



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

Case References : **MAN/00BN/HMF/2023/0044**

Premises : **97 Neil Lane, Chorlton, Manchester, M21 7SW**

Applicants : **(1) Caitlin Stockton
(2) Georgina Bulga
(3) Sophie Highfield
(4) Megan Allen**

Respondent : **Moyosore Yetunde Akinfe**

Type of Application : **for a Rent Repayment Order under s.41(1) of
the Housing and Planning Act 2016**

Tribunal Members : **Judge P Forster
Mr H Thomas FRICS**

DECISION

Decision

The application is refused. The Respondent, Ms Akinfe, has a statutory defence to the alleged offence under s.72(1) of the Housing Act 2004.

Introduction

1. The Applicants, Caitlin Stockton, Georgina Bulga, Sophie Highfield and Megan Allen applied to the Tribunal on 2 August 2023 for a Rent Repayment Order (“RRO”) under s.41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The Applicants occupied 97 Neil Lane, Chorlton, Manchester, M21 7SW (the Premises) between 10 September 2022 and 9 September 2023. There was also a fifth occupant, Olivia Grasier, who is not a party to the proceedings. She occupied the Premises between 10 September 2022 and 4 February 2023.
3. The Premises is owned by the Respondent, Moyosore Yetunde Akinfe. Throughout most of the tenancy Belvoir Property Management (UK) Ltd. (Belvoir) acted for Ms Akinfe as her agent. Belvoir stopped acting for her on 11 August 2023. Belvoir is not a party to the proceedings.
4. The written tenancy agreement names Ms Akinfe as landlord and Ms Stockton and Ms Bulga as tenants. Ms Highfield and Ms Allen are not included in the agreement nor is Ms Grasier.
5. The Tribunal issued directions on 12 December 2023 which required the parties to provide full details of their respective cases together with any documents they seek to rely on. The Tribunal directed that the application should be determined after a video hearing. The Tribunal did not inspect the Premises.
6. The hearing was conducted by video on 18 June 2024. The Applicants were represented by Ms Caitlin and Ms Akinfe represented herself. The Tribunal heard evidence from Ms Caitlin, Ms Bulga, Ms Highfield and Ms Uppal who works for Belvoir. Each party submitted a bundle of documents.

The Applicants’ case

7. The Applicants claim that the Premises was a house in multiple occupation which was required to be licenced under s.61 of the Housing Act 2004 Act (“the 2004 Act”). They say the house was not licenced and thereby Ms Akinfe committed an offence under s. 72 of the 2004 Act. The Applicants claim that they occupied the Premises under a tenancy granted by Ms Akinfe for a term of 12 months between 10 September 2022 and

9 September 2023 at a rent of £2,250.00 per calendar month. They initially applied for a RRO based on 12 month's rent, but now limit their claim to the period 10 September 2022 to 4 February 2023.

8. The Applicants allege that Ms Akinfe knew that the Premises was occupied by five people.
9. The Applicants say that they received a letter dated 26 January 2023 from Manchester City Council informing them that it was believed that the Premises required an HMO licence. They state that when this was reported to Belvoir they were threatened with eviction if they cooperated with the Council and they were told not to seek legal advice.
10. The Applicants complain about the condition of the Premises. The Council served an improvement notice dated 17 July 2023 on Ms Akinfe which identified a number of HHSRS category 1 and category 2 hazards and required remedial action to begin by 14 August 2023 and be completed within 14 days. The period was extended by the Council and the works completed after the tenancy had ended.

Ms Akinfe's case

11. Ms Akinfe alleges that the Applicants "have deliberately masterminded an incriminating circumstance by secretly and unlawfully including a 5th person in a sublet agreement unknown to me and the estate agent Belvoir and then anonymously writing a letter to the Council to initiate an HMO license investigation for an undue financial gain for themselves and thereby cause (sic) a financial hardship to me".
12. Ms Akinfe denies that she committed an offence because she did not know that a fifth person was occupying the Premises.

The law

13. The relevant law is set out in the annex below.

Findings

14. Ms Akinfe's evidence is that she owns the Premises and lived there until 2008 when she relocated to Essex. It was let to a family between 2008 and 2013. She says that she fully managed the Premises during this time. The Premises was let to a number of company tenants between 2013 and 2022. In 2015, Ms Akinfe instructed Belvoir to let the Premises and in 2022 to manage the property.
15. Ms Stockton, Ms Bulga, Ms Allen and Ms Grasier met on Facebook and looked for properties to rent together in Manchester. They found 97 Neil Lane listed on *Rightmove*. The Premises was described as a five-bedroom property. Ms Allan contacted Belvoir and a viewing was arranged for 1 September 2022.

16. Ms Bulga went to view the Premises and she says that she was told by Kam Uppal who works for Belvoir that the asking rent was £2,000.00 per calendar month. Ms Bulga states that Ms Uppal told her that five people could live in the house but that only two people would be allowed on the tenancy and that the remaining people could stay at the property as 'friends'.
17. There was an exchange of emails on 2 September 2022 between Ms Allen and Belvoir. Ms Allen offered to take the tenancy, stating that "there would be four of us living in the property, all female working professionals". She said that three of them were over 21 and one was 19 years old [Ms Grasier]. The youngest one "wouldn't be the one to put her name on the tenancy...it would be two of us older ones on the tenancy agreement".
18. Belvoir told Ms Allen that Ms Akinfe was happy to accept an offer and she was asked to provide the names of the 'the three people being referenced'. Belvoir's 'guidance for prospective tenants' was subsequently signed by Ms Stockton, Ms Bulga and Ms Allen on 7 September 2022.
19. Belvoir informed Ms Allen that another agency had listed the property online for £2,250.00 and that Ms Akinfe was still willing to accept their offer provided that they agreed to pay £2,250.00.
20. Ms Allen told Belvoir that they were "happy to move forward with the property at the higher price". She sent an email to Belvoir on 5 September 2022. She said that they "were just waiting on one of the other girls to finish referencing...".
21. Ms Allen stated that on the referencing form Ms Bulga "put '5' for the amount of people living there because she read it as how many rooms there are. I put 3 because I didn't know whether we were just putting in how many people were being referenced or if I should have put 4 people as that's how many people are living there. Caitlan (Ms Stockton) has also put down 3 people".
22. Ms Allen states that she asked Belvoir if they could have a fifth tenant to share the additional cost and that she was told that 'it would make no difference to them'. Sophie Highfield then joined as 'the 5th tenant'.
23. Ms Akinfe seeks to rely on the fact that, "the Applicant [Ms Allen] and the other three tenants were in breach of the tenancy agreement which does not allow for subletting or parting with possession of any part of the property".
24. The Tribunal finds that Belvoir was remarkably relaxed about the number of people occupying the Premises. As a professional letting agent, it would have known the importance of this because of the need to licence the Premises as an HMO if there were 5 or more occupants.

25. Belvoir knew when it drafted the tenancy agreement that there would be at least four people occupying the Premises. The agreement provides at clause 1.1.3 that “in addition to the Tenant [Ms Stockton and Ms Bulga], Permitted Occupiers are the only people allowed to live in the property but they do not have any rights or obligations as per the Tenant listed in clause 1.1.2 and are only permitted to reside at the Property with the permission of the Tenant”.
26. Clause 1.5.2 provides that “the Property is not let as a House in Multiple Occupation within the meaning of the Housing Act 2004. A Housing Act 2004 licence ****UNKNOWN**** for this Property. The Tenant agrees not to use the Property in any way that changes either of these facts”.
27. Clause 1.10 provides that where permission is required by the tenant, if granted, it will be in writing from either the landlord or the landlord’s agent.
28. Clause 4.3.10 provides that the Tenant shall not assign, underlet or part with or share possession of the whole or any part of the property without permission. Further, clause 4.3.11 states that the Tenant shall not permit any visitor to stay in the Property for a period of more than three weeks within any three-month period without permission.
29. Belvoir drafted the tenancy agreement in the knowledge that the Premises would be occupied by at least four people but yet the agreement named only two tenants, Ms Stockton and Ms Bulga. The agreement provides for ‘permitted occupiers’ to live in the Premises subject to the landlord’s written permission but this was not provided despite it being known that there would be at least four occupants. The tenancy was granted despite the express provision that the Premises was not being let as an HMO and the provision that the tenants agreed not to use the property as such. This shows that the importance of the number of occupants was appreciated. The agreement does not allow the tenants to underlet or part with possession of any part of the Premises without written permission which was not given. This all flies in the face of the facts.
30. Ms Uppal was asked to explain the discrepancy between the terms of the tenancy agreement and what was known and all she could say was that “it was an oversight”. The Tribunal does not find this to be credible because it was Belvoir’s responsibility to protect the landlord’s position and the tenancy agreement leaves Ms A Akinfe at potential risk if the rent was not paid or the terms broken. It would be usual for all the occupants to be signed up on the tenancy agreement to ensure that they were jointly and severally liable to the landlord.
31. Ms Stockton and Ms Bulga told the Tribunal that the four occupants considered the possibility of bringing in a fifth person to share the cost but initially decided not to do this and use the fifth bedroom as an office. This explains why the possibility of a fifth person was raised when Ms Bulga viewed the Premises on 1 September 2022. The Tribunal accepts Ms Bulga’s evidence and rejects Ms Uppal’s denial that she told Ms Bulga that five people could live in the Premises. The Tribunal also finds that Ms Uppal

stated that only two people could be on the tenancy agreement and that the three others could stay as 'friends'. Ms Uppal's credibility is damaged by her conduct when drafting the tenancy agreement and ignoring the fact, on her evidence, that there would be four tenants. In contrast, the Applicants' have given a consistent and credible account.

32. The Tribunal finds that Belvoir was asked if a fifth person could be added to share the rent as claimed by the Applicants. Belvoir's response that "it would make no difference to them" is consistent with the agent's relaxed approach to matters throughout.
33. The Tribunal finds that Belvoir knew that there would be five people occupying the Premises and that this crossed the legal threshold for an HMO. The question is whether Ms Akinfe knew that the Premises was occupied by five people.
34. It is alleged that Belvoir threatened to evict the Applicants if they cooperated with the Council. The respective accounts of what was said differ. The allegation is consistent with the Tribunal's findings overall and it is likely that Belvoir did warn the Applicants against cooperating with the Council's investigation.
35. Ms Akinfe claims that she did not know that there were five people in the house. She knew that there would be four people in the house because as she says in her witness statement, "I told Belvoir that I would prefer to let the house to four women provided they were willing to match the offer of £2,250 made by the other agent's tenant".
36. The Applicants did not have any contact with Ms Akinfe. Everything was done through Belvoir. Ms Akinfe relied on the agent to provide her with information. The Premises had not previously been let as an HMO and from Ms Akinfe's evidence it was clear that she was aware of the need to limit the number of occupants so as not to breach the terms of her mortgage.
37. The Tribunal rejects Ms Akinfe's assertion that the Appellants conspired to make a claim against her. Her perception of events is simply wrong. However, on the evidence the Tribunal finds that Ms Akinfe did not know that there were five people living in the house.

Reasons for the decision

38. By s.41(1) of the 2016 Act only a tenant or a local authority may apply for a RRO against a person who has committed a relevant offence.
39. The Applicants do not argue that they were all tenants. Only Ms Stockton and Ms Bulga were parties to the tenancy agreement. Ms Allen in her email on 2 September 2022 said that "it would be two of us older ones on the tenancy agreement". Ms Highfield and Ms Allen were not tenants and therefore do not have any standing to make an application.

40. Although they all considered themselves to be tenants, on the Tribunal's analysis of the facts, Ms Highfield and Ms Allen were sub-tenants of Ms Stockton and Ms Bulga to whom they paid 'rent'. They did not have a contractual relationship with Ms Akinfe and cannot claim a RRO as tenants.
41. The main statutory provisions in respect of HMOs are contained in ss.55 to 78 of the 2004 Act. S.254 sets out the meaning of "house in multiple occupation". By s.55(2)(a) mandatory HMO licensing only applies to those HMO's which fall within "any prescribed description". Reg.4 of The Prescribed Description Order 2018 provides that an HMO is of the prescribed description for the purposes of s.55(2)(a) if it is occupied by five or more persons living in two or more separate households and meets the standard test in s.254(2).
42. The Premises was occupied by five people between 10 September 2022 and 4 February 2023 and it was an HMO.
43. By s.61 of the 2004 Act, every HMO to which Part 7 of the 2004 Act applies must be licensed unless subject to an exception. No exceptions apply here. The Premises did not have a licence.
44. By s.72(1) a person commits an offence if they are a person having control of or managing an HMO which is required to be licenced but is not so licenced. It is not in dispute that Ms Akinfe had control of the Premises and it was managed on her behalf by Belvoir.
45. S.72(5) provides that in proceedings for an offence under subsection (1) it is a defence that the accused had a reasonable excuse for having control of or managing a house which is not licenced.
46. In Mohamed v London Borough of Waltham Forest [2020] EWHC 1083, the Court rejected the argument that it was a necessary element of the offence that the persons who had control of or managed an HMO, knew that they were managing or controlling an HMO, which was required to be licensed.
47. The Court held that a person alleged to have committed such an offence might have a defence if they established a reasonable excuse for having control of or managing an HMO which was required to be licensed. If the accused did not know that there was an HMO which was required to be licensed, for example because it was let through a respectable letting agency to a respectable tenant with proper references who had then created the HMO behind the accused's back, that might be relevant to the defence.
48. The offence under s.72(1) is an offence of strict liability to be determined beyond reasonable doubt. However, it is subject to a statutory defence. The burden is on Ms Akinfe to show on the balance of probabilities that she had a reasonable excuse for failing to licence the Premises.

49. Ms Akinfe first instructed Belvoir in 2015 to let the Premises and therefore she already had a relationship with the letting agent when she instructed them to manage the property in 2022. Belvoir is a well known national chain of agents and there was no apparent reason for Ms Akinfe to doubt its ability to manage the house on her behalf. Ms Akinfe let the Premises through a respectable letting agency to respectable tenants with proper references. There is no suggestion that she acted improperly. It was reasonable for her to Trust Belvoir to act in her best interest and to manage the Premises in accordance with all relevant legislation. Ms Akinfe had no contact with the Applicants herself and no reason to know that there were more than four people in the house.
50. In all the circumstances, the Tribunal finds that Ms Akinfe has a reasonable excuse for her failure to licence the Premises. Ms Akinfe therefore did not commit an offence under s.72(1) of the 2004 Act and there are no grounds to make a RRO.
51. Where tenants have identified their landlord in an application for an RRO, the Tribunal has no power to substitute another party where the 12-month limitation period in the 2016 Act has expired. In the present case, Belvoir is not a party to the proceedings and any offence ended on 4 February 2023.

Judge P Forster
24 June 2024

ANNEX

Housing and Planning Act 2016

Section 40 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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41 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 —
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43 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.

Section 44 **Amount of order**

- (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.

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.