



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

Case Reference : **BIR/00FY/HMA/2018/0003 &4**

Property : **205 North Sherwood Street, Nottingham
NG1 4EH**

Applicant 1 : **Chloe Louise Mills**

Applicant 2 : **Charlotte Cockerton**

Respondent : **Deborah Ann Chilton**

Type of Application : **Applications for Rent Repayment Orders
Under s41, Chapter 4 Part 2 Housing and
Planning Act 2016**

Tribunal : **Tribunal Judge P. J. Ellis
V Ward BSc (Hons) FRICS**

Date of Hearing : **4 December 2018**

Date of Decision : **17 December 2018**

DECISION

Introduction

1. These applications were both issued on 17 September 2018 each making a claim for a rent repayment order against the Respondent following the imposition of a civil penalty upon her by the Nottingham City Council. The penalty was imposed because of an admitted offence by the Respondent of failing to licence a house in multiple occupation contrary to s72(1) Housing Act 2004 (the 2004 Act).
2. As both applications arose from the same facts the Tribunal issued Directions on 4 October 2018 which among other directions ordered that the two applications be heard together.
3. The Respondent does not deny either the offence or the financial penalty or their relevance to these proceedings.
4. The Applicants were assured shorthold tenants of 205 North Sherwood Street Nottingham NG1 4EH (the Property) pursuant to a tenancy agreement with the Respondent between 23 July 2017 and 8 July 2018. The rent payable by both Applicants was £75.00 per week payable over an eleven calendar month period of £340.91 starting on 11 July 2017.
5. There is no dispute that the Property was an unlicensed HMO for the period of occupation by the Applicants until 4 April 2018.
6. The issue for the Tribunal to decide if it is satisfied that a rent repayment order should be made is what sum is repayable and for what period.

Inspection

7. The Tribunal inspected the Property on 4 December 2018. It is a two storey terraced house of brick and slate construction built in late 19th Century. It has been modernised and fitted with gas central heating and double glazing.
8. The front room of the ground floor is used as a bedroom. The room to the rear is a lounge for use in common by all the occupiers. At the rear on the ground floor is a kitchen with pantry. The kitchen is fully fitted by the landlord with equipment of a reasonable standard. There is garden to the rear maintained by the landlord.
9. There is a small shower room on a half landing off the staircase to the upper floor. Three bedrooms and a bathroom with w/c are on the upper floor. All bedrooms were occupied at the time of inspection but the residents allowed the Tribunal to make a brief observation of their rooms which appeared to be in reasonable condition.

The Hearing

10. The matter was determined without an oral hearing on the papers. The Applicants' statements of case were concise. They each pleaded their tenancy of the Property, the rent paid between the 23 July 2017 and 4 April 2018 and the financial penalty imposed upon the Respondent.
11. The statement of case served by the Respondent admitted tenancies, the rent paid and the financial penalty. The Respondent asserted that she had applied for an additional HMO licence under the city council's introduction of the additional licencing scheme in July 2015 but for some reason the application was not received. Mrs Chilton is the holder of an HMO licence in respect of a nearby property. She realised the application for the subject Property was not under consideration when summoned by the city council for an interview under caution on 6 April 2018 whereupon the Respondent immediately

applied for a licence for the Property. However, as the Respondent was in control of an unlicensed property in multiple occupation the council imposed a financial penalty.

12. The summary of the offence published by the council states that the culpability level was low, harm level C and penalty band 1 which sets out a penalty range of £600.00 to £1,200.00. Financial benefit obtained by the Respondent was determined at £2,700.00. Relevant income was ascertained at £348.00 with a multiplier of 50% for this offence consequently the increase of penalty amount was £174.00. Applying the various elements the financial penalty was fixed at £3,474.00 being the penalty calculation of £774.00 and the sum of £2,700.00 financial benefit. The Respondent did not challenge the sum.
13. The Respondent asserted that she endeavours to act as responsible landlord who is concerned for the welfare of her tenants who declined to let the property if she considered someone unsuitable to reside with the other tenants. She produced evidence of being responsive to requests for alterations to payment schedules and attention to maintenance sent by the tenants.
14. The Respondent gave some information regarding the costs of the Property but nothing relating to her financial circumstances. The Property is one of three owned by her for letting. They are subject to an interest only mortgage with a monthly payment of £921.00. Between £3000.00 and £5,000.00 is incurred annually between the three properties in general renovations, maintenance and decorations in addition to a monthly payment of £200.00 for general upkeep. The Respondent asserted the Property had suffered a financial loss in the year 2017-8 but admitted it was by reason of the vacancy in the Property for six months caused by her search for a suitable tenant to

share with the Applicants and a third person.

Statutory Framework

15. This is an application under the Housing and Planning Act 2016 (the 2016 Act) which provides at chapter 2 a scheme of arrangement for rent repayment orders. The introductory section 40 states

(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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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 5 an offence contrary to s72(1) of the 2004 Act: “control of unlicensed house”.

16. S41 of 2016 Act entitles a tenant to apply for a rent repayment order against a person who has committed an offence to which this Chapter applies.

However, by subsection (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.

17. S43 of the 2016 Act then gives the First tier Tribunal the power to make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

The section then specifically provides in relation to an application by a tenant

(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).

18. S44 of the 2016 Act then directs the First-tier Tribunal when considering an application for such an order the amount payable is to be determined in accordance with this section and at subsection 2 that the amount must relate to rent paid during the period mentioned in the table set out in that subsection. The table prescribes that for an offence mentioned in row 5,..... of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence.

19. S44(3)&(4) then give directions regarding the issues to be considered by the Tribunal when deciding an application for a rent repayment order as follows:

(3)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.

20. S46 provides that if certain offences are committed the amount of the rent repayment order must be the maximum which the Tribunal has power to award but in this case the relevant offence is not one of the prescribed offences.

Decision

21. There is no dispute that the Property was unlicensed for the period of the claim and the Tribunal has seen a copy of the offence summary issued by the Nottingham City Council the Tribunal is satisfied an offence was committed during the period of the tenancy held by the Applicants.

22. This application was issued on 17 September 2018 within twelve months of the commission of the offence.

23. Accordingly the Tribunal has the power to make a rent repayment order but it must take into account the conduct of the parties and the financial circumstances of the landlord (s44(4) 2016 Act).
24. The 2004 Act provided at s 74(5) that the amount to be repaid in a case such as this was such amount which the Tribunal considered reasonable. S74(6)(d) provides that the conduct and financial circumstances of the appropriate person among other matters set out in subsection 6 must be taken into account in determining what sum is reasonable. The two notable cases on rent repayment orders under the 2004 Act namely *Parker v Waller* [2012] 301 UKUT(LC) and *Fallon v Wilson* [2014] UKUT (LC) gave guidance as to the exercise of discretion by the Tribunal in deciding upon the reasonableness of the amount to be repaid. In *Fallon* HH Judge Huskinson said when allowing an appeal in which the First-tier Tribunal had not exercised its discretion properly
- “In Parker v Waller it is stated in paragraph 26(ii) that there is no presumption a RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. “The RPT must take an overall view of the circumstances determining what amount would be reasonable”. This I find the Tribunal failed to do.”*
25. The 2016 Act does not include an equivalent provision to s75(5) but the same or substantially equivalent words are used in s74(6)(d) as in s44(4)(a) & (b) of the 2016 Act.
26. Also the 2016 Act directs the Tribunal to have regard also to the conduct of the tenant.
27. As this is a case which is not subject to a mandatory maximum repayment the Tribunal will exercise its discretion when determining what sum is repayable in accordance with the new statutory framework but with the benefit of the approach adopted by the Upper Tribunal in the cases mentioned.
28. The Respondent acknowledged her fault and accepted the financial penalty. The Tribunal was satisfied the Property was in reasonable condition with good

fittings. It was also satisfied the Respondent who is generally familiar with the licensing regime was generally conducting herself in a way which provided the tenants with a decent home properly maintained and equipped.

29. The Applicants and fellow occupiers had the benefit of decent accommodation for their period of occupation. They make no complaints about the Respondent's behaviour.
30. Unfortunately, the Respondent has given little information about her financial circumstances. The loss sustained in the year of letting was associated with the lack of a tenant not her expenditure on the property. The void loss is pleaded by the Respondent as an example of her care for the tenants' wellbeing. The Tribunal is satisfied that the Respondent had conducted herself well in relation to the Property and her tenants apart from the failure to obtain a licence. There is no evidence that the Respondent has paid all utility or council tax outgoings relating to the Property but the Respondent incurred expenses relating to its maintenance and upkeep.
31. In the circumstances the Tribunal has decided that a rent repayment order of 50% of the rent paid during the period is appropriate.
32. As far as the period of repayment is concerned the amount payable must relate to the rent paid by the tenant in respect of a period not exceeding twelve months during which the landlord was committing the offence. The 2004 Act provided at s 74(8)(b) that the repayment order may not require payment of any amount which is in respect of any time falling outside the period of twelve months ending with the date of the occupier's application under s73(5) of that Act. However, the 2016 Act does not impose such a restriction but specifically provides that the limitation period is defined by reference to the period of occupation while the offence was being committed. In this case the period is as defined in the Applicants' statement of cases namely 23 July 2017 – 4 April 2018. The rent payment date was 11th of each month.
The tenancy agreement provided

“The Landlord lets the demised property to the Tenants for 50 weeks starting on 23rd July 2017 to 8th July 2018 (tenancy period) on the tenants agreeing to pay the sum of £75.00 per week per tenant (Basic Rent). Total rent for the tenancy period for each tenant £3750.00. Payable over an eleven month period at £340.91 per calendar month each starting 11th July 2017.”

The daily rate is £10.71. The period between 23 July 2017 and 4 April 2018 was 255 days. The rent paid in this period was 2,677.50. 50% of the rent paid was £1338.75.

33. Therefore the sums repayable to each of the Applicants are as follows:

Charlotte Cockerton: £1338.75

Chloe Louise Mills: £1338.75

Appeal

34. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them under 9 rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis