



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

Case References	: MAN/ooBR/HMF/2023/0040
Premises	: 54 Lockett Gardens, Salford, M3 6BJ
Applicant	: Oliver Luhrs
Respondent	: Oliver Palenik
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

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Decision

The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under s.72(1) of the Housing Act 2004.

The Tribunal makes a Rent Repayment Order under s.41(1) of the Housing and Planning Act 2016 and orders the Respondent to pay the Applicant £2,212.52.

Introduction

1. The Applicant, Oliver Luhrs, applied to the Tribunal on 14 July 2023 for a Rent Repayment Order (“RRO”) under s.41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The Applicant occupied 54 Lockett Gardens, Salford, M3 6BJ (“the Premises”) between 20 January 2023 and 13 July 2023 under the terms of a Licence Agreement dated 16 January 2023 at a licence fee (referred to by the parties as rent) of £530.00 per calendar month.
3. The Premises was owned by the Respondent, Oliver Palenik. The Premises is a three-bedroom flat in a block of flats and was occupied by three unrelated people. The Respondent sold the Premises in November 2023.
4. The Tribunal issued directions on 20 November 2023 which required the parties to provide full details of their respective cases together with the documents they rely on. The Tribunal directed that the application should be determined after a video hearing. The Tribunal did not inspect the Premises.
5. The hearing was conducted by video on 17 July 2024. The Applicant represented himself as did the Respondent. Both parties submitted a bundle of documents. After hearing the evidence and the parties’ submissions the Tribunal reserved its decision.

The Applicants’ case

6. The Applicant states that the Premises was a house in multiple occupation (“HMO”) which was required to be licenced under s.61 of the Housing Act 2004 Act (“the 2004 Act”). He says the house was not licenced and thereby the Respondent committed an offence under s. 72(1) of the 2004 Act. The Applicant states that he occupied the Premises under a licence granted by the Respondent for a term of twelve months between 20 January 2023 and 19 January 2024 at a rent of £530.00 per calendar

month. By agreement with the Respondent, the Applicant vacated the Premises in July 2023. The Applicant applies or a RRO in the sum of £2,838.00.

The Respondent's case

7. The Respondent accepts that the Premises was an HMO which was required to be licenced under s.61 of the 2004 Act and that it was not licenced as required. He admits that he committed an offence under s.72 of the 2004 Act. He accepts that he is liable to pay a RRO under s.41 of the 2016 Act. The Respondent disputes the amount claimed by the Applicant.
8. The Respondent purchased the flat with a mortgage to live in and decided to let it out when he moved in with his partner. He is not a professional landlord. The Respondent says that the costs of running the flat were often higher than the rent he collected. He states that he was a good landlord and fixed things when anything broke and paid to have the common parts cleaned. The Premises have not been relet and Respondent sold the flat in November 2023.
9. The Respondent understands that he has to pay for not having a licence and he has paid a penalty to Salford City Council which "is punishment enough". He believes that the Applicant is simply taking advantage of the situation. The only two infractions were that the flat had a battery-operated fire alarm and that the size of the Applicant's room was 0.1m² smaller than the official guidelines. The Respondent says that if the flat was located 100m east it would be in the area of Manchester City Council and would not require a licence.
10. The Respondent says that a number of items should be taken into account to reduce the amount of the RRO:

- Council
- Tax
- service
- charges
- cleanin
- g fees
- internet
- mortga
- ge
- persona
- l loan
- water
- charges
- electrici
- ty

The law

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

Findings

12. The Premises is situated in an additional licencing area established by Salford City Council exercising powers under s.56(1) of the 2004 Act. This extends the definition of an HMO to properties occupied by three or more unrelated people.
13. The Council granted a temporary exemption of three months between 22 June 2023 and 21 September 2023.
14. The Respondent says that his failure to obtain a licence was an oversight on his part. He lived in the flat himself and only decided to rent it out when he moved in with his partner. He did not know that the Premises required a licence.
15. The Applicant occupied the Premises between 20/01/23 and 13 July 2023 under a licence agreement at a rent of £530.00 per calendar month. He vacated the Premises by agreement with the Respondent.
16. The Applicant paid the rent that was due and abided by the terms of the licence agreement. He was not in receipt of Housing Benefit or Universal Credit.
17. The Applicant does not make any allegations about the Respondent's conduct. The Respondent has raised two infractions of the HMO regulations but the Tribunal does not consider these to be significant.

Reasons for the decision

18. 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. The rights of a tenant extend to a licensee and therefore the Applicant is able to apply for a RRO.
19. The main statutory provisions in respect of HMOs are contained in ss.55 to 78 of the 2004 Act. It is not in dispute that the Premises was an HMO. The Premises was occupied by three unrelated people.
20. 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 statutory exceptions apply here. The Premises did not have a licence during the relevant period.
21. 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. The Respondent admits that he committed an offence.
22. 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. The Respondent conceded that not having a licence

was an oversight on his part. Ignorance of the legal obligations imposed on a landlord does not constitute a reasonable excuse.

23. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under s.72(1) of the 2004 Act, being a person having control of or managing the Premises which was required to be licensed and was not licenced.
24. The policy underpinning Part 2 of the 2016 Act is to deter the commission of housing offences by the imposition of stringent penalties. An unlicensed HMO may be a perfectly satisfactory place to live despite its irregular status but the main objective of the provisions is deterrence rather than compensation.
25. The amount of the RRO is determined in accordance with s.44 of the 2016 Act. The Upper Tribunal in Vadamalayan v Stewart [2020] UKUT 183(LC) set out the approach to be adopted. The starting point is the rent for the relevant period of up to 12 months. The RRO is not tempered by a requirement of reasonableness. It is not appropriate to calculate a RRO by deducting from the rent everything the landlord has spent on the property during the relevant period. This expenditure would have enhanced the landlord's own interest in the property and enabled them to charge rent for it. Much of the expenditure would have been incurred in meeting the landlord's obligations under the lease. There is no reason why the landlord's costs in meeting their obligations should be set off against the cost of complying with a rent repayment order. The only basis for deduction is s.44 itself.
26. There is a case for making deductions from the rent paid where, as in the present case, the landlord has paid for utilities, as those services were provided to the tenant by third parties and consumed at a rate chosen by the tenant. In paying for utilities the landlord was not maintaining or enhancing his own property. There is no justification for deducting either a fine or a financial penalty imposed on the landlord for the offence because Parliament's intention was that the landlord should be liable to pay both a fine or penalty and a RRO.
27. Vadamalayan must be read together with the subsequent decisions in Ficcaro & Others v James [2021] UKUT 0038 (LC) where it was held that the sum repayable should not be the same irrespective of the seriousness of the offences committed by the landlord. The requirements in ss.44(4) and 45(4) for tribunals to have particular regard to certain matters indicates that the RRO should not necessarily be for the maximum amount. In Awad v Hooley [2021] UKUT 0055 (LC) the Upper Tribunal endorsed the tribunal's room for manoeuvre when exercising its discretion. In Williams v Parmar [2021] UKUT 244 (LC) the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed in ss.44(4) and 45(4) of the 2016 Act.
28. The Tribunal must take into account the conduct of both the parties. On the evidence, the Applicants paid the rent that was due and abided by the terms of the licence

agreement. There is no reason to criticise the Applicant. Likewise, no allegations are made against the Respondent and there is no reason to criticise his conduct. Both parties have acted reasonably throughout the proceedings.

29. The starting point is the rent paid by the Appellant of £530.00 per calendar month. The relevant period is from the start of the licence on 20 January 2023 to 21 June 2023 the day before an exemption was granted. This is a period of 5 months and three days. The Tribunal calculates this as amounting to £2,702.00 (5 x £530 plus 3 x the daily rate of £17.42).

30. The Respondent asks for this to be reduced to take account of a number of factors:

- Council Tax
- service charges
- cleaning fees
- internet fees
- mortgage
- personal loan
- water charges
- electricity
- gas

31. The Tribunal finds that the utility charges should be deducted. The parties have sensibly agreed the figures: internet, £20.00, water, £43.00 and electricity, £225.00, per month. This totals £288.00 per month. Divided by 3 because there were 3 occupants, gives a sum of £96.00 per month. Over 5 months and 3 days this produces a figure of £489.48. For every household there must be at least one liable person whether that is the owner or a tenant.

32. In the case of HMOs, liability to pay Council Tax falls on the owner of a property rather than the tenants. In the present case, this is reflected in the terms of the licence agreement which expressly provides that the Applicant was not entitled to pay or appear on the Council Tax bill. This expenditure was incurred in meeting the Respondent's obligations and there is no good reason why these costs should be set off against the cost of complying with a RRO.

33. The Respondent is liable to pay a service charge under the terms of the lease under which he owns the flat. This charge relates to the costs of the current and future

maintenance of the common parts of the block and will include the cost of insuring the building. This is for the benefit of the Respondent and ultimately to enhance and protect the capital value of the building. It is therefore not appropriate to deduct the service charge when calculating the amount of the RRO.

34. The Applicant was under an obligation in the licence agreement to keep clean the interior of the room he occupied and other shared parts of the flat. The Respondent voluntarily incurred additional cleaning costs for which the Applicant was not liable. It is therefore not appropriate to make a deduction in this respect.
35. The Respondent claims the costs of this mortgage and personal loan. This expenditure would have enhanced the landlord's own interest in the property and enabled him to charge rent for it. These costs are not to be deducted when calculating the RRO.
36. The Tribunal concludes that the rent paid of £2,702.00 is reduced by £489.48 to give a net sum of £2,212.52.
37. The Tribunal has some discretion when determining the amount of the RRO. In the present case, the evidence presented does not support either an increase or decrease in the figure of £2,212.52. The purpose of a RRO is to promote compliance with the legislation and deter disobedience. The Tribunal finds that this objective is achieved by imposing a RRO in the sum of £2,212.52 on the Respondent.

Judge P Forster
17 July 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 —
 - (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.

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 an offence mentioned in row 1 or 2 of the table in section 40(3)	the amount must relate to rent paid by the tenant in respect of 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.