



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

Case Reference : **MAN/00BR/HMF/2023/0066**

Property : **10 Cowslip Close, Salford M7 1RB**

Applicant : **Jordan Todd**

Respondent : **Lionel Robinson**

Type of Application : **Housing and Planning Act 2016 – Section 41(1)**

Tribunal Judge : **John Murray LLb**

Tribunal Member : **Ian James MRICS**

DECISION

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DECISION

The Tribunal dismisses the application for a Rent Repayment Order.

BACKGROUND

1. The Applicant submitted an application for a Rent Repayment Order on the 13th November 2023 against the Respondent under section 41 of the Housing And Planning Act 2016 in relation to his occupation of 10 Cowslip Close, Salford M7 1RB ("the Property").
2. He made the application on two counts:
 - a. That the Respondent was in control of or managing an unlicensed HMO contrary to s72(1) Housing Act 2004; and
 - b. That the Respondent had subjected the Applicant to harassment contrary to s1(3) Protection from Eviction Act 1977
3. The Applicant submitted two statements, both dated 11th February 2023, one on his own behalf, and one from a witness, Alex Campbell.
4. The Respondent filed a statement on his own behalf, and further statements from the two other concurrent tenants of the Property Michaela Willis and Patryk Utecki.

INSPECTION

5. The Tribunal arranged an inspection of the Property at 10.00am on the 17 December 2024.
6. The Property was found to be a modern (approximately 8 years old) three bedroom semi detached house arranged over three floors. The master bedroom on the top floor had an ensuite bathroom. The middle floor contained two bedrooms and a bathroom, There was a kitchen living room on the ground floor. Outside, there was a driveway to the side, and gardens to front and rear.

HEARING

7. A hearing took place in the Tribunal's office at Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH at 12.00 on the 17 December 2024. .
8. Both parties attended the hearing and represented themselves. No witnesses were called.

EVIDENCE FOR THE APPLICANT

9. The Applicant filed a statement confirming that he had moved into the Property in the summer of 2021 with Patryk Utecki, renting the property from the Respondent. In September 2022 Mr. Utecki moved his girlfriend Michaela Willis into the property - against the Applicant's protests. However in March 2023 the Applicant agreed to sign a new (six month) tenancy agreement with Ms Willis on the basis that she was living there anyway, and his rent would reduce accordingly.
10. On the expiry of the six month agreement in September 2023, Mr. Utecki and Ms. Willis told the Applicant that they wanted to live there as a couple – without the Applicant.
11. The Respondent assured the Applicant that he would not evict him; but then sent him a two week notice to quit. The Applicant found out that the Property was not licensed as an HMO, as the Local Authority believed there were only two tenants living there. The Property is in an area of Salford subject to additional HMO Licensing regulations. The Respondent told the Applicant he was worried about getting a £30,000 fine from the Council, so had therefore given notice to quit to the Respondent.
12. The Applicant felt that the Respondent was pressurising him to move out of the property. He asked him to only send emails (not text or WhatsApp messages) as he did not want to be interrupted at work. The Applicant said the Respondent had his email address, but he replied to say he would continue to text and he did so a further six times. The Respondent threatened to serve a s8 notice; the Applicant said it was not appropriate for him to attend the property as he was angry. He asked for 24 hours notice of visits
13. The Applicant stated that the Property was mostly unfurnished. The other tenants bought a dog and let it sleep on his sofa, so he moved the sofa out after it was cleaned and put it into storage. He said that his other belongings were stacked and moved. The Respondent told him that Patrick Utecki admitted to having done it. He reinstated all of his belongings, but they continued to be moved. He was concerned for the safety of his belongings.
14. He found it all "a bit stressful" and his friends recommended he moved out for the sake of his peace of mind. He asked the Respondent for a letter confirming that he did not owe any rent.
15. He said that similarly he would have been happy to stay in the Property and find another tenant to cover the rent. He stated that he paid rent up until the end of October when the notice was sent. He told the Respondent that his conduct and that of the other tenants were making him move out; the Respondent agreed not to recover any more money at that stage.
16. On 22nd November the Applicant emailed the Respondent asking to amicably resolve the situation, as the environment in the property was causing him a great deal of anxiety. The Respondent replied saying let's meet, but when the Applicant left his bedroom to go downstairs he found him standing in the kitchen.. The

Applicant found this alarming, as he had not received notice of his attendance after explicitly stating he would require 24 hours. The Applicant felt harassed.

17. On Tuesday 28th November, the parties had arranged to meet and put what they had said into writing. On attendance, the Respondent presented a "Notice To Quit" written on behalf of the Applicant and back dated to 23rd October.. He said if the Applicant signed the notice, he would not pursue legal action against him. The Applicant said that a tenancy could not end in the middle of the month and they changed the dates to 31st December.
18. The Applicant confirmed to the Tribunal that he was seeking a Rent Repayment Order for a 12 months period because the Property was unlicensed. He sought repayment of £470pcm from 1.3.24 but prior to that he was paying £650pcm when there was two tenants.
19. He had reported harassment to the police, and got a crime reference number. He was concerned that the Respondent would attend the Property and the situation would escalate.

EVIDENCE FOR THE RESPONDENT

20. The Respondent in his statement confirmed that he first met the Applicant in May 2021 when he and Mr Utecki approached him regarding renting the Property. They signed an initial agreement of £1200 a month in June 2021.
21. After the first couple of months, the Respondent confirmed that he was receiving the rent, but the tenants were still struggling to find work and subsequently start paying the bills, which was in breach of the tenancy agreement under sections 18 and 19. He said he gave them another chance to his own financial detriment and kept paying the bills and council tax due to fear of blacklisting the address or a substantial council tax bill tied to the address, which was a big concern of his.
22. He said that he kept his distance as much as possible, only coming to the property when there were issues to resolve, with all communication going via WhatsApp, Text Messages and face-to-face conversations only.
23. As they reached March 2023, he said that the tenants asked him to add an additional tenant who they wanted to be on the tenancy agreement. At the time, he was dealing with a lot of personal; his father-in-law had cancer, his father had Parkinson's disease, and his son had autism so when asked to add a tenant, he did not think too much about it. He said that there were no messages, complaints or protests from any tenant via any medium to illustrate any problems with this arrangement. At this point, he said he had thought about potentially giving the tenants notice as there were still issues paying the bills; or moving management of the property to a rental agency.
24. After the tenants had signed the tenancy agreement on March 2023, he hadn't heard any issues until 8th July when the Applicant sent an alarming voice note to a WhatsApp group making aggressive expletives about opening the door using the C word and F word.

25. On the 31st of August, the Applicant sent him a text message asking if they could chat confidentially. The Applicant considered how involved he should be in mediating between the tenants, who seemed to be falling out.
26. On the 2nd of September, he met up with the other two tenants to discuss the issues raised by the Applicant; their version of events were quite different and went on to say that they had been discussing with the Applicant for a couple of months before the end of the tenancy agreement, and that when they first brought up the idea of living together, the Applicant said it made sense and wouldn't be a problem. Miss Willis went on to explain that she feared for her safety in the Applicant's presence and aggressive and threatening outburst, which she said was mainly focused on her potentially based upon some jealousy in her opinion. They said that the voice recording on the WhatsApp group by Mr Todd on 8th July 2023 was a regular occurrence and that they didn't mention it previously at the time as it was an issue between the tenants, and they didn't want to get the Respondent involved.
27. The Respondent went into further details of his perspective on the different conversations and events that took place between all parties.
28. On the 22nd of November 2023, the Respondent arranged the annual gas safety inspection, and had approval from Mr. Utecki and Miss Willis to access the Property to carry out these duties. He met the Gas Safety engineer on this date; he had called me at 09:59, stating that he was at the property. The Respondent arrived 5 minutes later with his wife, who insisted on waiting outside due to the inconsistent and alleged aggressive behaviour of Mr Todd.
29. As they entered the property, the Respondent received an email from the Applicant at 10:07, stating based upon conversations with his solicitor, for them to amicably resolve this situation without court action. At 10:12 the Respondent sent an email stating that they could meet. To his shock, the Applicant walked downstairs while the Respondent talked to the Gas Engineer, who was completing his checks. The Applicant asked if they could talk; the Respondent agreed but asked for five minutes until the Gas Engineer could finish his work. The Gas Engineer left the property at 10:18.
30. The Applicant went on to state that his solicitor said to stop any potential court action, they should come to some agreement, and went on to say that he had clashed with Miss Willis after a few drinks and made a negative social media post about her dog. The Applicant said he didn't have money for a deposit and couldn't pay any rent but would move out at the end of December
31. The Respondent said that finances "things were very tight, and having numerous months without the total rent" would result in his having to use credit cards to survive. He had to judge this against going through the legal options with a potential six-month waiting list (for eviction proceedings) with no rent at all. He said that the Applicant had pushed him into a no-win situation, which was him basically living three months rent-free at the property while the other tenants were still paying rent if they didn't move out.

32. He was thinking this over because he did not trust the Applicant who said he would sign something if that helped; the Respondent said not really but ultimately felt pressured into saying ok. The Applicant asked him to print something off him and would sign as he didn't have a printer at the moment.
33. The Applicants last rent payment was made on the 2nd of October 2023. As November came around, no rent had been paid and as the Applicant had asked for a copy of the tenancy agreement, the Respondent thought he must be finalising a new rental property. He said that the Applicant officially moved out on the 15th January, which was when he got the keys back.
34. The Respondent felt that the Applicant was trying to create some entrapment or create fake evidence to corroborate the Tribunal application that he had already made on the 13th of November. The Respondent admitted that he had got quite agitated by this point, with the Applicant stating he wouldn't move out and he wasn't going to pay, and there was nothing the Respondent could do about it.
35. Within the text conversation, the Applicant had used this method for years and all of a sudden said the Respondent should use e-mail. Whilst this was going on, the Respondent messaged the other tenants, and they stated the Applicant had started moving his things out, moving all of his things downstairs and stated he was moving out and then, later in the evening, seemed to change his mind.
36. The Respondent said he was facing the potential of financial ruin; the rent was actively used to support different things, such as mortgage payments, utility payments, Taxes and additional self-funded support for his son with autism. He had started noticing a real detrimental effect on myself and my wife, so he ceased communications with the Applicant on November 17th.
37. In conclusion the Respondent stated that he was deeply shocked by the narrative the Applicant tried to create about him. He believed he had been a decent landlord, responding promptly, not just from a financial standpoint but any request or query. The Applicant had made several accusations, he addressed as follows:
- a. The Applicant stated Mr Utecki was the Respondent's wife's cousin. Mr Utecki was a family friend and unrelated to the Respondent's wife.
 - b. In relation to the accusations of harassment, the Respondent had only entered the property when one of the tenants requested when signing new tenancies or completing essential mandatory landlord duties. The evidence of harassment was all based upon events after the Tribunal application was submitted on the 13th of November 2023, and the key one in question was when the annual gas inspection was being carried out on the 22nd of November and the Respondent had been admitted to the Property by the other tenants.
 - c. Regarding the HMO aspect of the application, the Applicant had sent an email to the council stating five tenants were living at the property as

stated before this would have been in breach of section 25 of the tenancy agreement. Which clearly states that that there should be no subletting or additional lodging.

38. On the 27th of November, the parties signed the document referring to no court action and stated the Applicant would leave by the end of the year. It was backdated to the 23rd October so it "gave" eight weeks notice in accordance with the tenancy agreement.
39. The Respondent produced in evidence a screenshot of the Salford City Council Website and the questions surrounding additional HMO licensing, which stated the following:
40. Does my HMO need a licence? If your HMO has five or more people who form two or more households, you will need a Mandatory HMO Licence.
41. If your HMO has three or four people who form more than two or more households, you will need an additional HMO licence.
42. He told the Tribunal that from his reading of the website, he did not believe that he was in breach of the additional requirements of the licensing scheme, because the three people living in the Property did not form more than two or more households. He said that the Local Authority had not been in touch with him.
43. The Applicant considered this was a typing error on the website.

DECISION

44. To make a Rent Repayment Order under section 41 of the Housing and Planning Act 2016 (the Act) the Tribunal must be satisfied Beyond Reasonable Doubt that the Respondent has committed one or more of the offences listed in the Act.
45. The Applicant alleged that the Respondent had committed two offences : harassment of occupiers contrary to s1(3) or (3A) of the Protection from Eviction Act 1977, and control or management of unlicensed HMO under s.72(1) Housing Act 2004.

s1(3) or (3A) of the Protection from Eviction Act 1977

46. This offence is committed where any person with intent to cause the residential occupier of any premises—
 - (a) to give up the occupation of the premises or any part thereof; or
 - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

47. The allegations of harassment against the Respondent were that

- (i) he sent WhatsApp messages to the Applicant at work when the Applicant had asked him to restrict communication to email only
- (ii) he served a Notice of Seeking Possession which did not provide the correct notice period, after he had told the Respondent he would not evict him.
- (iii) he asked him to leave because the tenants were not getting on.

48. The Tribunal had no doubt that the situation was not pleasant for the occupants, who were not getting on. However the sending of WhatsApp messages when there was need for the parties to communicate cannot be considered harassment and falls a long way short of committing an offence, as does the service of a Notice which the Applicant was well aware was invalid and of no effect, and told the Respondent as such.

49. It was the Applicant who sought to resolve the situation and put forward a suggestion that he would surrender his tenancy at the end of the year in return for the Applicant agreeing to waive two month's rent. This was put in writing at his request. He moved out of his own volition in January of 2024.

50. The Tribunal finds that no offence has been committed.

s72(1) Housing Act 2004: control or management of unlicensed HMO

51. 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.

52. S72(5) of the 2004 Act provides a defence where a person had a reasonable excuse for having control of or managing the, for permitting the person to occupy the house, or for failing to comply with the condition.

53. Salford City Council designated an additional HMO licensing scheme in Salford under section 80 of the 2004 Act. On their website it states that private landlords

who rent out a three or four person small HMO property in Salford, will be required to obtain a licence from the council, subject to any statutory exemptions.

54. The scheme commenced on 19 July 2021 for five years.
55. Two of the three people occupying the Property were in a relationship and formed one household. Under s258 of the 2004 Act, members of the same family are considered a single household, including persons who live together as if a married couple. The three occupants therefore formed two households.
56. The Respondent did not have an HMO licence, and did not believe he had to have one as whilst three people occupied the property, two of them were a couple and therefore there were two households, and not more than two.
57. When the Applicant told him that he was breaching the conditions, he took steps to reduce the number of occupants to two.
58. The Applicant had produced in evidence a letter from Salford Council dated 9 September 2024 stating that the property had been brought to their attention via his email dated 15th November 2023 where he had advised that the property was being let as an Additional HMO housing 3 tenants but did not hold a Licence.
59. In the letter the Council stated that they had conducted a thorough investigation following his complaint and reviewed the evidence presented by him. The investigation had concluded that the property was operating as an Additional HMO without the required Licence. This offence was found to have taken place between March 2023 and December 2023.
60. In line with the Councils Enforcement Policy Enforcement and Prosecution Policy (the evidence and circumstances had been considered and a decision was taken not to take any formal action against the Landlord. The Council was satisfied that the offence occurred. Despite no formal action being taken the Council trusted that this confirmation is what he required to proceed with his case.
61. The Tribunal do not accept the letter from the Council as evidence that an offence had been committed. The surrounding email correspondence was not produced; there was no evidence that the Council had inspected the Property, or on what information the council officer had formulated their opinion on. There was no evidence that the Council had contacted the Respondent at all. They did not clarify the somewhat ambiguous statement on their website referring to "more than two or more households".
62. The Respondent had not seen this letter nor had any similar correspondence himself.

63. On their website, the Council stated that their scheme will cover all HMOs of any size building, occupied by three or four unrelated persons. Two of the persons in this instance were in a relationship.
64. The Council's website states: "your HMO has three or four people who form more than two or more households, you will need an additional HMO licence."
65. This statement is perhaps ambiguous, but more than two households in any objective understanding would mean three households.
66. On the evidence before it, the Tribunal could not be satisfied beyond reasonable doubt that an offence had been made out, as the Property was not occupied by more than two households.
67. If an offence had been made out, by virtue of the ambiguity of the Council's website, the Respondent might be considered to have a reasonable excuse for non compliance under s72(5). Where a local authority seeks to impose criminal liability on a party, it is imperative that the information framing that liability is set out in clear, unambiguous terms, and with the absence of errors.
68. As the Tribunal is not satisfied that either offence was made out, no order is made on the application.

Judge : John Murray

Date: 17 December 2024