



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

Case Reference : CHI/40UE/HMF/2023/0026

Property : 4 Gravelands, Lane, Henlade, Taunton,
TA3 5DL

Applicant : Karen James
Christopher McKee

Representative :

Respondent : Darren Jarman

Representative :

Type of Application : Application for a Rent Repayment Order by a
tenant under ss40-45 of the Housing and
Planning Act 2016

Tribunal Members : Regional Surveyor Coupe FRICS
Mr I Perry FRICS

Date & Venue of Hearing : 1 August 2024
Havant Justice Centre (remote video hearing CVP)

Date of Decision : 1 October 2024

DECISION

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Decision of the Tribunal

(1) The Tribunal dismisses the application for a rent repayment order against the Respondent.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicants are the former tenants of the property known as 4 Gravelands Lane, Henlade, Taunton, TA3 5DL ("the property").
2. The Respondent is said to be the landlord of the property and the person to whom the rent was payable throughout the tenancy.
3. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("the 2016 Act").
4. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation ("HMO") which was required to be licensed under Part 2 of the Housing Act 2004 ("the 2004 Act") at a time when it was let to the Applicants but was not so licensed and that the Respondent was therefore committing an offence under section 72(1) of the 2004 Act.
5. The Applicants' claim is for repayment of rent during the period 23 October 2021 to 25 April 2023, amounting to £9,900.
6. These reasons address in summary form the key issues raised by the Applicants, the Respondent having not participated. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.
7. References in this determination to page numbers in the bundle are indicated as [].

The Application

8. The application was received by the Tribunal on the 2 August 2023.
9. Section 41(2) of the 2016 Act provides that 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 was made. The Tribunal is satisfied that, in this matter, such criteria is met.

10. The property is said to have been advertised as available to rent on an online portal and, following discussions between the parties via mobile phone messaging and an inspection of the room by Mr McKee, the Applicants entered into a verbal agreement with the Respondent to rent the room. The agreement remained a verbal one for the duration of the Applicants' occupation.

Procedural History

11. On 24 July 2023 the Tribunal struck out the application in accordance with Rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds that, contrary to Tribunal Directions dated 30 May 2024, the hearing bundle had not been received and, as such, the Applicants had failed to comply with a direction which stated that failure to comply by a stated date would lead to the striking out of the proceedings.
12. The Applicants were entitled to apply for reinstatement of the application under Rule 9(5) of the Tribunal's Procedural Rules and did so on the 26 July 2024, simultaneously providing a hearing bundle extending to 21 electronic pages. The application was reinstated on the 29 July 2024 and the hearing, already listed for 1 August 2024, proceeded.

The Hearing

13. The hearing took place on the 1 August 2024 with the Tribunal sitting at Havant Justice Centre. The Applicants appeared in person via the online cloud platform CVP. The Respondent neither attended nor was represented at the hearing.
14. The hearing bundle was considered by the Tribunal prior to the hearing. As the Respondent had not engaged in the proceedings the bundle contained only the Applicants' submissions.

Relevant Statutory Provisions

15. The relevant statutory provisions are set out in the Schedule to this decision.

Parties' Contentions

16. The Applicants rented a room with ensuite bathroom in the property from 23 October 2021 to 25 April 2023 at a monthly rent of £550, such accommodation being their main/only residence. The property is said to form part of a shared house comprising seven rooms, let, on occasion, to eleven tenants. Shared facilities include a kitchen, laundry room, garden and six parking spaces.
17. The Applicants argue that the property was an unlicensed HMO during their tenancy and, furthermore, that the offence had been committed in the 12-month period immediately previous to the date the application for a rent repayment order was made, that being the 3 August 2022.

18. In evidence of such, [13-11] the Applicants rely on an email exchange between Ms James and Kim Lewington, a Private Sector Housing & Environment Protection Manager at Somerset Council (“council officer”) which commenced on 11 July 2023. The purpose of Ms James’ initial enquiry to the Council was to establish whether the property had been licensed as a HMO within the last five years. The Tribunal rely on this email thread in reaching its findings of fact and therefore find it beneficial to set out the relevant text.
19. On 12 July 2023 the council officer answered the Applicants by email stating that *“The licence process for this property hasn’t yet been completed”*.
20. Ms James replied *“Does that mean this property has never had a HMO licence in the last five years?”*.
21. The council officer responded with *“That is correct. What is your interest with this property?”*.
22. Ms James replies *“... My interest is because I used to live in this HMO from October 2021 to April this year.”*
23. The council officer replied saying *“In that case, I would advise you to look into Rent Repayment Orders, perhaps go into Citizens Advice? [sic]. We have recently prosecuted a landlord for failing to license, which I would believe based on the information you have provided so far, is the landlord you would have rented from. This conviction would prove that 4 Gravelands was not licensed and we have taken action because it wasn’t. This would help in any case you would make for a Rent Repayment Order.”*
24. At the hearing the Applicants stated that they had not sought the opinion or assistance of either Citizens Advice or any legal or advisory body.
25. The Applicants state that during their tenancy the property was occupied, on occasion, by up to eleven tenants, with only one couple forming a household. The occupiers, in addition to themselves were said to be John, described as a working professional; a Polish man; a room with a regular turnover of tenant; two men sharing a room; a couple sharing a room, and a room described as being next to the kitchen which had a regular turnover of tenants. The Applicants could provide no evidence of such tenants, their dates of occupation or details of their tenancy agreements.
26. Following the local authority’s email of 12 July 2023 concerning prosecution of a landlord, the Applicants undertook various internet searches and, they say, uncovered an article in the Somerset Gazette allegedly reporting the prosecution of the Respondent in relation to housing offences. No evidence of this was put before the Tribunal.
27. The Applicants state that in order to recover their tenancy deposit from the Respondent they applied to Taunton County Court, following which judgement was handed down in their favour. The Respondent, in that matter, was named as Darren Jarman. No evidence of this was put before the Tribunal.

28. The totality of the Applicants' claim for a rent repayment order is £9,900, comprising eighteen monthly rental payments of £550, as evidenced by an extract from an unnamed online account showing payments between the dates of 14 October 2012 and 7 April 2023. [21]
29. The schedule of payments lists multiple transfers of amounts varying from £20 to £1,050, each with a description of "Payment to P M Jarman". In a column titled "Notes", there is reference to "C & K" which, the Applicants explained, indicated Christopher and Karen, the joint tenants.

Reasons for Decision

30. Firstly, we considered whether we should proceed to determine the matter. We are satisfied that the Respondent was aware of the hearing. Notification was sent to him by the Tribunal. We are satisfied that the Respondent chose not to attend.
31. Next, we considered whether it was in the interests of justice to proceed. In doing so we have regard to all of the submissions made and information before us, including the Respondent's failure to engage in any stage of these proceedings. We also have regard to Rule 3 of the Tribunal Procedure Rules 2013 and in particular the need to act proportionately. We were satisfied that in the particular circumstances of this case it was right and proper to proceed and make a final determination.
32. Turning next to the evidence before us.
33. The first question before the Tribunal was whether the property was a HMO during the period of the alleged offence? Despite the paucity of evidence on the point the Tribunal decided it was, on the balance of probabilities, more likely than not that the property was being used as a HMO during the relevant dates.
34. The Tribunal next turned to the issue of whether the property was unlicensed on the relevant dates. In such regard, the Applicants rely on the email conversation with a Private Sector Housing & Environment Protection Manager of Somerset Council, the fundamental parts of which are reproduced at paragraphs 19-23 above. The Tribunal observe that the Applicants did not adduce a witness statement from the council officer and nor did the council officer attend the hearing.
35. The initial response by the local authority officer to the Applicant's enquiry, that being on 12 July 2023, advised that the licence process for the property "hasn't yet been completed", the wording of which suggesting that an application had been received and was being processed. Such wording is significant as, were an offence being committed under the Act, the offence would cease upon a valid application for a required licence being duly made.
36. The Tribunal further note that the Applicants did not adduce any evidence as to what date the local authority considered the property required licensing from and therefore whether such date fell within the Applicants' occupation.

37. Accordingly, the Tribunal has no evidence before it as to either the date the property was required to be licensed from, nor the date upon which a license was applied for.
38. Next, the Tribunal carefully considered the schedule of rent payments made by the Applicants to their landlord and, in doing so, identified that the recipient was P M Jarman, a name which did not correspond with the initials of the named Respondent. The Applicants confirmed that their contact had been with an individual identifying himself as Darren Jarman, who presented himself as the landlord. Furthermore, that it was Darren Jarman who was the defendant in the County Court application to recover the tenancy deposit. However, the Applicants accepted, but were unable to explain as to why, their rent payments had been made to an account in the name of P M Jarman.
39. Having considered the written and oral submissions presented, the Tribunal finds as follows:
 - i. The Tribunal is required to determine as to whether the property was an unlicensed HMO at the relevant date. The Applicants have provided an email thread from the local authority confirming that an application is not *yet* complete, the crucial word being yet, which suggests an application is underway. Without the relevant dates the Tribunal is unable to ascertain as to whether, by virtue of a valid application for a licence having been made, any alleged offence had ceased by the relevant date. Taking the evidence in its entirety, the Tribunal finds that although the property was likely to have been a HMO, there is insufficient evidence to find that it was an unlicensed HMO at the relevant date.
 - ii. The Tribunal is also required to determine whether the Respondent was the person in control or management of an unlicensed HMO at the time of the alleged offence. In this regard, the Tribunal concludes that insufficient evidence was provided from which the Tribunal could find that the Respondent was the Applicants' landlord at such time. The Applicants had not adduced any evidence of a tenancy agreement with the named Respondent, Darren Jarman, nor did they submit any of the mobile phone exchanges between the parties when agreeing the initial tenancy. In oral submissions the Applicants raised, for the first time, that litigation had been conducted against the Respondent in the County Court but no evidence of such was before the Tribunal. Furthermore, the monthly rental payments were made to a bank account in the name of P M Jarman, a discrepancy the Applicants were unable to explain. Moreover, the Applicants' email exchange with the council officer did not identify the landlord by name, instead saying that, based on information provided by the tenants, the officer believed that the recently prosecuted landlord and the Applicants' landlord may be one and the same person. It is unfortunate that the Applicants took this no further, providing no evidence of any prosecution, nor even the newspaper article they relied upon. Cumulatively, the Tribunal found there to be insufficient evidence to find that the Respondent was either the landlord with control or

management of an HMO that was required to be licensed or that the Respondent received the rent for the property.

- iii. The Tribunal finds insufficient evidence concerning the identity of the Respondent to determine that the Respondent has been successfully prosecuted for a housing offence.
40. Statute requires that the alleged offence of which the Respondent is being accused must be proven to the criminal standard, which means that the Tribunal must be satisfied beyond all reasonable doubt that the offence has occurred. The offence in question is that of controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 but was not so licensed contrary to section 72(1) of the 2004 Act.
41. The burden of proof is on the Applicants to demonstrate that the offence was committed.
42. In reaching our determination we have carefully considered the evidence provided to us and have applied the criminal standard of proof required. Whilst possible to draw inferences from evidence the Tribunal was not satisfied beyond all reasonable doubt that the Applicant had proved that the Respondent was controlling and/or managing an HMO which was required to be licensed at the relevant dates. The Tribunal cannot therefore find that the Respondent was committing an offence under section 72(1) of the 2004 during that period.
43. Although the Tribunal found the Applicants credible in their oral submissions, they demonstrated a fundamental lack of knowledge of the statutory mechanics of what they sought, for example applying for a rent repayment order more than the maximum 12-month period applicable for the alleged offence. The Applicants also showed an unawareness as to the burden of proof they were required to meet.
44. Accordingly, we determine that the application for a rent repayment order must be dismissed.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. 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.

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

- (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 ...
- (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

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

Housing Act 2004

Section 95

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part ... but is not so licensed.
- (4) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1)