



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

Case reference : **CAM/00KF/HMG/2024/0002**

Property : **209A York Rd, Southend, SS1 2RU.**

Applicant : **Mr D Dawson**

Represented by : **Ms A Hoxha of Represent Law**

Respondent : **Mr H Humphries**

Represented by : **In Person**

Type of application : **Application for a rent repayment order under s.41(1) and (3) of the Housing and Planning Act 2016**

Tribunal : **Judge Stephen Evans
Mr Gerard Smith FRICS FAAV**

Date of hearing and venue : **25 April 2025, Cambridge Magistrates Court**

Date of decision : **6 May 2025**

DECISION

DECISION

- (1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant within 28 days of the date of this decision the sum of £2818.75.**
- (2) The Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 28 days of the date of this decision.**

REASONS

Background

1. On 25 October 2007 the Respondent was registered with leasehold title to the property.
2. On 1 December 2021 the Ward in which the Property is situated became subject to selective HMO licencing.
3. On 30 and 31 May 20 22 the Respondent had communications with Southend On Sea Council in respect to a licencing application.
4. On 16 June 2022 the Respondent initiated a HMO licencing application with Southend On Sea Council.
5. On 5 July 2022 the Respondent granted to the Applicant a tenancy of the Property to last until 4 January 2023 at a rent of 710 per calendar month.
6. On 8 August 2022 the Applicant began paying rent to the Respondent via internet banking.
7. On 25 October 2022 the Council wrote a letter addressed to the owner of the Property indicating that there was no evidence of a HMO licence.
8. On 9 November 2022 the Council wrote a chaser letter.
9. On 2 August 2023 the Council wrote to the Respondent directly.
10. On 11 August 2023 the Applicant gave the Respondent 28 days notice to quit the Property, which the Respondent initially refused to accept.
11. On 17 August 2023 the Council wrote again to the Respondent, saying the date for him to make an application for an HMO licence had expired. On the same day, he responded to say he could not upload documents online.
12. On 18 August 2023 the Respondent paid the licence application fee and submitted his application, with all documents being posted.
13. On 15 September 2023 a landlord checkout report was completed in respect of the Property.

14. On 13 October 2023 a HMO licence was issued to the Respondent for the Property.
15. On 12 December 2023 an Adjudicator made written findings in respect of the tenant's deposit.
16. On 16 January 2024 the Council wrote to the Respondent confirming that he had started an HMO application on 16 June 2022.

The Application

17. On 15 January 2024 the Application was made for a rent repayment order by the Applicant against the Respondent. The grounds for the Application were stated to be:
 - there was a selective licencing scheme in place, but no licence granted;
 - the Applicant was a tenant between 5 July 2022 and 12 August 2023;
 - the Applicant therefore claimed a rent repayment of £8645 in respect of the above period.
18. On 20 September 2024 directions were given by the Tribunal Procedural Judge. These were later extended.
19. On 15 October 2024 the Applicant made a witness statement and provided a bundle of documents.
20. On 1 November 2024 the Tribunal extended time for the Respondent to provide his bundle, but by 7 November 2024 the Applicant was complaining he had not received it.
21. On 17 December 2024 the Tribunal wrote to the parties, stating the Applicant could only rely on the bundle which was provided in October 2024.
22. On 13 February 2025 the Applicant obtained a witness statement from a person called Clark Barrett.
23. On the 13 February 2025 the Tribunal refused to strike out the Application, which the Respondent had requested in writing.
24. On 24 March 2025 the Respondent provided a document entitled "Areas of Mitigation".

The Hearing

25. The Applicant was represented at the face to face hearing by Miss Ariana Hoxha of Represent Law. The Respondent represented himself.
26. There was a preliminary issue. The Respondent contended that he had received a composite 309 page bundle from the Applicant on Easter Saturday, and given the Tribunal's direction in December 2024, the application should be dismissed, because he had not had enough time to prepare using that bundle, given he has a condition similar to dyslexia. The Tribunal resolved this difficulty by suggesting to the parties that the Respondent use his own

bundle and the Applicant his original October 2024 bundle, to which both parties agreed. The additional witness statement of Mr Barrett was then admitted in evidence as a separate document.

27. The parties then called their evidence and made representations, issue by issue.

The Issues

28. As the Tribunal directions state, the issues are:

- (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.
- (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.
- (3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- (4) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (5) What account must be taken of:
 - (a) The conduct of the landlord?
 - (b) The financial circumstances of the landlord?
 - (c) Whether the landlord has at any time being convicted of an offence?
 - (d) The conduct of the tenant?
 - (e) Any other factors?

Relevant Law

29. Section 95 of the Housing Act 2004 provides (so far as is material):

“95 Offences in relation to licensing of houses under this Part

(1) 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.

...

(3) 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 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

...

(6B) 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.

(7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the Tribunal and confirms the authority’s decision (with or without variation).”

Discussion and determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

30. Miss Hoxha called the Applicant to confirm his witness statement. She then made representations on the first issue. It was not in dispute that there was no HMO licence until 13 October 2023, she said. She contended that the Respondent was the person in control of the accommodation, as he received the rack rent. But he also met the definition of a person managing, for the purposes of s.263 of the Housing Act 2004.
31. Whilst she accepted that the Respondent had appeared to start an application for a licence on 16 June 2022, there was no further evidence that it had progressed beyond starting; and that an application was not “duly made” for the purposes of the defence under s.95(3) of the Act unless and until he had paid for it. Moreover, there would have been no need for the Council to have written in the terms it did in October 2022, had a licence application been duly made.
32. The Respondent contended the application had been duly made; that he had made a part payment for a licence, he believed, but had no documentary evidence of it; nor could he remember getting any acknowledgment from the Council of the application having been submitted. He thought it was enough that the application had been started online. He confirmed he had not used his lettings agents to make the HMO application, only as a tenant-finder, with the day-to-day management of the Property being his alone.
33. The Tribunal is satisfied that the constituent elements of s.95(1) are made out. The only issue is whether the Respondent has a defence on balance of probability under either subsection (3) or (4). Mr Humphries accepted he did not have a reasonable excuse for being in control of an HMO. Subsection (4) was not prayed in his aid. Instead, his argument was that a licence application had been duly made: see subsection (3).
34. The Tribunal considers that an application cannot be duly made unless and until it is completed and a fee is paid. In the instant case, the only evidence we have in document form is the email from the Council, stating that Mr Humphries had started the application in June 2022. It does not say he had completed it. Nor is there any other evidence for us to find, on balance of probability, that the application was either completed or paid for. Mr Humphries was not at all sure that he had made full payment for the application, nor that he received any acknowledgment of that fact, or of the application, from the Council. We are unable to rely on his oral evidence alone, without corroboration, in such circumstances.

35. The Tribunal is therefore satisfied beyond reasonable doubt that the offence alleged was committed.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

36. The parties were agreed that it was, and we are satisfied of this requirement on the face of the tenancy agreement alone.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

37. The Application for a rent repayment order was made on 15 January 2024. Accordingly, the Applicant has to show the commission of an offence on at least 1 day in the period between 16 January 2023 and 15 January 2024.

38. We are satisfied the Applicant has, for the reasons already given. The Property remained unlicensed from the start of the tenancy until October 2023.

(4) What is the maximum amount that can be ordered under section 44(3) of the Act?

39. This issue was explored with the parties in order to seek clarification. After Ms Hoxha had taken instructions, she accepted that the Applicant should claim for the period 5 September 2022 to 12 August 2023 only, given:

(1) The absence of evidence for payment of rent by the Applicant for the month of August 2022;

(2) The terms of the application at paragraph 2, and the witness statement from the Applicant at paragraph 10, which accepted the Applicant moved out on 12 August 2023.

40. The documentary evidence established payment of rent up to 4 August 2023 in the sum of £7855. For the period 5 August 2023 to 12 August 2023, there should be added another £198.56 (calculated using a monthly rent of £755).

41. There are no utilities to take into consideration.

42. The maximum recoverable is therefore £8053.56.

43. The case law provides that we are not compelled to grant the maximum amount sought. In this regard we follow *Acheampong v Roman* [2022] UKUT 239 (LC):

"20. The following approach will ensure consistency with the authorities:

- a. Ascertain the whole of the rent for the relevant period;
- b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced Tribunal will be able to make an informed estimate.
- c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
- 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)."

44. We have already conducted the exercise in (a) and (b) above.

45. As to (c), the Applicant contended that both the seriousness of the offence on the scale of section 40(3) offences, and on the scale of s.95 offences, should be judged to be 7/10. Therefore the award could be made at £5637.49.

46. However, we consider this was a mid-range offence, in terms of the other more serious offences set out in section 40(3) of the 2016 Act, which include violence for security entry, eviction or harassment of occupiers, failure to comply with improvement notices and prohibition orders, and breaches of banning orders. Our initial starting point is therefore half of the maximum which the Applicant seeks.

47. As to seriousness on the scale of failures to licence, we accept the Applicant and Respondent's contention that it was 7/10. There was, in short, a failure to licence for a period of 15 months. The Council wrote to the Respondent on the matter in 2022, without response. In all, the offence was fairly serious.

48. Therefore the default penalty is a sum of £2818.75 ((£8053.56 / 2) x 0.7).

(5) What account must be taken of:

(a) The conduct of the landlord?

49. The Applicant complained the Property had not been kept in repair. He complained of mould in an isolated area of the bedroom. He accepted he had no expert or other corroborative evidence of the cause of that mould.
50. The Applicant also complained of conduct (harassment by email) of the Respondent, but this was after the landlord and tenant relationship had ended on 12 August 2023. Accordingly, he accepted this would be of little relevance and did not pursue that point.
51. The Respondent contended he had put in 2 airbricks before the Applicant moved in. But these had been covered up. If condensation dampness occurs, so will mildew, he said. The Respondent accepted he did not have expert or other corroborative evidence of the cause of the dampness, only what a building business friend had told him.
52. In the Tribunal's determination, we cannot be satisfied on balance of probability on the evidence before us that the Respondent's conduct was at fault in relation to this issue, such that it should be taken into account in adjusting any award made in this case. The cause of the dampness is unclear.

(b) The financial circumstances of the landlord?

53. We had no evidence concerning this. None was volunteered by the Respondent either in writing or orally.

(c) Whether the landlord has at any time being convicted of an offence?

54. The parties accepted the Respondent has not been convicted.

(d) The conduct of the tenant?

55. The Respondent cited the findings of the Adjudicator to the effect that the Applicant had failed to pay his rent after he handed back possession. The Adjudicator had found the Applicant had given notice on 11 August 2023 and was required to give 1 months' notice, so was liable for the rent between 5 September 2023 and 4 October 2023.
56. The Tribunal does not consider the above conduct to impact the calculation of the amount payable under any rent repayment order. The Adjudicator has already awarded the Respondent £755 as a result of his or her finding. The Respondent may (and indeed might already have, we understand) pursue that sum in the civil courts. In any event, a single missed payment of rent is not conduct which would swing the pendulum in the Applicant's favour.

(e) Any other factors?

57. There was nothing advanced by either party in this regard.

Conclusions

58. Given all the above, the Tribunal is satisfied that it should make a Rent Repayment Order in favour of the Applicant in the sum of £2818.75 .

59. The above sum of £2818.75 shall be paid by the Respondent to the Applicant within 28 days, we determine.

60. The above sum is recoverable as a debt, if not paid: s.47(1) of the 2016 Act.

61. The Applicant being successful, we also order that the Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, within 28 days of the date of this decision.

Judge:

S J Evans

Date:

6/5/25

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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.