



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

Case Reference : CHI/00HN/HMF/2024/0012

Property : 62a Holdenhurst Road, Bournemouth,
BH8 8AQ

Applicant : Stanley Ogbedeleto

Representative : Ms Hoxha, Represent Law Limited

Respondent : Michael Meeks

Representative :

Type of Application : Application for a Rent Repayment Order
Sections 40,41,42,43&45 of the Housing
and Planning Act 2016

Tribunal Member(s) : Regional Judge Whitney
Mr M J F Donaldson FRICS

Date of Hearing : 19th December 2024

Date of Decision : 28th February 2025

DECISION

Background

1. The Applicant seeks a rent repayment order against the Respondent in the sum of £5700 for the period 19 September 2022 to 15 September 2023. The Applicant says that during the said period the property was required to have, but did not have, an HMO licence.
2. Initial directions were made by the Tribunal on 4 October 2024. They were sent by email to the email address provided within the application. A response was received on 14 October 2024 stating that emails in relation to the property should be sent to a different email address.
3. On 26 October 2024 the Tribunal received an email from Bournemouth Lettings purporting to attach on behalf of the Respondent and his Agents the Respondent's reply to the application.
4. A bundle was supplied which included a statement from the Respondent. References in [] are to pages within that bundle.
5. On the day prior to the hearing an application was made for the Applicant's representative to attend remotely due to illness preventing travel. The Tribunal agreed that Ms Hoxha could attend remotely.

Hearing

6. On commencement of the hearing Ms Hoxha was in attendance remotely. The Applicant was not in attendance. The Respondent was not in attendance.
7. Ms Hoxha explained due to a miscommunication by her firm the Applicant had been led to believe he did not have to attend. Ms Hoxha explained that she had spoken to him and he was now travelling to the Tribunal.
8. With some reluctance we adjourned to allow time for the Applicant to attend Havant Justice Centre. We were satisfied that it was reasonable to do so and we also instructed our clerk to try and make contact with Mr Meeks to see whether or on he wished to attend.
9. No contact was made with Mr Meeks. We considered the file and noted on 9th December 2024 he sent his statement to the Tribunal and the Applicant's representative. This email came from the same address to which the directions were sent which set out the hearing date. We were satisfied that the Respondent had received notice of the hearing. We were further satisfied given we had his statement that

it was in the interests of justice to proceed to determine. Ultimately it was a matter for the Respondent whether or not he attended.

10. The Applicant attended in person.
11. The hearing was recorded and below we set out a precis of what took place.
12. Ms Hoxha confirmed it was accepted that there was an HMO licence in place for the Property given the evidence of Mr Meeks [311-371]. However it was the Applicant's case that there was a breach of the licence conditions in that the Property was occupied by more than 8 person and as a result the Applicant was entitled to a Rent Repayment Order.
13. The Applicant confirmed the truth of his two statements [77-79 & 231-232].
14. The Tribunal questioned Mr Ogbedeleteo upon his statement.
15. He confirmed that from October 2022 more than 8 people were living at the Property. He confirmed and recited the people living at the Property.
16. He confirmed that he asked for permission prior to his wife moving into the Property. He had to pay the increased amount charged for 12 days prior to the new contract a copy of which was at page [292] onwards. Subsequently his son moved into another room at the Property with Marvin. Again the agent knew.
17. He was the first tenant to occupy in the September. Then the other rooms were filled up. From October until he left there were more than 8 occupants. He confirmed he was occupying the Property as his home.
18. He confirmed when the local authority visited he was not at home. His son and wife were also not at home.
19. He had no ongoing contact with any of the tenants.
20. Ms Hoxha then made submissions. She stated that from October 2022 the evidence of Mr Ogbedeleteo was clear that there were more than 8 tenants. She seeks a rent repayment order for the amounts of rent paid from then until the vacation by the Applicant. She suggests that Mr Meeks does not challenge that the rent was paid.
21. She suggests the oral evidence given matched that within the statement. She referred to the print out of messages with the landlords agent [255-260] which supported the fact they knew the Property was occupied by more than 8 people.

Decision

22. We thank Ms Hoxha for her submissions including her skeleton argument and the evidence of Mr Ogbedeleto.
23. The original application was made on the grounds that there was not a licence for the Property. Ms Hoxha acknowledged and accepted the licence produced as being for the Property. She contended there was a breach of a condition of the licence and this was the basis for making a rent repayment order.
24. As Ms Hoxha set out within her skeleton argument Section 40 of the Housing and Planning Act 2016 provides the basis for making a rent repayment order and section 40(3) lists the offences. These are set out in the notes at the end of this decision.
25. A failure to have a licence would be an offence under section 72(1) of the Housing Act 2004. There is no offence as Ms Hoxha conceded there was a licence and we are satisfied beyond reasonable doubt that the licence produced by the Respondent is for the Property.
26. If the condition as to the number of occupants was breached this would be an offence under Section 72(2) of the Housing Act 2004. However this is not an offence for which a rent repayment order may be made.
27. As a result we make no findings as to whether or not the offence was committed as even if it was we could not make a Rent Repayment Order.
28. No other offence was alleged by the Applicant and so the application must fail. The application is dismissed and no other orders are made.

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
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.

Explanation of the Tribunal’s jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

| <i>Act</i> | <i>section</i> | <i>General description of offence</i> |
|-----------------------------------|---------------------|---|
| Criminal Law Act 1977 | s.6(1) | violence for securing entry |
| Protection from Eviction Act 1977 | s.1(2), (3) or (3A) | unlawful eviction or harassment of occupiers |
| Housing Act 2004 | s.30(1) | failure to comply with improvement notice |
| Housing Act 2004 | s.32(1) | failure to comply with prohibition order etc. |
| Housing Act 2004 | s.72(1) | control or management of unlicensed HMO |
| Housing Act 2004 | s.95(1) | control or management of unlicensed house |
| Housing and Planning Act 2016 | s.21 | breach of banning order |

Or has a financial penalty¹ been imposed in respect of the offence?

(i) What was the date of the offence/financial penalty?

(ii) Was the offence committed in the period of 12 months ending with the day on which the application made?

¹ s.46 (2) (b): for which there is no prospect of appeal.

- (iii) What is the applicable twelve-month period?²
 - (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?
 - (v) Should the tribunal reduce the maximum amount it could order, in particular because of:
 - (a) The conduct of the landlord?
 - (b) The conduct of the tenant?
 - (c) The financial circumstances of the landlord?
 - (d) Whether the landlord has been convicted of an offence listed above at any time?
 - (e) Any other factors?
 - (f)
2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

Important Note: Tribunal cases and criminal proceedings

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.

² s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.