



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

Case References : BIR/00FY/HSG/2024/0001

Property : Flat 3, 39-41 Bridlesmith Gate, Nottingham, NG1 2GN

Applicants : Asher Latif Khan and Iman Fatima

Respondent : VSHF Nottingham Limited

Representative : Orange Nottingham Limited t/a Loc8me and
Messrs Bird, Wilford & Sale Solicitors, Loughborough

Type of Application : Application by tenant for Rent Repayment Order pursuant to
sections 40, 41, 43 & 44 Housing & Planning Act 2016.

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr R. Chumley-Roberts MCIEH JP

Date of Hearing : 23 July 2024 with inspection on 24 September 2024

Date of Decision : 07 October 2024

DECISION

Introduction

- 1 This is an application by former tenants of a flat in Nottingham for a Rent Repayment Order ('RRO') under sections 40, 41, 43 & 44 of the Housing and Planning Act 2016 ('the Act'), as the flat they occupied required a selective licence as a House in Multiple Occupation ('HMO') under Nottingham City Council's housing policy and they understand no Licence has been issued.
- 2 The application was made to the First-tier Tribunal (Property Chamber) ('the Tribunal') on 5 March 2024.
- 3 The Tribunal issued Directions on 20 March 2024 and a video Hearing was held on 23 July 2024.
- 4 As the parties were unable to agree a description of the building the Tribunal carried out a site inspection on 24 September 2024.

Issues

- 5 The Applicants submitted four grounds in their claim for an RRO:
 - 1 that there was no selective licence in place;
 - 2 that the landlord and their agents had displayed unprofessional conduct;
 - 3 that the alleged lack of licence had caused them financial loss and emotional stress;
 - 4 as a result, the Applicants claimed reimbursement of all the rent paid during the period of their tenancy and compensation for emotional loss.

Relevant Law

- 6 Section 40(1) of the Act gives the Tribunal the power to issue a rent repayment order where a landlord has committed an offence under the Act.
- 7 Section 41(1) provides that a tenant can apply to the First-tier Tribunal for a rent repayment order.
- 8 Section 43 allows the Tribunal to issue an order if satisfied 'beyond reasonable doubt' that a landlord has committed an offence under the Act.
- 9 Section 44 relates to determination of the amount to be repaid.
- 10 It is common ground between the parties that the property required a selective licence under Nottingham City Council's housing policy.

Submissions

- 11 Applicants
The Applicants produced a copy of an Assured Shorthold tenancy agreement granted by VSHF Nottingham Limited to the Applicants, Mr Asher Khan and Mrs Iman Fatima, for a term of 379 days from 18 September 2023 to 30 September 2024.
- 12 The agreement described the property as 'Flat 3, 39-41 Bridlesmith Gate, Nottingham, NG1 2GN.'

- 13 They were concerned that it needed a Selective Licence and made enquiries of Nottingham City Council and received an email from Anisa Iqbal of the Council's Selective Licensing Team dated 2 December 2024 which stated *'I had a look at our records but not able to find an application for Flat 3, 39-41 Bridlesmith Gate, Nottingham, NG1 2GN'*. From this, they concluded that it had been let unlicensed in contravention of the Council's HMO policy.
- 14 They made further enquiries with the landlord's agents, Loc8me Nottingham, but were dissatisfied with the response and by agreement with the landlord vacated the flat by early surrender of the lease on 30 January 2024.
- 15 Having vacated, they applied to the Tribunal for a Rent Repayment Order requesting return of all rent paid during their occupation, full reimbursement of their deposit and compensation for emotional stress caused by lack of a licence.
- 16 The other parts of their claim for return of the deposit and compensation for emotional loss flowed from the apparent lack of licence.
- 17 Respondent
The Respondent landlord was represented by Messrs Bird, Wilford and Sale, Solicitors, who produced a Response with Witness Statement by Samantha Foulds, the landlord's Property Manager, who gave evidence at the hearing.
- 18 The Respondent said the Tenancy Agreement gave the address as 'Flat 3, 39-41 Bridlesmith Gate, Nottingham, NG1 2GN' and admitted that this had been incorrect due to administrative error, but said the flat had been part of a building converted to flats in 2022 and that this had been the address used by the developers at the time. The postal address was subsequently changed to 'Flat 3, 37a Bridlesmith Gate, Nottingham, NG1 2GN'.
- 19 They produced a Notice from the Address Management Department of Nottingham City Council dated 12 August 2022 headed 'Address Management, Public Health Act 1925 and Local Government Act 1972', in which property with the development address 'First and Second Floors, 37-39 Bridlesmith Gate, Nottingham', was subsequently to be known as 'Flat 1 and Flat 2, 37a Bridlesmith Gate'.
- 20 They also produced a selective licence issued 7 February 2023 under section 88 of the Housing Act 2004 for 'Flat 3, 37a Bridlesmith Gate, Nottingham, NG1 2GN', granted to VSHF Nottingham Limited with an expiry date of 26 September 2027, which they said related to the flat.
- 21 The Respondent submitted that the error in the address in the Tenancy Agreement did not affect the validity of the selective licence which related to the physical building in which the flat was situated.

Decision

- 22 The Tribunal inspected the property on 24 September with Mr Johnston, a Property Manager employed by the Respondent's agents. No other parties were present.
- 23 The building containing the subject property was found to be a four-storey Victorian building in a secondary retail position in Nottingham City centre. It occupies a corner position with frontage to Bridlesmith Gate and Byard Lane. The ground floor comprises a hairdressing salon on the street corner and a shop on the Bridlesmith Gate frontage

trading as 'Stick and Ribbon'. Between the shops on the Bridlesmith Gate frontage there is a passageway leading to a small yard at the back for bin storage.

- 24 The upper floors are accessed from a door on Byards Lane behind the hairdressers which leads into a hall with stairs to the first, second and third floors. There are landings on each floor. The first floor is a multi-occupied flat, an HMO. The second floor is similar. The third floor comprises three flats known as Flat 3 (the subject flat), Flat 4 and Flat 5.
- 25 We are advised that Flat 3 comprises a self-contained bedsitting room, kitchen and bathroom.
- 26 A sign on the outside of the building next to the hall door reads '37-41 Bridlesmith Gate Flats'.
- 27 It is clear from the evidence that Flat 3, 37a Bridlesmith Gate has a licence. It is also clear from the Respondent's evidence that Flats 1 and 2, 37a Bridlesmith Gate have licences and that their addresses were changed by Notice from Nottingham City Council on 22 August 2022 from their previous addresses of Flats 1 and 2, 39-41 Bridlesmith Gate.
- 28 There is no written evidence that Flat 3, 37a is the same as Flat 3, 39-41 as the Notice of address change only relates to Flats 1 and 2, but as it is directly above Flats 1 and 2 and there are no other stairs to the flats comprised in this block of property the Tribunal finds as a matter of fact that it is the same Flat and has a valid licence. Furthermore, to find for the Applicants, the Tribunal would need to find 'beyond reasonable doubt' that they were right in their assertion that Flat 3 is unlicensed and there is no evidence to this effect.
- 29 Accordingly, the Tribunal finds for the Respondent and rejects the application for a Rent Repayment Order.
- 30 Whilst the Applicants' claim for rent reimbursement fails with the rejection of the application for a Rent Repayment Order, the Tribunal can confirm that the Applicants' other claims do not fall within its jurisdiction.

I.D. Humphries B.Sc. (Est.Man.) FRICS
Chairman, First-tier Tribunal Property Chamber (Residential Property)

Date: 07 October 2024

Application to the Upper Tribunal

If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.