



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

Case Reference : **MAN/00BR/HMF/2023/0013**

Property : **8, Cliff Avenue, Salford M7 2HN**

Applicant : **Marvin Katende**

Respondent : **Seven Arches Limited**

Type of Application : **Application for a rent repayment order by tenants (no conviction)
Sections 40-44 Housing and Planning Act 2016**

Tribunal Member : **Mr J R Rimmer
Mr J Gallagher MRICS**

Date of Decision : **5th December 2023**

Order : **The application for a Rent Repayment Order is granted in an amount of £2,324.64 for the reasons set out herein.**

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A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicant for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by a Legal Officer of the Tribunal for the further conduct of this matter on 6th July 2023.
4. Those directions have now been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

- 5 The Applicant has been for some time the tenant and occupier of the room known as Room 2 at 8, Cliff Avenue. Salford. He has been a tenant under a succession of assured shorthold tenancy agreements and his rent is currently £388.00 a month.
- 6 The Respondent is the owner of the 8, Cliff Avenue. It appears to be a property which the company purchased in July 2021 from the previous landlord.
- 7 There is no dispute between the parties that the application for a rent repayment order is founded upon the fact that the property was required to be licensed under the licensing scheme being operated by the local housing authority, Salford City Council in respect of houses in multiple occupation (HMOs). The previous landlord was the holder of such a licence.
- 8 The Applicant had reason to approach the local housing authority about matters unconnected with the licence and in the course of its enquiries the authority became aware of the change of ownership and Seven Arches Limited becoming the landlord. It therefore revoked the licence held by the previous landlord with effect from 3rd November 2021.
- 9 For a rent repayment order to be sought it is necessary to show that a relevant housing offence has been committed; the relevant offence alleged in this case is that for the period from 3rd November 2021 to 19th July 2022, that latter date being the date when a new licence was granted to Seven Arches Limited, the Respondent was operating a HMO in contravention of the requirement to possess a licence in respect thereof.
- 10 There have been no proceedings taken in any court of competent jurisdiction seeking to establish any relevant offence in respect of any failure to

license, nor has there been any apparent consideration of the imposition of a financial penalty against the Respondent. These current proceedings are the first to investigate the facts pertaining to the licensing situation in 2021-2022.

The Law

In relation to a rent repayment order:

- 11 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
 - (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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.
- 12 Section 40 of the H&PA
 - (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenant

Subsection 3 then sets out a table of 7 offences to which the Tribunal's powers apply:

 - 1 using violence to secure entry to residential premises
 - 2 eviction of harassment of occupier
 - 3 failure to comply with an improvement notice
 - 4 failure to comply with a prohibition notice
 - 5 and 6 offences in relation to houses required to be licenced
 - 6 breach of banning orders in relation to the provision of housing
- 13 18 Section 43 H&PA then provides that
 - (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with
 - (a) Section 44 (where it is made by a tenant)
- 14 Section 44 provides a table (Sub-section 2) whereby the amount of the order must relate to rent paid by the tenant in respect of a period not exceeding 12 months during which the landlord was committing the offence and, (Sub-sections 3 and 4):

- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
- In determining the amount the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

In relation to the requirements for a licence:

15 Section 72 of the Act provides:

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed... but is not so licensed
- (2) ...
- (3) ...
- (4) ...
- (5) In proceedings for an offence under subsection (1)... it is a defence that he had a reasonable excuse-
 - (a) for having control or managing the house in the circumstances mentioned in sub-section (1) or
 - (b) for permitting the person to occupy the house...
 - (c) ...

Submissions

- 16 The Tribunal received information from the Applicant which was not limited to the narrow factual situation which had occurred and was relevant to the issue of the making of a rent repayment order, but also outlined other issues existing between the parties. It was however clear that the substantive facts were that:
 - (1) The Council had revoked the licence of the previous landlord with effect from 3rd November 2021.
 - (2) A new licence in favour of the Respondent was granted on 19th July 2022
 - (3) The property was therefore an unlicensed HMO between 4th November 2021 and 18th July 2022 and had no valid licence from about 28th June 2021.
 - (4) Between 4th November 2021 and 18th July 2022 the Applicant had paid rent, net of council tax, at 4-weekly intervals, firstly in an amount of £288.00 per 4 weeks until 10th February 2022 and thereafter in an amount of £368.00 per 4 weeks until and beyond 18th July 2022. In monthly terms they are amounts of £308.00 and £390.00.
 - (5) He sought to reclaim that rent.
- 17 The Applicant noted the difficulties outlined in the process for a licence encountered by the Respondent but did not accept that they represented a reasonable excuse for operating a HMO without a licence but merely

outlined the process for the making of an application. At the hearing of this matter on 5th December 2023 Mr Katende expanded upon this view, suggesting that the difficulties experienced by the Respondent could have been avoided by being sufficiently pro-active and being aware that a new licence was required immediately upon the acquisition of the property from the previous landlord. A landlord was obligated to understand the regulatory regime relevant to its portfolio.

- 18 The Respondent eventually provided a submission as to the circumstances in which it found itself requiring a licence, and that it had initiated the application process within a reasonable time of the revocation of the previous licence. It had been thwarted in its efforts to obtain a licence by failures within the Council's procedures over which the Respondent had no control.
- 19 A hearing was requested by the parties and this took place at the offices of the Tribunal in Manchester on 5th December 2023. Mr Katende was in attendance as were Mr Strassman from the managing agents for the property and Mr Debenbakker, a director of the respondent company.
- 20 The Applicant had provided considerable information in his submission to support his case for the making of an order and the Tribunal confirmed the licensing history relating to 8, Cliffe Avenue, with the parties and thereafter invited the representatives of the of Respondent to explain the position that it now found itself in.
- 21 This property was one of the first, if not the first, that the Respondent had acquired. It was aware that the property was an HMO (it had been viewed prior to purchase) and that a licence was required. Such a licence existed and continued to do so until the Respondent was notified that it had been revoked. The Respondent had relied upon that licence. When it became aware of the revocation it had taken steps to remedy the situation. There was no adequate explanation given as to how communication, or lack thereof, between conveyancer, agent and company had led to the situation.
- 22 It is fair to say that there was some disagreement between the parties as to how speedily assessments were made as to work required on the property and having that work carried out. Sufficient was however done to enable an application to be commenced.
- 23 For no reason in respect of which a reasonable explanation has been given there was a considerable delay in progressing the application at the Council. It was only with considerable pressing from the respondent making the application that it was eventually progressed to a point where a licence could be regarded as properly made and given sufficient consideration to be granted. Mr Debenbackker described the process to the Tribunal by referring to the Councils' process as "schlep". The Tribunal believes he was

using this with its Yiddish meaning of “dragging out” or “slowing down”. The word seemed to the Tribunal to accurately reflect the delay and there is no evidence that this was in any way the Respondent’s fault. Indeed, it appears the Respondent was responsible for restarting forward progress.

- 24 The Respondent’s position is that in the circumstances outlined they respondent did have a reasonable excuse for operating the property as an HMO without a licence. Such a reasonable excuse would negate criminal liability and without an offence there can be no repayment order.

Decision

- 25 The Tribunal must firstly consider whether the Applicant has made a valid application. For this to be the case it must be made within 12 months of the licence being granted. In this case the licence was granted on 19th July 2022. That is the date at which an offence of operating a HMO without a a licence, if such an offence has been committed, ceases to be committed. Mr Katende’s application is dated 22nd March 2023. It is therefore an application made within the timescale provided for on Section 41 H&PA 2016 as set out in paragraph 10, above.
- 26 The offence most relevant to the matter now before the Tribunal is that set out in paragraph 15 above, that of operating an HMO without a licence when a licence is required. The Tribunal asks itself if this is the case? The answer is that it is. The property requires a licence and it is managed or controlled by the Respondent without a licence for the period relevant to the Applicant’s claim: 4th November 2021 to 18th July 2023.
- 27 It is important to note that committing an offence is not synonymous with being convicted of an offence in a court exercising a criminal jurisdiction, but is regarded as requiring any decision as to such an offence being determined, where there is a need to do so, on the criminal burden of proof.
- 28 The Respondent suggests that there is a reasonable excuse for the failure to license available to it to extent that it was reasonable to continue to operate the house whilst the application was pending, given the responsibility for the delay fell upon the Council and not on the Respondent.
- 29 The Tribunal has some sympathy with the situation in which the Respondent found itself given the delay that it encountered in what the Tribunal regards as the unconscionable tardiness in dealing with the information provided by the Respondent.
- 30 This sympathy is, however eroded by the inaction of the Respondent in the period from acquiring 8, Cliffe Avenue until the revocation of the licence of the previous landlord on 4th November 2021. A licence is personal to the current landlord. It is not a licence attached to the property. The Respondent

indicated to the Tribunal that it knew the house to be an HMO. Although it is new to the HMO regime, it was on notice that some sort of legislative regime might apply to it. It also had professional advice at the time of purchase and continuing input from the managing agents. It is the Tribunal's view that ignorance of the law is not an excuse, particularly in the circumstances that are outlined here. Only another non-relevant matter brought the absence of a licence to the attention of the Council the unlicensed period, otherwise the unlicensed period would have continued. In these circumstances the Tribunal is so satisfied that it is sure that for the relevant period from 4th November 2021 to 18th November 2022 an offence was being committed. The Tribunal does acknowledge that any culpability is greatly mitigated by the actual conduct of the Respondent in pointing out the errors of the Council and being pro-active in pushing progression of the application. Had the Tribunal been dealing with the offence itself those matters would undoubtedly have been taken into consideration as mitigation for any offence, but these proceedings for a rent repayment order are a further step along the pathway of the licensing regime.

- 31 Should the tribunal make an order? Mr Katende has done nothing wrong. He simply asks the Tribunal to make an order for which parliament has determined he should have the right to make. If the Respondent had done what it should have done, at the time when it should have been done the position might have been regarded differently. It did not do so and the Tribunal is of the view that an order should be made in the Applicant's favour.
- 32 He is entitled to claim rent paid for the period when there was no licence. He paid council tax in his rent, which appears to be acknowledged as being £20.00 per 4 weeks. The landlord should bear no responsibility for repaying this
- 33 The Tribunal also understands that from that net rent the Respondent paid for the tenants utilities of:
- | | |
|---------------------|-----------------|
| Broadband | £1.25 per week |
| Water | £2.66 per week |
| Gas and electricity | £10.38 per week |
- The respondent should not be out of pocket in respect of these costs that have been incurred on the Applicant's behalf.
- 34 The Tribunal therefore determines that a rent repayment order in an amount of £2,324.64 should be made in favour of the Applicant in this matter. The calculations of the Tribunal are shown in Appendix 1

J R RIMMER (CHAIRMAN)

Appendix 1
MAN/00BR/HMF/2023/001

Rent Repayment Calculation

Period

4/11/21 to 18/7/22 = 8 months 14 days or 36 weeks 4 days (36.57 weeks) or 256 days.

Inputs

- The rent from 4/11/21 to 10/2/22 was £308 per calendar month. Thereafter it increased to £390 per calendar month.
- Council tax was charged at £20 every 4 weeks (£5 per week).
- Gas and electricity was charged at £10.38 per week.
- Water was charged at £2.66 per week.
- Broadband was charged at £1.25 per week.

Gross Rent

November 2021 = 26/30 x £308 =	£266.93
December 2021 =	£308.00
January 2022 =	£308.00
February 2022 = 10/28 x £308 =	£109.99
18/28 x £390 =	£250.71
March – June 2022 = £390 x 4 =	£1560.00
July 2022 = 18/31 x £390 =	<u>£226.45</u>

Total	£3030.08
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Deductions

Council tax = £5 x 36.57 =	£182.85
Gas & Elec = £10.38 x 36.57 =	£379.60
Water = £2.66 x 36.57 =	£97.28
Broadband = £1.25 x 36.57 =	<u>£45.71</u>

Total	£705.44
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Net amount	£2324.64
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