



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

Case References : **BIR/00CN/HMJ/2024/0609**

Property : **358(a) Shirley Road, Adcocks Green B27 7NS**

Applicant : **Rachel Adams**

Representative : **None**

Respondent : **Iqbal Singh**

Representative : **None**

Type of Application : **Application for a Rent Repayment Order
By the Tenant. Part 3 Housing Act 2004
Ss40, 41, 43 & 44 Housing & Planning Act
2016**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member Mrs J Rossiter MBA
MRICS**

Date of Hearing : **5 February 2025**

Date of Decision : **13 March 2025**

DECISION

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1.The Tribunal is satisfied to the standard required the Respondent is guilty of a housing offence namely having control or managing a house which is required to be licensed pursuant to s95(1) Housing Act 2004

2.The Applicant is entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016

3.The sum payable by the Respondent to the Applicant is £714.28.

Introduction

1. This is an application for a rent repayment order pursuant to Chapter 4 ss 40-, 41,43 and 44Housing and Planning Act 2016 (the 2006) on the grounds that the Respondent has committed a housing offence namely having control or management of an unlicensed house contrary to s95(1) Housing Act 2004 (the 2004 Act)
2. The application was issued on 28 September 2024 by Rachel Adams who is the tenant of 358(a) Shirley Road Adcocks Greene Birmingham B27 7NS (the Property). pursuant to an agreement made on 13 February 2013 and continuing at the date of the hearing at a rent of £650.00 pcm. The Respondent landlord is Iqbal Singh of 17 Glaston Drive, Hillfields, Solihull B19 3YE
3. The Birmingham City Council introduced a selective licensing scheme covering the area in which the property is situated on 5 June 2023. The Respondent did not apply for licence until 6 October 2023 when a Temporary Exemption Notice was issued on 6 October 2023 for three months expiring on 5 January 2024. An application for a selective licence was made on 20 May 2024. A licence issued on 24 July 2024 without conditions.
4. The Applicant's claim is for repayment of rent arising from the letting of an unlicensed house. The period of claim in the application form is either a period of thirteen months from June 2023 until July 2024 or nine months from 10 October 2023 to July 2024. The sum paid for rent in the claimed periods is either £8450,00 or £5850.00.

5. Directions for determination of the matter were issued including a direction to the Applicant to prepare a schedule of all rent payments paid to the Respondent (or his agents) during the 12-month period prior to 24 July 2024 (or if earlier, prior to the date on which the landlord applied for the licence), and confirmation of any housing benefit or Universal Credit received by the Applicant in respect of housing during the same period.

The Property

6. The Tribunal did not inspect the Property. The description of the Property is substantially agreed by the parties. It is a detached building comprising the Applicant's residential part and a post office. The Respondent was formerly a postmaster running his business from the premises and residing in the remainder. It is now leased from him by the present postmaster.
7. The residential part has a separate entrance. The ground floor comprises a living room, kitchen, small bathroom and conservatory. The upper floor comprises three bedrooms although one bedroom has been partitioned to create a fourth bedroom, and a bathroom.

The Tenancy Agreement

8. The Tenancy Agreement was made on 13 February 2013 for an assured shorthold tenancy with effect from 23 March 2013 for six months. The tenant is responsible for all utilities and council tax and water rates in addition to the rent which has not been increased since commencement.
9. By Clause 3 of the Agreement the tenant was obliged to keep the interior of the premises decorated and in a good, clean and tenantable repair and condition. A further condition required the tenant to keep the premises well and sufficiently aired and warmed at all times.

10. The Property has gas central and water heating. There are radiators in all rooms. The windows are double glazed apart from two.

11. There is a garden to the rear of the Property.

The Parties Submissions

12. The Applicant relies on the failure of the landlord to obtain a licence as required under the relevant legislation. In addition, the Applicant told the Tribunal and asserted that the Respondent did not respond in a timely manner or at all (sometimes) to requests for maintenance or repairs. As a result, the condition of the Property has deteriorated. Further the landlord has issued s21 Notices to quit frequently causing her distress and anxiety.

13. The Applicant complained that the Respondent neglected her complaints about want of attention to defects apparent in the Property. A window in one of the bedrooms was old and made from wood, it is causing her daughter some health problems. At Christmas 2022 the oven ceased to function. She was without an oven for three weeks.

14. The gas boiler was condemned also at Christmas 2022. Replacement electric heating was required until the boiler was replaced.

15. The conservatory is leaking and cannot now be used. Some fence panels in the garden are neglected and require attention.

16. It seemed to the Applicant that whenever a complaint was made about the condition of the Property the Respondent served s21 notice to quit. She offered to arrange for some of the repairs in consideration of a rent reduction. The Respondent agreed to her request reducing the rent to £325.00pcm for three months. The resulting fund was used for some work, although work on the wooden windows or replacement of the oven could not be financed from the fund.

17. The fund was used to remove some accumulated mould and other decorations including the purchase of lining paper. An allowance of £100 was agreed for the cost of extra heating. £495.00 remains in the fund.
18. The Applicant was asked to give particulars of any housing benefit or other benefit applied to housing costs but notwithstanding the directions she was unable to do so. The Applicant later supplied the missing information.
19. The Applicant has some familiarity with the licensing obligations. She is involved with a housing charity which has required licences. The Applicant stated that she is a holder of an HMO licence in connection with her work.
20. The Respondent admitted he did not have a licence for certain periods of time during twelve months before the date of the application. He was unaware of the introduction of selective licensing in June 2023. In any event it was his intention to sell the Property. When he learned of the scheme and having regard to his desire to sell the Property, he decided to apply for a Temporary Exemption Notice (TEN) which was issued on 6 October 2023. He did not serve the Notice on the Applicant.
21. At the expiry of the TEN he found he was unable to secure an extension or a new exemption. The Respondent made a number of calls to the council in connection with his hope for a new extension, then finally applied for a full licence on 20 May 2024. He was not seeking to avoid buying a licence. He was trying to sell the Property. He has had offers from the current occupiers of the post office but as they want vacant possession, he has served s21 notices to quit on the Applicant, who remains in occupation.
22. In answer to the Applicant's description of want of attention to the Property he described prompt response to the complaints he received. He arranged for contractors to visit the Property but there were difficulties with access. He

agreed to the Applicant's suggestion of setting aside some of the rent for use as a repairs fund.

23. He denied the wooden windows were a cause of draughts or cold. There is secondary glazing fixed to the window frames. Fencing contractors have attended the property to repair any damage to fence panels but the Applicant has not been present.
24. He denied there was a problem with the mould. When he resided at the Property there was no such problem. Adequate ventilation is the tenant's responsibility. The Applicant has failed to comply with that obligation. He had identified the problem with the conservatory which needs new jointing strips. Repair to the conservatory roof was the only item of repair required by the local authority before granting a licence.
25. Roof repairs were required and attended to without delay at a cost of £3500. The Respondent wishes to keep the Property in good repair in order to sell it. He described other work to fascia on the flat roof extension at a cost of £400.00.
26. As far as his financial circumstances are concerned, the Respondent is not a professional landlord. He has two other properties which are for rent in Solihull. He is in fulltime employment as a customer service agent for equity release employed by Legal and General.
27. The Respondent challenged the Applicant for failing to disclose her housing benefit payments. He had been candid with the Tribunal regarding the failure to licence. He did not believe the Applicant had shown the same candour with regard to her evidence particularly concerning her financial circumstances.

The Statutory Framework.

28. The relevant legislation comprises a comprehensive framework for identifying the offences created by the legislation and the consequences of failing to comply with it.
29. S40 Housing and Planning act 2016 provides:
- (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, or*
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.*
 - (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.*
- (the general description of offences has been omitted)*
- | <i>Act</i> | <i>Section</i> |
|---------------------------|----------------|
| <i>1 Housing Act 2004</i> | <i>95(1)</i> |
30. By s41 of the 2016 Act *(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.*
31. S43 provides “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). By s85 Housing Act 2004

(1) Every Part 3 house must be licensed under this Part unless—

(a) it is an HMO to which Part 2 applies (see section 55(2)), or

(b) a temporary exemption notice is in force in relation to it under section 86.

31.S95(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 (see section 85(1))

But is not so licensed

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a)for having control of or managing the house in the circumstances mentioned in subsection (1),

32. Section 86 is relevant in this case. It provides that when a person having control of a house which is required to be licensed notifies the local housing authority of his intention to take steps with a view to securing the house is no longer required to be licensed the authority may serve a Temporary Exemption Notice (TEN). Where a TEN is served the house is not required to be licensed for the period of the Notice (s85(3)).
33. If the tribunal is satisfied to the requisite standard that a relevant housing offence has been committed it may impose a rent repayment order as provided in s44 which sets out the issues the Tribunal must address when deciding upon what order to make. By s44(2) the amount must relate to rent paid during the period not exceeding 12 months, during which the landlord was committing the offence.
34. By s44 (3) and (4) the Tribunal must also note
- (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.*

Discussion and Decision

35. In this case both parties agreed that the primary issue in this case is the consequence of the Respondent's omission to apply for a selective licence upon introduction of the licensing scheme but the local housing authority on 5 June

2023. The Applicant was plainly troubled by some issues relating the condition of the house which the landlord allegedly failed to deal with in good time, although the Tribunal accepts his evidence that he was diligent in attending to complaints. In any event complaints about relatively minor matters concerning the condition of the Property did not amount to misconduct of the type envisaged by the legislation. Part 2 of the 2016 Act which includes the relevant sections set out above is explicit at s13(i) is explicit in that this Part “is about rogue landlords and property agents”. The Respondent is not a “rogue landlord”.

36. The Tribunal is satisfied the Respondent made an effort to attend to any complaints or maintenance needs as and when they arose. There were occasions when access was difficult because of the Applicant’s absence, something the Applicant acknowledged. The Tribunal does not consider there was any serious wrongdoing by the Respondent which should be taken into account when determining the order for repayment.
37. The Respondent admitted without hesitation that he had failed to obtain a licence. Although there was such an admission the relevant legislation requires the Tribunal to decide whether there was a reasonable excuse for failing to licence the property. The Respondent recognised that he had made an error in failing to obtain a licence when he learned about the introduction of the scheme. Also, he did not have any excuse for failing to observe the introduction of the scheme other than failing to notice publicity relating to the scheme because he lived in an area outside the scheme.
38. It is his case that the Applicant has miscalculated the sum to be repaid and moreover has failed to disclose that she was in receipt of HB or UC which must be taken into account when determining what sum is actually repayable to the tenant who is not entitled to a windfall under this legislation.

39. The Tribunal is satisfied beyond reasonable doubt that subject to the observation in the next paragraph, the Respondent is guilty (by responsible admission) of an offence contrary to s95(3) Housing Act 2004 and is liable to make a rent repayment.
40. The Respondent has a valid defence to the claim for repayment during the periods when the Property was licensed or an application for a licence was on foot. Having the TEN is a defence to the first claim. The application for the selective licence in May 2024 is a defence to the second period. There are two periods during which an offence was committed. The first was from 29 September 2023 being twelve months from the date of this application to 6 October 2023 when the Respondent received his TEN (7 days). The second is from 5 January to 20 May 2024 when the application for a licence was made (136 days).

Quantum of repayment

41. The Tribunal has followed the guidelines of the Upper Tribunal in determining the sum payable. In *Acheampong v Roman* [2022] UKUT 239 (LC) HHJ Cooke set out a four-stage approach to determining a repayment claim:

The following approach will ensure consistency with the authorities:

- a. Ascertain the whole of the rent for the relevant period;*
- b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*
- c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense*

that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors, but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked.

42. The Applicant was in default by failing to produce her housing benefit payments until the Tribunal issued a further direction. The further information provided by the Applicant confirmed payment of housing benefit payments between October 2023 and July 2024 in the total sum of £2721.96 and rent paid by her from other income in the same period of £5078.04 which is the sum claimed for repayment. The daily rate over the total period from 1 October to 31 July is £16.65 (£5078.04/305 days).

43. The actual rent paid during periods in which the offence was being committed is £2380.95 (143 days at £16.65pd). The maximum rent repayable is only awarded in exceptional circumstances. In *Acheampong v Roman [2022] UKUT 239 (LC) at paragraph 15*, the Tribunal (Judge Cooke) concluded in the light of a review of decisions on awards of rent repayment that "an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it". This is not such a case.

44. In *Dowd v Martins {2022} UKUT249 (LC)* HHJ Cooke said at paragraph 26 "*it is not appropriate to regard the full rent claimed by a tenant as the starting point for quantification, in the sense that the only flexibility the FTT can have is to make deductions from that figure in the light of good conduct by the landlord or poor conduct by the tenant*". Instead, as the Tribunal put it in paragraph 21

of *Acheampong*, the FTT should follow the four steps identified in that case as set out above. On the facts of that case the award was 45% of the rent.

45. In *Newell V Abbott [2024] UKUT 181(LC)* the Deputy President Mr Martin Rodger KC reviewed recent cases noting their awards having regard to the seriousness of the offences.
46. In this case the Respondent is not a professional landlord. He has not been convicted of any other housing offences. He was guilty of some neglect by relying on his own management of the Property which resulted in his failure to recognise the introduction of a selective licensing scheme. When he learned about the scheme, he took steps to correct his mistake although he allowed some delay to arise which he ascribed to failure in reliable information from the local housing authority.
47. He has not increased the rent since commencement of the tenancy. The Property may be showing some signs of wear, but it has been occupied by this tenant and her family for several years. The Respondent pointed out that he would not want to see the condition deteriorate so as to prejudice his hopes for a sale. He attended to complaints and maintenance issues in a timely manner.
48. The Tribunal does not regard the conduct issues raised by the Applicant as instances of the conduct envisaged by the legislation. The Respondent did not put forward any information regarding his financial circumstances other than to inform the Tribunal of his ownership of two other properties and that he is in full time employment.
49. This is not a matter of deliberate disregard of the requirements for letting residential property. The tenant still resides in the Property which has been her home for over ten years. The Tribunal considers 30% of the rent deduced is a fair reflection of the seriousness of the offence. In all the circumstances of this case the Tribunal determines the appropriate sum for repayment is £714.28.

Appeal

50. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge P.J.Ellis