FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/34UC/HMF/2023/0009**
Property	:	**182 Headington Rd, Oxford OX3 0BS**
Applicant	:	**Steven Matthews**
Represented by	:	**Ms Hoxha of Represent Law**
Respondent	:	**Mr Aslam Javid Dogar**
Represented by	:	**In Person**
Type of application	:	**Application for a rent repayment order under s.41(1) and (3) of the Housing and Planning Act 2016**
Tribunal	:	**Judge Stephen Evans** **Mr Roland Thomas FRICS**
Date of hearing and venue	:	**30 April 2024 and 10 June 2024, remote by video**
Date of decision	:	**22 July 2024**

DECISION

DECISION

(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £ to the Applicant.

(2) The Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

REASONS

Background

1. On 11 February 2002 Aslam Javid Dogar and Mussarrat Parveen Dogar became the registered freehold proprietors of 182 Headington Rd, Oxford, OX3 0BS ("the Property").
2. From 2012 the Property was first licenced as an HMO.
3. The Property was last licensed on 12 February 2021 for a year.
4. In June 2021 Oxford City Council commenced an Additional Licensing Scheme.
5. On 21 August 2021 an assured shorthold tenancy was entered into between the Applicant, Steven Matthews and a person named on the tenancy agreement as Aslam Javid Dogar. The tenancy agreement is signed above that printed name, with the date of 21 August 2021. It is also signed by the Applicant. The term is 6 months, and the rent is £750 per calendar month. There was a deposit of £750 payable, which was duly refunded.
6. On 4 September 2021 the tenancy started, with the Applicant moving in on that date. He states that there were various problems with the Property after that date, including that there has been no toilet seat from the beginning.
7. The Applicant thereafter paid £750 per calendar month rent as and when required.
8. On 11 February 2022 the HMO licence for the Property expired.
9. In early March 2022 the Applicant alleges the oven stopped working.
10. On 3 March 2022 the Applicant's assured shorthold tenancy ended, and a statutory periodic tenancy began on the following day, at the same rent.
11. The Applicant continued to pay the £750 rent due under the statutory periodic tenancy.

12. On 31 March 2022 the oven was replaced.

13. On 20 March 2022 Oxford City Council requested an inspection of the Property on 27 June 2022.

14. On 27 June 2022 Oxford City Council, by one Hemma Naran, inspected the Property. The notes on their system state it was an HMO with 5 occupants, but no HMO licence was in place. There were various breaches of the Management Of Houses In Multiple Occupation Regulations 2006 found, including breaches of Regulation 3, Regulation 4 and Regulation 7, some of which related to safety measures.

15. On the following day, 28 June 2022, the Applicant ceased to be a tenant when he left the Property. His deposit was later returned on 5 August 2022.

16. On the 9 August 2022 a new application was made for an HMO licence, which was in time granted.

The Application

17. On 19 March 2023 the Applicant made this application to the Tribunal for a rent repayment order, on the grounds of breach of section 72 of the Housing Act 2004, namely failure to licence a HMO.

18. The period claimed by the Applicant runs from the date the Property ceased to be licensed on 11 February 2022 to the date that he left the Property on 28 June 2022.

19. The Tribunal gave directions on 18 December 2023, which the Applicant has complied with. Regrettably, the Respondent failed to comply with any directions in this case.

20. As a result, on 11 April 2024, the Tribunal judge wrote to the parties in the following terms:

    "The Tribunal has now received further evidence from the Applicant but heard nothing from the Respondent, despite the letter dated 6 February 2024. In the circumstances the judge has made an order under rule 9 of the Tribunal Procedure Rules preventing the Respondent from taking further part in proceedings. For the avoidance of doubt, the Respondent may still attend the hearing and cross examine the Applicant's witness(es) but he is prevented from producing any statement of case or written evidence including any written statements of his own. The matter will now be set down for a hearing. The Tribunal proposes that the hearing be by video conference on 30 April 2024".

The First Hearing

21. The hearing did not go ahead as planned on 30 April 2024, because at 06:50 that morning the Respondent contacted the Tribunal to say that he was unable

to attend, by reason of an accident. He stated that he would have liked to be present at the hearing. He made a request for an adjournment. He produced a discharge summary from a hospital which indicated that Aslam Dogar, date of birth 4 May 1964 of an address in Headington had attended the John Radcliffe Hospital on 29 April 2024 complaining of chest pains. He was discharged in the early hours of the morning on codeine, after examination. The summary included the words, "will not be fit to attend important meeting later today".

22. In the circumstances, after hearing representations form Mr Barrett for the Applicant, the Tribunal exercised its discretion to adjourn the hearing, notwithstanding the Respondent's history of procedural lack of compliance. There was clear medical evidence that the Respondent was unfit to attend the hearing, and this was his first application for an adjournment. The overriding objective, when applied, was in favour of an adjournment, to preserve the Respondent's Article 6 rights to attend the hearing, to cross examine witnesses and to make representations (without adducing evidence). It seemed to the Tribunal that, if a short adjournment was granted, the prejudice to the Applicant would be considerably reduced.

The Second Hearing

23. The parties were given a choice of dates in the near future, and the matter resumed on 10 June 2024.

24. The Respondent attended remotely, as did the Applicant, with his representative Ms Hoxha. At first the Respondent said he had difficulties hearing the Tribunal, and we suggested that he join by telephone instead. However, immediately thereafter, the Respondent's remote video link must have corrected itself, because he was able to hear all the participants, and to take active participation in the hearing, so far as he was permitted under the directions.

25. The case for the Applicant was opened on the basis that, throughout the period of 11 February 2022 to 28 June 2022, both the standard test for an HMO under section 254 of the Housing Act 2004 was satisfied (5 persons, 2 households etc), as well as under the Additional Licensing Scheme for Oxford City Council, which requires a licence when there are at least three occupants.

26. The Tribunal was taken to the tenancy agreement, and the e-mail from the City Council dated 13 February 2024 confirming the Additional Licensing Scheme, with a website link to the public notice in that regard.

27. The Applicant took the Tribunal through the definition under section 254 of the Act, asserting that this was a building which did not contain self-contained flats, the persons therein were not of a single household, they were not related, they occupied as their only or main residence, it was their only use of the accommodation, and that rent was payable by at least the Applicant. Lastly, the persons in occupation shared bathrooms, living areas and the kitchen.

28. The Applicant contended that the Respondent was a person in control of the HMO as he was the freeholder, and that there was evidence that the Property had been licensed from 27 January 2012 to 11 February 2022, when there was a gap in licensing until the application was made on 9 August 2022.

29. The Applicant contended that there was evidence in the bundle by way of his witness statements in relation to the landlord's conduct concerning the state of repair of the Property. This included the lack of a toilet seat, the oven not working for three weeks, damp and mould affecting every bedroom, including visible damage to the ceiling in his bedroom which has been painted over, and rubbish in the rear garden and in the shed left over from building work, including broken glass, old windows and doors, and rubble.

30. The Applicant confirmed that there had been no Universal Credit paid.

31. The Applicant, however, volunteered that there should be deductions from any Rent Repayment Order which we might make. The Applicant conceded that council tax per room of £62.11pcm should be deducted, as well as electricity of £25 PCM and gas of £25 pcm. In other words, there should be deducted from the calculable rent of £750 a sum of £112.11, leaving £637.89 pcm as the net rent for the purposes of making any order.

32. The Applicant contended that the full period should be awarded of 139 days, or 4 months 19 days, thereby giving a maximum amount payable by the Tribunal of £2870.51.

33. The Applicant gave evidence, and clarified what at first blush was a contradiction in his 2 statements, concerning the number of persons in the Property. In his first statement, he had said that there were 4 bedrooms, 3 of which were occupied, with the 4th used as a communal room to store personal belongings of all the tenants. In his second statement, he corrected this, saying that he did not make it clear that out of the 4 bedrooms, he occupied 1, and the remaining 3 bedrooms were occupied by 4 people, such that a total of 5 people actually lived in the house. The Tribunal pressed the Applicant as to the reasons for the correction. The Applicant was candid in stating that this inaccuracy was not spotted by him when signing the first statement.

34. The Applicant was then asked questions by the Respondent. The Respondent asked who signed the agreement, and whether it was he. The Applicant responded that the person who signed the agreement in his presence on 21 August 2021 looked a different person to the person appearing before him in the hearing.

35. The Applicant was asked to whom he had paid his rent. The Applicant confirmed it was to “A Dogar”, as evidenced on the bank statements.

36. The Applicant was asked what name was on the tenancy deposit certificate. The Applicant did not need to answer, because it was plain that it said "landlord: Akmal Dogar".

37. The Applicant confirmed that he had never met the Respondent until the hearing.

38. The Applicant confirmed that there were 5 occupants including himself in the Property during the period for which he claims.

The Final Representations

39. The Respondent contended that he had never met the Applicant, had never dealt with him, and he had never been his tenant. He alleged that the case should not have been brought against him. He alleged that he was not managing the tenancy at the time. He alleged that the tenancy agreement wasn't signed by him. He said that his son was managing the Property, instructed by his wife, because he had had certain family issues. He claimed he did not receive any rent. He pointed to the different name on the tenancy deposit certificate.

40. Ms Hoxha contended that the evidence was overwhelming that the Respondent was the Applicant's landlord. It did not matter if the tenancy agreement was signed by someone else, as long as it was signed on behalf of the Respondent, who was named on the agreement, and was joint freeholder of the Property.

The Issues

41. As the Tribunal directions state, the issues we have to decide are:

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

(4) What is the maximum amount that can be ordered under section 44(3) of the Act?

(5) What account must be taken of:

(a) The conduct of the landlord?

(b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other factors?

Determination

42. It seems to us that the hearing threw up a preliminary issue: whether the Respondent was the landlord under the Applicant's tenancy and therefore the correct party to this Application.

43. On this preliminary issue, we have no hesitation in finding that the Respondent was the landlord and the correct party. On the evidence before us, the party to the tenancy agreement as landlord was "Aslam Javid Dogar" both on p.1 and on the final page. Whether or not the person who signed the agreement was Aslam Javid Dogar is not in our determination decisive, as long as it was signed on that person's behalf. We have no evidence that it was not. Nor is the fact that the tenancy deposit certificate in the name of Akmal Dogar decisive. The rent was paid to A Dogar, and we have no evidence that was not to an account for or in the name of Aslam Javid Dogar. The Respondent is debarred from defending the application and cannot adduce any evidence. His family circumstances and other representations which amount to evidence we therefore do not take into account.

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

44. It was not in dispute that there was no HMO licence in the relevant period (11 February 2022 to 28 June 2022).

45. The Tribunal is persuaded that this was a HMO under s.254 of the Act, for the reasons the Applicant has advanced: see paragraphs 27 and 28 above.

46. We are also satisfied that there were 5 persons in occupation at the relevant time. We pressed the Applicant on this point and accept the Applicant's explanation for the correction in his statements.

47. Even if we are wrong on that, there is evidence which persuades us of an Additional Licensing Scheme, which requires licensing as a HMO when there are 3 persons in occupation.

48. We are therefore satisfied that the Property was required to be licensed under s.72 of the Housing Act 2004, but was not.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

49. We are satisfied of this requirement on the face of the tenancy agreement.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

50. The Application for a rent repayment order was made on 19 May 2023. Accordingly, the Applicant has to show the commission of an offence on at least 1 day in the period between 19 May 2022 to 19 May 2023.

51. We are satisfied the Applicant has, for the reasons already given.

(4) What is the maximum amount that can be ordered under section 44(3) of the Act?

52. We calculate there were a maximum of 138 days during which the offence was committed.

53. A rent of £637.89pcm equates to £20.97 per day.

54. The maximum recoverable is therefore £2893.86.

55. However, the Applicant has limited himself to a total of £2870.51.

(5) What account must be taken of:

(a) The conduct of the landlord?

56. We are satisfied, for the reasons given by the Applicant in his statement, as summarised in paragraph 29 above, that the Property has not been kept in a good state of repair as the tenancy agreement at clauses 34 and 35 requires.

(b) The financial circumstances of the landlord?

57. We have no evidence concerning this.

(c) Whether the landlord has at any time being convicted of an offence?

58. We have no evidence concerning this.

(d) The conduct of the tenant?

59. We have no evidence of poor conduct by the Applicant.

(e) Any other factors?

60. There was nothing advanced by either party in this regard.

Conclusions

61. Given all the above, the Tribunal is satisfied that it should make a Rent Repayment Order in favour of the Applicant.

62. The case law provides that we are not compelled to grant the maximum amount sought. In this regard we follow *Acheampong v Roman* [2022] UKUT 239 (LC):

> "20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;
>
> 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.
>
> 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:
>
> 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)."

63. We have already conducted the exercise in (a) and (b) above.

64. As to (c), we consider this was a mid-range offence, in terms of both s.72 of the 2004 Act and the other more serious offences set out in section 40(3) of the 2016 Act, which include violence for security entry, eviction or harassment of occupiers, failure to comply with improvement notices and prohibition orders, and breaches of banning orders. There was, in short, a lapse in licensing for a period of 6 months over a 10 year period. That is still serious.

65. Our starting point is therefore half of the maximum which the Applicant seeks (£2870.51), namely £1435.26.

66. However, we consider under (d) above, that the conduct of the landlord, both during the tenancy and in failing to respond to these proceedings, merits an increase of the starting sum to ¾ of the maximum payable, namely £2152.88.

67. The above sum of £2152.88 shall be paid by the Respondent to the Applicant within 28 days, we determine.

68. The above sum is recoverable as a debt, if not paid: s.47(1) of the 2016 Act.

69. The Applicant being successful, we also order that the Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, within 28 days of the date of this decision.

Judge:

S J Evans

Date:

22/7/24

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 (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.