



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

Case reference : **MAN/00EJ/HMG/2024/0007**

Property : **5 First Street, Wheatley Hill, Durham DH6 3NX**

Applicant : **James Clint**

Respondent : **Solomon Urhiofe**

Respondent's Representative : **A. Donamart Solicitors**

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

Tribunal Members : **Tribunal Judge S Moorhouse LLB
Mrs J Bissett FRICS**

Date & Venue of Hearing : **3 June 2025 - remote video hearing (CVP)**

Date of Decision : **3 June 2025**

DECISION

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The tribunal makes no rent repayment order against the Respondent.

REASONS

The Application

1. By an application dated 16 April 2024 ('the Application'), James Clint ('the Applicant') seeks a Rent Repayment Order pursuant to section 41(1) of the Housing and Planning Act 2016 ('the 2016 Act') in relation to his tenancy at 5 First Street, Wheatley Hill, Durham DH6 3NX ('the Property'). The Respondent landlord is Solomon Urhiofe.

Procedural matters

2. Pursuant to directions bundles of documents were submitted by the Applicant and the Respondent in support of their respective cases, and a reply was submitted by the Applicant. A combined paginated bundle was supplied for use at the hearing.
3. Whilst the Applicant had indicated that he would be content with a determination on the papers, the case was listed for a hearing. This is the usual practice where a tribunal is required to determine whether an offence has been committed. The hearing took place on 3 June 2023 by video-conference. It was attended by the Applicant, the Respondent and the Respondent's Solicitor Mr Nwaike.
4. The Tribunal considered it unnecessary, in view of the matters in issue and the time that had elapsed since the Applicant's tenancy, to conduct an inspection.
5. At the outset of the hearing the tribunal addressed a number of preliminary matters. Some key facts were agreed between the parties, namely that the Applicant and his family had occupied the Property from 19 July 2023 until 24 February 2024, that the tenancy was in place from 10 July 2023 until 24 February 2024, that the amounts and dates of the rent payments made by the Applicant were as set out in a statement at page 214 in the hearing bundle (headed 'Rent Collection Statement') and that the Respondent had applied for the requisite Selective Licence after the Applicant and his family had vacated the Property.
6. The Applicant was given the opportunity to present his case and had nothing to add to the written documents he had submitted. The Judge therefore took him through the key issues, including the Respondent's defence of 'reasonable excuse', whether (if an offence had been committed) the tribunal should exercise its discretion to make a rent repayment order, and various issues relevant to the amount of any order. The Applicant made additional comments in these areas. The tribunal had questions for the Applicant and he was cross-examined on his testimony by Mr Nwaike, following which the Judge asked a follow-up question which was answered.
7. At that point in the hearing the Applicant dropped off the video-conference and a recess was taken. When the hearing reconvened the Applicant was present by audio connection only. It was established that he had lost the wi-fi connection at his flat so could not continue with his combination of iPad for the video-conference and mobile phone to view the papers. He was on his mobile phone sitting in his car having driven to another location, he was not confident of being able to maintain the phone signal for the remainder of the hearing and it was unclear whether he would have sufficient signal or

data allowance to additionally access the papers on the phone. With the concurrence of Mr Nwaike it was decided by the tribunal that he could not fairly or adequately participate in the hearing in those circumstances.

8. The hearing was therefore discontinued on the basis that the tribunal would have regard to its overriding objective to deal with cases fairly and justly and would either arrange for the hearing to be reconvened at a later date, or would decide that it could determine the Application without the need to reconvene.
9. The tribunal's overriding objective is set out at Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and includes issues of proportionality, costs and resources, ensuring so far as practicable that parties are able to participate fully and avoiding delay so far as compatible with proper consideration of the issues.
10. The tribunal decided that it was able to determine the case on the evidence before it since the Applicant had made a written submission, had replied in writing to the Respondent's written submission, had had the opportunity to present his case to the tribunal and had had relevant issues raised with him for comment by the Respondent's Solicitor and by the tribunal.

Determination

11. The relevant statutory provisions relating to Rent Repayment Orders are contained in sections 40, 41, 43 and 44 of the 2016 Act, extracts from which are set out in the Schedule.
12. Section 40(3) of the 2016 Act sets out in a table the offences which would entitle a tenant (or local housing authority) to apply to the First-tier Tribunal for a rent repayment order against the offender pursuant to section 41(1)
13. Row 6 in the table describes an offence under section 95(1) of the Housing Act 2004 ('the 2004 Act'), generally described as the control or management of an unlicensed house. Section 95(4) of the 2004 Act provides a defence of 'reasonable excuse'. The Respondent submits that this defence applies in the present case.
14. Under section 43(1) of the 2016 Act if the tribunal is satisfied beyond all reasonable doubt that the Respondent has committed the relevant offence, the tribunal may make a Rent Repayment Order.
15. The tribunal has not considered the Respondent's defence of 'reasonable excuse', it would be neither fair nor just to do so without reconvening the hearing. However the tribunal has decided that even if an offence had been committed, it would not exercise its discretion to make a rent repayment order in the circumstances of this case for the reasons set out below.
16. In a message to the Respondent dated 15 February 2024 (page 190-191 of the hearing bundle) the Applicant stated that he intended to vacate the Property no later than 29 February 2024, identified that the Property fell within a Selective Licensing Area and that it was being let unlicensed, and stated that he therefore invited the Respondent to accept possession of the Property by that date under the agreement that no more rent or fees would be payable 'as by issuing the tenancy without a licence you committed an offence'. The Respondent was invited to notify the rent collection agency no further rent was payable and to return the deposit 'in an attempt to avoid costly and protracted legal proceedings to gain a rent repayment order'. The following day the Applicant raised

issues with the condition of the property and reiterated that a rent repayment order would be pursued if any further rent payments were required.

17. The tribunal considers the content of the messages to indicate clearly that compliance with these terms would result in there being no application for a rent repayment order. It is common ground that the full deposit was returned, the notice period was waived and no further rent demanded.
18. On 1 March 2024 having gained access to the Property the Respondent raised his own comments on the condition of the Property and the Applicant notified the Respondent that he was proceeding with an application for a rent repayment order.
19. The tribunal is mindful of the statutory objectives of punishing defaulters and deterring future offences where a tribunal finds a relevant offence to have been committed. However even if the Respondent's defence of reasonable excuse did not succeed (which has not been determined), the tribunal would not consider it appropriate to make a rent repayment order in the circumstances of this case.
20. The Applicant offered to waive his right to seek a rent repayment order in consideration of his notice period and future rent liability being waived, and his deposit being returned, all of these conditions having been met. It would not be in the interests of fairness and justice to make an order in those circumstances.
21. For these reasons the tribunal makes no rent repayment order.

S Moorhouse

Tribunal Judge

Schedule

Housing and Planning Act 2016

Section 40

(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).....

(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.

The table described in s40(3) includes at row 6 an offence contrary to s95(1) of the Housing Act 2004 “control or management of unlicensed house”

Section 95(1) 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 under this Part (see section 85(1)) but is not so licensed.

Section 95(4) provides: 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 of or managing the house in the circumstances mentioned in subsection (1)

Section 41

(1) A tenant.....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.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (whether or not the landlord has been convicted).

Section 44

(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.

The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.

(3) The amount that the landlord may be required to pay 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.