



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

Case reference : **MAN/00BY/HMF/2023/0063**

Property : **33, Lennon Studios, 109, Cambridge
Court, Cambridge Street, Liverpool
L7 7AG**

Applicant : **Ms Xiaohan Xu**

Representative : **Mr George Penny (counsel) instructed
by Flat Justice CIC**

Respondent : **USAF Management 11 Limited**

Representative : **Mr Paul Whatley (counsel) instructed by
Walker Morris LLP, Solicitors**

Type of application : **Application for a Rent Repayment Order
under the Housing and Planning Act
2016**

Tribunal member : **J R Rimmer
I James MRICS**

**Date and place of
hearing** : **10th December 2024 by Video hearing**

Date of decision : **24th January 2025**

DECISION

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Background

1. The Applicant, Ms Xu, makes application to the Tribunal to the Tribunal for a rent repayment order in respect of her tenancy of a studio apartment at 33, Lennon Court. This is one of a number of blocks containing modern, purpose-built, studio flats in Liverpool City centre. They are primarily provided for occupation by students attending educational establishments in the City. The Landlord is one of a number of associated companies under the “Unite Students” umbrella managing and operating the individual blocks.
2. The fundamental premise upon which an application may be based is that the Respondent has committed a relevant offence under the Housing Act 2004. This then allows an application for a repayment order to be made. The statutory provisions are set out at paragraph 14, onwards, below.
3. The application was made in the appropriate manner upon an application form dated 29th June 2023. Standard directions were provided by the Tribunal which were complied with by the parties sufficiently to enable the matter to proceed to a hearing in September 2024.
4. By the time of the date set for that hearing, 18th September, it became apparent that a number of similar applications were being made against the Landlord, or associated companies, all based upon the premise that the landlords had failed to comply with a selective licensing scheme imposed under the regime for such schemes provided by the Housing Act 2004. Furthermore, all the applications were founded upon one particular common factor, the failure of the relevant landlord to make application for the appropriate licence. The various tenants had then made their applications for rent repayment orders, as provided for by the statutory regime.
5. At the hearing conducted by videolink in September it was considered appropriate to use this current case as a lead case to provide a determination sufficient to deal with all those outstanding applications that were based upon on substantially similar factual matrices.
6. In view of the different stages reached by those applications within the tribunal’s processes, further directions were given to allow them to be identified as studio flats similar to 33 Lennon Studios, to be linked to this application and to allow for any representations as to why it might not be appropriate to include them.
7. Those further directions were complied with for a definitive list of a further 14 properties to be so identified and to be included under the aegis of this lead case in time for the hearing in respect of 33, Lennon Studios to resume on 10th December 2024.

Relevant facts

8. In the course of these proceedings and by reason of previous interaction between the respective legal teams representing the Applicant and the Respondent the number of outstanding issues for the Tribunal to resolve were reduced. There was agreement between the parties as to many significant facts of relevance to the proceedings, together with the narrowing down of differences between the parties where agreement had not been reached. Without the necessity for formal recognition, it was also clear that other facts were not in dispute, sufficient for the Tribunal to record the matters set out below.
9. Liverpool City Council, being the local housing authority for the area in which 33, Lennon Studios is situated, enacted a selective licensing order for the area in which the Property is located under section 80 Housing Act 2004 on 7 December 2021 and which came in to force on 1 April 2022. The Order related to a considerable quantity of accommodation and encompassed those such as the subject property and others in the city centre and required them to be appropriately licenced by the City Council
10. The Applicant took a tenancy of her flat from a start date was before the selective licensing order required the property to be licenced. The property, therefore, became unlicensed, during her period of occupation, from 1st April 2022 and that unlicensed state continued until 14th July 2023. The following day the Respondent's application for a licence was deemed to have been duly made, that is to say in a form and manner that required only the Council to go through the process of considering and granting it.
11. Under the regime set out for rent repayment orders the Applicant may only apply for an order relating to a maximum period of 12 months during which she had occupation of the studio: that is to say from 15th June 2022 to 14th June 2023.
12. During that time Ms Xu was entitled to occupancy under 3 separate tenancy agreements. Her existing agreement as at 15th June 2022 expired on 26th August 2022. An interim agreement was entered into for the short period from 27th August to 2nd September and then a third agreement ran from 3rd September and continued onto and beyond 14th June 2023. Differing periodical were payable under each of those agreements.
13. The Respondent offers now sufficient excuse for the failure to license the property during the period bore it provided its completed application. The reasons for the failure to license are provided by Ms Redfearn, an employee of the Respondent, in a witness statement. It is frank about the situation that arose within the Respondent's organisation whereby in the Spring of 2022 it became aware of the licensing regime but then, during a period of internal re-organisation, the matter came to be overlooked for a lengthy period of time.

14. Against that background it is appropriate to set out the law as it relates to the situation pertaining to 33, Lennon Court and against which the respondent accepts that a housing offence has been committed and the applicant may apply for a rent repayment order (RRO) to the Tribunal.

In relation to a rent repayment order:

15. 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.
16. 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
17. 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)
18. 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:

19. Section 95 Housing Act 2004 provides:

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed... but is not so licensed
- (2) ...
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that at the material time –
 - (a)...
 - (b) an application for a licence had been duly made in respect of the house...and that application was still effective...
- (4) In proceedings against a person 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)...

20. In the context of the statutory background set out above it is clear, and conceded by the Respondent, that an offence has been committed (the reasons provided not being a reasonable excuse), but the commission of the offence came to an end with a licence application being duly made on 15th June 2023.

21. It was further agreed between the parties that the process for ascertaining the amount that should be considered as the basis of a repayment order should follow that enunciated by the Upper Tribunal in *Acheampong v. Roman* [2022] UKUT 239 (LC) and that the Tribunal should be cognisant of:

- (a) The tenancy included the supply of heat, light, power, internet access and contents insurance
- (b) There were no issues arising in relation to the conduct of the Respondent towards the applicant.
- (c) The Respondent had not been convicted of any relevant previous offences to which the H&P Act applied.
- (d) The nature and character of the Respondent was such that its financial circumstances were not relevant to the Tribunal's considerations.

The outstanding issues

22. There are matters that have not been the subject of agreement between the parties:

- (a) The precise rent paid by this applicant in respect of her 3 relevant tenancies for the appropriate 12-month period.
- (b) The proper deduction to be made in respect of utilities.
- (c) The seriousness of the offence, given the very extensive nature of the Respondent's business, the manner of its disregard of licensing requirements, being widespread and systematic and the previous findings made in favour of other tenants granted repayment orders.
- (d) The likely resources available to a large organisation to meet any order that the Tribunal may see fit to make.

Evidence

- 23. The rent There is a discrepancy between the amount suggested as relevant to the 12-month period as suggested by the Applicant when compared with that provided on behalf of the Applicant. They appear to be differences of arithmetic, rather than principle.
- 24. The Tribunal, perhaps rather unhelpfully provides a third calculation, noting, firstly, that in the Applicant's reply to the Respondent's case there appears to be no allowance made for the date of 3rd September 2022.
- 25. The 365-day period over which an offence is committed and upon which the Applicant may base a claim ends on 14th June 2023. The following day is that upon which the Application for a licence is deemed to be duly made. The first day of the relevant period is therefore 15th June 2022.
- 26. From 15/06/22 to 26/08/22 the Applicant occupies the property at a daily rate of £21.43 – 73 days at £21.43 = £1564.39

From 27/08/22 to 02/09/22 the Applicant occupies the property for 1 week/7 days at £125.00 = £125.00

From 03/09/2022 to 14/06/23 the Applicant occupies the property for 285 days at a daily rate of £21.00 = £5985.00

Total = £7674.39.

That is the rent paid for the period and the maximum amount that the Tribunal has available upon which to base any order it may wish to make.

- 27. The utilities It is accepted by the parties that the cost of utilities provided to the tenant and from which the tenant has derived a benefit can be deducted from that total rent as not representing any part of the occupational rent for the property. The Respondent has provided a spreadsheet setting out the amounts it considers representing the cost of utilities for all the flats for which this decision represents the lead case.

The amount in respect of 33, Lennon Court is set out by the Respondent as being an amount of £2.12 per day. The spreadsheet breaks that down into elements of heat, light, water, internet service and contents insurance.

28. The spreadsheet is a composite one and refers also to those other studio flats to which this decision ultimately relates. Given that not all elements of the totality of charges are reflected for each property and that the total amounts are in respect of different buildings, the spreadsheet gives an impression of accuracy.
29. There is, however, no detailed breakdown based upon invoices, or metering and the Applicant quite rightly points out that the Tribunal is being asked to take the Respondent at its word. Ultimately, it is the responsibility of the Tribunal to assess what those reasonable costs are. It has not inspected the flat, nor has it any special knowledge of what may be relevant to this specific studio.
30. It does take the view that the amount suggested by the Respondent is likely to be reflective of actual costs for the provision of such services to a flat such as 33, Lennon Court. It is appropriate to deduct the annual reflection of those costs, £772.17, from the rent ascertained under paragraph 26, above of £7674.39.
- 31 The Tribunal does note that in relation to this subject property the amount in question is nearly twice that relating to some others in a different building. The Tribunal is content that there can be more than one reasonable amount depending upon the building being considered. The Tribunal is satisfied that there would be an even greater element of artificiality about a decision that appeared to arbitrarily relate them, one to the other, and determine some sort of universal composite figure, than that, building by building, they are each suggestive of reasonable amounts.
- 32 The Tribunal also notes that the amount is greater than provided for in other cases, but again it is satisfied as to the likely accurate reflection of costs, particularly at a time of volatility in respect of those utilities subject to severe market turbulence.
- 33 The reason for failing to license The Respondent called evidence from Louise Redfern, who is Regional General Manager for the North-West area for Unite. Her evidence is recounted in the following paragraphs.
- 34 She reflects upon details of the scheme being provided, but not its immediate significance, thereafter a major restructuring of the respondent's business took place. The effect, at a time of such perturbation of office procedures, being that the information was overlooked until March 1922.

- 35 Thereafter a new management team for North-West England was put in place. In January 2022, the Respondent had announced a large-scale restructuring of its business. Around 60 redundancies were made. The period March to May was a particularly difficult time. Ms Redfern had to apply for and be interviewed for her own job. She has no recollection of receiving the 16 March 2022 email from LSH, but discovered it when preparing for this case. Her evidence is therefore that she was unaware of the Order when it came into force.
- 36 A new team for the management of the Respondent's North-West region was formed in around May 2022. Ms Redfern was the Regional Manager but the new team did not become aware of the licensing scheme put in place by the City Council.
- 37 In November 2022 the omission was detected and a plan put in place to identify what student properties within the Respondent's portfolio were required to be licensed and whether a relevant licence was in place, or not. That exercise clearly extended to a significant number of properties in a number of licensing areas.
- 38 The application process commenced, but the Respondent encountered technical problems that caused some delay. There were also difficulties encountered in utilising the Council's computer system to process around 1,400 applications in an efficient and timely manner. The Respondent's view was that the computer system was mis-matched to large scale applications. Attempt to engage with the Council on the administrative requirements continued through March 2023 to the end of April 2023.
- 39 With the assistance of the Respondent's legal team a process was developed using a template application and this proved sufficient for the applications to be duly made. In the case of this subject property the relevant date is 15th June 2023.
- 40 There appears to have been some dispute between the parties as to whether the correct date is the 15th June, as other electronic communications may give the impression that the application(s) were only duly made by a later date, after a later submission of application forms.
- 41 The Tribunal is satisfied that an application was "duly made" for a licence in respect of the Property on 15 June 2023. Ms Redfern provides a credible timescale and it is supported by evidence of electronic communications between her office and the council pertinent to that time.
- 42 The explanation that is proffered is, however, to the Tribunal's mind, evidence of an inexcusable delay, at least in the period up to November 2022. What occurred may have been the result of an omission, but it is a serious one and one that should not have been made by a Respondent

acting to the extent that it is in the sphere of commercial residential letting.

- 43 The situation is only slightly better from then until June 2023. There are clearly difficulties experienced with the computer portal operated by the Council and efforts are made to overcome this, but it does seem to take a considerable length of time to make progress in respect of a difficulty that should be constantly at the forefront of the corporate mind.
- 44 The Tribunal, in considering the evidence and the manner and content of the submissions made before it at the hearing, is satisfied that the omission to license those properties required to be licensed arises from one major omission and does not represent a concerted, deliberate, or reckless attempt to circumvent the licensing process.
- 45 The Tribunal also reminds itself that it is considering the situation relating to the subject property, together with those that have been accepted as ones in respect of which the same, or substantially the same considerations apply. The reason for the omission, which is not an excuse, is made out by the Applicant and there is no evidence to challenge seriously that view.

Submissions and Discussion

- 46 The facts set out above clearly show that from 15th June 2022 to 14th June 2024 the respondents were operating and controlling an unlicensed property contrary to Section 95. It is suggested by both counsel and accepted by the Tribunal that in circumstances where there is a clearly an offence committed the Tribunal continues in the manner outlined in Acheampong.
- 47 It has already ascertained:
- a. The whole of the rent for the relevant period. (paragraph 26)
 - b. The payment for utilities that only benefited the tenant, for example gas, electricity and internet access. (paragraph 30).
 - c. The seriousness of the offence (paragraphs 42-5) and thereafter what proportion of the net rent (ascertained by deducting b) from a)) is a satisfactory reflection of the seriousness of this offence? This represents the starting point from which in terms of criminal offences a court exercising criminal jurisdiction would look to sentence in the absence of other mitigating or aggravating circumstances,
 - 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).

- 48 The net rent, first stage requires identification of the maximum sum that can be ordered to be repaid. The Tribunal calculates that as being £7,674.39, from which should then be deducted the amount attributable to those utilities from which the Applicant has benefitted; light, power, water, internet, contents insurance - £772.17. the net rent is therefore £6,902.22.
- 49 It is then necessary to assess the seriousness of the offence, both in relation to the types of offences for which rent repayment orders can be made, and in relation to other types of failure to licence offences.
- 50 In *Daff v Gyalui and Aiach-Kohen* [2023] UKUT 134 (LC) the Deputy President of the Upper Tribunal expounded the view that where section 40(3) of the Act, set out the 7 types of offences that could be committed and lead to consideration of a RRO (paragraph 16, above) and expressed the view was that the licensing offences were “of a less serious type”. This is a reasonable view to adopt, given the nature of the other offences set out in that sub-section and the sorts of conduct and/or omission that they embrace.
- 51 The Tribunal should then consider how serious this current offence is compared to others. All cases are different and will generally turn upon their particular circumstances. It is the view of this Tribunal that relevant factors are:
- a. The reason that is established for the failure to licence;
 - b. The nature and quality of the accommodation;
 - c. The likely expertise and commercial and legal acumen of the landlord, which may fit the description of being professional or amateur.
 - d. The impact upon the Applicant;
 - e. The need for an RRO to be a deterrent to rogue landlords.
- 52 A determination has been made on the point at a), above, in paragraphs 33 to 45 above.
- 53 Point b) may also be answered simply. There appears to be no complaint as to the nature and condition of the property. This is not a situation where the offence may be considered to be aggravated by issues of disrepair, or interference with quiet enjoyment of the flat, reflecting further upon a landlord in breach of its licensing obligations.
- 54 The nature of the Respondent is a factor here that the Tribunal should consider. It is a large commercial landlord, or a part of such a group of landlords. It is not held to a higher standard because of that, but it is expected that they will properly apply relevant expertise in a more robust way to ensure compliance with relevant regulatory regimes. If there is a

failure there should be a response to take corrective action in a timely manner.

- 55 In relation to point d), there would appear to have been little, if any, effect upon the Applicant's occupation and enjoyment of the property at any stage of the relevant period arising from the absence of any licence.
- 56 So far as a deterrence to rogue landlords is concerned, there is a common connection made between an offence or offences under Section 95 and the adoption of the term "Rogue landlord". The Tribunal's view is that this connection is not always a valid one. Certainly, the powers of the Tribunal are such as to enable it to reflect considerable disapproval of a "Rogue landlord" in the way a penalty is assessed. Not all offenders are, however, "rogues". The Respondent isn't. It is a landlord that the Tribunal views as being responsible, but which is capable of making an error of considerable magnitude. Its response to the situation is not that of a "rogue".
- 57 The Tribunal does not feel that in the current situation it needs to consider an order that is intended to act as a deterrent to further offending, directed either at the Applicant or further afield. It has recognised its mistake and belatedly put things right.
- 58 Other factors to consider under section 44(4)? There is some disagreement between Mr Penney and Mr Whatley as to what may be relevant here. There are clearly other proceedings that have been taken for RROs against the Respondent and this case is a lead case from which the decision will be reflected elsewhere. They all appear to arise from the same mistake and should not be regarded as previous convictions in the sense that they so referred to in conventional criminal proceedings. The Tribunal views them, again, as relating to no the same unfortunate circumstances, rather than previous relevant convictions, or findings of conduct amounting to an offence.
- 59 Section 44(4) refers separately to conduct of the parties. There is no relevant conduct by the Applicant. The Respondent essentially conducts himself in one relevant way, no matter how many properties may be affected and however many prospective applications for RROs arise from it: The failure to appreciate and act upon the need to license.
- 60 The final consideration is in respect of the current landscape and an overview of situations involving this landlord, or others of a similar nature in a similar position. The Tribunal is guided by the decisions of Upper Tribunal which seek to identify the relevant considerations and principles of general application, rather than those of other First-tier Tribunals.

Determination

- 61 The Tribunal is left with the task of determining the appropriate proportion of the net rent of £6902.22 that should be applied in this case. It is necessary to weigh all the relevant factors in the balance and reach a decision. Mr Penny seeks a relatively high proportion, Mr Whatley suggests a much lower one.
- 62 It appears to the Tribunal that no factor weighs decisively in favour of a conclusion one way or the other. Without referencing again those factors, the Respondent has made a mistake that should not have been made. The Applicant, by the nature of these proceedings is a beneficiary of an order where, in the circumstances of this case, there has been no damage done. That suggests to the Tribunal that an order that draws a line in the middle is appropriate. That is an order for repayment of 50% of the available amount - £3,451.00 rounded to the nearest pound.
- 63 There are 14 other cases before the Tribunal that depend upon this decision as the basis for the decision in those cases.
- 64 The Tribunal has been supplied with calculations prior to the hearing as to:
- the period over which a relevant offence has occurred
 - the period (not exceeding 1 year) for which the Applicant may seek a RRO
 - the total rent paid in that period
- and has now been supplied with the Respondent's calculations as to the amount deductible for the utilities provided.
- 65 The parties are now requested to advise the Tribunal as to any outstanding disagreements between them as to the accuracy of the amounts quoted in order to finalise and/or agree any order.

Appeal

- 66 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.

John R Rimmer
First-tier Tribunal (Property Chamber)