



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

Case Reference : **LON/00AG/HMK/2018/0020**

Property : **8 Ivybridge Court, Lewis Street,
London NW1 8PX**

Applicants : **Serena Paget, Carly Pullen, Nawel
Kobb, Kit Fretz (tenants)**

Representatives : **Carly Pullen and Kit Fretz**

Respondent : **Andrew Smith (landlord)**

Representative : **Laurence Pearl FNAEA, Property
Manager at Saffron Property
Limited**

Type of Application : **Application for a rent repayment
order: sections 40,41, 43 & 44 of
the Housing and Planning Act 2016**

Tribunal Members : **Judge N Hawkes
Ms S Coughlin MCIEH
Mr A D Ring**

**Date and venue of
hearing** : **26 July 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **9 August 2018**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the applicants' application and makes a rent repayment order in the total sum of £19,669.72.

(2) The Tribunal was informed by the applicants' representatives that any rent which the Tribunal finds is to be repaid falls to be divided between the applicants as follows: Kit Fretz is to receive 25.96%, Carly Pullen is to receive 25.24%; Serena Paget is to receive 24.52%; and Nawel Kobb is to receive 24.28%.

(2) If these percentages do not take into consideration the housing benefit received by Carly Pullen, the payment to Carly Pullen falls to be reduced by £320.45 and this sum should be allocated to the other three applicants in proportion with their agreed percentages.

The application

1. By an application received by the Tribunal on or about 16 April 2017, the applicants applied for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").
2. Directions were issued on 11 May 2018 leading up to a final hearing which took place on 26 July 2018.

The hearing

3. Ms Carly Pullen and Mr Kit Fretz attended the hearing on behalf of the applicants and Mr Laurence Pearl FNAEA attended on behalf of the respondent landlord.
4. The Tribunal heard oral evidence from all of those who attended the hearing.

The issues

5. Section 41 of the 2016 Act provides:

(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.”

6. Paragraph 5.3 of the statutory guidance issued by the Department for Communities and Local Government provides that “a rent repayment order can only cover the period during which the offence was committed, up to a maximum of 12 months.”
7. The landlord has admitted in his witness statement dated 24 May 2018 that he has committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”), namely, he has been a person having control or management of a house in multiple occupation (“HMO”) which was required to be licenced under Part 2 of the 2004 Act but which was not so licenced.
8. Mr Pearl of the Saffron Property Limited, the landlord’s managing agents, also gave evidence confirming the commission of this offence by the landlord, both at the hearing and in a witness statement dated 24 May 2018.
9. It is common ground that 8 Ivybridge Court, Lewis Street, London NW1 8PX (“the property”) was the HMO in question; that the time during which the offence was committed included the entirety of the agreed 12 month period under consideration in these proceedings; and that, during this period, the property was let to the applicants.
10. Further, the parties have agreed that rent in the sum of £26,476.69 was paid to the landlord during the relevant period. The Tribunal was informed that this includes housing benefit in the sum of £320.45 which was paid to Ms Pullen but that no other tenants received housing benefit or universal credit in respect of rent under the tenancy during this time. Accordingly, the sum paid to the landlord net of housing benefit was £26,156.24 and this is the maximum amount of rent which the Tribunal can potentially order to be re-paid.

The Tribunal’s determinations

11. Section 43(1) of the 2016 Act provides:

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

12. On the basis of both the landlord and Mr Pearl's admissions, the Tribunal is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72(1) of the 2004 Act (which is an offence to which Chapter 4 of the 2016 Act applies).
13. As stated above, the maximum amount of rent which the Tribunal can potentially order to be re-paid is £26,156.24.
14. Subsection 44(4) of the 2016 Act provides:

(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.
15. In determining the amount to be repaid, the Tribunal has had regard to two decisions of the Upper Tribunal relating to the amount of a rent repayment order under the 2004 Act, namely *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*.
16. Copies of these decisions were provided to the parties and the Tribunal took an extended lunch adjournment from 12.15 pm to 1.45 pm in order to ensure that the parties had sufficient time to consider these authorities (and to enable the applicants to obtain confirmation as to the amount of any relevant housing benefit and/or universal credit received in respect of rent under the tenancy).
17. Under the 2004 Act, section 74(4) provided that where there has not been a conviction the Tribunal shall order such amount as it considers reasonable in the circumstances.
18. Whilst sections 44 and 45 of the 2016 Act do not include the word "reasonable", given the similarities between these provisions and the relevant provisions of the 2004 Act, the Tribunal considers that the guidance provided in these Upper Tribunal decisions remains relevant under the 2016 Act.
19. Accordingly, the Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made and (ii) the benefit obtained by the tenants in having had the accommodation is not a material consideration.

20. Further, the Tribunal has deducted the amounts set out in various invoices which were presented to the Tribunal by Mr Pearl as showing sums incurred by the landlord in maintaining the property, in order to arrive at a figure for the landlord's profit. The Tribunal notes that the invoices relied upon by Mr Pearl did not include any invoices in respect of letting agents' fees.
21. The Tribunal has only taken the invoices to which it was referred by Mr Pearl into account insofar as they relate to the 12 month period which it is agreed is under consideration. The Tribunal determines that all of the invoices which fall within this period comprise relevant expenditure and that the total sum which falls to be deducted on account of the landlord's expenditure is £1,569, leaving a balance of £24,587.24.
22. Whilst there was a dispute between the parties concerning whether or not new tables and chairs were supplied at the applicants' request, the invoice relating to these tables and chairs falls outside the relevant 12 month period in any event.
23. The Tribunal has also considered the level of culpability of the landlord and the length of time during which the offence was committed. Mr Pearl informed the Tribunal that the landlord has eight other properties that Mr Pearl knows of and that he is "well versed in letting properties".
24. The landlord stated in his witness statement dated 24 May 2018 that his managing agents made him aware that a licence was required in November 2015, that is well over two years before the property was first let to the applicants on 10 January 2017. On the basis of the landlord's own evidence, no application for an HMO licence was made until 5 May 2018.
25. The sole reason given by the landlord for not applying for a licence, notwithstanding receiving reminders from Saffron Property Limited, is "I was distracted by my other business interests and forgot to provide the necessary instructions".
26. The Tribunal has also had regard to the fact that the tenants have complained of ongoing penetrating damp and plumbing problems. The parties agree that that these issues are caused by defects within the block in which the property is situated which require the head landlord's involvement to resolve.
27. The Tribunal accepts that the applicants made a limited number of complaints, attempting to manage some of the issues themselves, and that their intermittent use of heating during the winter months and reluctance to use an electric clothes dryer is likely, on the balance of probabilities, to have increased the humidity levels within the property.

28. However, the Tribunal is of the view that the primary cause of damp within the property is likely to be the water penetration. The landlord has direct obligations towards the applicants and no evidence was presented to the Tribunal that he had taken or was proposing to take legal action, if required, against the head landlord in order to ensure that the damp and plumbing issues which all parties agree exist are remedied.
29. The Tribunal is of the view that the landlord's conduct has resulted in potential risks of harm to the applicants.
30. An electrical inspection carried out in connection with the landlord's recent application for an HMO licence has identified a potentially dangerous fault to the consumer unit serving the property.
31. If the application for an HMO licence had been made prior to the start of the applicants' tenancy (when the property was vacant for a few months), electrical testing would have been carried out at that stage and this potentially dangerous fault would have been identified and remedied before the applicants moved into the property.
32. Further, the Tribunal accepts evidence which was presented to it by the applicants that damp in the bedrooms at the property has caused three of the four applicants to use Ventalin inhalers in order to treat resulting breathing difficulties.
33. The Tribunal also heard evidence, which it accepts, that the plumbing problems at the property have resulted in back surges of waste water. The Tribunal is of the view that such back surges present a potential risk to food safety.
34. So far as the Tribunal is aware, the landlord has no convictions and no information was relied upon concerning his personal financial circumstances.
35. Whilst the Tribunal has taken into account the landlord's clarity and straightforwardness in admitting relevant facts and circumstances, which is to his credit, the Tribunal considers the level of culpability overall to be at the higher end of the spectrum.
36. In all the circumstances, the Tribunal determines that it is appropriate to make a rent repayment order in the sum of £19,669.72, representing 80% of the net balance of £24,587.24 which remains once the housing benefit and landlords' expenses have been deducted from the sums paid to the landlord during the relevant period.
37. The Tribunal was informed by the applicants' representatives that any rent which the Tribunal finds is to be repaid falls to be divided between

the applicants as follows Kit Fretz is to receive 25.96%, Carly Pullen is to receive 25.24%; Serena Paget is to receive 24.52% and Nawel Kobb is to receive 24.28%.

38. If these percentages to not take into consideration the housing benefit received by Carly Pullen, the payment to Carly Pullen falls to be reduced by £320.45 and this sum should be allocated to the other three applicants in proportion with their percentages.

Name: Judge Hawkes

Date: 9 August 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).