



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

**Case Reference** : CHI/21UC/HMF/2024/0009/LC

**Property** : Room 4, 5 Hyde Road, Eastbourne BN21 4SY

**Applicant** : Matthew Allen

**Representative** : None

**Respondent** : Chris Kelly

**Representative** : None

**Type of Application** : Application for a rent repayment order by  
Tenant  
Sections 40, 41, 42, 43 & 45 of the Housing  
and Planning Act 2016

**Tribunal Member** : Regional Surveyor Clist MRICS

**Date of Notice** : 12 February 2025

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**DECISION**

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## Background

1. On 26 March 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The amount claimed was for '6 months totalling £3,588'.
2. The Applicant stated that the property in question did not have an HMO licence.
3. Directions were issued on 26 September 2024 setting out a timetable for the exchange of documents between the parties and the submission of a hearing bundle in preparation for a hearing to take place on 5 December 2024.
4. Paragraph 19 of the Directions required the hearing bundle to be submitted by 21 November 2024. Paragraph 23 stated: *If the hearing bundle is not sent to the Tribunal by the said date or not in the required format, the Application will be struck out without further notice.*
5. The Respondent emailed the Tribunal on 26 September 2024 stating: Unfortunately there has been a big delay in the council sending me the licence. I received it this week after much chasing and a complaint. Please see the licence attached.  
This is a non-starter so can we save the hassle of having to go to court or whatever and just cancel it now.  
Also attached was a copy of the license for the subject property which is dated 23 September 2024 and is valid for the period 23 November 2021 to 22 November 2026.
6. There is no documentation to indicate when the license was applied for.
7. The Case Officer copied the Respondents email and the license to the Applicant on 27 September 2024 advising that if the application is to be withdrawn, the Applicant must be the one to withdraw it on the prescribed form.
8. The Tribunal also emailed the Applicant on 26 September 2024 requesting the payment of the hearing fee which was due to be paid by 24 October 2024.
9. By a case management application dated 22 November 2024, the Respondent has requested that the proceedings be cancelled stating: I have not received a statement from the applicant (sic) within the required time and have submitted evidence (the HMO licence) which I believe shows there is no case here.
10. The Applicant failed to submit a hearing bundle by 21 November 2024, or at all, as required by the Directions dated 26 September 2024. By an Order dated 3 December 2024 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 ground that the Applicant has failed to comply with a Direction that stated that failure to comply by a stated date would lead to the striking out of the proceedings.

11. By a case management application made by the Applicant (albeit not on a case management application form but utilising an application form for permission to appeal a decision to the Upper Tribunal) the Applicant seeks an order that the proceedings be reinstated. The Applicant says that he had instructed a solicitor to handle the matter on his behalf but that he heard nothing from them. But by the time that he realised that they had not taken action on his behalf as required by the Directions it was too late to submit the hearing bundle or to make payment of the hearing fee. Thereafter the Applicant says that his email account was hacked which caused further delay. The Applicant says that he believes that he has a legitimate case that there was no valid HMO licence in place for the property at the relevant time.
12. On 15 January 2025, the application was reinstated with a case management and dispute resolution hearing listed for 12 February 2025 at Havant Justice Centre at 1pm.

### **The Hearing**

13. The hearing was attended by Mr Allen only, with Mr Kelly having previously indicated to the Tribunal that he had a preference for a remote hearing to be held in the late afternoon. A case management application for the same was not received prior to the hearing, but sent at 2:30pm on the day of the hearing, following its conclusion.
14. Having been satisfied that the Respondent was aware of the hearing, and having not received a case management application prior to the hearing, in the interests of justice the hearing proceeded on the basis of Mr Kelly's written evidence.
15. At the hearing, Mr Allen confirmed that he had sight of the HMO license sent by the Respondent to the Tribunal on 26 September 2024. Mr Allen further confirmed that the licence, dated 23 September 2024 stated that it was valid from 23 November 2021 to 22 November 2026, having seemingly been backdated by Eastbourne Borough Council and covering the relevant period to which an offence under S.72(1) Housing Act 2004 was said to have occurred.
16. Mr Allen was advised that the Tribunal only had jurisdiction to make a Rent Repayment Order whereby one of the offences listed under s.40 Housing and Planning Act 2016 had been committed. His application had related to such an appropriate offence; s.72(1) Housing Act 2004 - the control or management of an unlicensed HMO. As Mr Kelly had provided a HMO license covering the relevant period, there was seemingly no offence committed under s.72(1) Housing Act 2004.

17. Mr Allen disputed this, stating that the local authority had advised him that there was an offence as Mr Kelly made his application on 2 October 2023 and that the property was unlicensed prior that.
18. I informed Mr Allen that such correspondence had not been received by the Tribunal. Regardless, Mr Kelly had provided a copy of the HMO which was backdated to cover the relevant period.
19. Mr Allen was insistent that an offence had occurred as the license was not applied for until 2 October 2023.
20. On the basis of Mr Kelly's written evidence I explained, was that a license fee was seemingly paid in April 2021 and there was evidence of complaints made by Mr. Kelly. Further, Mr Kelly's evidence referred to backlogs due to covid. A backdated HMO was issued, covering the relevant period was subsequently issued 23 September 2024.
21. Mr Allen asserted that the property was unlicensed as Mr Kelly's application was made out late and after the date of Mr Allen's application for a Rent Repayment Order, therefore there was an offence.
22. I advised Mr Allen that whilst I understood the reasons for initially making the application, new evidence had now come to light which formed my finding that there was seemingly no relevant offence under S.72(1) committed and as such the Tribunal lacks jurisdiction to make a Rent Repayment Order. Mr Allen was therefore welcome to make a verbal withdrawal of his application to which I would accept, or I would issue my decision in writing to dismiss the application pursuant to Rule 9 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 following the hearing.
23. Mr Allen requested that he had more time to go back to the local authority for evidence that an offence was made under S.72(1) Housing Act 2004 before withdrawing the application.
24. I advised Mr Allen that he was of course welcome to discuss the matter further with the local authority but as the Tribunal currently has evidence before it of a HMO licence covering the period of the alleged offence, there is no jurisdiction to make a Rent Repayment Order and as such I would issue a decision reflecting the same.
25. Mr Allen asked if he would be able to reinstate the application following his discussion with the local authority. As I am making a decision in writing following a hearing, I refer Mr Allen to the rights of appeal and process to be followed, as outlined below, which would be an appeal of this decision rather than a reinstatement.

## **Decision**

26. I find that no offence was committed under S.72(1) Housing Act 2004 owing to the backdated HMO licence covering the relevant period. As no offence has been committed, the Tribunal lacks jurisdiction to make a rent repayment order under S.41 Housing and Planning Act 2016.
27. Should Mr Allen obtain any relevant evidence from the local authority in contrary to my findings within this decision, the same should be supplied to the Tribunal alongside an application for permission to appeal. The Tribunal **may** set aside this decision upon review of any such evidence should it demonstrate jurisdiction to make a rent repayment order.

## **RIGHTS OF APPEAL**

28. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
29. 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.
30. 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.
31. 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.