



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

<b>Case References</b>	<b>:</b>	<b>MAN/00BY/HMF/2023/0020 MAN/00BY/HMF/2023/0021 MAN/00BY/HMF/2023/0022</b>
<b>Property</b>	<b>:</b>	<b>1 Sefton Grove, Aigburth, Liverpool, L17 8XB</b>
<b>Applicants</b>	<b>:</b>	<b>(1) Daniel Moore (2) Craig Simon (3) Aaron O'Brien</b>
<b>Applicants' Representative</b>	<b>:</b>	<b>Daniel Moore</b>
<b>Respondent</b>	<b>:</b>	<b>John McDowell</b>
<b>Respondent's Representative</b>	<b>:</b>	<b>VC Law Solicitors</b>
<b>Type of Application</b>	<b>:</b>	<b>Applications for rent repayment orders by tenants</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Mr S Wanderer MRICS Mrs H Clayton</b>
<b>Date and Venue of Hearing</b>	<b>:</b>	<b>27 November 2023 – video hearing</b>
<b>Date of Decision</b>	<b>:</b>	<b>27 December 2023</b>

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**DECISION**

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- (1) The Tribunal refuses the applications for Rent Repayment Orders under section 43 of the Housing and Planning Act 2016.**

- (2) The Tribunal makes no order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reimbursement of fees.**

### **Reasons**

#### **The Applications**

1. The Applicants seek rent repayment orders pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”).

#### **The Law**

2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. Those offences include an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”). Such an offence is committed if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
4. By section 72(4)(b) of the 2004 Act it is a defence to a charge of an offence under section 72(1) that an application for a licence has been duly made in respect of the house under section 63.
5. The Act makes provision about when applications may be made and in respect of what periods orders may be made. Those provisions are important in this case.

6. Section 44(2) of the Act provides that for offences of the kind alleged in this case an order may be made in respect of a period not exceeding 12 months during which the landlord was committing the offence.
7. Section 41(2) of the Act states as follows;  
*“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.*

### **Procedural Background**

8. The three applications were all dated 18 May 2023 and were all substantially the same, namely that the Respondent was a person in control of an unlicensed HMO.
9. On 4 August 2023, the Tribunal issued directions requiring, inter alia, an exchange of bundles between the parties over a specified timetable in advance of the hearing.
10. The Tribunal received various submissions and responses, which were ultimately assembled into a joint hearing bundle (provided as a main document and a smaller addendum) comprising 182 numbered pages in total. Page references throughout this decision are to this joint bundle unless otherwise stated.

### **The Hearing**

11. Mr Moore attended the video hearing both in his own right and representing the other two Applicants. The Respondent attended and was represented by Mr Vaughan of VC Law Solicitors.

### **Discussion**

12. It was common ground that, prior to the grant of the HMO Licence dated 13 June 2022 (pp.88-99), the Property was unlicensed. The Respondent raised by way of defence a number of issues for consideration. As will be discussed below, there was no need for the Tribunal to decide most of the points raised by the Respondent.
13. Of the issues raised, the Tribunal considered as a logical starting point the case put forward by the Respondent that the applications were made out of time.
14. The Respondent's case was that no offence under section 72(1) was being committed at any time after 4 May 2022. This was because by that date an application had been made by the Property's managing agents to the relevant housing authority – Liverpool City Council – for an HMO licence. Reliance was placed on an email from Liverpool dated 14 September 2023. This stated that an application for an HMO licence in respect of the Property had been submitted on 4 May 2022 (p. 100).
15. The Applicants raised no challenge to the evidence that the HMO

licence application was submitted on 4 May 2022 and, in response to questioning from the Tribunal, Mr Moore accepted that the HMO licence was applied for on that date. Accordingly, the Tribunal was satisfied that an HMO licence application was made on 4 May 2022 in respect of the Property. That being the case, it was satisfied that from that date on, no section 72 offence was being committed.

16. The Respondent further argued that, given that no such offence was being committed at least from 4 May 2022 onwards, even if an offence was being committed at an earlier time, no rent repayment orders could be made as the applications for them were made out of time. The applications were not signed by the Applicants until 18 May 2023, more than 12 months after any section 72 offence which was being committed had come to an end.
17. It follows from this that the three applications in this case did not meet the requirements of section 41(2)(b) of the Act and so the Tribunal had no jurisdiction to make an order in their favour. No offence was committed under section 72 within the period of 12 months immediately preceding the date of their application. That was, therefore, the beginning and end of the case and there was no need for the Tribunal to consider the other issues raised by the Respondent.

### **Conclusions**

18. It follows from what is set out above that the Tribunal was satisfied that no rent repayment orders should be made. It was satisfied that even if the Respondent had committed an offence under section 72 of the 2004 Act, that offence came to an end on 4 May 2022 when an HMO licence was applied for. The three rent repayment order applications in this case were made more than 12 months after any section 72 offence came to an end, so the Tribunal has no jurisdiction to make an order.
19. There was no application by the Applicants under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reimbursement of the fees paid for bringing the applications. The Tribunal concluded that, in any event, given its decision, it was not just and equitable to make such an order.

27 December 2023

Mr S Wanderer MRICS as Chairman

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72    **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.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

## **263 Meaning of “person having control” and “person managing” etc.**

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
    - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
    - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
  - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## **Housing and Planning Act 2016**

### **Chapter 4 RENT REPAYMENT ORDERS**

#### **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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

### **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.
- (3) A local housing authority may apply for a rent repayment order only if—
  - (a) the offence relates to housing in the authority's area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

### **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.
- (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).

### **Section 44 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.



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

## **Section 52 Interpretation of Chapter**

- (1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

- (2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.