



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

Case Reference : **MAN/ ooCC/HMF/2023/0014**

Property : **32 PARK STREET, WOMBWELL S73 0HF**

Applicant : **MORGAN LOUISE O'GRADY**

Respondent : **JUSTIN KALAY**

Type of Application : **Application for rent repayment order, section 41 Housing and Planning Act 2016**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member J Gittus MRICS**

Date of Decision : **15 April 2024**

DECISION

DECISION

Within 28 days of the date of this decision:

1. The Respondent shall repay rent to the Applicant in the sum of £860.
2. The Respondent shall reimburse £300 to the Applicant in respect of the application and hearing fees.

REASONS

BACKGROUND

1. On or about 28 January 2023 the Applicant visited 32 Park Street, Wombwell with her brother Silver O'Dowd with a view to renting a room in the property. She met the Respondent landlord and agreed to take a room at a rent of £520 per month inclusive of services. Her occupation was to start on 30 January and a bond of £250 was payable. The Respondent agreed to accept rent weekly, the weekly amount being £120.
2. The Respondent emailed the Applicant a form of agreement described as a "Lodger Agreement", which created a term of 26 weeks beginning on 30 January 2023. The "Lodger" was identified in the agreement as the Applicant and her brother.
3. The Respondent occupied a self contained flat on the ground floor of 32 Park Street. The upper floor or floors contained 5 bedrooms, two kitchens, a bathroom (with toilet) and a shower room. The kitchen and bathrooms were shared. The occupants of the several rooms were not related and this property was therefore a licensable House in Multiple Occupation.
4. The Applicant moved into the property on 30 January 2023. On the same day Silver O'Dowd arranged for a transfer to the Respondent of one month's rent (£520) and the bond (£250). Following pressure from the Respondent, the Applicant vacated her room in the property on 20 March 2023. The bond was not repaid to her although no reason was given for non-payment. On 2 April 2023 the Applicant applied to this tribunal for a rent repayment order.

THE LAW

5. Section 41 of the Housing and Planning Act 2016 ("the Act") permits a former tenant to apply for repayment of rent where, during the tenancy, the Landlord has committed one of the offences listed at section 40(3).
6. Section 43 of the Act enables a tribunal to make a rent repayment order if satisfied beyond reasonable doubt that the landlord has committed a relevant offence. Section 44 provides that the amount to be repaid must relate to rent paid by the tenant and must not exceed the rent paid, less any universal credit paid in respect of the rent. The Tribunal must take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence.

7. Further guidance is provided by Mr Justice Fancourt in the case *Williams v Parmar & Others [2021] UKUT 244 (LC)*. At paragraph 4 of his judgment he says "*The right approach is not for a tribunal to simply consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances....A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed).....The Tribunal should also take into account any other factors that appear to be relevant.*"

THE EVIDENCE

8. In accordance with the Directions Order, the Applicant provided a detailed statement and also witness statements from her mother Mrs O'Dowd and her brother Silver, supported by documents and screenshots of messages to and from the Respondent.
9. The Respondent requested more time to file his evidence, and was granted an extension to 9 February 2024. In the event, he made no representations to the Tribunal. He did not challenge any part of the Applicant's evidence.

THE HEARING

10. The hearing was attended by the Applicant, her mother and brother. The Respondent did not attend and was not represented.
11. Silver O'Dowd was questioned as to why he had paid the £250 bond and a month's rent, total £770, out of his own bank account. He and Mrs O'Dowd explained that the Applicant had been left a sum of money by her grandmother, and that this was kept by the family in an account to which she did not have access without their assistance. The bond and the month's rent emanated from this account and for convenience was paid to the Respondent via Silver O'Dowd's account. The Tribunal were informed that this was solely the Applicant's money. The arrangement was not mentioned in the Applicant's written representations as the family were unaware of its importance. The additional evidence provided at the hearing was accepted by the Tribunal.
12. In other respects the Applicant confirmed her written representations. She further explained that the shared shower in the property was out of working order for the first 2 weeks of her occupation. She confirmed that as well as use of the shared kitchen she had a small oven and hob in her own room. The property had central heating which was controlled by the Respondent, and she could not adjust the radiator in her room, which she said she found cold. The Respondent did not let her move into her room the portable heater which was in the small bedroom he required her to occupy for the first two nights of her tenancy. The rent included services and council tax, but was not apportioned by the parties.

13. The Applicant confirmed that relations with the Respondent were initially friendly but that after about a week she had had a visit from her social worker. When the Respondent discovered that she was assisted by a social worker and was deemed a vulnerable adult his attitude towards her changed. She told the Tribunal that the Respondent asked her not to talk to people in the corridor of the property, and accused her of being noisy, leaving lights on, and of having visitors in her room without his consent. She found this difficult and upsetting.
14. From 23 February the Respondent began to ask the Applicant to vacate the property. In writing, he asked her to leave by 31 March. Orally, he was asking her to leave straight away. The Applicant's unchallenged evidence is: "*Mr Kalay had sworn at me for leaving lights on etc but after I had told him that my therapist needed to visit me, he got really funny with me. He told me that I should have told him about her before I moved in and was very angry. He said that he had a right to know if I had mental health problems and that he could throw me out for not telling him.*"
15. On 3 March, the Applicant says, she was asked to increase her rent. She refused. The Respondent informed her that she must move out of the property, and that he would re-let her room. In the early hours of 7 March 2023 the Respondent sent her a message advising that he intended to show a prospective tenant her room. He did not specify when he would do so. The Applicant was at work during the day, but found that the Respondent had entered her room without her consent the same morning and had taken a video of it which he sent her. He complained that the room was untidy. During the evening of the same day the Respondent attempted a forced entry into the Applicant's room while she was alone and after she had explained to him that she was not dressed. Wishing to preserve her independence, she did not report this behaviour to her family at the time.
16. The Applicant had paid rent until the end of March. She told the Tribunal that she wanted to leave early because of the Respondent's conduct towards her. The Respondent told her to move out on 17 March. Silver O'Dowd contacted the Respondent to check that if his sister vacated the room on 17 March the overpaid rent would be refunded, and the Respondent said that it would not. Consequently the Applicant did not vacate the property on 17 March.
17. On 18 March, the Respondent (who was abroad at the time) spoke by telephone to the Applicant, her mother and her brother. The Tribunal heard that during these conversations the Respondent was angry, shouting, swearing and threatening to charge the Applicant the expense of an early return to the UK.
18. Having had first hand experience of the Respondent's attitude to the Applicant, her family arranged for her to vacate the property on 20 March. They cleaned her room thoroughly and left it in the same order as it had been at the outset of her occupation. Meanwhile for lack of funds the Applicant had lost the opportunity to take up alternative rented accommodation and she returned to live with her mother.

FINDINGS

19. The “Lodger Agreement” created a tenancy for a fixed term of 6 months in a HMO. The tenant was the Applicant. The rent was £120 per week. Of this it is reasonable to allot £20 per week for the provision of services and council tax, leaving an occupation rent of £100 per week.
20. The rent paid to the Respondent was paid by the Applicant from her own funds, albeit through the medium of her brother’s bank account. The total rent paid was £1000. Applicant was not in receipt of benefits. She occupied the property for 7 weeks. Deducting £140 for the provision of services during that time, overall she paid an occupation rent of £860.
21. The HMO at 32 Park Street was licensable and was unlicensed throughout the Applicant’s occupation. An offence has been committed by the Respondent under section 72(1) of the Act: control or management of unlicensed HMO. On the basis of the Applicant’s unchallenged evidence, the Respondent has also committed an offence under section 1 of the Protection from Eviction Act 1977: eviction or harassment of occupiers.
22. The Tribunal is not aware of any adverse conduct on the part of the Applicant. Insofar as she may have had friends, her social worker and therapist visiting her at the property without the Respondent’s consent contrary to paragraph 1.9 of her tenancy agreement, the Tribunal considers that that term of her tenancy is unreasonable and unenforceable.
23. The offences committed by the Respondent were serious, intentional and harmful. They are exacerbated by the fact that the Respondent was aware that the Applicant was a vulnerable adult and that her health was likely to be compromised by his behaviour towards her. His behaviour was damaging and discriminatory. The Applicant’s health was badly affected and she lost confidence during her first attempt to live independently of her family. This was entirely understandable in the circumstances.
24. The Respondent failed to register the Applicant’s bond and has failed to return it, without cause.
25. As a result of the Respondent’s retention of the Applicant’s money, she lost the opportunity to move into alternative rented accommodation.
26. Throughout these proceedings the Respondent has failed to rectify the situation by making any apology or reparation to the Applicant. He has failed to engage with the Tribunal process.
27. The Tribunal has no information about the Respondent’s financial circumstances and has no reason to believe that they are relevant in this case.
28. The Respondent’s conduct was unjustifiable, and particularly reprehensible in view of the Applicant’s vulnerability. The Tribunal concludes that exceptionally a rent repayment order for 100% of the rent paid is appropriate. In addition the Applicant is to be reimbursed for the fees she has paid to the Tribunal.