



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

Case Reference : **CHI/00ML/HMF/2023/0028**

Property : **55 Roedale Road, Brighton, BN1 7GB**

Applicant : **Mr Miroslaw Szymczak**

Respondent : **Nafeesa Begum Limited**

Representative : **Mrs Farah Entwistle**

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

Tribunal Members : **Tribunal Judge H Lumby
Mr B Bourne MRICS
Ms T Wong**

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

Date of Hearing : **23rd July 2024**

Date of Decision : **31st July 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal dismisses the application for a rent repayment order against the Respondent.
- (2) The tribunal orders the Respondent to reimburse to the Applicant the application fee of £100 and the hearing fee of £200 (amounting to £300 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Introduction

1. The Property is a house in Brighton with four rooms furnished as bedrooms together with a communal kitchen and bathroom
2. The Applicant have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
3. 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 she was therefore committing an offence under section 72(1) of the 2004 Act.
4. The Applicant’s claim is for repayment of rent paid during the period from 1 September 2021 to 30 September 2022, amounting to £9,400.
5. The tribunal was provided with a bundle running to 256 pages as well as three videos provided by the Respondent. The contents of all these were noted by the tribunal. During or subsequent to the hearing, the Respondent also provided at the request of the tribunal a lodger agreement signed on 19 September 2021 between the Respondent and Menna Elwakeil and a holiday/short term letting agreement dated 1 May 2022 between the Respondent and Gurdial Singh. She subsequently claimed to have been confused and provided two further holiday/short term letting agreements, one between the Respondent and David Cadet dated 14 September 2022 allowing occupation of the Property between 14 September 2022 and 30 September 2022 on Monday, Thursday and Friday every week between 17.00 and 09.00. The other was between the Respondent and David Ellison dated 1 August 2022 allowing occupation of the Property between 1 August 2022 and 31 December 2022 on Thursday and Friday every week between 17.00 and 09.00

6. The hearing was conducted using the VHS video service. Each of the Applicant and the Respondent's representative joined in this manner. There were no witnesses present for either party; the Respondent had provided three witness statements (from David Cadet, David Ellidson and Tony Elliott) but the Respondent told the tribunal that none were available to attend. The panel were together at the Havant Justice Centre.

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 Applicant rented a room in the Property from 1 September 202 until 30 September 2022. The amounts they say that they paid during that time are not disputed by the Respondent.
9. The Applicant argues that the Property was an unlicensed HMO on the basis that it was rented to three 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 she did not have an HMO licence at any time during the Applicant's occupation of part of the Property.
10. The Applicant's application was received by the tribunal on 29 September 2023. Section 41(2) of the 2016 Act provides that 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.
11. The Applicant's tenancy ended on 30 September 2022. Section 41(a) requires that for a tenant to be able to bring a claim, the offence must have been going on whilst the relevant housing was let to the tenant. Section 41(b) also requires the offence to have been committed in the 12 month period counting back from the date the application for a rent repayment order was made. Counting back the 12 months from 29 September 2023, the earliest date permitted would be 30 September 2022, the same date that the Applicant's lease ended. Accordingly, for the application to be valid, the alleged offence must have been occurring on 30 September 2022.
12. As a result, the tribunal considered as a preliminary issue whether the alleged offence was occurring on 30 September 2022. The Applicant

argued that the offence in question was 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. For these purposes, the parties both agreed that the location of the Property meant that an HMO was a property rented to three or more people who form more than one household as opposed to five or more people.

13. The Applicant argued that there were at least three permanent households living in the Property throughout his entire occupation, including on 30 September 2022. The Property was his main residence throughout that period and he contended that it was the main residence of all other occupiers. He said that the occupiers on 30 September 2022 in addition to himself were Menna Elwakeil, Daniela Coates and a man called Ciaran. He could provide no evidence of this.
14. The Respondent denied that the Property was being occupied as an unlicensed HMO at any time whilst the Applicant was in occupation, including on 30 September 2022. She argued that the first time it was occupied by three separate households was in October 2022. Her argument was that only the Applicant and Ciaran had assured shorthold tenancies on that date. She contended that Menna was a student who only occupied the Property for two or three days a week; she would otherwise live with her parents. She also argued that Daniela was only occupying on a temporary basis at this time whilst she was looking for a job as a teacher; she claimed that Daniela signed an assured shorthold tenancy on 2 October 2022, after the Applicant had left.
15. Having conferred during a break in the hearing, the tribunal decided it was, on the balance of probabilities, more likely than not that the Property was being used as an unlicensed HMO on 30 September 2022 but wanted to hear further evidence from the parties in relation to the period of the Applicant's occupation.

Earlier occupations

16. The dispute between the parties was in relation to whether there were three people in occupation as separate households and as their sole or primary residence.
17. The Respondent accepted that the Applicant occupied the Property as his main residence from 1 September 2021 to 30 September 2022.
18. It was agreed that someone called Scarlett had occupied from September 2021 until June 22 but the Respondent claimed that she was a student and the Property was not her main residence. No evidence was provided by either party. Scarlett was replaced by Daniela in due

course but the Respondent argues her residence was part time until 2 October 2022.

19. It was also agreed that Menna had been in occupation from December 2021 until after the Applicant's departure but, as referred to above, the Respondent said that the occupation was only part time and her main residence was elsewhere. An agreement showing the part time nature of her occupation in 2021 was provided to the tribunal and the Respondent argued that both she and Daniela would vacate their rooms and store their possessions elsewhere to allow other occupiers of the room. The Applicant asserted that the Property was both Menna's and Daniela's main residence and that they both occupied their rooms on a permanent basis, rather than vacating their rooms each time they left.
20. The fourth room was occupied by someone called Issa from 25 September 2021 until 7 May 2022. The Respondent accepted that Issa was a permanent resident with an assured shorthold tenancy but argued any prior occupation was by way of a holiday or other short term let. Issa was replaced by a short term occupation by Gurdial Singh until June 2022, after which the room was vacant until Ciaran moved in at some point in September; the Respondent accepted that Ciaran was in permanent residence.
21. As a result, there was no agreement that there were ever more than two permanent residents using the Property as their sole or primary residence during the Applicant's residence there, including on 30 September 2022. The Applicant asserted that there were more but was unable to provide evidence that this was the case.
22. The Respondent provided evidence that rooms were let on a short term basis for a few days a week, providing witness statements from David Cadet and David Ellisdon that they occupied for a few days a week. The Respondent subsequently provided agreements signed by them. However, neither attended the hearing and so were unable to be questioned by the Applicant and the Tribunal, so little weight was given to their evidence. It was also noted that the statement provided by Mr Cadet refers to occasional occupation between January 2022 to June 2023 but the agreement provided only refers to 14 to 30 September 2022. The Applicant denied that either had occupied the Property at any point.
23. The Respondent also provided evidence of the Property being offered for rent on AirBNB. A booking is contained in the bundle at page 99 but the Applicant questions its authenticity on the basis that it shows a person arriving on May 8 but also arriving on August 22.

Tribunal consideration

24. The alleged offence of which the Respondent is being accused has to be proved to the criminal standard, which means that the tribunal must be satisfied beyond all reasonable doubt that the offence has occurred. The offence in question is that controlling and/or managing an HMO which was required to be licenced under Part 2 of the Housing Act 2004 (“**the 2004 Act**”) but was not so licensed contrary to section 72(1) of the 2004 Act.
25. The burden of proof is on the Applicant to show that the offence was committed.
26. The tribunal carefully considered the evidence provided to it and the submissions provided by the parties. Much evidence was in dispute between the parties, especially in relation to the nature of occupations and whether the residence was as a sole or main residence or not. It found that on balance the Applicant was a more credible witness and had doubts about some of the Respondent’s evidence. The tribunal also accepted that the Respondent had mental health issues which could lead to confusion on her part.
27. Overall, it was noted that the Applicant’s case was mostly based on his own assertions and denial of the Respondent’s claims. None of the other occupiers of the Property during his residence had provided witness statements or attended the hearing and there was no documentary evidence as to the basis of their occupation. As a result, the tribunal was unable to satisfy itself beyond all reasonable doubt that the alleged offence had been committed on any day, including 30 September 2022. It must as a result dismiss the application.

Tribunal determination

28. The tribunal determines that it is not 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 1 September 2021 and 30 September 2022. It cannot therefore find that she was committing an offence under section 72(1) of the 2004 Act during that period.
29. The application is therefore dismissed.

Cost applications

30. 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.

31. As the tribunal had concerns about the veracity of the some of the evidence provided by the Respondent, it feels that it is just and equitable that the Respondent should pay the fees incurred by the Applicant in bringing this application.
32. The tribunal therefore orders the Respondent to reimburse to the Applicant the application fee of £100 and the hearing fee of £200 (amounting to £300 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
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.

	<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
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</i>	<i>the amount must relate to rent paid by the tenant in</i>
--	--

<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)