



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

Case References : BIR/00FY/HMF/2019/0003
BIR/00FY/HMF/2019/0004
BIR/00FY/HMF/2019/0005

Property : 171 Hawton Crescent, Nottingham, NG8 1EG

Applicants : Vasil Enchev
Mitchell Eighme
Matthew Gwyn Holley

Representative : Vasil Enchev

Respondent : Jaswinder Singh

Type of Application : An Application by Tenants for Rent Repayment Orders pursuant to section 41 of the Housing & Planning Act 2016.

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Mr R. Chumley-Roberts MCIEH JP

Date of Hearing : None. Paper determination.

Date of Decision : 21st November 2019

DECISION

Introduction

- 1 This is an application by three former tenants of a house in Nottingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied had been a registered House in Multiple Occupation ('HMO') but the HMO Licence expired on 31st December 2018 and had not been renewed. The tenants remained in occupation for several months but subsequently vacated and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 19th August 2019.
- 2 Former tenant and Applicant Mr Enchev requested an Order for the period 1st September 2018 to 31st August 2019. The other Applicants requested Orders but did not specify the periods for which Orders were requested.
- 3 The FTT issued Directions on 3rd September 2019, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b).
- 4 Mr Vasil Enchev made a Submission on 3rd October 2019 on behalf of all three tenants.
- 5 Mr Jaswinder Singh, the landlord, made a Submission on 14th October 2019.

Facts Found

- 6 The FTT inspected the property on 12th November 2019. Mr Singh was present but the former tenants had vacated and were neither present nor represented.
- 7 The house comprises the left hand side of a pair of semi-detached bungalows on a housing estate in Nottingham about one mile west of the city centre. The estate is accessed from the A6514 Middleton Boulevard about half a mile north of the Nottingham University campus. The house has no direct road frontage and is accessed by public footpath from Hawton Crescent. The immediate area is residential.
- 8 The accommodation comprises a hall and stairs, three bedrooms, kitchen, bathroom and veranda on the ground floor with two further bedrooms and a second bathroom on the first floor in a converted attic. There are gardens to the front and rear.

Relevant Law

Statute

- 9 Section 41(1) of the Housing and Planning Act 2016 provides:
'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.'
- 10 Section 40(3) of the Act lists 7 categories of offence and offence no.6 referring to section 95(1) of the Housing Act 2004 identifies the offence as:
'control or management of unlicensed house.'
- 11 Section 95 (1) of the Housing Act 2004 provides:
'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 ... but is not so licensed.'

- 12 The house is required to be licensed as a HMO as the area was originally designated by Nottingham City Council for selective licensing and since 1st January 2019 for additional licensing. It had previously been licensed under section 64 of The Housing Act 2004 from 13th October 2017 to 31st December 2018 but the license expired and had not been renewed.

Contract

- 13 Mr Enchev provided a copy document between Tristram's Lettings, an agency, dated 6th September 2018 that appeared to be a tenancy agreement between 'Mr Jay Singh', landlord, and 'Mr Vasil Enchev', tenant, for a period of 12 months from 6th September 2018 to 5th September 2019 at a rent of £299.00 per calendar month. It referred to a deposit of £300.00 in section 1 but under the heading 'Special Tenancy Conditions' stated '*The deposit will be used to offset the last month's rent*'.
- 14 Mr Enchev provided a Schedule of rent payments with the application advising that he had paid £898.00 on 7th September 2018 and nine further payments of £300.00 per month, i.e. effectively 12 months' rent of around £300.00 per month.
- 15 As a preliminary issue the Tribunal found this 'agreement' was not in fact an agreement at all and at best only a draft because:
- 1 the rent reserved in the draft was £299.00 per month but in fact the tenant had paid £300.00 pcm (evidenced by copy bank statements), i.e. the rent paid did not match the rent reserved;
 - 2 the landlord was shown in the draft as 'Jay Singh' but the landlord shown on the previous expired HMO license was 'Jaswinder Singh' who provided the Submission for the application i.e. there was a question of the landlord's identity;
 - 3 the copy 'Agreement' had only been signed by Mr Enchev, not the landlord and no action could be brought against a party who was not a signatory to a signed document and
 - 4 in his Submission, Mr Enchev stated '*The landlord, Mr Jaswinder Singh, and I signed a seperate contract, to that of Tristram's one, of which he did not provide a copy for me to hold*', in other words, Mr Enchev said there had been another Tenancy Agreement of which this was not a copy.

It is not clear why the draft had been provided. Nevertheless, it was not disputed by Mr Enchev's or Mr Singh's Submissions that Mr Enchev had been a tenant and had paid £3,598.00 for a year's rent.

Submissions

Vasil Enchev

Applicant

- 16 Mr Enchev said in a brief statement that he rented the house from 6th September 2018 to 1st September 2019 when it was required to be licensed and had not been, accordingly he requested a Rent Repayment Order for the full period of his occupation. He provided copies of bank statements showing periodic payments to 'Tristrams' (letting agents) and 'Jay Singh' as evidence.

Respondent

17 Mr Singh made four points:

- 1 he refuted the claim for the period to 31st December 2018 as he had a valid HMO licence until that date.
- 2 He said Mr Enchev had not been a student and was required to pay Council Tax of £119.50 per month as part of the £300.00 monthly rent, i.e. the rental element was only £180.50 per month.
- 3 Mr Enchev had damaged the house and furniture and he asked the Tribunal to deduct the cost of remedying this (claimed at £1,890) from any Rent Repayment Order;
- 4 Mr Singh was a single parent which was a personal circumstance to be taken into account by the Tribunal.

18 Tribunal Decision

The Tribunal considered the points and finds as follows:

- 1 Mr Enchev had been a tenant from 1st September 2018 to 31st August 2019, during which time he paid rent of £300.00 per calendar month.
- 2 The landlord was required to have a valid license for the property and by not having a license he committed an offence from 1st January 2019. There was no evidence that the license had been renewed although Mr Singh said he had made an application which the Council had rejected as incomplete. Accordingly, the Tribunal finds beyond reasonable doubt that an offence was committed from 1st January 2019 to 1st September 2019 in respect of Mr Enchev's tenancy.
- 3 The Tribunal are unable to deduct any amount in respect of alleged damage to the property. The Tribunal have no jurisdiction in this. Any costs of this nature would need to have been claimed from a deposit which would have been the subject of a separate dispute with the tenant at the date of vacation and in the event of non-agreement, settled by the appropriate arbitration authority, e.g. the Tenancy Deposit Scheme.
- 4 There was no evidence that Mr Enchev was required to pay Council Tax to Mr Singh and no deduction is made on this ground.
- 5 The Tribunal makes no allowance for Mr Singh's status as a single parent. The Tribunal are required to take account of the landlord's and tenant's conduct, the landlord's financial circumstances and any previous convictions under section 44 of the Housing and Planning Act 2016 but there was no evidence to show any financial hardship by Mr Singh.
- 6 Accordingly, the Tribunal makes a Rent Repayment Order requiring Mr Jaswinder Singh to pay eight months' rent of £300.00 per month, i.e. £2,400 (Two Thousand Four Hundred Pounds), to Mr Vasil Enchev with immediate effect.

Mitchell Eighme

Applicant

- 19 Mr Eighme produced no tenancy agreement showing the dates of his tenancy. He produced a photocopied bank statement showing a cash withdrawal of £1,800 on 12th March 2019 but no evidence to show that any rent had been paid to Mr Singh for this property.

20 Respondent

Mr Singh acknowledged that Mr Eighme had been a tenant but said he had received no rent from him in 2019 and in addition Mr Eighme produced no evidence to the Tribunal that he had paid any rent.

21 Tribunal Decision

With no proof of any tenancy to Mr Eighme or evidence of rental payments, the Tribunal are unable to make an Order. Accordingly the Tribunal dismisses Mr Eighme's application.

Matthew Gwyn Holley

(identified as 'Matt Holley' on the Application but full name appears on copy bank statements sent to the Tribunal)

Applicant

- 22 Mr Holley produced no tenancy agreement showing the dates of his tenancy. He produced photocopied bank statements showing payments of £782.29 to 'Tristrams' on 20th July 2018, various cash withdrawals and payment of £767.00 to 'Jubilee Letting' on 6th June 2019, but no evidence to show that any other rent had been paid to Mr Singh for this property.

23 Respondent

Mr Singh acknowledged that Mr Holley had been a tenant and had paid 'the correct amount directly into the landlord's account' on 6th June 2019, but said there was no evidence that he had paid any other rent.

24 Tribunal Decision

The Tribunal considered the points made and finds as follows:

- 1 Mr Holley had been a tenant of the property.
- 2 The landlord was required to have a valid license for the property and by not having a license he committed an offence from 1st January 2019. There was no evidence that the license had been renewed although Mr Singh said he had made an application which the Council had rejected as incomplete. Accordingly, the Tribunal finds beyond reasonable doubt that an offence was committed from 1st January 2019 to the date of Mr Holley's vacation.

- 3 The Tribunal makes no allowance for Mr Singh's status as a single parent. The Tribunal are required to take account of the landlord's and tenant's conduct, the landlord's financial circumstances and any previous convictions under section 44 of the Housing and Planning Act 2016 but there was no evidence to show any financial hardship by Mr Singh.
- 4 Mr Holley had paid rent of £767.00 to the landlord's account on 6th June 2019 as acknowledged by the landlord. No other payments are evidenced.
- 5 Accordingly, the Tribunal makes a Rent Repayment Order requiring Mr Jaswinder Singh to pay £767.00 (Seven Hundred and Sixty Seven Pounds) to Mr Matthew Holley with immediate effect.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman, First-tier Tribunal Property Chamber (Residential Property)

Date: 21 November 2019

Application to the Upper Tribunal

If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.