



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

Case References : **BIR/00CN/HMK/2024/0047**

Property : **135, Heather Road, Small Heath
Birmingham. B10 9TD**

Applicant : **Fatima Majjat Mssissi & Brahim Ben
El Mokadem**

Representative : **Ibtissam Ben El Mokadem**

Respondents : **Kamran Ahmed**

Representative : **Attwood Estates**

Type of Application : **Application for a Rent Repayment Order
By the Tenant. Part 3 Housing Act 2004
Ss40, 41, 43 & 44 Housing & Planning Act
2016**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member Mr P. Morris**

Date of Hearing : **2 April 2025**

Date of Decision : **08 May 2025**

DECISION

1.The Tribunal is satisfied to the standard required the Respondent is guilty of a housing offence namely having control or managing a house which is required to be licensed pursuant to s95(1) Housing Act 2004 but was not licensed.

2.Subject to s44(3)(b) Housing and Planning Act 2016 the Applicants is entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016. The amount of rent payable is 40% of the rent paid between 6 September 2023 and 9 August 2024, £3103.78.

3.The Applicants were in receipt of universal credit for the total rent throughout the relevant period. The Tribunal deducts the sum received by the Applicants as universal credit pursuant to s 44(3)(b) thereby extinguishing the sum payable.

Introduction and Background

1. This application for a rent repayment order was issued on 6 September 2024 by Fatima Majjat Mssissi and Brahim Ben El Mokadem who are tenants of 135 Heather Road, Small Heath Birmingham B10 9TD (the Property). The Respondent and owner of the Property is Kamran Ahmed. The parties are represented respectively by Ibtissam Ben El Mokadem for the Applicant and Mohammed Khalid of Atwood Estates for the Respondent.
2. The Respondent and Mr Khalid did not take any part in the proceedings after serving a short statement denying the Applicant was entitled to a rent repayment order and rebutting the various allegations of neglect of the property and misconduct.
3. Directions were issued on 17 October 2024. The matter was listed for hearing on 10 February 2025 but neither party attended. The matter was relisted for hearing on 2 April 2025. The Applicant Mrs Fatima Majjat Mssissi attended with her daughter Ibtissam Ben El Mokadem Majjat. Mr Brahim Ben El Mokadem was unable to attend. Mrs Mssissi does not speak English. Miss Ibtissam Ben El Mokadem resided in the property until recently and effectively both represented the Applicants, her parents, and gave evidence on their behalf.
4. The tenancy by which the Applicants occupy the property was made in February 2019. The property, which was not inspected, is three-bedroom mid-

terrace constructed in the late 19th or early 20th century of conventional brick and slate tile. It is fitted with gas central heating with radiators in every room. Windows and doors are fitted with uPVC installations. The toilet is at the rear ground floor. There is a garden to the rear. The description of the property is from observations of Google Streets by the Tribunal and a description given by Miss Ibtissam.

5. The claim for a rent repayment order is made on the grounds that the Respondent is guilty to the required standard of being responsible for a property that requires a selective licence but which was not licensed. Further allegations of misconduct by the landlord or his agent were part of the Applicants case.
6. There is no dispute that the property is in an area of selective licensing which was introduced by the local housing authority on 5 June 2023. The Respondent made an application for a licence on 9 August 2024. A licence was granted on 27 September 2024. In accordance with section 44(2) Housing and Planning Act 2016 the relevant period for which rent may be repayable is from 6 September 2023 until 9 August 2024.

The Parties Submissions

7. The Applicants had made written submissions in support of their case prepared with the help of Miss Ibtissam. At the hearing she described the Respondent through his agent Mr Khalid as engaging in a persistent course of conduct designed to make the family leave the property. S21 notices to quit had been served. A notice of increase of rent in Form 4 had been served imposing a substantial increase in rent from £700pcm to £1100pcm. One bedroom was uninhabitable because of mould and unremedied damp. She had been subjected to abusive and threatening words and behaviour by Mr Khalid.
8. The first alleged misconduct occurred in December 2020 when the landlord's agent was asked to fix the bathroom as there was no hot water. The Applicants

were without hot water for about one month. At that time the Respondent's agent told the Applicants the landlord wanted the house back.

9. In December 2023 a s21 Notice was served. The Applicants' written submission described a chronology of difficulties between the parties.
10. The condition of the property was referred to the local housing authority which served an Improvement Notice in February 2025. The Notice was produced at the hearing. It described Category 1 & 2 hazards including excess cold for the bathroom on the upper floor. Other hazards identified were risks of falling and mould and damp.
11. At an inspection of the property in May 2024 a representative of the local housing authority advised the Applicants that the house should have a licence. This application was issued thereafter. Miss Ibtissam described comments made by Mr Khalid since issue of the proceedings which she considered threatening. The comments included demands that the Applicants leave if they don't like the house, that the landlord is angry with them, Miss Ibtissam is "playing games" and other personally abusive remarks about her.
12. In answer to questions from the Tribunal, Miss Ibtissam confirmed the rent is paid with a housing benefit element of the Applicants universal credit. When Miss Ibtissam obtained employment in October 2024 a working adult deduction of £91.47 was imposed.
13. Mr Khalid on behalf of the Respondent served a short statement in November 2024 in which he denied all allegations of harassment and discriminatory remarks. He asserted there had been difficulties securing access for repairs because of the Applicants not giving access. He alleged the Applicants do not respond to telephone calls. Any repairs notified have been carried out.
14. The licence was produced. There are no exceptional conditions attached to it. Mr Khalid's statement did not explain why the property was unlicensed. The only reference to the licence was to record that a licence had been issued.

The Statutory Framework

15. The relevant legislation comprises a comprehensive framework for identifying the offences created by the legislation and the consequences of failing to comply with it.
16. S40 Housing and Planning Act 2016 (the 2016 Act) contains the key definition and confers a power on the First-tier Tribunal to make an order requiring the landlord under a tenancy to repay an amount of rent where a landlord has committed an offence. Section 95(1) Housing Act 2004 *provides* “A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.”
17. The table in subsection 3 lists offences to which this applies. Seven offences are listed which the Deputy President in *Daff v Gyalui [2023] UKUT 134 (LC)* where, at paragraphs [48]-[49], ranked by reference to their general seriousness. The offence under s95(1) Housing Act 2004 (the 2004 Act) was among the offences he described as “generally of a less serious type”.
18. By s95(3)(b) of the 2004 Act in proceedings against a person for an offence under subsection (1) it is a defence that, at the material time— (b)an application for a licence had been duly made in respect of the house under section 87.
19. Further, by s95(4) *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).*
20. By s43 of the 2016 Act “(1)The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence” (whether or not the landlord has been convicted).The amount of a rent repayment order under this section is to be determined in accordance with section 44 which directs that the amount must relate to rent paid during

the period not exceeding 12 months during which the landlord was committing the offence.

21. It goes on to provide “*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.”

Discussion and Decision

22. There is no doubt the Respondent failed to obtain a licence upon introduction of the Selective Licensing scheme by the local housing authority in June 2023. The Tribunal is obliged to consider whether there was a reasonable excuse for failing to obtain a licence. In the absence of any evidence to explain the lack of a licence until August 2024 the Tribunal is satisfied that an offence under s95(1) 2016 Act was committed by the Respondent by the default of his agent and there was no reasonable excuse for the lack of the licence.
23. As the Respondent is guilty of a relevant housing offence he is susceptible to a rent repayment order. By s44(3)(a) (b) the rent repayment must not exceed 12 months during which the landlord was committing the offence less any relevant award of universal credit paid to any person under the tenancy during that period.
24. In this case had the Applicants not been in receipt of universal credit the Tribunal would have made an award requiring repayment of a portion of the rent paid between 6 September 2023 and 9 August 2024 when the Respondent applied for his licence.

25. In determining the award the Tribunal would apply the principles formulated in *Acheampong v Roman* [2022] UKUT 239 (LC). The Applicants are responsible for utilities under the terms of the tenancy. The want of the licence did not make any change to the Applicants' circumstances although the Tribunal accepted that they believed they were under pressure to leave the property. The Respondent and his agent took negligible part in the proceedings making it difficult for the Tribunal to assess the denials of abusive and discriminatory behaviour or make any decision regarding the Respondent's financial circumstances.

26. It appeared to the Tribunal that the Applicants had become suspicious of the Respondent's agent whose conduct during the course of these proceedings gave the Tribunal cause to consider a barring order. The Applicants have a poor understanding of English and depended upon their eldest child, Miss Ibtissam, who conducted meetings with the agent as she grew into adulthood. Understandably, Miss Ibtissam was not familiar with the law and practice connected with an application for a repayment order although she made a coherent presentation of her case to the Tribunal. In particular she was unfamiliar with the obligation on the Tribunal to deduct any payment of universal credit from an award.

27. In the circumstances of this case the Tribunal determines the amount of rent repayable is 40% of the total rent paid between 6 September 2023 and 9 August 2024 of £7759.46 making £3103.78 payable subject to the deduction for universal credit. As the amount of universal credit paid included a payment for the entirety of the rent the Applicants are not entitled to a payment of an award of repayment of rent.

Appeal

28. 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.