FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00MC/HMK/2024/0004**
Property	:	**119 Ambrook Road, Reading, Berkshire, RG2 8SW**
Applicants	:	**(1) Mr Robert Archibold Ferguson Wood** **(2) Ms Jenessa Wood**
Representative	:	**Mr C Barlow, counsel**
Respondent	:	**Mr Peter Smith**
Representative	:	**No appearance or representation**
Type of application	:	**Application by tenant for rent repayment order** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal members	:	**First-tier Tribunal Judge K Gray** **Tribunal Member M Hardman FRICS**
Venue	:	**Remote hearing by CVP**
Date of hearing	:	**4 February 2025**
Date of decision	:	**25 February 2025**

DECISION

Decisions of the tribunal

(1) The tribunal is satisfied beyond all reasonable doubt that the Respondent was during the period 21 November 2023 – 28 July 2024 a person having control of a House in Multiple Occupation which was required to be licensed under section 61(1) of the Housing Act 2004 but which was not so licensed and that therefore he has committed an offence under section 72(1) of the Housing Act 2004.

(2) The tribunal finds that the Applicants are entitled to a rent repayment order under section 41 and that such an order ought to be made.

(3) The amount of the rent repayment order, determined under section 44 of the Housing and Planning Act 2016, is £3600.00, payable by the Respondent to the Applicants within 28 days of this decision.

(4) The Respondent shall pay the Applicants £220.00 in respect of the reimbursement of the tribunal fees paid by the Applicants within 28 days of this Decision.

(5) The Applicants' application for the Respondent to pay their costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is dismissed.

The application

1. By an application dated 12 April 2024 ("the Application") made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") the Applicant tenants sought a rent repayment order ("RRO") against the Respondent landlord.

2. The Applicants assert that the Respondent had control of or was managing a house in multiple occupation ("a HMO") which was required to be licenced under the Housing Act 2004 ("the 2004 Act") but which was not so licenced.

3. The Tribunal issued directions on 22 October 2024 requiring the parties to prepare for this hearing.

The hearing

4. The Applicants were represented at the hearing by Mr Barlow, counsel.

5. The Respondent did not attend the hearing and nor was he represented. By the directions referred to above, the Respondent was directed to send to the Tribunal his bundle of documents by 6 December 2024, including a full statement of reasons for opposing the Application, any defence to

the alleged offence and a response to any grounds advanced by the Applicants, as well as a statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order. He did not comply with these directions and produced no documents to the tribunal.

6. On 29 January 2025, the tribunal received a written request from the Respondent to adjourn the hearing. The Respondent said that i) a chest infection had exacerbated his stroke symptoms, leaving him more disabled, ii) that he had lost his sight in one eye and iii) that he was stressed about the case, which could bring on another stroke. The Respondent said that he required further time to gather his evidence. The application was not supported by any medical evidence.

7. On 3 February 2025, the tribunal refused to grant the adjournment on the grounds that no medical evidence had been supplied in support of the application and the Respondent had not engaged with the tribunal's directions and had not provided his bundle of documents nor sought a timely extension of time to do so. The tribunal informed the Respondent that he could renew his application for an adjournment, with supporting medical evidence, at the outset of the hearing on 4 February 2025.

8. At 10am on 4 February 2025 the Respondent had not joined the hearing online. The tribunal office telephoned the Respondent to ask whether he was intending to attend the hearing and was informed that the Respondent did not intend to do so.

9. In light of the Respondent's failure to engage with the tribunal's directions and his failure to renew his application to adjourn the hearing with medical evidence, the tribunal considered that it would not be in accordance with the overriding objective to delay the final resolution of this matter. Accordingly, we proceeded to hear the Application in the Respondent's absence.

10. At the outset of the hearing, Mr Barlow sought permission to rely on a copy of a search of the Reading Borough Council public register of landlord licences. The search returned no results in relation to the property, which Mr Barlow said demonstrated that the property did not have and had never had a HMO licence. Mr Barlow apologised for the late provision of the document and informed the tribunal that those instructing him had not realised that proof of a failure to licence was required given that the Respondent had not denied the matters pleaded in the Application.

11. We considered the application during a short adjournment of the hearing and concluded that it should be granted, having regard to the overriding objective. We considered particularly whether any procedural unfairness to the Respondent was caused by the late admission of the document and concluded that no such unfairness arose in circumstances where the

Respondent had not engaged with the Application and had not asserted that the property was licenced on the relevant dates.

12. We heard oral evidence from both of the Applicants, who adopted their witness statements of 11 November 2024. There was no cross-examination though both witnesses answered questions raised by the tribunal. Mr Barlow made submissions. We reserved our decision.

The background

13. 119 Ambrook Road, Reading, Berkshire RG2 8SW (being the property which is the subject of this Application) is a two-storey semi-detached house with three bedrooms. Neither party requested an inspection of the property and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

14. The Applicants' case is that they were the tenants of the property pursuant to an assured shorthold tenancy dated 9 February 2020. The Respondent is named as the landlord in the tenancy agreement. Though the agreement was expressed to relate to the whole of the property, in fact the Applicants say that they only used two of the bedrooms, together with the common areas such as the kitchen, bathroom and living room. They say that on 21 November 2023, four people (including two children) moved into the other bedroom at the property at the Respondent's invitation. There were accordingly six people living in the property but no HMO licence had been obtained. The Applicants moved out of the property on 28 July 2024.

15. The Applicants accordingly say that between 21 November 2023 and 28 July 2024 ("the relevant period"), the Respondent was committing an offence under section 72(1) of the 2004 Act.

16. As set out above, the Respondent has not engaged with these proceedings and has not sought to defend the allegations of his alleged offending, nor to raise any circumstances upon which he relies to justify a reduction in any RRO.

The issues

17. Mr Barlow agreed at the outset of the hearing that the tribunal is required to decide:

    (i) whether it is satisfied beyond reasonable doubt that the Respondent has committed an offence to which Chapter 4 of the 2016 Act applies.

(ii) whether the Applicants are entitled to a RRO under sections 41 and 43 of the 2016 Act; and if so

(iii) the amount of the RRO, to be determined in accordance with section 44 of the 2016 Act.

Legal framework

18. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

19. Section 41 of the 2016 Act provides:

(1) A tenant … 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."

20. Section 43 of the 2016 Act provides:

(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 section 41.

21. The relevant offences to which Chapter 4 of the 2016 Act applies are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO.

22. Section 72 of the 2004 Act provides, so far as is material:

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

23. The definition of a HMO is found in section 254 of the 2004 Act, which sets out various tests by which a building may fall within the definition of a HMO. By section 254(2) of the 2004 Act:

"*a building or a part of a building meets the standard test if*

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

24. A person "having control" of premises means

"*the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent*".

25. The amount of a RRO is to be determined under section 44 of the 2016 Act as follows:

"*…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 [*a period, not exceeding 12 months, during which the landlord was committing the offence*], 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."

Findings

26. Having heard evidence and submissions from and on behalf of the Applicants and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

27. As set out above, the Applicants' evidence was unchallenged. We found the Applicants to be credible and truthful witnesses. They gave their evidence in a clear and straightforward manner. There were no inconsistencies which caused us concern.

Has the Respondent committed a relevant offence?

28. The Applicants assert that the Respondent has committed an offence under section 72(1) of the 2004 Act, namely being a person having control of or managing an HMO which is required to be licensed under this Part but is not so licensed.

29. Having heard the unchallenged evidence of the Applicants and having considered the documents in the hearing bundle, we are satisfied beyond reasonable doubt of the following matters.

30. The property met the standard HMO test during the period of offending relied upon by the Applicants. This is because:

    (i) we accept that the property is a two storey semi-detached house with three bedrooms, as it is described in the Applicants' application form and in the Applicants' witness statements.

    (ii) we accept that between 21 November 2023 and 28 July 2024, the property was occupied by persons who did not form a single household. During this period, the property was occupied by the Applicants (who form one household) and by another family, namely Raymond Chittock, his partner Chantelle and their two children (who form another household), as the Applicants describe in their witness statements.

    (iii) we accept that both the Applicants and the Chittock family were occupying the property as their only or main residence and that their occupation constituted the only use of that accommodation. The first Applicant had lived in the property since 10 May 2017 and the second Applicant had lived there since

May 2018, as they confirmed in their witness statements. Though the first Applicant said that Mr Chittock had initially told him that he was only "visiting" the property, we accept the unchallenged evidence of both Applicants that the Chittock family in fact occupied the property from 21 November 2023, that they slept in the third bedroom and that they used the communal areas. The Respondent did not suggest otherwise.

(iv) we accept, having seen the Applicants' tenancy agreement and having heard their unchallenged written and oral evidence, that the Applicants were liable to and did pay rent in respect of their occupation of the property in the sum of £750.00 per calendar month.

(v) we accept that the Applicants and the Chittock family shared basic amenities in the property, namely the washing facilities and toilet in the bathroom and the cooking facilities in the kitchen, as the Applicants said in their witness statements.

31. We are satisfied, in light of our findings set out above, that the property was in the relevant period occupied by five or more persons living in two or more separate households and that therefore the property fell within the prescribed description of a HMO under section 55(2)(a) of the 2004 Act.

32. Having found that the property was a HMO during the relevant period, we are satisfied beyond reasonable doubt that it was required to be licenced under section 61(1) of the 2004 Act. The Respondent did not suggest that any temporary exemption notice or interim or final management order was in force in relation to the property at the material time.

33. We are satisfied beyond reasonable doubt, having considered the search of the Reading Borough Council public register of landlord licences referred to above which returned no results in relation to the property, that the property was not licenced under section 61(1) of the 2004 Act during the relevant period. The Respondent has not suggested that the property was so licenced.

34. We are satisfied beyond reasonable doubt, having considered the Applicants' tenancy agreement dated 9 February 2020, the Applicants' witness statements, and the bank statements contained in the hearing bundle, that the Respondent was at the material time a person having control of the HMO. This is because:

(i) The tenancy agreement states that the Applicants are required to pay rent of £750 per calendar month.

(ii) It was not suggested by the Respondent that £750 per calendar month is not the "rack-rent" of the property. In light of the Applicants' unchallenged evidence that the rent of £750 per calendar month was negotiated when the Applicants were in sole occupation of the property (that is to say, at a time when no other individuals were occupying the third bedroom) we find that £750 is the rack rent of the property.

(iii) we accept, having considered the bank statements in the hearing bundle which show monthly payments of £750.00 being made by the first Applicant to the Respondent, that the Respondent received the rack-rent of the property during the relevant period.

35. In light of these findings, we are satisfied beyond all reasonable doubt that the Respondent was during the period 21 November 2023 – 28 July 2024 a person having control of an HMO which was required to be licensed under section 61(1) of the 2004 Act but which was not so licensed and that therefore he has committed an offence under section 72(1) of the 2004 Act.

Are the Applicants entitled to an order under sections 41 and 43 of the 2016 Act?

36. As set out above, we are satisfied that the Respondent has committed an offence to which Chapter 4 of the 2016 Act applies and that this offence was committed during the relevant period of 21 November 2023 to 28 July 2024.

37. Having considered the Applicants' tenancy agreement dated 9 February 2020, which provides that the property is let to the Applicants for a fixed term from 9 February 2020 to 9 February 2023 and thereafter under a statutory periodic tenancy arising under section 5 of the Housing Act 1988, we find that the property was let to the Applicants at the time of the offence.

38. The application for a RRO was made on 12 April 2024. Accordingly, the offence was committed in the period of 12 months ending with the day on which the application is made.

39. The Respondent has not provided any response to the grounds advanced by the Applicants in their application.

40. We are therefore satisfied that the Applicants are entitled to an order under section 41 of the 2016 Act and that it is appropriate, in light of the Respondent's failure to ensure that the property was licenced and to respond to the matters raised in this application, to make such an order.

The amount of the RRO

41. We begin by ascertaining the whole rent paid by the Applicants for the relevant period, being in this case 21 November 2023 – 28 July 2024. We have considered the bank statements contained in the hearing bundle and find that the following payments of rent were made by the Applicants to the Respondent in that period:

(i) 8 December 2023 - £750.00.

(ii) 10 January 2024 - £750.00.

(iii) 9 February 2024 - £750.00.

(iv) 8 March 2024 - £750.00.

(v) 10 April 2024 - £750.00.

(vi) 10 May 2024 - £750.00.

(vii) 10 June 2024 - £750.00.

(viii) 12 July 2024 - £750.00.

42. The total rent paid in the relevant period is therefore £6000.00. There was no suggestion that any relevant award of universal credit was paid to the Applicants or the Respondent in respect of the rent under the tenancy during the relevant period.

43. The Applicants' unchallenged oral evidence was that no part of the rent referred to above represented payment for utilities. The first Applicant said that the electricity and gas was paid for on a pre-payment meter which the Applicants themselves generally "topped-up" (the Chittock family contributed occasionally), and that the Applicants paid the council tax and water bill for the property themselves. We accept the first Applicant's unchallenged evidence on this point which was given clearly and straightforwardly. We therefore find that there is no deduction to be made in respect of utilities that only benefitted the Applicants.

44. We consider next the seriousness of the offence that we have found to be made out. In our judgment, the offence is more serious than the offence of having control or management of an unlicenced house under section

95(1) of the 2004 Act because of the risk of overcrowding, sanitation and fire hazards involved with managing properties occupied by multiple households. However, it is in our judgment considerably less serious than some of the other offences identified in section 40 of the 2016 Act, such as using violence to secure entry, the eviction or harassment of occupiers and/or the failure to comply with an improvement notice or prohibition order.

45. There was no evidence before us relating to whether the Local Authority would have granted a licence had one been sought. There is no suggestion, for example, that the property would have required repairs or other works in order to bring it up to licensable standard. Though the first Applicant told us that the Local Authority were aware of how the property was occupied, and that he asked the Local Authority to prosecute the Respondent for his failure to obtain a HMO licence, the Local Authority did not do so, and though Mr Barlow submitted that the Applicants would have been able to approach the Local Authority about their complaints about the conduct of the Chittock family had the property been licensed, the first Applicant's evidence was that the Local Authority was less concerned about the lack of a licence and more concerned about re-housing the Applicants once they had received a notice from the Respondent under section 21 of the Housing Act 1988.

46. The fact that the Local Authority did not engage with the Applicants' requests to take enforcement action against the Respondent is in our judgment also indicative that the offending in this case is of a less serious nature.

47. In our judgment, the less serious nature of the offending in this case warrants a reduction in the amount of the RRO for the relevant period. Subject to the remaining factors referred to in section 44 of the 2016 Act (i.e. the conduct of the parties and the financial circumstances and offending history of the landlord) we find that the less serious nature of the offending would warrant the making of a RRO of 55% of the rent paid for the relevant period. However, the seriousness of the offending is not the only matter that we are required to take into account, and we now consider those remaining factors in coming to our final assessment of the amount of the RRO.

48. As to the conduct of the Respondent, there was no suggestion that the Respondent is a "professional" landlord (that is to say, that he owns other properties). Further, we note that the Applicants' tenancy agreement states that their tenancy deposit was protected in a deposit scheme, a matter that the Applicants did not suggest was inaccurate.

49. We have considered the Applicants' view that the Chittock family were moved into the property by the Respondent in order to put pressure on the Applicants to leave after they were served with a section 21 notice seeking possession of the property. However, we note that the

Applicants' evidence was that the third bedroom in the property was occupied by other tenants from time to time before the Chittock family moved in. We therefore consider it unlikely, despite the Applicants' suspicions, that the arrival of the Chittock family was calculated to put pressure on the Applicants, as opposed to for the simple purpose of filling the empty room.

50. However, we accept the Appellants' unchallenged evidence that the Chittock family often left the kitchen and bathroom of the property in a "filthy" and "disgusting" state. We consider that the Respondent's failure to make proper provision for the cleaning of these shared facilities, knowing that 6 people would be occupying the property, reflects poorly on his conduct.

51. Likewise, we also note the Applicants' unchallenged evidence that Raymond Chittock removed a tumble dryer and freezer from the property which were not replaced, that a door was sticking in the property and that the shower had stopped working during the relevant period and was not repaired. Again, we consider that the Respondent's failure to deal with these matters reflects poorly on his conduct.

52. We do not consider there to be any relevant issues relating to the Applicants' conduct to be taken into account.

53. There was no evidence before us of the Respondent's financial circumstances. There is no suggestion that the Respondent has been convicted of an offence to which Chapter 4 of the 2016 Act applies.

54. Taking all these matters into account, we determine that the appropriate order in this case is for the repayment of 60% of the rent paid.

55. We therefore make an RRO of £3600.00.

56. We also order the Respondent to reimburse the Applicants for the tribunal fees that they paid in the sum of £320.00 (being the application fee of £100.00 and the hearing fee of £220.00).

57. At the conclusion of the hearing, Mr Barlow made an oral application under Rule 13 of the First-tier Tribunal (Property Chamber) Rules 2013 for the Respondent to pay the Applicants' legal costs on the grounds that the Respondent has acted unreasonably in bringing, defending or conducting proceedings. However, he fairly accepted that it was for the Applicants to prove their case, and that they would have been required to do so notwithstanding the Respondent's failure to engage with these proceedings. In those circumstances, we do not consider that the Applicants have demonstrated unreasonable conduct on the Respondent's part. We dismiss the application for costs under Rule 13.

Name: Judge K Gray **Date:** 25 February 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).