



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

Case Reference : **MAN/00CJ/HMF/2023/0017**

Property : **4B St George's Terrace Jesmond Newcastle
Upon Tyne NE2 2SY**

Applicant : **Mr. Gregory Charles Edward Knight**
Represent Law Ltd

Respondent : **Stormont James Eltringham Smith**

Type of Application : **Housing and Planning Act 2016 Section 41(1)**

Tribunal Members : **Mr John Murray LLB\
Mr Joe Fraser FRICS**

Hearing Type : **Video Hearing**

Date of Hearing : **19 January 2024**

REASONS FOR DECISION

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ORDER

1. The Respondent do pay the Applicant the sum of £519.96 as a Rent Repayment Order pursuant to s41(1) Housing and Planning Act 2016.
2. The Respondent do reimburse the Applicant the application fee of £100.

INTRODUCTION

3. The Applicant made an application dated 6th May 2023 to the Tribunal to make a Rent Repayment Order (RRO) against the Applicant pursuant to s41(1) Housing and Planning Act 2016
3. Directions were made by a Legal Officer on 27th June 2023 for bundles and evidence to be exchanged and for the matter to be determined by a Video Hearing.
4. The hearing was conducted on the Video Hearings Platform with the consent of the parties. The Applicant Mr. Knight was represented by Ms. Arjona Hoxha of Represent Law. The Respondent Mr. Smith appeared in person.

LEGISLATION

5. The Tribunal has power to make a Rent Repayment Order by virtue of Chapter 4 Housing and Planning Act 2016 the relevant sections of which read:

S40 Introduction and key definitions

- (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.

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

S41 Application for rent repayment order

(1) A tenant or a local housing authority 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.

S43 Making of rent repayment order

(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.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

S44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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.

The relevant offence in this case is under s72(1) Housing Act 2012

s72 Offences in relation to licensing of HMOs

(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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) 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 67(5), and

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

(4) 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

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition, as the case may be.

THE APPLICANT'S CASE

7. The Applicant's solicitors filed a statement by Mr. Clarke Barrett, Paralegal in support of the application dated 6th May 2023
8. The Applicant filed a statement on his own behalf dated 28th July 2023.
9. The Applicant's case was that he was a tenant at 4B St George's Terrace Jesmond Newcastle Upon Tyne NE2 2SY ("the Property") from 1 August 2021 to 31 July 2023 together with four other individuals.
10. The Respondent was the Landlord at all material times. The Property was occupied during the relevant period by 5 people in 2 or more households and consequently was required to be licensed as a House in Multiple Occupation under the Housing Act 2004. The Property was described as a maisonette house being the upper two floors of a property. There is a ground floor flat, 4a underneath which at the time they moved in was occupied by a couple.
11. For the most part the Applicant's statement related to the return of his tenancy deposit, which is not a matter for consideration by the Tribunal; Ms. Hoxha submitted this evidence was provided as to the Landlord's conduct, because the tenancy deposit had not been registered.
12. The Applicant provided evidence with his original application by way of an email dated 30 March 2023 from Zoe McCannell Environmental Health Officer at Newcastle City Council which stated that no licence existed during the relevant period for the Property and that, as a consequence the Respondent had committed an offence under s72(1) of the Housing Act 2004.
13. The Applicant confirmed in questioning by the Tribunal that the Respondent had been generally responsive in relation to repair requests, and

that he had seen the HMO certificate on display in the Property whilst he lived there.

14. The Tribunal was invited in the original application to make a rent repayment order pursuant to the Housing and Planning Act 2004, in the sum of £25,998 being the rent paid for the relevant period.
15. Ms. Hoxha confirmed in her skeleton argument and her oral submissions that in light of Upper Tribunal guidance, the Applicant would seek only £5,199.60, being his own share of the combined rent, although at the conclusion of the skeleton argument the Tribunal was invited to make a RRO for £25,998, presumably in error.

SUBMISSIONS FOR THE RESPONDENT

16. The Respondent made submissions in writing to the Tribunal on the 29th June 2023.
17. He stated he had obtained an HMO licence on 17th April 2019 and produced a copy of the certificate which he stated (and the Applicant confirmed) had been on display in the communal area of Flat 4b.
18. He said that it had come to light in an audit by Newcastle City Council in May 2023 that the licence had been issued in error to Flat 4a. Flat 4a (which he confirmed was also in his ownership) was a 2 bedroomed flat underneath Flat 4b occupied by two people.
19. He confirmed in his oral evidence that when the error had come to light, the Council said they could not amend the 2019 licence, so given that it had nearly come to an end suggested a new application should be applied for. This involved him paying the £750 fee and having a new EICR commissioned. He said that the new licence was processed swiftly, and granted on 12 June 2023.
20. On questioning by the Tribunal, the Respondent confirmed that the Property had been inspected by the Council in 2019, and that the error had not been noticed by them. He said he had put in floor plans, EICR reports etc. as required – but these were noticeably lacking in his evidence, and nor was there any evidence from the Council that whilst a licence had been granted following a physical inspection by them in 2019, it was granted with the incorrect flat number upon it.
21. The Respondent admitted that the original error was in all likelihood his, as he would regularly confuse Flats A and B; he said this confusion was further confounded by the flats being known as Flats 1 and 2 by the Post Office and on Council Tax records.

22. The Respondent also admitted that he had amended the certificate in 2019 before putting it on the wall, by using tippex to remove reference to Flat 4A so that it read "4 St George's Terrace".

23. The Respondent told the Tribunal that he had not been convicted of an offence to which the Housing Act 2004 applies or indeed any other offence.

DETERMINATION

24. In order to make a RRO, the Tribunal must be satisfied beyond reasonable doubt that the Respondent has committed one of the offences as set out in s40(3); that the housing, subject matter of the offence, was at that time let to the Applicants, and that the offence was committed by the Respondent in the period of twelve months ending with the date the application was made.

25. The Tribunal considered that the application was correctly brought; that the applicable twelve month period was from 1 August 2021 to 31 July 2022 and that the maximum amount that could be ordered under section 44(4) of the Act for the period was £5,199.60 being the amount the Applicant had paid in rent for the twelve month period.

26. There was no dispute between the parties that the Property was an HMO that required a licence, that the Respondent was the person having control or managing the HMO, that the Applicant was one of the occupants at the time of the tenancy, and that no HMO licence existed for the Property's address.

27. The Tribunal found the evidence of both parties as to the circumstances to be straightforward, credible and honest.

28. The Tribunal found that the offence was made out.

29. Under s72(5) of the Housing Act 2004 in proceedings against a person for an offence under subsection (1), it is a defence if a person has a reasonable excuse for having control of or managing the house in the circumstances mentioned in subsection (1), or for permitting the person to occupy the house.

30. From the Respondent's evidence, he realised the mistake in 2019, and amended the certificate; this contradicted his written submission and skeleton argument that the error only came to light after the Applicant's enquiries to the Local Authority. He was aware of the error in 2019 and had taken steps himself to amend the certificate, but had not referred the matter back to the Local Authority to point out the error.

31. The Tribunal does not consider on the evidence that the Respondent put forward that the defence is made out. He was aware of the administrative

mistake in 2019 but did not give the Local Authority any opportunity to correct it and adopted it by correcting the certificate. He may have considered it was not important as he owned both Flats in the block, and the Local Authority had inspected the dwelling, and were satisfied with its condition, whilst not noticing the error on the address on the application.

32. The question for the Tribunal was therefore the amount that the RRO should be made in.
33. The offence is not an offence described in s46(3)(a) and there is no requirement for the Tribunal to make a maximum repayment order. The matter is only governed by s44. The amount must be no more than the rent paid over the twelve month period; in determining the amount the tribunal must, in particular, take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter applies.
34. In respect of the Applicant's conduct, there was no suggestion by the Respondent that there had been any conduct relevant on the part of the Applicant to report.
35. The Applicant referred to the Respondent's conduct of not registering the tenancy deposit and in relation to how the tenancy deposit dispute was handled at the end of the tenancy.
36. In relation to the arguments over the repayment of the deposit the Tribunal notes that both parties had something to say about the conduct of the other; the Respondent had made a partial repayment of the deposit to the Applicant. The Tribunal did not consider the conduct of either party in respect of the tenancy deposit relevant to the offence committed.
37. The Tribunal notes that there are other fairly punitive remedies available to the Applicant in terms of non-compliance with the tenancy deposit regime.
38. In relation to the Landlord's conduct relevant to the offence, the Tribunal accepts that he was not a professional landlord with a large portfolio, and had actually complied with the process to apply for and to obtain a licence albeit for the wrong address.
39. He had applied for, and been granted a licence in 2019 for the upstairs Flat, Flat 4b, which had been inspected by the Council and found to be compliant. The Applicant candidly confirmed to the Tribunal that he had no problems with the Property; he had found the Respondent to generally be a responsive landlord, even stepping in to assist with noise insulation when the

neighbours in the two bedroomed flat complained they could hear the occupants of Flat B above.

40. Consequently none of the concerns surrounding HMOs that the legislation is designed to address were made out. There were no hazards in the Property, and when the Respondent sought to address the situation in 2023, an HMO Licence was granted swiftly.
41. It is clear to the Tribunal that to all intents and purposes, the processes of the legislation had been complied with by the Respondent; an administration error had led to an offence being committed, which had not been picked up on by the Local Authority.
42. The Tribunal considers that a penalty should therefore be at the very lowest of the spectrum when comparing to other RRO offence judgements. The seriousness is low.
43. In the circumstances the Tribunal determines that the maximum amount of a Rent Repayment Order should be reduced by 90%.
44. The Tribunal Orders that the Respondent pays a Rent Repayment Order to the Applicant in the sum of £519.96.
45. As the Tribunal has made the Order in favour of the Applicant it is appropriate that the Respondent should pay the application fee of £100.

J N Murray

**Tribunal Judge
19 January 2024**