



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

- Case Reference** : CHI/00ML/HMJ/2019/0001  
CHI/00ML/HMF/2019/0002  
CHI/00ML/HMF/2019/0003  
CHI/00ML/HMK/2019/0007  
CHI/00ML/HMK/2019/0008
- Property** : 2 Natal Road, Brighton, BN2 4BN
- Applicants** : 1) Holly Hoskinson 2) Lucie Francis 3) Alfie Murrey 4) Polly Sellman 5) Chloe Heath
- Representative** : Mrs Susan Sellman
- Respondent** : Mark Waters
- Representative** : Thompson Allen LLP Solicitors
- Type of Application** : Application for Rent Repayment Order sections 40, 41, 42, 43 and 45 of the Housing & Planning Act 2016
- Tribunal Members** : Judge N P Jutton, Mr M J F Donaldson FRICS
- Date and Venue of Hearing** : 30 August 2019  
Court 4, Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL
- Date of Decision** : 4 September 2019
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## DECISION

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### 1 **Background**

- 2 By 5 separate applications, each Applicant applies for a Rent Repayment Order in respect of a tenancy previously enjoyed by them at 2 Natal Road, Brighton, East Sussex, BN2 4BN (the Property). The Tribunal heard all 5 applications at the same time. All 5 Applicants were represented by Mrs Susan Sellman. The respondent was represented by Mrs Emma Thompson of Thompson Allen LLP Solicitors.
- 3 The Applicants at the material time were all students. They occupied the Property under the terms of an Assured Shorthold Tenancy Agreement dated 5 September 2018. The tenancy was for a term of 11 months commencing on 5 September 2018 at a total rent of £3640 per month. There were 7 tenants, the Applicants and two others. Apportioned between them, each tenant paid a monthly rent of £520.
- 4 The Tenancy Agreement provided that the tenants would be responsible for payment of services including Council Tax, water and sewerage rates, gas and electricity supplies. The tenants covenanted amongst other things to maintain the garden at the property in a neat and tidy condition (clause 4.8), to keep the interior of the Property and the fixtures and fittings and contents in a clean and good condition, repair and decoration (clause 4.23) and to keep the interior of the Property and the contents in at least *“as good and clean condition and repair as they were at the commencement of the tenancy, with fair wear and tear excepted ...”* (clause 5.2).
- 5 The landlord agreed to carry out any repairing obligations as required by section 11 of the Landlord & Tenant Act 1985 (clause 12).
- 6 On moving into the Property, the Applicants were not happy with the state of repair, condition and cleanliness of the Property. They took their concerns up with the Respondent’s Managing Agents, a company called Kendrick Property Services. There is in the bundle of documents before the Tribunal, a copy of an email from Mrs Susan Sellman on behalf of the Applicants to Kendrick Property Services dated 16 September 2018 which lists some 34 items of concern with attached photographs.
- 7 The tenancy ended on 4 August 2019. The tenants have moved out. Both parties confirmed that the full amount of the rent payable under the terms of

the tenancy was paid by the tenants throughout the term of the tenancy and received by the Respondent.

8 There was before the Tribunal a bundle of documents which included the Applicants’ applications, Directions made by the Tribunal, a copy of the Tenancy Agreement, each party’s Statement of Case, a Witness Statement made by the Respondent and other documents.

9 **The Law**

10 The relevant statutory provisions are to be found in sections 40, 41, 43 and 44 of the Housing & Planning Act 2016 (the 2016 Act). They provide as follows:

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- (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.*

	<b>Act</b>	<b>Section</b>	<b>General description of offence</b>
1	<i>Criminal Law Act 1977</i>	<i>Section 6(1)</i>	<i>Violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>Section 1(2), (3) or (3A)</i>	<i>Eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>Section 30(1)</i>	<i>Failure to comply with improvement notice</i>
4		<i>Section 32(1)</i>	<i>Failure to comply with prohibition order etc</i>
5		<i>Section 72(1)</i>	<i>Control or management of unlicensed HMO</i>
6		<i>Section 95(1)</i>	<i>Control or management of unlicensed house</i>
7	<i>This Act</i>	<i>Section 21</i>	<i>Breach of banning order</i>

- (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).*

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- (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.*

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- (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).*

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- (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.*

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>The amount must relate to rent paid by the tenant in respect of</i></b>
<i>An offence mentioned in row 1 or 2 of the table in section 40(3)</i>	<i>The period of 12 months ending with the date of the offence</i>
<i>An offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>A period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.*

## 11 **The Applicants' Case**

- 12 The Applicants say that during the term of their tenancy the Property was required to be licensed as a house in multiple occupation pursuant to the provisions of the Housing Act 2004. That it was not licensed and that accordingly, the Respondent had committed an offence pursuant to section 72(1) of that Act. The Applicants seek Rent Repayment Orders in respect of all rent paid by them during the entire 11 month term of their tenancy. The Applicants complain that the Property and the contents of it were in a poor condition from the commencement of the tenancy. Particulars are set out in the Applicants' Statement of Case and in the documents attached thereto, in particular in an email from Mrs Sellman to the Managing Agents, Kendrick Property Services, dated 16 September 2018 with photographs attached. The Applicants say the Respondents should have ensured that an HMO licence was in place at the commencement of the tenancy. That on 25 March 2019, Brighton and Hove City Council wrote to the Respondent stating that the

Property had previously been subject to an HMO licence and advising that the Property did not at the time have a licence. That the Respondent did not make an application to the local authority for a licence until 10 June 2019. That that was an unreasonable delay on his part. The Applicants say that the Respondent made no effort to address their concerns about the state of disrepair of the Property.

### 13 **The Respondent's Case**

- 14 The Respondent admits that the Property did not have an HMO licence for the period of the tenancy and he accepts that it should have done. That he says was a genuine oversight on his part. He had retained the services of a firm of managing agents, Kendrick Property Services, to manage the Property (and other properties) for him. Part of the retainer included, where appropriate, applying for HMO licences and ensuring that the Respondent's properties complied with all relevant statutory requirements. He had retained the services of Kendrick Property Services for some 15-16 years. He retained them to manage all his HMO properties. Upon being questioned by the Tribunal, Mr Waters said that he owned some 50 rental properties, 6 of which were HMOs. He was he said always concerned that the HMO properties were properly licensed. That he had been badly let down in this case by his agents.
- 15 There was, the Respondent says, no intention on his part to let the Property unlicensed. That the majority of the issues raised by the Applicants at the commencement of the tenancy in relation to the state of repair and condition of the Property fell within the tenants' responsibilities under the terms of the Tenancy Agreement, for example replacing light bulbs and the disposal of refuse.
- 16 The Respondent says the Property was in good condition appropriate for a property of this nature being a property let to students. That it complied with all relevant requirements for a property which would be subject to an HMO licence. That the absence of a licence had not occasioned the Applicants any damage. That the repayment of rent to them would be a windfall for them. That as soon as the Applicant became aware that the Property did not have an HMO licence, he took immediate steps to rectify the situation by making an application to the local authority. That application has been determined and a licence now granted. It was granted some 2 weeks ago.
- 17 The Respondent says he is a landlord of good character. He works regularly with the local authority. He refers to a letter from Brighton and Hove City Council addressed 'to whom it may concern' dated 7 August 2019 from one Paul Lucas, an Acquisitions Negotiator. Mr Lucas says that he has an ongoing business relationship with the Respondent and always found the Respondent's properties to be *"in excellent condition and above average quality for rented*

*stock*". That he had always found the Respondent to be responsive if repairs were needed. The letter describes the Respondent as being "*unusually patient with tenants who exhibit demanding and difficulty behaviour – he acts in a very professional and responsible manner*".

18 The Respondent says that he was a good landlord to the Applicants throughout their tenancy. That he had maintained the Property and cleaned it for them. He accepts that the Property did not have an HMO licence but asks the Tribunal to exercise its discretion to reduce the amount of rent repayable on the basis that the failure was a genuine and unintentional oversight.

19 The Respondent says he has no previous convictions under the terms of the 2004 Act. He states that he received no universal credit or housing benefit during the period of the tenancy. The rent was paid in full by the tenants. He states that he did not pay any outgoings or utility bills on behalf of the Applicants during the course of the tenancy.

## 20 **The Tribunal's Decision**

21 The Tribunal is satisfied that properly the Property should have been subject to an HMO licence during the term of the Applicants' tenancy. The Respondent quite properly accepts that is the case. The Respondent made an application for an HMO licence on 10 June 2019 and there is with the papers before the Tribunal a draft form of licence issued by the local authority. The Tribunal were told that the licence was granted some 2 weeks prior to the hearing but after the end of the term of the tenancy. In all the circumstances, the Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence pursuant to section 72(1) of the Housing Act 2004.

22 All parties accept and agree that rent was paid in full by the Applicants to the Respondent during the entire term of the tenancy. In all the circumstances the Tribunal is satisfied that this is an appropriate matter in which to make a Rent Repayment Order. The maximum that the Tribunal can order the Respondent to repay to the Applicants would be the rent paid for the entire 11 months of the tenancy.

23 In determining the amount to be repaid, the Tribunal must in particular take into account the conduct of both the Applicants and the Respondent, the financial circumstances of the Respondent and whether the Respondent has at any time been convicted of an offence to which Chapter 4 of the Housing & Planning Act 2016 applies.

24 In respect of the last point, the Respondent says he has not previously been convicted of an offence and there is no evidence that he had been.

- 25 The Applicants complain about the state and condition of the Property at the commencement of the tenancy and throughout its term. That they say is conduct on the part of the Respondent which the Tribunal should take into account. The Respondent makes the point that under the terms of the tenancy, that the Applicants were responsible for keeping the interior of the Property and the garden clean and tidy and free of rubbish. Mrs Sellman confirmed to the Tribunal at the hearing that the Applicants did inspect the Property prior to entering into the tenancy. That they were aware of its condition before the tenancy commenced. The Tribunal agrees upon the basis of the limited evidence before it, in particular from the photographs produced by the Applicants at the commencement of the tenancy that the Property was far from being in a clean and tidy condition. However, the Tribunal has to consider the Respondent's conduct in the context of his failure to obtain an HMO licence. The draft licence produced by the local authority which is in the bundle of documents and appears to have been produced on or about 29 July 2019, contains what appear to be standard conditions as well as special conditions requiring further action. Certain of those conditions do touch upon matters raised by Mrs Sellman in her email of 16 September 2018. For example, a requirement to keep the garden in a clean and tidy condition and order and a requirement to remove protruding nails/tacks from carpets to the stairs. There is reference in the special conditions (albeit these are draft conditions) to investigate damp ingress to the wall in the corner of the ground floor front bedroom.
- 26 In the view of the Tribunal, the majority of the entirely understandable issues raised by Mrs Sellman on behalf of the Applicants at the commencement of the tenancy in relation to the condition, repair and cleanliness of the property are not, in the context of the application before the Tribunal, relevant to the issue of conduct on the part of the Respondent. The conduct of the Respondent in not having a licence in place was not on the whole causative of the apparent condition of the Property at the commencement of the tenancy. That notwithstanding, had there been an HMO licence in place it is reasonable to assume that certain of the conditions set out in the draft HMO licence would have been a requirement of such a licence and which would or should have been in that event addressed by the Respondent. To that relatively marginal degree the condition of the Property during the course of the tenancy may have been slightly improved to the benefit of the Applicants. Accordingly the conduct of the Respondent in letting the Property without a licence probably had an, albeit relatively minor, effect on the Applicants enjoyment of the Property.
- 27 The Tribunal takes into account the fact that the Respondent is a professional landlord. He owns a large number of properties. He says that 6 of those are or were HMO properties. The Tribunal also has regard to the fact that the Respondent engaged professional letting agents to manage the Property for



him. That he relied upon those agents to ensure inter alia that all necessary licences were in place. In the circumstances the Tribunal accepts that this would not appear to have been a deliberate flouting of the law on the Respondent's part. The Respondent says that as soon as he became aware that the Property was not licensed he "*immediately caused an application for renewal to be made*". In fact he was notified by the local authority of the need for a licence on 25 March 2019 and did not make his application until 10 June 2019, a delay of some 11 weeks.

- 28 As to the conduct of the Applicants, it was entirely right and proper for them to make their applications. They paid the full rent throughout the term of the tenancy. However, they did inspect the Property prior to commencing the tenancy. They were undoubtedly aware of its condition before moving in. They were aware or should have been aware of the provisions in the Tenancy Agreement which placed the burden upon them to keep the garden and the interior of the Property clean and in good condition and repair.
- 29 The Tribunal enquired at the hearing of the Respondent's Solicitor as to the Respondent's financial circumstances. The Respondent said that he owns a portfolio of properties and he was not seeking to plead poverty. Nonetheless, a substantial Rent Repayment Order would cause him some cash flow problems. That if an Order were made he asked for time to pay, he requested 28 days.
- 30 The Tribunal is satisfied that it is appropriate for it to make a Rent Repayment Order. There is no presumption that the Order should be for the entire term of the tenancy. The Tribunal has regard to the fact that it was not until 1 June 2019 that the Respondent submitted his application for a licence. That he is a professional landlord. There are no deductions made for expenses incurred by the Respondent associated with the letting of the Property. The Respondent adduced no evidence of such expenses and confirms in his statement of case that he has not paid any such outgoings. Under the terms of the tenancy, the Applicants were responsible for the payment of services such as gas and electricity.
- 31 Having regard to the submissions made to the Tribunal both in writing and orally at the hearing and taking all relevant matters into account, the Tribunal determines that it would be appropriate to make a Rent Repayment Order for a period equivalent to 3 months of the term of the tenancy. The Tribunal therefore orders that the Respondent reimburse each of the Applicants the sum of £1560 (a total sum of £7800) to be paid within 28 days of the date of receipt of this Decision.

Dated this 4th day of September 2019

Judge N P Jutton

### **Appeals**

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.