



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

Case Reference : **CHI/00MR/HMF/2023/0032**

Property : **19 Paddington Road, Portsmouth,
PO2 0DU**

Applicant : **(1) Frederick Ethionamuadia
Usen
(2) Vincent James White**

Respondent : **Andrew Tindall**

Type of Application : **RRO, HPA'16**

Tribunal Members : **Judge Dovar
Mr Smith FRICS
Ms Wong**

**Date and venue of
Hearing** : **20th June 2024,
Havant Justice Centre**

Date of Decision : **1st July 2024**

DECISION

Introduction

1. This is an application, dated 14th November 2023, for a Rent Repayment Order under s.44 of the Housing and Planning Act 2016 ('the Act') by Mr Usen and Mr White who were tenants of Mr Tindall at the Property.
2. Mr Usen seeks payment of £3,461.02, being rent paid for the period 29th July 2022 to 31st January 2023. Mr White seeks £2,438.68, being rent paid for the period 29th July 2022 to 30th November 2022. The ground relied on by both is that when let to them, the Property was an unlicensed house in multiple occupation. The material statutory provisions are set out in the appendix to this decision.

Proceedings

3. The application was served on the Respondent at the email address given by the Applicants on their application, being 'hollyajmpropertymanagement@gmail.com': that was said to be the address on the Tenancy Contract where notices can be served. The application also provided two additional postal addresses, being 154 Havant Road, Drayton, Portsmouth, PO6 2JG and 9 Stratfield Park, Elettra Avenue, Waterlooville, PO7 7XN. The first is said to be the address listed for the Respondent on the Land Registry Document, the second is said to be the address listed as the corresponding address for the superior landlord, of whom the Respondent is a director.
4. As part of the application, the Applicants have provided their tenancy agreements with the Respondent. They are for a fixed term of 6 months

and then monthly thereafter. Both refer to the landlord as the Respondent and the 'Landlord's/agent contact details' as 'hollyajmpropertymanagement@gmail.com'. Immediately underneath the following is written '*Note: Under s.48, Landlord and Tenant Act 1987, notice can be served on the Landlord at the above address.*'

5. Directions were given by the Tribunal on 22nd April 2024, including for the Respondent to acknowledge receipt and provide details of any representation or alternative email address for service of documents. They also provided the time, date and location of the final hearing and that by 27th May 2024, the Respondent was to provide his statement and evidence in response. Those directions were sent to the Respondent at the same email address that the application was sent.
6. The Respondent did not provide any response. On 12th June 2024, following an application for a debarring order by the Applicants, the Tribunal sent to the Respondent a notice under rule 9 of the Tribunal Procedure Rules, notifying its intention to make a debarring order due to his lack of engagement in the proceedings. The Tribunal sent that notice out by the same email and also by post to the two addresses provided on the application form.
7. On 17th June 2024, the Respondent emailed the Tribunal saying that the notice had been forwarded to him as he didn't live at '*this address anymore*'. He said the local council had years of backlogs on HMO Licences and that '*we submit all applications and certs too PCC and then that is all done our end as they take ages and then we rent back to*

the council for housing.’ He further stated that *‘the council collects all rents for the above property so all certifications and applications for licences are in place’* and he said he was unable to attend the hearing as he was in Paphos for his nieces’ wedding.

8. Further enquiries were made of the Respondent and the agents, AJM Property Management. There was no response from the latter. The Respondent has said that he only received the letter from the Tribunal a few days prior. Further, the Tribunal had enquired as to why he said he let to the council, when the tenancies in this case were directly with the Applicants. He said *‘...what I mean social housing rent these properties on AST by me but they put asylum seekers and vulnerable people in these properties But the property is fully regulated and verified and all docs would be submitted with HMO applications ...’*
9. At the hearing, the Tribunal enquired of the applicants as to whether either of them fitted this description of the type of occupants and their route to the occupation. They both denied that this was applicable to them. They were both employed and had made private arrangements for the letting to them.
10. The evidence before the Tribunal shows that the First Applicant paid rent directly to ‘A J Tindall’. Mr White’s payments were to Mr Marie Pharoah, with a reference ‘Paddington Road’. Mr White confirmed to the Tribunal that these were the details that Holly had given him when he started the tenancy. He had not questioned that.

11. Both confirmed that they thought that Holly was a relation of Mr Tindall, probably his daughter. Certainly a whatsapp message in the bundle showed that a 'Holly Tindall' was dealing with the property.
12. The Tribunal have considered whether to adjourn this hearing because it appears that the Respondent may not have received the initial application and is unable to attend the hearing. However, the Tribunal has decided not to for the following reasons:
 - a. The application was served at the s.48 address that was given. Section 48 provides for a landlord to furnish the tenant with an address at which notices (including notices in proceedings) may be served on him by the tenant. A significant reason for providing that address is so that the tenant is able to serve proceedings at that address. It should also enable a person who had been a tenant to serve notices on their landlord after departure, if they relate to the tenancy;
 - b. It seems that this remained a valid source of communication given that Mr Tindall appears both to continue to own and let this property and Holly appears to be a relative of his, and it is expected that arrangements are in place for passing on information to him;
 - c. Allowance will be made for the Respondent to provide further evidence, albeit limited in scope, which will be considered before a final order is made;

- d. No application has been made by the Respondent to adjourn these proceedings;
 - e. From the correspondence with the Respondent it appears that he is a professional landlord;
 - f. The assertion that the property is effectively let to the council is not warranted in this case given that both Applicants have tenancy agreements in their own names;
 - g. The correspondence from the local authority contradicts the generalised statements made by the Respondent. The points made by the Respondent as to the slowness of the action by the local authority does not seek to dispute the fact that there was no licence in place, nor that a licence needed to be in place. Indeed it appears an admission that he was letting out an unlicensed HMO.
13. Further, the Applicants have made an application for a debarring order for the Respondent's failure to engage with these proceedings. The Tribunal will not make an outright order in such terms, however, in light of the points above it will limit the Respondent's involvement in the proceedings to putting forward any defence based on a reasonable excuse and any evidence he wishes to rely on to show his financial position. Further details are provided below.

Time for bringing an application

14. The first point of general application is that s.41 of the Act provides that the application must be based on an offence which was committed in the period of 12 months ending with the day on which the application was

made (s.41(2)(b)). In this case therefore the offence in question must have occurred in the 12 months leading up to the date of the application, which was 14th November 2023; i.e. from 15th November 2022.

Unlicensed HMO

15. The issue for the Tribunal is whether it considers that it is beyond reasonable doubt that there has been an offence committed under s.72(1) of the Housing Act 2004, during the relevant period, so that there was a failure to licence the Property as a HMO, when there was a requirement to do so.
16. Mindful of s.41(2)(b) the Tribunal must first be satisfied that an offence was committed in the period between November 2022 and November 2023 when the application was made. If it was, then s.44 provides that where this offence is relied on then the amount of any order *‘must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence.’*
17. Section 55 of the Housing Act 2004 imposes the requirement for owners of certain HMOs to obtain a license. Section 55(2) refers to the following HMOs being required to be licenced, either:
 - a. an HMO within any description of an HMO prescribed by a national authority; or
 - b. if any area is designated under s.56 as subject to additional licencing by a local authority, then if it is within any description of an HMO provided in that designation.

18. The Tribunal was not provided with any evidence of the second, being a local designation, and so the first applied. In which case this Property would need to be licensed under the description provided by a national authority, where there are 5 or more occupants in total (see article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018).

19. Mr Usen gave evidence that when he was living at the property between 29th July 2022 and 28th January 2023, there were 6 unrelated people living at the property including himself. Mr White's evidence supported that. Indeed there were 6 rooms that appear to have been let out. Further, Mr Tindall did not contest the number of occupiers asserted in this period, his representations were based on the fact that he had tried to get a licence, but that the local authority had been slow in granting it. This was contrary to correspondence provided from the local authority, but that is presently immaterial as in any event, this appears to be an admission of breach; at best it might be an attempt to set up a defence of reasonable excuse.

20. In light of the evidence from the Applicants, the Tribunal finds beyond reasonable doubt, that the Property was an HMO that was required to be licensed, but was not between the periods 29th July 2022 and 28th January 2023. That was contrary to the Housing Act 2004, s95(1). Subject to the Respondent filing any submissions with regard to a defence of reasonable excuse, the Tribunal makes a determination that an offence has been made out, engaging the right to a rent repayment order in respect of rent paid in the period 29th July 2022 and 28th January 2023.

21. In approaching the quantum of an order, the Applicants submitted the following was relevant:
- a. Mr Tindall was unreachable other than through Holly Tindall;
 - b. The tenancy agreements provided that all utilities would be paid by the landlord. However, he had not paid them and a pay as you go meter had been installed. At one point Mr Usen had to pay to have electricity reconnected, albeit he was later reimbursed;
 - c. There were also various outages of heating and electricity;
 - d. The heating was a significant issue with the property and ultimately led to both moving out;
22. The Tribunal has regard to s.44 of the Housing and Planning Act 2016 and adopts the four stage approach set out by the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 (LC).
23. Both Applicants provided evidence of payment during the period that the offence was committed: Mr Usen in the sum of £3,461.03 and Mr White in the sum of £2,332.72. Whilst Mr White paid rent not to the Respondent directly, but to a Ms Pharoah, he was subject to a tenancy agreement in which the Respondent was the landlord and his obligation was to pay his landlord the rent. He was told by the agent, Holly Tindall, to pay Ms Pharoah. Accordingly, the Tribunal considers that payments to Ms Pharoah were in effect payments to Mr Tindall for the purposes of a rent repayment order.

24. From the total rent payable, an approximation of the cost of utilities that was provided is deducted; bearing in mind though the outages referred to and the time of year that the rent was paid; i.e. partly summer and the fact that there were 6 occupants in total. The Tribunal assess this as £40 per month for each.
25. Next the Tribunal has considered the seriousness of the offence committed in light of the other offences which trigger a Rent Repayment Order. This is judged by the criminal sanctions that can be imposed, and the present offence is in the lower half of the list of offences.
26. In terms of the particulars in this case, it does appear to be along the moderate to bad severity in that the Respondent was aware of his obligations to licence the property, but did not do so and let it nonetheless. Further, the conditions of the property were poor, there were complaints of damp, intermittent heating and cold. Further, not only does the property remain unlicensed but the local authority have said that they have imposed an interim management order, which strongly suggests that the Respondent is content to flout the regulatory requirements. That suggests a cynical approach has been taken by the Respondent throughout the relevant period. Further, the Tribunal notes that the offence lasted for at least 6 months, despite the Respondent's knowledge of the need for a licence.
27. Finally, the Tribunal agrees with the Applicants' contention that the Respondent should be treated as a professional landlord in assessing his conduct. That is for the following reasons:

- a. The Respondent himself appears to have business with the local authority placing accommodation and has made reference to several licences pending;
 - b. The freeholder of the property is a company of which the Respondent is a director. The company is called 'Co-living South Limited', which suggests that there is more than just one building that is let out as part of its business.
28. We have been provided with no information about the Respondent's financial circumstances, nor whether he has been convicted of any earlier relevant offences.
29. On the matters that are presently before the Tribunal a preliminary view has been taken as to quantum being, that after deduction of the estimate cost of utilities of £40 per month, 70% of the rent paid should be repaid, taking into account the factors set out above.
30. Therefore a preliminary order is made for Mr Tindall to pay the following sums:
- a. For Mr Usen, £2,254.72 (i.e. £3,461.03 less £240, x70%); and
 - b. For Mr White, £1,520.90 (i.e. £2,332.72 less £160 x70%)
31. In addition Mr Tindall is to reimburse the Applicants their application and hearing fee in the sum of: £200 for the hearing fee, and £100 each for their applications.

32. Before that order is made final, the Respondent is given a period in which to provide written submissions, with documentary evidence in support in respect of:
- a. Any defence of reasonable excuse he wishes to raise; and
 - b. Any matters relating to his financial circumstances that he wishes to raise.
33. He should provide those submissions and documentation by 5pm 23rd July 2024. In the event that no submissions are made, then the Respondent is to pay the Applicants the sums set out at paragraphs 30 and 31 above by 5pm on 30th July 2024.
34. If submissions are made, then the Applicants shall file any reply to those submissions by 5pm 6th August 2024 and the Tribunal will consider the matter (whether to make an order or give further directions) thereafter.

Conclusion

35. The Respondent is given until **5pm on 23rd July 2024**, to file written submissions on any claim to defend the matter on the basis of a reasonable excuse or to provide detail of his financial circumstances. Any submission should be supported by documentary evidence; the absence of which may mean that the Tribunal rejects the assertions made in writing.
36. If any submissions are made then by **5pm on 6th August 2024**, the Applicants may file any response. The Tribunal will then consider the matter further.

37. If the Respondent fails to file and serve such submissions by **23rd July 2024**, then without further order or direction a Rent Repayment Order is made is made on the following terms:

a. A payment to Mr Usen of **£2,254.72, plus £200** reimbursement for the application and hearing fee **by 5pm 28th July 2024**;

b. A payment to Mr White of **£1,520.90 plus £200** reimbursement for the application and hearing fee **by 5pm 28th July 2024**.

JUDGE DOVAR

LEGISLATION

Housing and Planning Act 2016

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.

	Act	section	general description of offence	
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

(4) For the purposes of subsection (3), an offence under [section 30\(1\)](#) or [32\(1\)](#) of the [Housing Act 2004](#) is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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.

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).

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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in 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.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

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 28day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.