents may have been given by the Council, they did not hold a licence. Lack of knowledge or human error does not provide them with a reasonable excuse. None of the other statutory defences has been asserted.
25. The Respondents claim that they applied for a new licence on 2 February 2023. On the evidence, this application was incomplete and it was rejected by the Council. This was not remedied until 8 March 2023 when the Council received a valid application.
26. The Tribunal finds that the Premises was unlicensed from the start of the Applicants' tenancy on 28 August 2022. The application for a new licence was received by the Council on 8 March 2023. A new licence was issued to Asim Shahzad on 12 June 2023 for a period of three years from 22 May 2023 to 21 May 2026.
27. The Tribunal is satisfied beyond reasonable doubt that the Respondents committed an offence under s.72(1) of the 2004 Act, being a person having control of or managing the Premises which was required to be licensed and was not licensed.
28. In these circumstances the Tribunal may make an RRO. The policy underpinning the legislation is to deter the commission of housing offences by the imposition of stringent penalties. An unlicensed HMO may be a satisfactory place to live despite its irregular status but the main objective of the provisions is deterrence rather than compensation.
29. The amount of the RRO is determined in accordance with s.44 of the 2016 Act. The Upper Tribunal in Vadamalayan v Stewart [2020] UKUT 183(LC) set out the approach

to be adopted. A starting point is the rent for the relevant period of up to 12 months. The RRO is not tempered by a requirement of reasonableness. The only basis for deduction is s.44 itself.

30. Vadamalayan must be read together with the subsequent decisions in Ficcara & Others v James [2021] UKUT 0038 (LC). The requirements in ss.44(4) and 45(4) for tribunals to have particular regard to certain matters indicates that the RRO should not necessarily be for the maximum amount. In Awad v Hooley [2021] UKUT 0055 (LC) the Upper Tribunal endorsed the tribunal's room for manoeuvre when exercising its discretion. In Williams v Parmar [2021] UKUT 244 (LC) the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed in ss.44(4) and 45(4) of the 2016 Act.
31. The Tribunal had regard to the Applicants' complaints about difficulties communicating with the Respondents and the time taken to deal with problems. The Tribunal finds that it is likely there were problems from time to time but that overall, the issues identified were of a relatively minor nature which were ultimately resolved. The Tribunal finds that it would not be reasonable to adjust the amount of the RROs for reasons attributable to the conduct of the Respondents.
32. It is not in dispute that the Applicants paid the rent that was due in full. There evidence does not suggest that any of them were in receipt of Universal Credit at the relevant time.
33. Under the terms of the tenancy agreements, utility charges for electricity, water and broadband were included in the rent. These costs relate to the services enjoyed and consumed by the Applicants and stand to be deducted from the rent paid in order to calculate the amount of the RROs.
34. It is right to deduct from the rent paid by the Applicants the costs of the utilities they consumed. The Tribunal has not been presented with evidence of the actual costs incurred. The Applicants estimate the costs at between £20.00 to £50.00 per person per month. The Respondents' estimate is higher, between £95.00 to £104.00 per month. The Respondents have not provided the Tribunal with evidence of the actual costs incurred to support their estimate.
35. The Tribunal is left to use its knowledge and experience of the housing market and housing costs. It finds that a reasonable sum to attribute to the utilities would be £50.00 per person per month. This should be deducted from the monthly rent of £520.00 to produce a net figure of £470.00 per month.
36. The Tribunal has room for manoeuvre when exercising its discretion. The purpose of RROs is to deter rogue landlords and encourage compliance with the legislation. On the evidence, the Respondents in this case are not rogues. They attempted to comply

with the legislation albeit that a valid application was not made for several months. In the circumstances, the Tribunal finds that it is appropriate to discount the rent less the cost of the utilities by £100.00 per person per month. The net result satisfies the purpose of RROs. The intention is not to be draconian.

37. The Tribunal makes RROs against the Respondents under s.43 of the 2016 Act and orders the Respondents to pay each of the Applicants the sum of £2,220.00 representing £370.00 per person per month over a period of six months.

Judge P Forster
26 March 2023

ANNEX

Housing and Planning Act 2016

Section 40 Introduction and key definitions

- (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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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 Application for rent repayment order

- (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 Making of rent repayment order

- (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 section 41.

Section 44 Amount of order

- (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.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
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.