



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

Case Reference : CHI/29UC/HMK/2019/0011

Property : 7 Glen Iris Avenue, Canterbury, Kent CT2 8HP

Applicant : Adam Bengueyfield, Brett Taylor, Matthew Lurkins, Kimberley Cherrie-Rees

Representative :

Respondent : Rashmin Patel, Naresh Patel, Bharay Patel

Representative :

Type of Application : Application for a Rent Repayment Order by tenant
Sections 40,41,42,43 & 45 of the Housing and Planning Act 2016

Tribunal Member : Judge JA Talbot

Date of Decision : 12 August 2019

DECISION

The Application

1. On 13 May 2019 the Tribunal received an application under Section 41 of the Housing and Planning Act 2016 (“the Act”) from the Applicants for a rent repayment order.
2. The amount(s) of rent that the Applicants seek to recover from the Respondent are:

Adam Bengeyfield	£3,685
Brett Taylor	£3,690
Matthew Lurkins	£3,320 (amended)
Kimberley Cherrie-Rees	£3,375
Total	£14,070

3. The Applicants have also applied for reimbursement of their application fee of £100.
4. Directions were issued by Judge Tildesley OBE on 18 June 2019. Both parties complied with Directions to provide further evidence and statements. Neither party asked for an oral hearing so Judge Tildesley directed that the application was to be determined on the papers.
5. The Directions also contained an explanation of the Tribunal’s jurisdiction to make a rent repayment order, and the issues for the Tribunal to consider. In this decision, after setting out the background facts, I will deal with each issue in turn.

Background Facts

6. The Applicants were joint tenants of 7 Glen Iris Avenue, Canterbury (“the Property”) under an Assured Shorthold Tenancy agreement dated 21 March 2018, for a term commencing on 1 July 2018 and expiring on 30 June 2019. There was also a 5th joint tenant who is not an Applicant.
7. The rent was £2,000 per month payable in advance on the 1st of every month. There was a rent reduction for July and August 2018 when half rent of £1,000 was payable, presumably because this was a letting to students to retain the property until the start of the next academic year. The rent was not inclusive of utilities or council tax (clause 2.16).
8. Three of the Applicants have provided bank statements showing payments of rent by standing order into an account named RNB Property Account, as required by the tenancy agreement. It would appear they agreed the proportion of £2,000 to be paid by each of them. RNB Property is presumably a managing agent (the Respondents mention that they employ a letting agent to find tenants). One of the Applicants, Brett Taylor, made payments to a person named Dikesh Patel. This is not

explained. Dikesh Patel is not one of the Respondent landlords but is presumably a family member.

9. The Respondent landlords are Rashmin Patel, Naresh Patel and Bharat Patel, all of the same address, 42 Welling Way, according to the tenancy agreement. They describe themselves as “three elderly private landlords that only own one other property together”. They are presumably related. It is not known whether that other property is 42 Welling Way, or another rental property, but that is not material to my decision.
10. There is some discrepancy between the parties as to the condition of the property at the start of the tenancy. The Applicants say that it was in a sorry state in that it had not been cleaned since the departure of the previous tenants and the garden was overgrown. The Respondents dispute this and say that the house was cleaned. They do not mention the garden, but the Applicants say it took some time for the Respondents to accept responsibility for it, and I note a copy email from Harshil Patel (presumably another family member) to the Applicants dated 5 December 2018 says: “the weather wasn’t suitable for garden work so it had to be left. It may now be after the winter when the landlords are able to do it”, which is over 5 months from the start of the tenancy. I make no finding of fact about whether the interior of the property had been cleaned or not.
11. There is further disagreement about the grill function on the oven. The Applicants say it was not working and never fixed. The Respondents say the grill was working when they undertook maintenance. This is not borne out by the email of 5 December which says: “the grill: they tried to fix it but a specific part is needed to do so (this may take a bit of time to get sorted). The landlords were looking at providing a small countertop grill in the meantime but noticed there was one already there”. I make no finding as to whether the grill was eventually fixed or not but I accept there was an alternative counter-top grill available.
12. A further disagreement concerns the shower curtain. The Applicants say it was “caked in mould” and after reporting it were told how to prevent further mould from forming, so they purchased their own shower curtain which they left behind. They included a photograph. The Respondents deny this, and also deny any complaint was made. They rely on an inventory 2018/19, which is marked “partially checked by tenants”. In the column next to the item “shower curtain on hooks, no mould” is written “yes”.
13. However, it is not clear from this extract whether this was the inventory given to the Applicants at the start of the tenancy, or a check at the end when they left. It is also not clear who wrote the notes next to each item. I am inclined to the view that it was at the end, because items for “Bedroom U/S Middle” such as “waste bin emptied: yes” and “desk – clean, drawers emptied: yes” are more likely to indicate a check by the landlord that the named tenant, Adam Bengeyfield, had left his room in good order.

14. I note that an email of 31 August 2018 from Harshil Patel to Kimberley Cherrie refers to maintenance carried out at the property. In relation to the bathroom, it states: “repainted ceiling, removed mould and cleaned the bathroom” which suggests there was a problem with mould and cleanliness. It is possible then that the shower curtain was mouldy. Overall and on balance I prefer the Applicants’ evidence, so the reference to “no mould” on the shower curtain in the inventory, is likely to refer to the one purchased by the Applicants and left behind.

The issues for the Tribunal to consider

Has the landlord committed a specified offence?

15. Turning now to the issues, the tribunal must first be satisfied beyond reasonable doubt that the landlord has committed one or more of seven specified offences. The relevant offence in this case is under s.72(1) of the Housing Act 2004, “control or management of an unlicensed HMO”, which means House in Multiple Occupation. There is no suggestion that the Respondents have committed any other offences.
16. The property was a two-storey house let to 5 single tenants who were not related to each other. It therefore meets the standard test for an HMO in that it consisted of one or more units of accommodation that do not consist of a self-contained flat or flats; the living accommodation was occupied by persons who do not form a single household as their only or main residence; and they shared one or more of the basic amenities.
17. In a letter dated 27 June 2019, Timothy Lovell MCIEH, Private Sector Housing Development Manager at Canterbury City Council, confirmed that the property may be subject to HMO licensing following the extension to the mandatory scheme which came into force on 1 October 2018. Before that date it was not required to be licensed. He also confirmed that, at that date, the Council had not granted an HMO licence in relation to the property, or received an application.
18. The Respondents do not dispute that the property is an HMO which should have been licensed after 1 October 2018 but was unlicensed.
19. The Respondents have not been convicted of the specified offence under s.72(1) and no financial penalty has been imposed.
20. However, I am satisfied beyond reasonable doubt from the evidence above that the Respondents have committed the specified offence of control or management of an unlicensed HMO.

Was the offence committed in the period of 12 months ending with the day on which the application was made?

21. The offence was committed from 1 October 2018, when the property became subject to the mandatory licensing scheme, and continued until

the expiry of the tenancy on 30 June 2019. The application was made on 13 May 2019. The applicable period is 1 October 2018 to 30 June 2019 which was within 12 months.

Have the tenants paid rent during the applicable period?

22. The Applicants have all paid their rent monthly by standing order, see para.8 above. Mr Lurkins acknowledged that he was late in making his payment for June 2019 and so has reduced his claim from £3,735 to £3,320.

What is the maximum amount that can be ordered under s.44(3) of the Act?

23. The total amount of rent received by the Respondents was £14,070. This is the maximum amount that can be ordered.

Should the Tribunal reduce the maximum amount it could order?

24. The Tribunal may make a rent repayment order under s.73(5) of the Act. The amount should be “such amount as the Tribunal considers reasonable in the circumstances” (s.74(5)). When exercising its judgment, the Tribunal must take into account the total amount of relevant payments, the conduct and financial circumstances of the landlord, whether the landlord has been convicted of any specified offence at any time, and the conduct of the occupiers (s.74(6)).

25. In the leading Upper Tribunal case of *Parker -v- Waller and others*, [2012] UKUT 301 (LC), the President held that the purpose of the provision was threefold: (1) to provide for further penalty in addition to any fine; (2) to help discourage illegal letting of property by landlords; and (3) to resolve problems that would arise from a withholding of rent self-help by tenants. He held that s.74(6) was not a complete list of matters to be taken into account: any fine imposed is a relevant factor; there is no presumption or starting point of 100% reimbursement of payments made; the length of time the offence was committed and the culpability of the landlord are both relevant factors.

26. Applying these principles in this case, I find as follows:

The conduct of the landlord

27. The President also said, in *Parker -v- Waller*, where allegations of harassment, intimidation and serious disrepair were made by the tenants: “I do not think that conduct on the part of the landlord that is unrelated to the offence under section 72(1) that underlines the RRO could entitle the tribunal to increase the amount of the RRO above the level that would otherwise be justified. To do so would be to punish the landlord for matters that form no part of the offence”. He concluded: it is only [the landlord’s conduct] in relation to his failure to obtain a licence that requires to be considered”.

28. It is not entirely clear, however, when the Respondents became aware that the property was subject to HMO licensing from 1 October 2018, and why they did not apply for the licence earlier. They say in their statement that the first communication they received from Canterbury City Council was 26 April 2019, but this does not mean they were previously unaware of the requirement.
29. I note in an email dated 20 June 2019 to the Council following receipt of the letter, Harshil Patel says (on behalf of the landlords) : “they rented the property to a group of students in March 2018 but during the summer they decided they would like to change it into a 4 bedroom property once the tenants had left in June 2019 due to potential administration of HMO licensing ... they are in some confusion as the tenancy was already signed before October 2018 but couldn’t remove the 5th tenant until they all moved out in June 2019”.
30. This suggests to me that the Respondents (albeit mistakenly) thought that if they reduced the number of occupiers from 5 to 4, they would avoid the HMO licensing requirements, and that they considered this possibility in the summer of 2018, so they were at least aware that the property could be an HMO. It seems that they did not seek advice from the Council (or even their managing agents) at this point but decided simply to wait until the end of the tenancy in June 2019 before taking any action.
31. That said, I do not overall regard the Respondents as culpable in the sense of having an intention of deliberately flouting the law. It is regrettable that they did not fully inform themselves of the position, but I have regard to the fact that the Respondents do not appear to be “professional landlords”, as I accept their evidence that they only own one other property. They applied on 10 July 2019 (after the end of the tenancy) for an HMO licence, and on 12 July Canterbury CC sent notice of intention to grant a licence to Rashminkumar Patel, subject to conditions (replacement of bedroom doors and adequate provision of electric sockets). The Council stated the house was reasonably suitable for multiple occupation for 5 persons and that the proposed management arrangements appeared satisfactory.
32. Although I have analysed above the evidence from both parties about various allegations concerning the condition of the property and some landlord’s fixtures and fittings, I do not consider these as relevant to the amount of the order, given the guidance in *Parker -v- Waller*. Even if I were to have regard to them, in my view they are all minor in nature, and the tenants have made no other complaints.

The conduct of the tenants

33. There is no evidence whatsoever of poor conduct on the part of the tenants. They all paid their rent in full and on time. The email exchanges

that have been provided to me are reasonable in content and civil in tone, both from the tenants and the landlords.

The financial circumstances of the landlords

34. I have limited information about this. The Respondents say in their statement that they are elderly, they are not “high earners” and rely on the rental income. It is not clear whether, either individually or collectively, they have any other sources of income. They say they would be “significantly impacted” by any rent repayment order but have provided no documentary evidence to this effect.
35. In terms of the property, the income was £2,000 per month for 10 months and £1,000 for the first 2 months, totalling £22,000 over 12 months. They have a mortgage on the property with a balance of £115,000 as at 31 March 2019. The monthly repayments are interest only, with monthly payments ranging from £268.53 to £309.38, the majority being around £280. These payments are quite low compared to the rental income. The only other declared expenditure was a British Gas HomeCare cover with a renewal price of £338.13 as at 23 October 2019.
36. It is not possible to calculate the exact profit from 1 October 2018 to 30 June 2019 as I have only been given the mortgage repayment figures from April 2018 to March 2019, but it is a reasonable sum.
37. I note that on 02/10/2018 and 11/12/2018, the Respondents made 2 extra lump sum mortgage payments of £10,000 each, a total of £20,000. This is a significant sum, which they have paid out of choice, and suggests that the Respondents, even if not “high earners”, have spare capital at their disposal.

Have the Respondents at any time been convicted of an offence under s.72(1) in relation to the HMO?

38. The answer to this is no.

Any other factors

39. Looking at the examples given in *Parker-v-Waller*, I also take into account that the Respondents have not had a fine imposed; the length of time that the offence was committed was relatively short, being 9 months from 1 October 2018 to 30 June 2019; there was no payment of utilities; they were not professional landlords.

Decision and Order

40. Having fully considered all the factors discussed above, I take the view that the appropriate Rent Repayment Order should be 50% of the total amount claimed of £14,070, namely £7,035.

Rent Repayment Order

41. The Tribunal therefore orders repayment by the Respondents to the Applicants, to be paid within 28 days of the date of this decision, as follows:-

Adam Bengeyfield	$£3,685 \times 50\% = £1,842.50$
Brett Taylor	$£3,690 \times 50\% = £1,845.00$
Matthew Lurkins	$£3,320 \times 50\% = £1,660.00$
Kimberley Cherrie-Rees	$£3,375 \times 50\% = £1,687.50$

42. The Tribunal allows the application for reimbursement of the application fee of £100, to be paid to Adam Bengeyfield, the lead Applicant.
