FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	CAM/38UC/HMF/2023/0005
Property	:	57 Bicester Road, Kidlington, Oxford OX5 2LD
Applicant	:	Theodora Powell
Applicant's Representative	:	Miss S Holyhead
Respondent	:	Charandeep Sanghera
Respondent's Representative	:	In person
Type of application	:	Application for a Rent Repayment Order
Tribunal members	:	Mr Max Thorowgood and Mr Roland Thomas MRICS
Venue	:	CVP
Date of Decision	:	[2023]

DECISION

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1. The application

1.1. By her application dated 15th March 2023, the Applicant seeks an order that the Respondent repay to her the whole of the rent which she paid to him in respect of her tenancy of a room in the property known 57 Bicester Road, Kidlington from 4th October 2021 to 12th April 2022. The

sum in question is £4,029.36, less the proportion attributable to the outgoings which were included in the rent.

2. The Tribunal's jurisdiction to make a Rent Repayment Order

2.1. The Tribunal's jurisdiction to make a Rent Repayment Order is set out in ss. 40-44 of the Housing and Planning Act 2016.

2.2. We think it will be helpful for us to set those sections out in full, so far as they are applicable, in order the identify the various matters which we need to decide.

s. 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.

s. 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.

(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);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

s. 44 Amount of order: tenants

(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.

2.3. To summarise, therefore, it is the effect of these provisions that before we can make an order, we must be satisfied beyond reasonable doubt that the Respondent has committed an offence to which the Chapter applies. One such offence is that contrary to s. 72(1) of Housing Act 2004 the Respondent either controlled or managed a House in Multiple Occupation which was required to be licensed but which was not licensed.

2.4. The Respondent admitted that he was guilty of that offence and we are satisfied that that was an appropriate admission. Accordingly, we have power to make an order. He also did not dispute that, in what the Cherwell District Council's investigating officer described as 'minor' respects, the Property failed to comply with the HMO Regulations.

2.5. We are therefore concerned with the amount which we should order to be repaid. The Respondent admitted that for the entire period of the Applicant's tenancy he was operating an HMO which was not licensed. Therefore, the maximum possible extent of the claim is £4,029.36.

2.6. In deciding the amount which we should order the Respondent to repay, we must have regard to: the conduct of the respective parties, the financial resources of the Respondent and whether he has ever been convicted of an offence to which the Chapter relates. So far as this application is concerned, neither the Applicant nor the Respondent sought to suggest that the Respondent's financial position was a relevant consideration and it was admitted that the Respondent has never been convicted of a relevant offence, not even in relation to the matters of which the Applicant complains.

2.7. We are therefore concerned primarily with the conduct of the parties in connection with the offence. The approach which we should adopt to

the exercise of that discretion is described in the decision of the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 as follows:

> "20. The following approach will ensure consistency with the authorities:
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> a. Ascertain the whole of the rent for the relevant period;
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> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
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> c. Consider how serious this 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? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
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> d. 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) .
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> 21. I would add that step (c) above is part of what is required under section 44(4)(a) . It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

2.8. It is important also to emphasise, as the Court of Appeal did in *Kowalek v Hassanien Ltd* [2022] 1 WLR 4558, citing with approval the words of the Deputy President of Upper Tribunal in *Jepsen v Rakusen* (2021) HLR 18 §64, that, "... the main object of the provisions is deterrence rather than compensation." The main focus therefore is upon the seriousness of the Landlord's conduct in relation to the offence rather than the effect of that conduct upon the Tenant. However, it is also clear from the words, "in particular," used in s. 44(4)

that other factors may be relevant and the general words, "… conduct of the Landlord and the Tenant," must admit of a relatively broad consideration of the parties' conduct in connection with the matters complained of. These are the aggravating or mitigating features which form the last part of the decision-making process described in passage which we have cited from *Acheampong* above.

3. Findings of fact

3.1. So far as the seriousness of the Respondent's admitted offences is concerned, the Respondent relied heavily upon the decision of Cherwell District Council's investigating officer, Carolyn Arnold, not to prosecute him in respect of the small number of relatively minor breaches of the HMO Regulations or in respect of his failure to obtain an HMO Licence contrary to s. 72 Housing Act 2004. Ms Arnold explained her reasons for that decision in her email to the Applicant of 26th August 2023 as follows:

3.1.1. She was concerned that, although she was satisfied that the offences had been committed, it might not be possible to prove that to the criminal standard[1]; and

3.1.2. "There are other mitigating factors; it is a first offence, and the landlord has been cooperative. An application for an HMO licence was made at an early stage. Although there were some minor breaches of the HMO Regulations, overall, the house was in reasonably good condition and the potential harm to the occupants posed by the offences was low. There are also factors related to the pandemic and our conclusion is that failing to apply for a licence in this case does not seem to have been a deliberate omission."

[1] It is difficult to understand this in light of the Respondent's admissions.

3.2. Although she was dissatisfied with her decision not to prosecute because she felt that there were other aggravating features of the Respondent's conduct, the Applicant did accept Ms Arnold's central conclusion that, "... overall, the house was in reasonably good condition and the potential harm to the occupants posed by the offences was low."

3.3. The aggravating features of the Respondent's conduct to which the Applicant pointed were these:

3.3.1. He had not protected her deposit as he ought;

3.3.2. She discovered that there was mould in her wardrobe;

3.3.3. When she had lost her key he had refused to replace it or make arrangements for it to be replaced because she refused to pay what she regarded as an exorbitant charge to replace it and then evaded her demands that he justify it by the production of an invoices; and

3.3.4. The failure of the Respondent to provide her with a replacement key had the result that she and her mother found themselves locked out of the Property at 3 o'clock in the morning after they had travelled to Oxford from London on the bus after the Applicant had been admitted to hospital in London having suffered a seizure as a result of a congenital neurological disorder from which she suffers.

3.4. We were provided with very full witness statements from the Applicant and her mother, who also acted as her representative, and the Respondent availed himself fully of the opportunity to cross examine the Applicant on her evidence.

3.5. His position, essentially, was that the Applicant abuses alcohol and that it was as a result of a binge that she lost her keys and was then reluctant to pay the agreed charge for replacing them. A dispute between them then arose and despite his best efforts and the efforts of his sister, who was responsible for managing the Property, it proved impossible for him to supply the Applicant with a replacement key.

3.6. He denied that the Applicant and her mother had been locked out of the Property in the middle of the night after she claimed she had just been released from hospital and suggested that their evidence to that effect was dishonest. Not only that, he alleged that the letter from the ambulance crew member which the Applicant had managed to produce in support of her claim was forged.

3.7. For good measure, he claimed that the Applicant had digitally modified images which she had produced which she claimed showed mould inside her wardrobe and on her shoes in order dishonestly to create and exaggeratedly poor impression of the condition of the Property.

3.8. Finally, he asserted in reliance upon claims made by one of the Applicant's fellow tenants that she had put bleach in her shampoo.

3.9. We accept the Applicant's evidence in its entirety as to the matters in respect of which it was challenged by the Respondent. We considered that her evidence under hostile cross examination was clearly, coherently, calmly and convincingly given despite the obvious anxiety which it caused her and we therefore have no hesitation whatsoever in rejecting the liberal allegations of dishonesty which the Respondent made against her. We find that the Respondent's willingness to persist in making those allegations in the face of what seemed to us to be the obviously genuine evidence provided by the London Ambulance Service, in particular, to be quite extraordinary and we think it reflects considerable discredit upon him that he did so; indeed, we find that it is an aggravating feature of his offence. Likewise, his claims that the Applicant had fabricated the images of mould in her cupboard and on her shoes. As to the allegation that the Applicant had put bleach in a

fellow tenant's shampoo, there is simply no credible evidence to support it and again the fact that the Respondent chose to press it does him no credit at all. We accept that he felt he had been unjustly rounded upon by the Applicant but that is no excuse for his persistence in making what seemed to us to be obviously unfounded and yet serious allegations against the Applicant.

3.10. In relation to the controversy concerning the replacement key, we find that this was certainly the *casus belli* which has led to a very serious breakdown in relations between the parties and which ultimately has led to this claim being made. We find that both parties were guilty of a degree of intransigence which led very unfortunately to the Applicant and her mother being locked out of the Property at 3 am. However, we also find that that was not the fault of the Respondent, as such, and that his reaction to being called at 3 am was not unreasonable.

3.11. The final question which we must consider is the amount of the deduction which should be made from the rent to make allowance for the fact the monthly rent of £640.00 was inclusive of bills and cleaning. This subject is complicated by the fact that, as appears from the WhatsApp messages, it was the practice of the Respondent's sister who provided the cleaning services to refund the £40.00 per week charge which she made in respect of the property by leaving it in cash on the kitchen table of the Property which made it difficult to account for amongst the five tenants. It is the Applicant's case that the total amount of rent which she paid during the course of her tenancy was £4,029.36 from which we propose to make a deduction of £75.00 pcm from that to allow for bills and so much of the cleaning charges as were not properly refunded, that is a total of £472.16. The total amount of rent which we might order to be repaid is therefore £3,557.20.

3.12. To summarise, therefore, we find that the Respondent kept the Property to a reasonable standard so that it was possible for him to obtain a licence to operate it as an HMO after doing some relatively minimal works of improvement. We accept that at least part of the reason for the Respondent's failure to obtain a licence as he ought to

have done was because he was pre-occupied by the ill-health of his mother following his father's death. We also accept that the Respondent cooperated with the investigation launched by Cherwell District Council following the Applicant's complaints and give credit for his frank admission that the offences alleged were committed.

3.13. We accept the Applicant's account of the reasons for the breakdown of her relationship with the Respondence and find that the manner in which the Respondent has conducted his defence of this claim is an aggravating feature of his offence. We also think that his failure to protect the Applicant's deposit as he ought and his intransigent attitude in relation to the replacement of the Applicant's key are indicative not that he is a 'rogue landlord' but that he is someone who feels it is unnecessary for him to take active steps to ensure that he is complying with the applicable rules.

4. Conclusions

4.1. Our conclusions are therefore as follows:

4.1.1. That the entry point in terms of seriousness is 20% of the rent, the sanction needs to be sufficient to ensure that the Respondent will ensure in the future that he is complying with the rules; but

4.1.2. The Respondent aggravated his offence by the manner in which he conducted his defence of this application and so we order him to repay 30% of the maximum, namely £1,067.16.

5.

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.