



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

**Case Reference** : **CHI/43UE/HMF/2023/0027**

**Property** : **16 Oakwood Road, Horley, RH6 7BU**

**Applicants** : **Mr Matthew Wood and Ms Ya Wen**

**Respondent** : **Mrs Harriet Tovey**

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

**Tribunal Members** : **Tribunal Judge H Lumby  
Mr K Ridgway MRICS  
Ms T Wong**

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

**Date of Hearing** : **21st March 2024**

**Date of Decision** : **12th April 2024**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal orders the Respondent to repay to the Applicants the sum of £2,842.20 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.
- (2) The tribunal also orders the Respondent to reimburse to the Applicants one half of each of the application fee of £100 and the hearing fee of £200 (amounting to £150 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

## **Introduction**

1. The Applicants have 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 Applicants but was not so licensed and that she was therefore committing an offence under section 72(1) of the 2004 Act.
3. The Applicants’ claim is for repayment of rent paid during the period from 2 September 2022 to 30 June 2023, amounting to £6,800.
4. The tribunal was provided with a bundle running to 138 pages. The contents of all these documents were noted by the tribunal.
5. The hearing was conducted using the VHS video service. Each of the Applicants and the Respondent joined in this manner. No one else was in attendance. It had been stated that Ms Wen had moved permanently to China but she confirmed she was joining the hearing from within the United Kingdom.
6. The Respondent at the end of the hearing made a suggestion that she felt that, in the period up to the hearing, the tribunal was biased towards the Applicants. She was unhappy with the process, in particular that she was not receiving documents. The tribunal noted her comments but, having investigated the matter, found no evidence suggesting any bias or prejudice.

## **Relevant statutory provisions**

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

### **Alleged Offence**

#### **House in Multiple Occupation**

8. The Applicants rented a room in the Property from 2 September 2022 until 30 June 2023. The amounts they say that they paid during that time are not disputed by the Respondent.
9. The Applicants argue 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 Applicants paid rent. The Respondent accepts that she did not have an HMO licence at any time during the Applicants' occupation of part of the Property.
10. 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 23 September 2022 and 30 June 2023. The Applicants accepted that there were not five people in occupation before 23 September 2022 and that the Respondent had an HMO licence from 1 July 2023.
11. The parties and the Tribunal were satisfied that the Property and its occupation otherwise satisfied the requirements to be an HMO for the purposes of section 254 of the 2004 Act.
12. The Respondent therefore accepted that she 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 23 September 2022 and 30 June 2023 and that she was therefore committing an offence under section 72(1) of the 2004 Act during that period.
13. The Respondent received a financial penalty from the local authority as a result of her offence.

#### **Reasonable excuse**

14. 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.

15. The Respondent explained that she had inherited the house from her mother. This was a stressful time for her and she was in shock. She was aware that the Property was near to the local hospital and that health workers needed accommodation so she let the house out at what she believed were affordable rates. She had spoken to the local council (Reigate and Banstead) who had given her information about renting rooms but had not mentioned the need for an HMO licence. She organised for the fire brigade to inspect the Property to ensure there were no issues.
16. She had not investigated whether an HMO licence was required. Her husband had a rental property which was let to a charity at a reduced rent. This did not need an HMO licence so that had not alerted her to the need for one. She had not joined any landlord bodies at that time but now has.
17. The Respondent also mentioned stress and the shock of covid and losing loved ones during that period. She believes that she has suffered a lot of racism during her life which have led to her not having the opportunities which have been afforded to others. Experiencing micro-aggressions on a daily basis meant that she had real compassion for others who may be suffering as well and so she was motivated by her desire to help others, including Ms Wen.
18. 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.
19. As a result, the tribunal finds that the Respondent does not have a reasonable excuse to the offence.

### **Consideration of grounds**

20. The Respondent has accepted that she committed an offence under section 72(1) of the 2004 Act between 23 September 2022 and 30 June 2023. 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 23 September 2022 and 30 June 2023.

### **Rent Repayment Order**

21. 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)).

22. 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 amount of order**

23. Having determined that a rent repayment order should be made, the tribunal next considered what the amount of such order should be.
24. The Applicants initially argued that the full rent paid by them for the period 23 September 2022 and 30 June 2023 should be repaid to them, arguing that issues like repair time to the shower and potentially not holding their deposit in a registered scheme should be taken into account. They accepted that no repayment should be made in respect of other periods during their tenancy.
25. The Respondent was asked to comment on the conduct of the Applicants whilst tenants. She preferred not to comment, saying that they were young people who she wanted to help on their life journey. She had offered to stand as guarantor for them in their next accommodation, the fact that they had brought this case had made her question herself. Nonetheless, she did not want to speak ill of either the Applicants.
26. After a short break, the Applicants offered to reduce the proportion of the rent they were claiming to 60%, as a gesture of goodwill.
27. The Respondent argued that she had incurred significant costs in having tenants, including meeting all utilities bills, council tax and insurance. She said that having to pay some of the rent back would not cause her hardship, she has worked all her life and can work overtime as a carer to raise the money to pay the Applicants. She had no prior convictions for relevant offences.

### **Method of assessing amount of order**

28. 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.

29. 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 amount of order**

30. The tribunal calculated that the rent paid for the period when the offence had occurred (23 September 2022 and 30 June 2023) amounted to £6,316.
31. The Respondent met all the utilities bills from the rent received, so the rent was inclusive of utilities. Whilst detailed utilities information has

been provided, neither party made submissions as the amounts that should be apportioned to rent paid by the Applicants. Having carefully studied the information provided, the tribunal assessed that 25% of the rent paid by the Applicants should be allocated to utilities and other deductible costs. As these were actual costs incurred by the Respondent, the tribunal determined that this amount should be disregarded for the purposes of any rent repayment order. Having deducted the 25% utilities allowance from the £6,316 assessed rent, there was a balance of £4,737.

32. 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. The Respondent was not a professional or experienced landlord and was very much motivated by helping others. The Applicants had suggested during the hearing that the percentage that should be repaid was 60%.
33. The tribunal considered the conduct of the Respondent and the Applicants. The tribunal found no evidence of poor conduct by the Respondent or the Applicants nor did it feel any adjustment for the Respondent's financial circumstances was appropriate. Finally, the tribunal noted that the Respondent had not previously 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).
34. Taking all these factors into account, the tribunal agreed with the proportion offered by the Applicants and determined that the amount payable by the Respondent should be reduced by 40%, leaving the amount to be repaid as £2,842.20.

### **Tribunal determination**

35. 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 she 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.
36. The tribunal has determined that it should make a rent repayment order for it and has calculated the amount of that order as £2,842.20.
37. Accordingly, the tribunal orders the Respondent to repay to the Applicants the sum of £2,842.20 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

### **Cost applications**

38. The Applicants 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.
39. As the Applicants has been partially successful in this claim, the tribunal is satisfied that some level of reimbursement of these fees should be made. The Applicants proposed a 50/50 split at the hearing, which the Respondent also agreed to. The tribunal feels that this is a fair compromise and therefore agrees that these fees should be split between the parties in equal proportions.
40. The tribunal therefore orders the Respondent to reimburse to the Applicants one half of each of the application fee of £100 and the hearing fee of £200 (amounting to £150 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.



### **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](mailto: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.

	<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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><b>If the order is made on the ground that the landlord has</b></i>	<i><b>the amount must relate to rent paid by the tenant in</b></i>
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<i>committed</i>	<i>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) ... .