



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

Case Reference : **LON/00BH/HMK/2018/0040**

Property : **240B Capworth Street, Waltham Forest, London E10 7HL**

Applicant : **Mirian Mayo Moar**

Respondent : **Angela Fitch**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge Nicol
Mr PS Roberts DipArch RIBA**

Date and Venue of Hearing : **19th November 2018;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **19th November 2018**

DECISION

The Tribunal orders:

- (1) There shall be a Rent Repayment Order for the Respondent to pay to the Applicant the sum of £1,369.76.
- (2) The Respondent shall reimburse the Applicant the full amount of the application fee of £100 and half the hearing fee in the sum of £100.

The total sum payable by the Respondent to the Applicant is £1,569.76.

The relevant provisions in the Housing Act 2004 and the Housing and Planning Act 2016 are set out in an Appendix to this decision.

Reasons

1. The Respondent is the owner of the subject flat. She had been renting it out for about 10 years. She wanted to sell it and, when her existing tenant decided not to renew, she decided to rent it out for a further short period before the sale. Therefore, she let it to the Applicant expressly for “A temporary term from the 9th May until 31st July 2018.”
2. Unfortunately, the Respondent did not take legal advice before letting the flat and only found out later that the local authority, the London Borough of Waltham Forest, had a selective licensing scheme requiring any landlord in the area to be licensed. Her first thought was to ensure the Applicant left on the agreed date but then realised that the protections for a tenant under the Housing Act 1988 meant that she could only evict the Applicant following a notice lasting at least two months and, if necessary, court proceedings.
3. The Tribunal found it surprising, to say the least, that the Respondent only found out about these things some 10 years after becoming a landlord. A person who decides to take on the responsibility of being a landlord without finding out anything about what that entails cannot expect any sympathy if they make no effort to address their ignorance and fall foul of the law.
4. The Respondent applied for a licence on 23rd July 2018. It was granted on 26th September 2018. Under section 95 of the Housing Act 2004 it is a criminal offence to let premises while unlicensed, although it is also a defence if an application for a licence has been made. In the circumstances, the Respondent admitted that she had committed an offence during the period 9th May to 23rd July 2018.
5. The Applicant was extremely unhappy with the Respondent’s conduct of the tenancy. The previous tenant had complained of bed bugs. Rather than address this herself, the Respondent trusted the tenant’s word when he said he had addressed it. When the Applicant found she and her toddler son being bitten, she initially ascribed it to mosquitoes but eventually reported it as bed bugs in July. The Respondent offered a spray treatment from her contractor but the Applicant understood this would adversely affect her son. She insisted on a heat treatment without using chemicals. Unfortunately, this was only partially effective and there were still bed bugs when she eventually moved out on 31st October 2018.
6. There had also been a low-level mice infestation during the previous tenancy. The Respondent’s contractor had given the all-clear but the Applicant was concerned about the pest control materials that they had not cleared away and, then, some mice returned. On one occasion there was also a rat.
7. The Applicant complained of disrepair:
 - (a) The screws were loose on a kitchen cabinet door.

- (b) One of the kitchen drawer fronts fell off.
 - (c) The pest controller did not refix the bath panel properly and it came away.
 - (d) The living room, bathroom and kitchen doors did not close properly.
 - (e) There were holes in the skirting boards and cupboards allowing rodent access.
 - (f) A wall tile near the boiler was loose.
 - (g) An item of IKEA furniture, which IKEA had apparently subjected to a recall, almost fell on the Applicant's son.
 - (h) The boiler leaked in early September.
 - (i) The toilet flush broke in October and, although the Respondent's contractor fixed it, the problem returned.
 - (j) The washing machine leaked in September. The Respondent replaced it after one week.
8. The parties exchanged a large number of emails and text messages. The Respondent complained of the sheer volume from the Applicant, including one in the small hours (accompanied by a phone call) and abuse contained in some. However, in some of them, the Respondent had urged the Applicant to leave as agreed on 31st July 2018. The Applicant exercised her legal right to stay because she could not find alternative accommodation and complained that the Respondent's emails constituted steps to an unlawful eviction.
 9. The Applicant paid a deposit of £700 with her first month's rent. The Respondent failed to protect it on time. The Respondent paid the Applicant an amount equal to two times the deposit to settle her claim for breach of the tenancy deposit provisions of the Housing Act 2004.
 10. An offence having been committed, the Tribunal may make a rent repayment order, subject to taking certain matters into account, including both parties' conduct and the Respondent's financial circumstances.
 11. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301. Amongst other matters, it was held that an RRO is a penal sum, not compensation, and that the Tribunal should take an overall view of the circumstances, including whether the landlord has already been fined for the offence and whether the rent includes items the tenant has had the benefit of.
 12. The rent payable by the Applicant was £700 per month. It included council tax, water rates and the TV licence. The Respondent calculated the net rent as £556.75. The Applicant pointed out that the Respondent

had not presented evidence of these sums but the Tribunal is prepared to accept them – the Respondent was naïve and wrong not to acquaint herself with her obligations as a landlord and so it is appropriate that she pay the penalty for the consequences but she conceded this and came across as honest.

13. For the period of the offence, the Applicant paid the following in rent, net of council tax, water rates and the TV licence:

- May-June £556.75
 - June-July £556.75
 - 9th-23rd July £256.26
- £1,369.76

14. The Applicant is currently on Universal Credit but that did not start until August. She paid the above sum out of her own pocket.

15. The Tribunal is satisfied that £1,369.76 is an appropriate sum for the Respondent to pay as an RRO in the circumstances. The Applicant urged that the sum should be higher due to what she had been subjected to during the tenancy but she has already received the benefit of having the council tax, water rates and TV licence paid for. The Tribunal has no doubt that the bed bugs, rodents and disrepair were genuinely distressing but, the bed bugs aside, the Tribunal finds it difficult to see what more the Respondent could have done to address them.

16. The Respondent gave figures showing her financial circumstances. Evidence of those figures was contained in a bundle of documents the Tribunal did not allow her to rely on because it was served late and the Applicant had not had the opportunity to consider it. However, even taking the Respondent's figures at face value, they contain nothing to persuade the Tribunal to reduce the figure of £1,369.76. There is nothing in her figures to suggest that the Respondent would be unable to pay this amount.

17. In bringing this dispute to the Tribunal, the Applicant had to pay an application fee of £100 and a hearing fee of £200. She applied for an order that the Respondent reimburse her. It is appropriate that the Respondent pay the application fee for the same reasons that it is appropriate that she pay the RRO. It was the Tribunal that insisted on a hearing, rather than a determination on the papers, thus incurring the hearing fee. The Tribunal cannot remit this fee but it is appropriate that the parties share this cost equally.

Name: NK Nicol

Date: 19th November 2018

Appendix of relevant legislation

Housing Act 2004

Part 3 SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

Section 79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
- (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
- (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
 - (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).
- (3) A tenancy or licence is an exempt tenancy or licence if —
- (a) it is granted by a non-profit registered provider of social housing,
 - (b) it is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of Part 2 of the Housing and Regeneration Act 2008), or
 - (c) it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).
- (4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence—
- (a) if it falls within any description of tenancy or licence specified in the order; or
 - (b) in any other circumstances so specified.
- (5) Every local housing authority have the following general duties—
- (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part; and

- (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

Section 85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
 - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).
- (3) Sections 87 to 90 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.
- (4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed under this Part but are not so licensed.
- (5) In this Part, unless the context otherwise requires—
 - (a) references to a [Part 3](#) house are to a house to which this Part applies (see [section 79\(2\)](#)),
 - (b) references to a licence are to a licence under this Part,
 - (c) references to a licence holder are to be read accordingly, and
 - (d) references to a house being (or not being) licensed under this Part are to its being (or not being) a house in respect of which a licence is in force under this Part.

Section 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 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).

Section 95 Offences in relation to licensing of houses under this Part

- (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.
- (2) A person commits an offence if—
- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
- and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) In subsection (8) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

| | 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 Application for rent repayment order

- (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.
- (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.
- (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.

Section 43 Making of rent repayment order

(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).

(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 Amount of order: tenants

(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 |

(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.

...