



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

Case Reference : **BIR/00CN/HMK/2024/0011**

Property : **152 Mansel Road Small Heath Birmingham B10
9NJ**

Applicant/ Tenant : **Suleiman Robleh Ali**

Respondent/ Landlord : **Nusrat Jabeen**

Type of Application : **Application for a Rent Repayment Order under
the Housing and Planning Act 2016**

Tribunal : **Mr N Wint FRICS
Mr R G Chumley-Roberts MCIEH, J.P.**

Date of Decision : **16 October 2024**

DECISION

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Background

1. An application was made to the Tribunal dated 6 March 2024 by Mr Suleiman Robleh Ali (**the Tenant**).
2. The Tenant is seeking a Rent Repayment Order (**RRO**) under sections 41(1) and 41(2) of the Housing & Planning Act 2016 Act (**the 2016 Act**) in respect of 152 Mansel Road Birmingham B10 9NJ (**the Property**).
3. The Tenant was seeking a total of 7 months but revised this to 9 months rent dating back from 30 June 2023 to 8 April 2024 amounting to £8,100.
4. The Tribunal issued its Directions dated 18th March 2024 and listed the case for a hearing on 3 June 2024 without an inspection. Both parties were in attendance at the hearing with the aid of interpreters.
5. The Tribunal received the following documents:
 - (i) written statements from the parties
 - (ii) evidence of the rental payments made by the Tenant for the applicable period
 - (iii) a calculation of the on a monthly basis of the amount of rent paid in the applicable period
 - (iv) a copy of the Assured Shorthold Tenancy Agreement detailing the term which commenced from and including 27 February 2023 at an initial rent of £900 per month payable in advance. The lease is annotated on the signature page by the Landlord stating the rent is to increase after 6 months to £950 per month
 - (v) a copy of the Property Licence (5 people living as 1 household) dated 8 April 2024 licencing the Property from 8 April 2024 to 7 April 2029
 - (vi) a copy of the Electrical Installation Condition Report dated 15 January 2024
 - (vii) a copy of the Gas Safety Record dated 14 January 2024
 - (viii) a copy of the EPC certificate valid until 9 July 2031
 - (ix) a copy of the section 21 Notice served under the Housing Act 1988 seeking possession of the Property requiring the Tenant to leave after 27 February 2024.
6. Birmingham City Council (**the Council**) adopted the Selective and Additional Licencing Scheme for all wards on 5 June 2023 effective for 5 years. The Selective Licencing Scheme is applicable to all privately rented single household properties located in 25 wards of the City. The Additional (HMO) Licencing Scheme applies to private rented properties which houses 3 or 4 residents from 2 or more households who share one or more amenity. These schemes are in conjunction with the existing Mandatory HMO Licencing Scheme which has been a legal requirement nationwide since 2006 which relates to private rented properties housing 5 or more residents from 2 or more households who share one or more amenity.
7. The Landlord acquired the necessary Selective licence on 8 April 2024.

Submissions

8. The Tenant submitted a written statement dated 5 April 2024. That statement sets out that Mr Suleiman Robleh Ali occupies the Property with his wife under an Assured Shorthold Tenancy Agreement dated 27 February 2023 at a rent of £900 per month increasing to £950 per month after a period of 6 months.
9. The Tenant advised that on 31 January 2024 the Landlord served a defective “Notice Requiring Possession” under section 21 of the Housing Act 1988 and having subsequently obtained advice from Birmingham City Council was made aware that the Tenant could apply for a RRO and obtain a refund of rent backdated to 5 June 2023 when selective licencing was brought into force by the Council.
10. In response to the Landlords statement the Tenant does not dispute the first point. The Tenant states the Landlord was ably assisted by her family in dealing with the Property and should have been aware of the introduction of the selective licencing by the Council as it was widely publicised and became a legal requirement from 5 June 2023. The Landlord failed to act until February 2024 and was therefore in breach of the licencing requirements until the Landlord made her application in February 2024 and which was not granted until April 2024. The Tenant therefore seeks to revise their claim for the period of June 2023 to April 2024 totalling 9 months at £900 per month equating to £8,100.
11. The Tenant also states the rent was not increased to £950 per month as set out in the agreement nor has the Landlord sought to increase the rent by issuing an appropriate section 13 Notice.
12. The Tenant also submits that the fact the Landlord is unable to speak English is not an excuse for failing to have the Property licenced and nor is the Landlords income relevant as a mitigating factor.
13. The Landlord submitted a written statement dated 13 May 2024. In that statement the Landlord states that she rents the Property with the assistance of her children who understand and speak English better than she does.
14. The Landlord also states that as a result she was unaware of the legal requirements for letting a property or what checks need to be carried out.
15. As soon as she received notification from the Council on 4 January 2024 she applied for a selective licence and submitted it immediately. The Landlord also accepts that the Tenant has paid the monthly rent during the appropriate period and now has professional help in dealing with the letting of the Property.
16. The Landlord also accepts the Housing Act 1988 section 21 Notice that was served was incorrect and in future will use the services of her appointed letting agent.
17. At the hearing the Tenant informed the Tribunal he began occupying the Property in February 2023 having inspected it prior and moved his family in shortly thereafter on their arriving into the UK. However, on occupation he found the Property dirty and hadn't been cleaned and the garden was full of rubbish. At the time he didn't want to

accept the house but that the Landlord had promised to address all the issues of disrepair.

18. At the time, the Landlord had advised he would change the kitchen units and floor covering in the kitchen and would deal with all the other matters of disrepair. And having received these reassurances the Tenant entered into the tenancy agreement.
19. The Tenant confirmed the Landlord changed the windows on 23 April 2023 and that the Tenant proceeded to change the carpet on the stairs and when changing the lino flooring in the kitchen noticed, when lifting the floor covering, there was a leak and he assumed it was from the sink and/ or washing machine and noted what he described were 'worms'. The Tenant informed the Landlord who advised the matter would be dealt with via a claim against the house insurance policy. The insurance company sent their loss adjuster and advised that it was the flooring of the kitchen which was at fault that had led to the damp problems. As a result, the flooring had to be dried to remove the moisture however the cost of the electricity used was paid for by the Tenant.
20. As the issues remained outstanding the Tenant contacted the local authority in November 2023 and as a result the Council notified the Landlord and gave him 21 days in which to resolve the matters.
21. Having been contacted by the Council the Landlord approached the Tenant and asked him to move out so he could fix the kitchen. The Tenant refused on the grounds that he had a tenancy agreement in place.
22. The Landlord also notified the Tenant he would attend to the rubbish left in the garden.
23. It was around this time the Council contacted the Tenant and informed him that the Property was not licenced and had no gas safety certificate, electrical safety certificate nor had any fire/smoke alarms and was therefore unsatisfactory and potentially dangerous. In addition the Tenant advised the Tribunal the front door was unsafe and let cold air in through the letter box which had not been sealed although the Landlord did eventually replace the front door which addressed these issues.
24. The Tenant's wife was also pregnant at the time which presented various difficulties.
25. The Tenant then received an 'informal' notice from the Landlord seeking possession of the Property but on checking the Notice found it had not been correctly served. As a result, the Landlord followed this up by serving a formal section 21 Notice on the Tenant however this too was defective. It was at this point that the Tenant began the process to reclaim the rent he had paid.
26. A meeting had also subsequently taken place with the Landlord where the Landlord advised the Tenant could stay in occupation and that they would therefore undertake the necessary works in relation to the kitchen and flooring whilst they were living in the Property and would not need to move out. However, the Tenant advised the Landlord that in their view this would not be practical as the Property's toilet could only be accessed through the kitchen.

27. As a result, the Tenant informed the Landlord they would have to move out of the Property and in doing so contacted the Council to see if they could be rehomed. The Tenant says the Council carried out an inspection and found the Property unfit for habitation and as a result accepted the Tenants application of homelessness and request to be rehomed. The Tenant on questioning by the Tribunal confirmed however that no-one from Environmental Health had in fact attended to assess the condition of the Property and that they had only contacted an officer from the Council (a Housing Support Case Worker) who had supported their application to be rehoused.
28. The Tenant informed the Tribunal that he felt the Landlord had misled him when he agreed to enter into the tenancy agreement as he wasn't made aware of the issues and despite telling the Landlord to address these matters she had failed to do so. In addition, the Tenant advised that the Landlord had not registered his rental deposit provided at the start of the tenancy (of £900.00) with one of the Government's Tenancy Deposit Protection Schemes. This should have been registered within 30 days of the payment being made. The Landlord admitted that she had not done this and the lack of correct deposit registration was referred to in Birmingham City Councils letter to the Tenant of the 6th February 2024.
29. At the hearing the Landlord informed the Tribunal that she was unaware that the Property needed to be licenced but once they were aware made the necessary application.
30. The Landlord also advised that the Tenant had started to dismantle the kitchen and had refused the Landlord access to the Property on numerous occasions and had threatened to call the Police if the Landlord tried to gain entry. The Landlord also advised that she was not aware of the leak but expected the remediation to be covered by the house insurance policy.
31. The Landlord also informed the Tribunal that the Property had not been let through an agency but the Tenant had been informed that the Property was available through 'word of mouth'. The Property had also been let/ occupied previously but did not have a gas safety certificate or electrical safety certificate at that time either.
32. However, as soon as the Landlord became aware that a Selective licence was required, she applied to the Council. The Landlord therefore admits the offence that they did not have a licence but did so unknowingly.
33. The Landlord also acknowledged she had received the full rent during the offending period which was her main source of income. The Landlord also informed the Tribunal that she lived nearby with her husband and three adult children, one of whom is working. The Landlord's husband was also working as a 'maintenance man' on a 33 hour per week contract. They do not have a mortgage on the family home and nor is there a mortgage on the subject Property which they have owned since 1982. The Landlord however has no other income as she doesn't work but does not claim Universal Credit or any other tax credits. In terms of the running costs of the family home the Landlords son who lives with them does not contribute to the running costs of the family home either.
34. The Landlord informed the Tribunal that she did not want the Tenant to leave the Property and was progressing the house insurance claim to deal with the matters

raised by the Tenant and had now licenced the Property. At no time was the Landlord aware of any aggression between the parties but accepted that she was not good with admin. and as a result was now using the assistance of a friend.

The Law

35. Section 74(5) of the Act requires the amount of an RRO to be “such amount as the Tribunal considers reasonable in the circumstances”.
36. In addition the Tribunal must take into account the matters mentioned in s74(6):
- a) We accept the Tenants figure and find that the total amount of relevant payments is £7,200.
 - b) The broad financial circumstances of the Landlord are set out above.
 - c) As is the general conduct of the Landlord above.
 - d) There is no relevant conduct of the Tenant to be taken into account.
37. Having regard to **Parker v Waller and others** [2012] UKUT 301 (LC) and in particular paragraph 26. We deal with the matter identified by The President as follows:
- (i) It is agreed between the parties that the matters set out in s73 (8) are satisfied.
 - (ii) The Landlord has not been fined for the offence and we therefore find that this was not a serious offence given the Landlords response seeking to licence the Property as soon as she was informed.
 - (iii) The Tenant asks for a “full refund”. However, there is no presumption that the RRO should be for the total amount received by the Respondent.
 - (iv) We accept the Tenant’s figure and find the total amount of rent received during the relevant period was £7,200.
 - (v) The length of time over which the offence was committed was 8 months from 30 June 2023 to February 2024.
 - (vi) There is no misconduct on the part of the Tenant.
 - (vii) The Respondent has not indicated that any of the payments received by him were for utilities.
 - (viii) We have taken into account the conduct of the Landlord as set out above.
38. The Landlord is a private individual who has been involved in the letting of a licensable property for a number of years. The Landlord only has one property that she lets and is not a commercial landlord in the sense of having or managing multiple properties.
39. It is acknowledged by the Landlord that she was in breach of the Scheme. On notification the Landlord immediately applied for a licence.
40. We find that whilst the Respondent is not engaged professionally in residential letting she should have been aware of the licencing scheme given its importance and the extent of consultation/advertisement of it, prior to implementation.
41. Despite the need for various works the Landlord made the necessary application as soon as she became aware of the requirement to do so.

42. The Landlord's explanation that she was waiting for her home insurance policy to pay for the works required is reasonable in the circumstances and the Tribunal finds that the Landlord did attempt to carry out the works when notified.
43. We find that the Landlord was not deliberately flouting the requirement for the Property to be licensed. When the Landlord was made aware of her obligations, she did comply, albeit following the involvement of the Local Authority. The Tribunal finds the Landlord's conduct has not therefore exacerbated the breach.

Decision

44. The introduction of the Selective Licencing Scheme is to tackle crime and deprivation and the Additional Licencing Scheme is to deal with anti-social behaviour (ASB) and waste and rubbish issues. However, the overall aim of both is to improve the living conditions of tenants and improve neighbourhoods.
45. The Council has run a number of campaigns to promote the schemes and the legal requirement for applicable properties to be licenced. This has included a number of press articles, leaflets distribution, target letters to specific landlords, social media promotions and various adverts placed in local newspapers which will continue on an on-going basis throughout the life of the current schemes.
46. The Tenant raised with the Tribunal some areas of disrepair including a water leak, letterbox flap missing, kitchen in disrepair, boiler needed fixing, rubbish in the garden and two new radiators that are required. He also raised the issues of the lack of gas/electrical safety certificates, absence of rental deposit registration and the service of an incorrect "section 21" notice.
47. The Landlord advised the Tenant that they would undertake some repairs but only on a 'step by step' basis because they were waiting for some insurance monies to be received in respect of the kitchen replacement.
48. In assessing whether to make a RRO the Tribunal has had regard to the statements made by the parties and the evidence submitted.
49. There is no element for services within the rental paid as these were the responsibility of the Tenant. In the Addendum to **Parker** at paragraphs 37- 43 The President adopts a percentage figure of profit less the amount of the fine plus costs. There is no statutory basis for adopting that approach but it is a useful starting point for determining such amount as the Tribunal considers reasonable.
50. The Landlord has not been fined and as set out by the President at paragraph 39 of **Parker** it is only conduct in relation to failure to obtain a licence that requires to be considered.
51. The Landlord, has no mortgage costs and only the usual outgoings in relation to the Property. In any event the President directs (in paragraph 42 of **Parker**) that mortgage costs in respect of the subject property should not be taken into account in assessing the amount of the maximum RRO.

52. We are therefore left with a figure of £7,200 amounting to the rental payments received for the relevant period, as the maximum Rent Repayment Order. We have to determine a percentage to be applied to that figure. We apply our findings in relation to financial circumstances and conduct and having regard to the fact that we do not find this a particularly serious breach. There is no conduct on the part of the Tenant to be taken into account. We therefore determine that the appropriate percentage is 40%.
53. This results in an amount of £2,880 which is an amount as we find reasonable in the circumstances as required by s74 (5).
54. The total amount required to be paid by virtue of a Rent Repayment Order under s73 (5) is £2,880.
55. We therefore make a Rent Repayment Order that the Respondent/ Landlord shall pay to the Applicant/ Tenant the sum of £2,880.

Appeal

56. Either party may appeal this Decision to the Upper Tribunal (Lands Chamber) but before doing so must apply to the First-tier Tribunal for permission to appeal. Any application for permission must be in writing setting out grounds relied upon and must be received by the First-Tier Tribunal no later than 28 days after the Tribunal send this Decision to the party seeking permission to appeal.

Nicholas Wint FRICS