FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/38UC/HMG/2023/0004**
Property	**:**	**21 Ridgefield Road, Oxford OX4 3BT**
Applicant	**:**	**1 Ashika Kumar** **2 Adam Iordachescu** **3 Leon Williams** **4 Laura Butcher** **5 Thomas Binu**
Representative	**:**	**Jamie McGowan, Just for Tenants**
Respondent	**:**	**Mr Mohammad Asghar**
Representative	**:**	**Saima Yasin, Solicitor**
Type of Application	**:**	**Application for a rent repayment order under sections 40, 41, 43 and 44 of the Housing and Planning Act 2006**
Tribunal Members	**:**	**Judge Dutton** **Miss M Krisko BSC FRICS**
Date and venue of Hearing	**:**	**Leonardo Royal Hotel, Godstow Road, Oxford on 27th February 2024**
Date of Decision	**:**	**6 March 2024**

DECISION

DECISION

The Tribunal determines that the offence of having control and management of an unlicensed HMO pursuant to section 72(1) of the Housing Act 2004 (the 2004 Act) has been proved beyond reasonable doubt and the order is made that the Respondent shall pay to the Applicants the sum of £8,258.73, within 28 days, which shall be apportioned between them by Justice for Tenants. No request for reimbursement of fees was made.

BACKGROUND

1. By an application made in February of 2023 the named Applicants sought a rent repayment order against the Respondent for the periods of the 1st September 2021 to 26th July 2022. Differing amounts of rent are set out on the application but within the bundle was a schedule of the rental payments made by the named Applicants and the sums which they sought to recover from Mr Asghar.

2. After the application had been issued and on 23rd August 2023, directions were issued by the Tribunal which have certainly been complied with in the main by the Applicants but not by the Respondent Mr Asghar.

3. The matter was listed for hearing on 27th February 2024. Prior to that we had received documents, not in any particular format, from the Applicants which included the application, exhibits attached thereto which were the copy of the agreement, the spread sheet showing the rents paid and proof of payments by the individual Applicants. We also had a copy of the register of title for the Property and further correspondence.

4. Just before the hearing the Respondent decided to respond to the application and submitted a bundle on 19th February 2024 running to some 120 pages which included correspondence with the local authority, copies of licences and other correspondence that we will refer to as necessary during the course of this decision.

5. Just prior to the hearing we received a skeleton argument from Mr McGowan of Justice for Tenants, which had a number of exhibits annexed thereto. On the morning of the hearing, although said to have been lodged the day before, we received the Respondent's position by way of response from Saima Yasin, the solicitor just instructed by Me Asghar. Not content with this late delivery during the course of the hearing, we were also provided with copies of emails passing between Diamond Estates, the agents for Mr Asghar and the local authority. This is a most unsatisfactory state of affairs. We should also add that it appears that the Applicants had lodged a 400 plus page bundle with the Tribunal. However, that could not be traced and on 14th February 2024 an email was sent to Justice for Tenants indicating that the bundle had not been traced and asking for that to be resent. It was not and accordingly at the hearing that bundle was not before us.

6. As things transpired, this was not fatal to either side. We gave the parties time to get copies of such documents as they could.

7. At the start of the hearing, Saima Yasin on behalf of Mr Asghar accepted that there was no licence between 11th December 2021 and 24th January 2022 and again between 28th June and 11 July 2022.

8. This case really centred on whether or not a licence had been granted and when, and whether or not that afforded the Respondent the defence as set out at section 72(4) of the 2004 Act.

9. Both Mr McGowan and Miss Yasin have set out in their submissions to us what they consider to be the chronology in respect of the applications for a licence. However, before we get to those details we should record the admission made by Mr Asghar that the Property is one that was required to be licensed as an HMO and indeed was the subject of an HMO licence which expired on 10th December 2021. That licence confirms that it ran until 10th December 2021 having been granted on 11th December 2020.

10. This resulted in the Applicants amending their period of claim, which had started in July of 2021 but which was now accepted did not commence until 11th December 2021. It could be argued, however, that such amendment should have been made earlier because by a letter that was sent by Justice for Tenants on 25th July 2022, a response was appended by the local authority which clearly confirmed that a licence had been issued for the Property and expired on 10th December 2021 and that a further application had been received and was being processed.

11. In a letter that Mr Asghar sent to Justice for Tenants on 19th February 2024 he set out a timescale that he considered was relevant to the matters before us. This indicated that on 21st January 2022 a new HMO licence application was made and an email was received two days later from Oxfordshire City Council confirming receipt. There was then a request made by the Council on 9th February 2022 for a copy of the signed declaration and mortgage provider. It is said that this was responded to by 15th February 2022 when the mortgage provider and the declaration were sent to the Council. As a matter of comment, it seems that in April of 2022 an enforcement notice visit was undertaken by the Council's HMO Officer following complaints made by the Applicants. That, however, appears to be a matter that did not go any further and was not something that we were required to investigate further.

12. On or about 12th May 2022 the Council requested the Stage 1 fee be paid and that was done the next day.

13. On 28th June 2022 an email was sent from the Council which said as follows: *"I have been made aware that we haven't received a valid HMO licence application for the above property and the application has now been withdrawn.*

The reason the application was invalid is because we never received the signed declaration that was sent to you in an email on 12th May to complete and return.

This must be returned in order for us to continue with the issuing of the HMO licence.

If you have returned the signed declarations then please let me know when this was done and provide a copy of the email. Many thanks, Hemma Naran, HMO Enforcement Officer."

It appears that in July of 2022 the Respondent was told that a new application would have to be made, which was done. There then followed an inspection of the Property for the purposes of granting an HMO licence in August of 2022 and the licence was eventually granted on 25th October 2022.

14. It is accepted by the Applicants that the fresh application for an HMO licence was made on 11th July 2022 and this is the cut off period for which a claim is made.

15. In the Applicants' skeleton argument there is reference to the relevant sections of the 2016 Act as well as reference to Upper Tribunal decisions, which we will deal with in the findings section. It is the Applicants' case that no application for a licence was "duly made" as provided for under section 72(4) of the 2004 Act until it was relodged on 12th July 2022. There is at the foot of the skeleton argument a somewhat unnecessarily complicated calculation which indicates that in the view of the Applicants there is a sum of £20,688.52 due in respect of the rent repayment order. That, therefore, is the maximum sum which the Applicants say they are entitled to recover.

16. For the Respondent, as we have indicated above, there is acceptance that there is a period for which the Property was unlicensed and the number of days that it is said, at least initially, for which a licence was missing was some 56 days, this being from 11th December 2021 to 24th January 2022 and from 28th June 2022 to 11 July 2022.

17. In the papers submitted by Mr Asghar was an email from the Council dated 16th February 2024, which confirms that a stage 1 payment for the Property was received by them on 13th May 2022.

18. It is important to record as part of the chronology that on 9th February 2022 the Council wrote to Diamond Estates, Mr McMahon, indicating that there were details missing from the declaration attached to the licence application and it was emailed back to him for completion. Apparently the mortgage provider had not been included. We were provided with a copy of what purported to be the declaration that was missing, which is dated 10th February 2022 signed by Mr Asghar. On 15th February 2022 Diamond Estates emailed the Council providing limited information as to the mortgage lender being the name of a company, Mr Asghar as the account holder and the account number and returning the declaration.

19. Our attention was drawn by Mr McGowan to the declaration, which was set out in Mr Asghar's bundle at page 107 PDF or 64 handwritten (it should be noted that that this inconsistency in numbering did not assist us) in which it states that it is a criminal offence to supply false or misleading information. It also says that the licence holder must let certain persons know in writing that an application had been made which includes the mortgagee of the Property and their name, address, telephone number, email and fax. This seems to be a direction to the

licence holder more than the local authority however schedule 5 to the Act as is set out in Mr McGowan's skeleton argument includes a requirement that the local authority must serve notice of the application on all relevant persons and such relevant persons would in this instance include the client's mortgagee. Accordingly it is submitted that failure to provide the address meant that the application was not duly made.

20. On the morning of the hearing we were provided with a copy email from Diamond Estates to the local authority dated 30th March 2022 which provides the information that was sought by the local authority in relation to the mortgage company, namely its full address, they having previously having been provided with the name of the mortgagee and the account holder.

21. On behalf of Mr Asghar, Saima Yasin indicated that he was from Pakistan and whilst his spoken English was quite good, he did not fully understand the written language. It seems also that he had been in Pakistan for some time during the period for which the licence application should have been made, dealing with family matters.

22. Mr Asghar was not called to give any evidence. Mr McMahon did attend but he had made no witness statement, and we did not invite him to add anything further nor was he asked to do so by either side.

23. It is a pity that the Applicants' bundle of some 400 pages was not with the Tribunal but as we indicated above, it seems to us that this would not really have assisted in any great degree. We have an admission that the Property required to be licenced and an acceptance that for some of the time there was no licence in existence. The argument therefore centres around what period, if any, the Property was licensed and what period, if any, Mr Asghar may be able to make use of the defence under s72(4). We heard all that was said from both sides in this regard.

24. We then moved on the deal with Mr Asghar's financial circumstances and also to discuss the question of conduct. There is no evidence that Mr Asghar has been the subject of any previous convictions and this was accepted by the Applicants.

25. Mr Asghar told us that he was involved in the rental of three properties, one in his name and two shared with another party. Both were mortgaged but he could not tell us how much the mortgage was nor could he tell us what the estimated value of these properties might be. He told us that he lives in his brother's property but pays the outgoings and has five children who live with him. He is employed as a taxi driver with his own car but that is on finance.

26. He confirmed he was not aware of any conduct on the part of the Applicants that he would ask us to take into account.

27. Mr McGowan on behalf of the Applicants indicated that the Property had been in poor condition when they had first taken over the tenancy. Apparently there were damp issues. More vexing perhaps was the fact that there appeared to be a failure by the agents to settle the utility bill. The tenancy agreement provides for the first £25 per month, per tenant to be met by the Respondent and that the

Applicants would thereafter be responsible for the balance of any utility bill. This apparently resulted in an application to the redress scheme who held that Mr Asghar had to repay £1,050 which has been repaid, but £1,820 was said to relate to the Applicants' usage of gas and electric at the Property. A complaint was made by the Applicants that because of the default they were left having to suffer a meter at the Property, which resulted in their costs being higher than would otherwise have been the case. It seems that no bills had been paid at the Property since September of 2021. However, we were not provided with any comparable evidence to show what the electricity and gas bills may have been and whether £1,820 was a reasonable amount. It seems that within these sums was an enforcement fees of £300 and therefore the sum of £1,520 is perhaps all that was payable by the Applicants.

28. We do, however, need to take into account the £25 paid by Mr Asghar in respect of the utility payments, which will need to be considered by us in due course. Mr McGowan made allegations of other matters of conduct which were outside the period for which there was a dispute. He said that there was some authority to support the view that this could be taken into account but did not produce it. He thought, however, that the problems with the Property when the Applicants first moved in and the fact that Mr Asghar was in his words a professional landlord, albeit at the lower end of the range, this was therefore a serious offence and he considered that a reduction of 30% would be reasonable thus requiring Mr Asghar to pay 70% of the sum that has been claimed.

29. Saima Yasin in response told us that Mr Asghar had instructed agents to act throughout. There was no real evidence before us to show the poor condition, although it was accepted that it did require cleaning when the Applicants first took occupancy. Her view was that the Respondent had endeavoured to comply with his requirements but had been rather let down by the agent. We were reminded that the Property had been previously licensed and although there was an enforcement visit in April, nothing came from that.

30. We put it to Saima Yasin that it would seem that there was a period from 11th December 2021 to 30 March 2022 when the final details were given for the mortgagee when it could be argued that an application had not been duly made. She accepted that this was a period which could be applied in respect of the rent repayment. She did, however, ask us to consider that this was not a serious offence, that there was mitigation and that the Respondent had endeavoured to do "the right thing."

FINDINGS

31. There is no doubt that the Respondent was the Applicants' landlord at the time of the alleged offence. We are satisfied beyond reasonable doubt that for a period the offence under section 72(1) of the 2004 Act, namely the control or management of a licenced HMO has been committed. The question we need to concentrate on is the question of a defence under s72(4) and the basis upon which the penalty may be imposed by reference to the Upper Tribunal authorities and the case of Acheampong v Roman [2022]UKUT239.

32. We find that certainly from the 11th December until 30th March 2022 an application had not been 'duly made'. We make this finding because it was not until 30th March 2022 that the full details of the mortgagee was provided to the Council. This had been asked for on more than one occasion. Accordingly, we find that that was certainly a period for which the Property was not licensed.

33. The question of a defence then comes into play insofar as the period from 31 March through to the 28th June 2022 is concerned, which is when the local authority wrote to say that the licence application had been withdrawn. One might ask why Mr Asghar or his agents did not seek to chase the local authority after the end of Marsh to find out what the state of play was with the licence. However, we think weight must be given to the fact that in May of 2022 a request was made for the first fee to be paid and was paid. This in our finding would lead Mr Asghar to assume that his licence application was proceeding. It was not until 28th June when he was formally advised that the application had been withdrawn and no further application was made until 12th July 2022 which is agreed.

34. Accordingly, it is our finding that from 11th December 2021 to 30th March 2022 and from 28th June 2022 to 11th July 2022 there was no licence for this property. In the intervening period we accept that Mr Asghar does have the benefit of the defence under s72(4) by reason on the actions of the local authority in requesting and receiving the first payment due under the licence application, which would in our finding indicate that the application was still effective and s74(8) applied. It is our finding, therefore, that the Applicants cannot discharge the burden proof, that is to say beyond all reasonable doubt, that for the period between 31st March to 28th June 2022 the Respondent could not reasonably have believed that a licence was being processed by the local authority, which gave him the necessary elements for the defence to be made out. We remind ourselves also that the proof of this is on the balance of probabilities only.

35. We then need to consider the whole of the rent for the period in question which is set out on the attached schedule and deduct from that the utility payment. We have done that and those represent £25 per person, per month. However, we do not see why the Applicants should have to pay the penalty of £300 and we add that back in as being a sum that should be covered by the Respondent.

36. The licensing offence is not the most serious as is referred to in the Upper Tribunal case of Williams v Palmer. In that case a 20% deduction was given for that and the fact that there was no conviction.

37. On the question of conduct there is nothing that we must take into account on behalf of the tenants. Insofar as the landlord is concerned, the failure by his agents to pay the utilities on the due date was unacceptable but the Applicants were not able to show that they suffered any particular loss in that regard, although we will allow a credit for the £300 that they said was suffered as a result of the penalties imposed by the utility company. The financial circumstances of the landlord were not really provided in any depth by Mr Asghar. We do not accept, however, that he is really what one would class as a professional landlord. He owns one rental property, which is the subject of these proceedings and is a co-owner of two others.

38. However, there is no doubt that whether his knowledge of the English language is as good as he might have wished, he should keep abreast of the law and although it seems he did rely on his agent, he did not produce a copy of the agreement he had with them to show what their responsibilities were. In the absence of same, we cannot place too much weight on the managing agent's involvement. We conclude that we agree with Mr McGowan's assessment that a reduction by 30% would be a reasonable sum.

39. That gives the amount shown on the attached schedule, which we suggest should be paid to Justice for Tenants for them to distribute between the relevant Applicants. We did note, for example, that only Miss Butcher appears to have paid £600 for the rent in December 2021 whereas the other tenants appear only to have paid £550. The sum involved given our findings is perhaps de minimis but it is something that we will leave them to resolve between themselves.

40. No application was made for reimbursement of any fees.

Andrew Dutton

Judge: _____
A A Dutton

Date: 6 March 2024

ANNEX – 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 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 to 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 (ie 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.

Schedule of payments and sum to be repaid as a Rent Repayment Order

Period 11.12.21 to 31.12.21 (20 days) @ £98.63 per day but less £129
for the four applicants who only paid £550 this period £1,843.60

Period 1.1.22 to 30.3.22 (89 days) @ £98.63 per day =	£8,778.07	
Period 28.6.22 to 11.7.22 (14 days) @ £98.63 per day =	£1,380.82	B
Total sum of rent to be considered	£12,002.49	
Add penalty of £300 (see paragraph 37)	£12,302.49	

Deductions

In respect of utilities at £125 per month or £4.10 per day x 123 days = £504.30
Leaving the sum due before consideration of any further allowances under the Acheampong v Roman decision at £11,798.19

Applying 70% award gives a final figure of £8,258.73.