



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

Case Reference : **BIR/00CR/HMK/2019/0054
BIR/00CR/HMK/2019/0078**

Subject Property : **80 Birmingham Road
Dudley
DY1 4RF**

Applicants : **(1) Mr Ryan James Ellison
(2) Miss Hollie Taylor Jukes**

Representative : **None**

Respondent : **Hulhomes Property Investments Ltd**

Representative : **London Property Licensing**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for
rent repayment orders**

Date of Inspection : **9th December 2019**

Tribunal Members : **Graham Freckelton FRICS (Chairman)
Robert Chumley-Roberts MCIEH, J.P**

Date of Decision : **12 December 2019**

DECISION

INTRODUCTION

1. This is a decision on an application for rent repayment orders under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Housing Act 2004 ('the 2004 Act') introduced licensing for houses in multiple occupation (HMOs). Originally, licensing was mandatory for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. Since 1st October 2018 all HMOs which are occupied by five or more persons forming two or more households, are subject to mandatory licensing. Under additional licensing, a local housing authority can require licensing for other categories of HMO in its area which are not subject to mandatory licensing. The local housing authority can do this if it considers that a significant proportion of these HMOs are being managed sufficiently ineffectively so as to give rise to one or more particular problems, either for the occupants of the HMOs or for members of the public.
3. Under section 72 of the 2004 Act a person who controls or manages an HMO that is required to be licensed (pursuant to mandatory or additional licensing) but is not so licensed commits an offence and is liable on summary conviction to a fine.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 73 of the 2004 Act, where a person who controls or manages an unlicensed HMO has been convicted, the (former) occupiers of the unlicensed HMO may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6th April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the (former) occupiers if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72 of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

6. The Applicants are one former and one current tenant of 80 Birmingham Road, Dudley, DY1 4RF ('the subject property').
7. By Applications dated 13th August 2019 from Miss Hollie Taylor Jukes and received by the Tribunal on 17th October 2019 and dated 15th August 2019 from Mr Ryan James Ellison and received on 24th September 2019 both the Applicants applied for rent repayment orders under section 41 of the 2016 Act. They alleged that the Respondent was controlling or managing the subject property, which, as a property occupied by five or more people forming two or more households, was a House in Multiple Occupation and required to be licensed.
8. Directions were issued on 9th October 2019 in respect of Mr Ellison's application and on 25th October 2019 in respect of Miss Jukes application following which submissions were made and copied to the other party.
9. It is apparent from the documentation received from the Applicants that Room 3 at the property was occupied by Miss Jukes on an Assured Shorthold Tenancy for a term of six months from 10th October 2018 at a rental of £395.00 per calendar month. Miss Jukes subsequently moved to Room 4 at a rental of £525.00 per calendar month from 24th July 2019.

10. By the same token the documentation also confirms that Room 6 at the property was occupied by Mr Ellison on an Assured Shorthold Tenancy for a term of six months from 22nd January 2018 at a rental of £450.00 per calendar month.
11. Both the Applications confirm that the Applicants are requesting rent repayments for the period from 11th October 2018 (in the case of Miss Jukes) totalling £5,423.78 and from 22nd January 2018 for a period of nineteen months (in the case of Mr Ellison).
12. Both Applications submit the same basic grounds for requesting a rent repayment:
 - a) The property was an unlicensed HMO.
 - b) There were concerns regarding a shortage of waste bins.
13. In addition, the Application from Miss Jukes submitted:
 - a) There was a lack of light in her bedroom.
 - b) There was no rear gate or secure fencing.
 - c) There were water issues.
 - d) There were no garden lights or CCTV.
 - c) The mattress was poor and there were broken facilities.
14. In the pre-hearing bundle, the Respondent (through his Representative), Mr Richard Tacagni of London Property Licensing submits that there is a Preliminary Issue in that the name of the Respondent should be changed to Hulhomes Property Investments Ltd, Company Number: 9194039, 2nd Floor, Regis House, 45 King William Street, London, EC4R 9AN. The Respondent submits that Mr Daniel Hulbert is the sole Director of the Company and that Mr Steven Smith resigned as a Director in December 2018.

THE LAW

15. The relevant provisions of the 2016 Act, so far as relevant, are as follows –

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 ...

(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
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

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.

...

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);

...

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 an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>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</i>
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- (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.

THE PROPERTY INSPECTION

16. The Tribunal inspected the subject property on 9th December 2019 in the presence of Miss Hollie Jukes (one of the Applicants), Mr Daniel Hulbert (the Director of the Respondent Company) and Ms Colette Preece of Genie Rooms, (the Respondent's Managing Agent).

17. The property comprises of a mid-terraced house situated on a busy road.
18. The property is built of traditional brick construction surmounted by a pitched slate roof. The elevations are part cement rendered.
19. Briefly the property comprises of entrance porch leading to a hallway with stairs off. Below the stairs is access to the cellar and further cupboard housing the pressurised hot water cylinder. There was a notice board in the hallway with all the statutory information displayed.
20. On the ground floor there are three letting bedrooms and a communal kitchen. On the first floor the landing leads to three further letting bedrooms.
21. The Tribunal has inspected Rooms 1, 3, 4 and 6 internally and understands that those rooms not inspected offer the same accommodation. All the rooms have en-suite shower rooms fitted to a similar standard having shower cubicles, wash hand basins and low flush WC's.
22. The central heating is provided by a wall mounted gas fired boiler located in the kitchen. All windows and external doors have sealed unit double glazed fittings. There is a fire alarm system fitted to the property with the control panel being located in the ground floor porch.
23. The Tribunal found the property to be in generally good condition although some minor items of repair were required.
24. To the front of the property is a small forecourt and to the rear a private garden with rear access via a shared driveway to Birmingham Road. The rear garden is not secure.

THE SUBMISSIONS

25. The matter was dealt with by a paper determination.

THE APPLICANTS SUBMISSIONS

Miss Hollie Jukes

26. Miss Jukes submitted that she sent an email to the Respondent's agent requesting a copy of the HMO licence, the gas safety certificate and conversion certificate for the property. As she failed to receive evidence of the HMO licence, she raised the issue further and was then made aware that an application had previously been made but was never completed. She was informed that a new application was made on 31st July 2019.
27. Therefore, Miss Jukes submitted that for the majority of her tenancy the Respondent had been running an HMO without a licence. Miss Jukes had checked the licence register and subsequently learned that the licence was granted on 12th September 2019. At the same time the property had no noticeboard or display of documents such as the gas safety certificate and contact details for the landlord as required until 7th October 2019.
28. Miss Jukes further submitted that she paid an Administration Fee of £175.00 upon moving into the property. However, as these costs have now been abolished by the government they should never have been charged and most of the administration work was actually carried out by herself.
29. It was further submitted that there was evidence of mismanagement in that the condition of the rooms let to Miss Jukes was poor at the commencement of her tenancy; there was inadequate waste storage facilities and inadequate collection of waste; there were an inadequate number of fire extinguishers and only one fire blanket; the passcodes to the rooms were not changed upon the

arrival of new tenants; the Respondent's maintenance staff had entered tenants rooms unannounced and without permission and that in respect of room 3 there was inadequate natural light.

30. In addition to this Miss Jukes submitted that there was a security risk to the garden as there was no back gate which allowed direct public access to anyone from the main road and three adjacent car parks and there was no automatic lighting or CCTV in the garden area.
31. Miss Jukes also submitted that there was substantial noise from cars on neighbouring car parks as a result of which she enquired about renting room 4 when it became available rather than room 3. Miss Jukes submitted that she was assured by the managing agents that the high noise level in room 4 was only due to rush-hour traffic and it was quiet for the rest of the time but this proved not to be the case and there was considerable traffic noise at all hours. As such Miss Jukes submitted that she was misled by this information in order to ensure that she agreed to rent the more expensive room.

Mr R Ellison

32. Mr Ellison submitted that he was making the application for a rent repayment order due to the absence of an HMO licence for the property whilst he was living there. Mr Ellison believed that the property required an HMO licence as it had six separate rooms being occupied by non-related tenants on separate tenancy agreements while sharing kitchen, cooking and washing facilities.
33. Mr Ellison further submitted that as at 14th October 2019 the Houses in Multiple Occupation Register from Dudley Council confirmed that the HMO licence was only issued on 12th September 2019 which was after the date he left the property on 16th August 2019.
34. Mr Ellison submitted that he was contacted by the Respondent's agent on 10th October 2019 regarding the Tribunal Application in which they stated that they had '*applied for everything required when it was needed to have been done*'.

THE RESPONDENT'S SUBMISSIONS

35. The Respondent submitted that as a preliminary issue the Respondent in this case was Hulhomes Property Investments Ltd and not Mr Hulbert and Mr Smith. It was submitted that the company owned the freehold of the property and there are no separate leaseholders. It was further submitted that the property was purchased in January 2018 by Hulbert Smith Property Investments Ltd which changed its name to Hulhomes Property Investments Ltd on 25th April 2019. Copies of the Register from Companies House were submitted to support this.
36. The Respondent explained that Mr Steven Smith resigned as a Company Director on 17th December 2018 and has no ongoing interest in the property. Mr Daniel Richard Hulbert was appointed as a Director on 29th August 2014 and has been sole Director since December 2018.
37. It was further explained that when Mr Ellison's tenancy agreement was signed in January 2018, it showed the landlord as 'Dan Hulbert' and 'Steven Smith' as at that time they were both Company Directors and signed the tenancy agreement on behalf of the Company.

38. When Miss Jukes tenancy agreement was signed in October 2018, it showed the landlord as Dan Hulbert and Steven Smith followed by the Company name. The agreement was signed by them both as Company Directors at that time.
39. It was further submitted that the tenants paid rent to LGI Asset Management Ltd trading as Genie Rooms and they acted as managing agents on behalf of the Company. The rent collected by them was then transferred to the Company business account. This, in the submission of the Respondent demonstrated that the Company are the person having control and managing the property and that under Chapter 4, Part 2 of the Housing and Planning Act 2016, a Rent Repayment Order can only be made against the landlord. It was therefore contended that in this case the landlord is the Company Hulhomes Property Investments Ltd and not the individual Company Directors as they did not manage the property or collect or receive the rent in a personal capacity.
40. To support this opinion the Respondent referred to the Upper Tribunal decision in *Keith Goldsborough and Robert Swart and CA Property Management Ltd, Mr and Mrs Gardner [2019] UKUT 331*. Although acknowledging that the circumstances are somewhat different the Respondent submitted that the case explores the identification of the correct respondent for the purpose of a Rent Repayment Order application.
41. Turning to the main part of the Application the Respondent accepted that the Applicants were both tenants of the property. It was accepted that Mr Ellison occupied room 6 on an Assured Shorthold Tenancy from 22nd January 2018 to 16th August 2019 paying a monthly rent of £450.00. It was also accepted that Miss Jukes occupied room 3 and then room 4 on an Assured Shorthold Tenancy from 10th October 2018. Whilst occupying room 3 Miss Jukes paid a monthly rent of £395.00 and when she moved to room 4 in July 2019, she paid a monthly rent of £525.00.
42. The Respondent submitted that the property did not require an HMO licence before 1st October 2018. However, it was acknowledged that the property fell within the scope of mandatory HMO licensing with effect from 1st October 2018 and that to ensure compliance the Respondent submitted an HMO Licence Application to Dudley Council on 28th September 2018. This was acknowledged by Dudley Council on 1st October 2018.
43. In July 2019 Dudley Council started processing the Licence Application for the property and at that time contacted the Respondent to request some updated safety certificates as some had expired since the Application was submitted in September 2018. The requested documents were sent to Dudley Council in accordance with their directions.
44. It was further submitted that on 1st August 2019 Dudley Council issued the Respondent with a Notice of Intention to grant an HMO Licence. This notice acknowledged that the licence application had been submitted on 28th September 2018. On 12th September 2019 Dudley Council approved the HMO Licence for the property and a copy of this together with other supporting documentation was included with the Respondent's submissions.
45. The Respondent submitted that under section 72 (4)(b) of the Housing Act 2004, it is a defence that at the material time, an application for a licence has been duly made in respect of the house and that the application was still effective. Section 72 (8) states that an application is still effective if it has not

been withdrawn and the authority have not decided whether to grant the application.

46. In this case it was submitted that the Application was made on 28th September 2018, was not withdrawn by the Respondent and the council did not decide to approve the licence until 12th September 2019. As such it was submitted that no offence was committed.
47. The Respondent further submitted that all necessary works had been dealt with appropriately and, in any event, are not directly linked to the application for a Rent Repayment Order. In particular there was no requirement to install CCTV outside the property and the property was fitted with a full fire detection and alarm system together with fire doors to provide adequate fire separation. There was a fire blanket in the kitchen and there was no specific requirement to have a fire extinguisher in the kitchen itself.
48. With regard to the concern expressed regarding noise from motor vehicles outside the curtilage of the property it was submitted that this was beyond the Respondent's control although double glazing has been fitted to minimise sound transmission. With regard to tenancy fees the ban on these came into force on 1st June 2019 and the commencement of Miss Jukes tenancy predated this ban.

DETERMINATION OF THE TRIBUNAL

49. In the first instance the Tribunal considered the preliminary issue raised by the Respondent in its letter of 1st November 2019 and in the formal submission. The Respondent submitted that the identity of the Respondent was incorrectly noted in that it should be Hulhomes Property Investments Ltd, Company Number: 9194039, Second Floor, Regis House, 45 King William St, London EC4R 9AN and not Mr Daniel Hulbert and Mr Steven Smith as noted on the Application and on the Tribunal's correspondence. The Respondent submitted that Mr Daniel Hulbert is the sole Director of the Company and that Mr Steven Smith resigned as a Director in December 2018.
50. The Tribunal considered the matter and noted that the name of the landlord on the tenancy agreements is either stated as being 'Mr Dan Hulbert, Mr Steven Smith and Hulbert Investments Ltd' or 'Mr Dan Hulbert and Mr Steven Smith'.
51. The Tribunal considered the Upper Tribunal decision of *Keith Goldsborough and Robert Swart and CA Property Management Ltd, Mr and Mrs Gardner [2019] UKUT* referred to by the Respondent. In brief the Upper Tribunal determined that for a Respondent to have any liability to an RRO that person must be a landlord entitled to receive the rent on their own account.
52. The Tribunal does not consider the fact that Mr Steven Smith had resigned as a Director of the Company to be a relevant consideration. For at least part of the time the Applicants were in occupation, Mr Smith was a Director of the Company. At the time of submitting the Applications the Applicants could not reasonably be aware that Mr Smith and Mr Hulbert were not the correct Respondent's and the validity of their Applications are not therefore adversely affected. However, based on the above the Tribunal determines that the Respondent is correctly identified as Hulhomes Property Investments Ltd and substitutes the company for the Respondents noted on the original Applications.

53. The Tribunal then considered the application in four stages –

- (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.
- (ii) Whether the Applicants were entitled to apply to the Tribunal for rent repayment orders.
- (iii) Whether the Tribunal should exercise its discretion to make rent repayment orders.
- (iv) Determination of the amounts of any orders.

54. In accordance with sections 43(1) of the 2016 Act, the Tribunal was not satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 72(1) of the 2004 Act. In fact, the Tribunal finds that the reverse is true as the Respondent applied for an HMO licence on 28th September 2018 (which was prior to the Act coming into effect on 1st October 2018) and that this application was subsequently granted by Dudley Council.

55. The Tribunal determined that the Applicants were not therefore entitled to apply for Rent Repayment Orders pursuant to section 41(1) of the 2016 Act.

56. However, the Tribunal is concerned that there is no evidence that the Respondent has, at any time, informed the Applicants that an Application for an HMO Licence had been submitted on 28th September 2018. Indeed, it is confirmed in the written submission of Mr Ellison (letter of 22nd October 2019) that he was only contacted by Genie rooms by a phone call on 10th October 2019 to inform him that *'they had applied for everything required when they needed to have and they do not recommend me wasting my money by going through with the case even though they were adamant they were not trying to persuade me not to.....'*

57. It is the opinion of the Tribunal that the Respondent should have informed the Applicants at the outset that an application for an HMO Licence had been submitted on 28th September 2018 and certainly the telephone call to Mr Ellison on 10th October 2019 should have made that clear. Instead it appears that the Respondent has been somewhat vague in the information given to the Applicants. Had the Respondent fully explained the position to the Applicants they would have had an opportunity to investigate the position and would possibly not have submitted the Applications. As it is, they have effectively wasted the application fees of £100.00 each.

58. The Tribunal therefore determined that the lack of basic information given to the Applicants has effectively cost them £100.00 each and the Tribunal therefore orders the Respondent to reimburse both Applicants with the sum of £100.00 under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 within 14 days of the date of this decision.

APPEAL

59. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Date: 12th December 2019

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber)