



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

Case Reference: CHI/OOHH/HMK/2019/0009

Property: Fieldgate, The Avenue, Claverton Down,
Bath, Avon BA2 7AX

Applicants: Jason Chan, Siyu Ma, Han Xu Ye,
Haoxuan Tan, Man Cheng Tam, Xinyi Liu,
Shutong Fan

Representative: Jason Chan

Respondent: Richard Marley Fisher

Representative: None

Type of Application: For Rent Repayment Order –
Housing and Planning Act 2016
("the Act")

Tribunal Members: Judge A Cresswell (Chairman)

Hearing: On the Papers

Date of Decision: 1 August 2019

DECISION

The Application

1. The Respondent is the owner of the Property, which was let to multiple tenants. He was required to have a house in multiple occupation (“HMO”) licence for the Property but did not do so. The Applicant tenants have applied for a rent repayment order (“RRO”) under section 41 of the Housing and Planning Act 2016 (“the Act”).

Summary Decision

2. The Tribunal orders the Respondent to repay rent to the Applicants in the following amounts:

To Jason Chan £4895.81
To Siyu Ma £4895.81
To Han Xu Ye £4895.81
To Haoxuan Tan £4895.81
To Man Cheng Tam £4895.81
To Xinyi Liu £4895.81
To Shutong Fan £4895.81

Directions

3. Directions were issued on various dates. The Applicant was directed to provide further information and the Respondent to provide a statement in reply to the application by 16 July 2019. The Respondent has failed to comply.
4. The Directions of 19 July 2019 gave notification to the parties that the application would be determined without a hearing on or after 29 July 2019, the Respondent having failed to provide his statement of case.
5. This determination is made in the light of the documentation submitted in response to the Directions.

The Law

6. Section 41 of the Housing and Planning Act 2016 provides that a tenant may apply to the First-tier Tribunal (“FtT”) for a RRO against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an offence committed under section 72(1) of the Housing Act 2004 (section 40(3) of the 2016 Act). [L]
[SEP]
7. Section 43 provides that the FtT may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies. [L]
[SEP]
8. Section 44 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under section 72(1) of the 2004 Act the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence. [L]
[SEP]
9. By section 44(4) in determining the amount, the Tribunal had 'in particular' [L]
[SEP]to take account of the following factors: (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. [L]
[SEP]The use of the words 'in particular' suggests that these are not the only considerations the tribunal is to take into account. [L]
[SEP]

Uncontested History

10. The Tribunal first records the relevant history, where there has been no challenge made to the case stated by the Applicants. The Applicants’ case is

- supported by a copy of the lease showing the Respondent as the landlord, bank statements showing payments of rent to the Respondent landlord, a witness statement by Jason Chan and a witness statement by Paul Carroll, an Assistant Environmental Health Officer for the Housing Standards and Improvement Team of Bath and North East Somerset Council.
11. Mr Carroll states that the Respondent holds the Title Absolute for the property.
 12. He states that the property is a HMO, occupied by 7 persons, as revealed by an inspection on 25 March 2019.
 13. The property required a HMO licence from 1 October 2018 (“the relevant period”), but no application was received for the period 1 October 2018 to 11 March 2019. An application was made on 12 March 2019.
 14. There is a lease for the property for an assured shorthold tenancy; it is dated 15 April 2018 for a term of 9 months from 15 September 2018 to 14 June 2019 and the landlord is shown as the Respondent.
 15. In a witness statement of Jason Chan, it is stated that the tenancy was from 15 September 2018 to 14 June 2019. He states that rent was paid on the 15th of each month in advance, the first payment being on 15 August 2018 and the last on 15 April 2019, a total of 9 payments. The rent was divided equally between the 7 tenants; each month the tenants transferred their share of £914.29 to the lead tenant who then paid the Respondent £6,400 by bank transfer. A total was paid of £57,600 during the 9-month tenancy.
 16. Bank statements of Siyu Ma, the lead tenant, show the payments of rent to the Respondent in the sum of £6,400 in the months September 2018 to March 2019 inclusive.

The Tribunal’s Findings and Decision

17. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under section 72(1) of the 2004 Act from 1 October 2018 up to 12 March 2019, when he applied for an HMO licence.
18. The Respondent does not argue that the exemption in Section 62 of that Act is applicable or that he had applied for a licence during the relevant period or that he had a reasonable excuse within the terms of Section 72(5) of that Act. The Respondent did not have a licence for the property throughout the relevant period.
19. The table in Section 44 provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenants in respect of the period not exceeding 12 months during which the landlord was committing the offence.
20. In accordance with Section 44(4), the Tribunal has taken account of ^[L]_[SEP]the conduct of the landlord and the tenant, ^[L]_[SEP]the financial circumstances of the landlord, and ^[L]_[SEP]whether the landlord has at any time been convicted of an offence to which this Chapter applies. ^[L]_[SEP]There is no information to suggest any improper behaviour by the tenants; the Respondent landlord failed to make an application. There is no information available for the Tribunal to consider relating to the Respondent’s financial circumstances. There is no evidence of any other convictions.
21. There is persuasive authority in 2 cases dealing with the RRO provisions under the earlier 2004 Act, being **Parker v Waller and others** (2012) UKUT 301 (LC) and **Fallon v Wilson and Others** (2014) UKUT 300 (LC). The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for

the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a Tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. Account should be taken of payment for outgoings, such as utilities. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.

22. In the absence of any form of response by the Respondent, the Tribunal is unable to apply any of the mitigating factors detailed above.
23. The offence here spanned 5 months 11 days. Eleven days in March represents 35.48% of the month. The rent paid for the relevant period was, therefore 5 x £6,400 plus 35.48% of £6,400 or £32,000 plus £2,270.72, i.e. £34,270.72. That total divided by 7 is £4,895.81.
24. The Tribunal has weighed all of the relevant factors and concluded that the Respondent should make a full repayment of the monies paid in rent for the relevant period. He failed to apply for a licence during the relevant period and has provided no mitigating factors.
25. The Tribunal orders the Respondent to repay rent to the Applicants in the following amounts:

To Jason Chan £4895.81

To Siyu Ma £4895.81

To Han Xu Ye £4895.81

To Haoxuan Tan £4895.81

To Man Cheng Tam £4895.81

To Xinyi Liu £4895.81

To Shutong Fan £4895.81

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Schedule^[1]_[SEP]

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. ^[1]_[SEP]

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to— ^[1]_[SEP](a) repay an amount of rent paid by a tenant, or (b).....

^[1]_[SEP]

(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. ^[1]_[SEP]

	Act	Section	general description of offence
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

(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. ^[1]_{SEP}

(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 ^[1]_{SEP}

(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. ^[1]_{SEP}

Section 42

Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and

(c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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).

(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

(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:

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

(a) the rent paid in respect of that period, less ^[L]_[SEP]

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period. ^[L]_[SEP]

(4) in determining the amount the tribunal must, in particular, take into account-

(a) the conduct of the landlord and the tenant, ^[L]_[SEP]

(b) the financial circumstances of the landlord, and ^[L]_[SEP]

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies. ^[L]_[SEP]

	<i>Act</i>	<i>Section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry
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			unlicensed HMO
6		Section 95(1)	control or management of unlicensed house
7	This Act	Section 21	breach of banning order

Housing Act 2004

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.

(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.

(8) 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.

(9) 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.

(10) 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).

62 Temporary exemption from licensing requirement

(1) This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

(2) The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.

(3) If a temporary exemption notice is served under this section, the house is (in accordance with sections 61(1) and 85(1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.

(4) A temporary exemption notice under this section is in force--

(a) for the period of 3 months beginning with the date on which it is served, or

(b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.

(5) If the authority--

(a) receive a further notification under subsection (1), and

(b) consider that there are exceptional circumstances that justify the service of a second temporary exemption notice in respect of the house that would take effect from the end of the period of 3 months applying to the first notice,

the authority may serve a second such notice on the person having control of or managing the house (but no further notice may be served by virtue of this subsection).

(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of--

(a) the decision,

- (b) the reasons for it and the date on which it was made,
- (c) the right to appeal against the decision under subsection (7), and
- (d) the period within which an appeal may be made under that subsection.

(7) The person concerned may appeal to [the appropriate tribunal] against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.

(8) Such an appeal--

- (a) is to be by way of a re-hearing, but
- (b) may be determined having regard to matters of which the authority were unaware.

(9) The tribunal--

- (a) may confirm or reverse the decision of the authority, and
- (b) if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the tribunal directs.

87 Applications for licences

(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

(4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).

(5) The appropriate national authority may by regulations make provision about the making of applications under this section.

(6) Such regulations may, in particular--

- (a) specify the manner and form in which applications are to be made;
- (b) require the applicant to give copies of the application, or information about it, to particular persons;
- (c) specify the information [or evidence] which is to be supplied in connection with applications;
- (d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);
- (e) specify cases in which no fees are to be charged or fees are to be refunded.

(7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account--

- (a) all costs incurred by the authority in carrying out their functions under this Part, and

(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).