



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

Case Reference : CHI/43UM/HMK/2019/0003

Property : 10 Arnold Road, Woking, Surrey GU21 5JU

Applicant : Mr David Knight & Miss Alicia Gamez

Representative :

Respondent : Steven Gauthier

Representative :

Type of Application : Application for a rent repayment order by tenant - Sections 41(1) & 41(2) of the Housing and Planning Act 2016
Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016

Tribunal Member(s) : Judge Tildesley OBE
Mr P Turner Powell FRICS

Date and venue of the Hearing : Havant Justice Centre, Elmleigh Road,
Havant PO9 2AL
6 August 2019

Date of Decision : 10 September 2019

DECISION

Summary of Decision

1. The Tribunal orders Mr Gauthier to repay Mr Knight and Miss Gamez the sum of £2,142 plus £150 fees within 28 days from the date of this decision.

Background

2. Mr Knight and Miss Gamez applies under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO) in the sum of £12,631.25.
3. Mr Knight and Miss Gamez have rented 10 Arnold Road Woking (“the property”) from Mr Gauthier under the terms of an assured shorthold tenancy since February 2015. The rent for the property was £1,175 per month and had not increased since 16 March 2016. The tenancy was terminated by mutual agreement on the 26 April 2019.
4. The property is a two bedroom semi detached house and was within a Selective Licensing Scheme implemented by Woking Council from 1 April 2018 for all private residential landlords. The property was unlicensed for the period 1 April 2018 to 21 February 2019. Mr Gauthier accepted that he did not have a licence for the property during this period.
5. The Tribunal issued directions for the parties to exchange their statements of case. 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.
6. The Tribunal heard the application on 6 August 2019. Alasdair Mcclenahan of Justice for Tenants appeared for Mr Knight and Miss Gamez who were not in attendance because they had recently moved home to Spain. Mr Gauthier appeared in person. The Tribunal admitted two bundles of documents in evidence. The Tribunal did not inspect the property.

Consideration

7. The Housing Act 2004 introduced Rent Repayment Orders (RROs) as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RROs to a wider range of “housing offences”. The rationale for the expansion was that Government wished to support good landlords who provide decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

8. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.
9. The Tribunal is satisfied that Mr Knight and Miss Gamez met the requirements for making an application under section 41 of the Act. Mr Knight and Miss Gamez alleged that Mr Gauthier had committed the offence of control or management of an unlicensed property under section 95(1) of the Housing Act 2004 whilst the property was let to them. An offence under section 95(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 April 2018 to 21 February 2019 which was in the period of 12 months ending on the day in which Mr Knight and Miss Gamez made their application on 15 March 2019.
10. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Has Mr Gauthier (the Landlord) committed a specified offence?

11. The Tribunal must first be satisfied beyond reasonable doubt that the landlord has committed one or more of the seven specified offences. The relevant offence in this case is under section 95(1) of the Housing Act 2004, “control or management of an unlicensed house”.
12. Mr Knight and Miss Gamez occupied the property under the terms of an assured shorthold tenancy from February 2015 to 26 February 2019. The rent payable under the agreement was £1,175 per calendar month from March 2016.
13. On 7 March 2019 A Cooper of Housing Standards, Woking Borough Council wrote to Mr Knight and Miss Gamez informing them that the property was within a selective licensing area and that the property was unlicensed for the period 1 April 2018 to 21 February 2019.
14. Mr Gauthier admitted that the property was unlicensed during the period in question. Mr Gauthier explained that the property was originally his home which he had to leave to take an assignment overseas. In his absence the property was managed by Townends, a nationwide estate and letting agents under a fully managed property contract at a cost of 10 per cent of the rental income. Under the contract Townends was responsible for all communications and repairs in relation to the property.
15. Mr Gauthier said he had not been in Woking throughout 2018 and had unfortunately missed the information regarding the new requirement for selective licensing. Mr Gauthier stated that Woking Borough Council did not write to him directly about selective licensing until February 2019.

16. Mr Gauthier said the only information he received about selective licensing was a cryptic email from Townends dated 2 March 2018 which was generic and addressed to Dear valued client. The email did not mention Mr Gauthier by name or identify his property or the street in which it was situated. The email stated amongst other matters, *“As a landlord, your address and/or name details are linked to either the council tax records held by the Council or with one of the three tenancy deposit schemes in relation to a property in the Selective Licensing Area”*.
17. Mr Gauthier stated that he oversaw the email but could not recall reading it. At the time the email was sent Mr Gauthier was a full-time student at the University of Cambridge. The receipt of the email coincided with the end of Lent Term which according to Mr Gauthier was a very busy period with many assignments.
18. Mr Gauthier said that it was only on the 18 February 2019 when he was made aware by Townends that the property was subject to selective licensing. As soon as he found out Mr Gauthier applied for a licence on 22 February 2019. The licence was granted on 29 April 2019 for a period of 12 months. The licence recorded that the property was suitable for four persons, the proposed licence holder and manager of the house are fit and proper persons and the proposed management arrangements for the house are satisfactory.
19. Mr Gauthier stated that he paid £560 for the licence. Mr Gauthier pointed out that if he had applied before the selective licensing came into effect he would have paid no fee and the licence would have been granted for five years instead of 12 months. Mr Gauthier maintained that it was a genuine oversight on his part, and that Townends should have been more proactive when they became aware of the selective licensing requirements.
20. The Tribunal finds that
 - The property was required to be licensed under the selective licensing scheme introduced by Woking Borough Council from 1 April 2018.
 - The property was not licensed from 1 April 2018 to 29 April 2019.
 - Mr Gauthier was the owner of the property and received rent via his agent. The Tribunal is satisfied that Mr Gauthier met the definition of a person managing the house.
 - Mr Gauthier applied for a licence on 22 February 2019 and that the application remained effective until 29 April 2019.
 - The Tribunal is satisfied that Mr Gauthier’s failure to ensure that the property was licensed during the relevant period

was not deliberate and it was a genuine oversight on his part. The Tribunal, however, considers that if Mr Gauthier had read the email from his agent with more care he would have realised that the property was subject to selective licensing. In those circumstances the Tribunal holds that Mr Gauthier did not have a reasonable excuse for his contravention of the licensing requirements.

21. Given the above findings the Tribunal is satisfied beyond reasonable doubt that Mr Gauthier has committed the specified offence of control or management of a house contrary to section 95(1) of the Housing Act 2004 from 1 April 2018 to 21 February 2019.

What is the maximum amount that Mr Gauthier can be ordered to pay under a rent repayment order (section 44(3) of the 2017 Act)?

22. Mr Knight and Miss Gamez paid Mr Gauthier rent of £1,175.00 per month for their tenancy at the property.
23. The maximum amount payable by Mr Gauthier is the rent paid by Mr Knight and Miss Gamez during the period of the commission of the offence which was from 1 April 2018 to 21 February 2019. The Tribunal has calculated the rent paid during the relevant period at £12,631.25¹.
24. As far as the Tribunal is aware no universal credit was paid in respect of rent for the tenancy.

What is the Amount that Mr Gauthier should pay as rent repayment order?

25. In determining the amount the Tribunal must, in particular, take into account the conduct and financial circumstances of Mr Gauthier in his capacity as landlord, whether at any time Mr Gauthier has been convicted of a housing offence to which section 40 applies, and the conduct of Mr Knight and Miss Gamez.
26. The Tribunal finds the following facts in relation Mr Gauthier:
 - a) Mr Gauthier had let the property because of a move overseas in connection with his employment. Mr Gauthier did not let any other properties and was at the moment living in rented accommodation with his family. Mr Gauthier had removed the property from the letting market and intended when his current tenancy ends to return to the property to occupy it as

¹ Ten full months rent from 1 April 2018 to 31 January 2019 = 10 x £1,175 = £11,750 plus 21/28 days of February 2019 = 0.75 x £1,175 = £881.25

his family home. The Tribunal is satisfied that Mr Gauthier was not a professional landlord.

- b) Mr Gauthier put in place proper arrangements for the management of the property in his absence. Mr Gauthier entered into a full managed contract with a reputable firm of estate agents, which were given authority to deal with all matters relating to the tenancy. Mr Gauthier provided the agents with a £300 float to respond to emergencies.
- c) Mr Knight and Miss Gamez alleged throughout the tenancy the property suffered from damp and mould which had an adverse effect on Miss Gamez' health, and that Mr Gauthier through his agent failed to respond promptly to issues of disrepair. Mr Gauthier supplied detailed evidence to rebut the allegations of Mr Knight and Miss Gamez.

d) The Tribunal finds the following facts in respect of the allegations:

- The tenants prior to Mr Knight and Miss Gamez reported no problems with damp and mould.
- The copy of the inventory report including photographs when the property was first let to Mr Knight and Miss Gamez in February 2015 and a copy of the check out report in April 2019 recorded no major issues with damp and mould. The February 2015 report recorded two minor instances of mildew. The check out report in April 2019 mentioned a water mark on the bedroom ceiling.
- In May 2017 Mr Gauthier's agent had commissioned a report from Kenwood PLC to investigate the complaints of Mr Knight and Mr Gamez regarding damp and mould. Mr Reid, a technical surveyor, inspected the property and concluded that the bedroom and the office was suffering from condensation which was mainly caused by inadequate ventilation and heating of the property. Mr Gauthier offered to purchase a dehumidifier to help with the condensation but the offer was not taken up by Mr Knight and Mr Gamez.
- Mr Knight and Miss Gamez said that an Environmental Health Officer from the Council had inspected the property and had indicated to them that she would issue an improvement notice against the landlord to take remedial action to deal with the damp problems in the property. Mr Knight and Miss Gamez supplied an email dated 17 May 2019 from the Council to substantiate their

assertion. The email recorded that the Council had no record of improvement notices being served, and that the Officer concerned had been placed on special leave prior to the issue of the notices. Mr Gauthier pointed out that he had not been contacted by the Council regarding improvement notices. The Tribunal considers the evidence on improvement notices equivocal. The Tribunal is satisfied that if the Council had intended to issue improvement notices it would have been in touch with Mr Gauthier by now about steps he would be required to take to remedy the defects in the property.

- Miss Gamez supplied redacted copies of her medical record for the period 16 January 2019 to 27 June 2019. The extracts seen by the Tribunal did not support Miss Gamez' assertion that damp and mould in the property was the cause of her respiratory ailments.
- Mr Knight and Miss Gamez said the major causes of the damp and mould were the breakdown of the boiler which they said in February 2018 had been out of action for two months and the absence of double glazing. Mr Gauthier acknowledged that the boiler had been out of operation between 8 to 24 January 2017, and 19 December 2017 to 4 January 2018. In respect of the first breakdown Mr Gauthier's evidence showed that the initial contractor could not fix the issue, the second contractor cancelled the appointment on the 18 January 2018 and finally after contacting six other contractors a third contractor repaired the boiler on 24 January 2017. Mr Gauthier stated that the delay in repairing the boiler on the second occasion was a result of public holidays and contractor unavailability. A contractor repaired it on 4 January 2018 who reported that the tenants had set the boiler at maximum pressure which the boiler could not cope with. According to Mr Gauthier, the contractor explained to Mr Knight and Miss Gamez the operations of the boiler. Mr Gauthier disagreed with Mr Knight and Miss Gamez' assertions regarding the contribution of single glazing to the damp and mould problem. The Tribunal acknowledges that Mr Knight and Miss Gamez would have suffered considerable discomfort whilst the property was without heat during the middle of winter. The Tribunal, however, considers that Mr Gauthier did his best to meet his obligations as a landlord to remedy the problem. The Tribunal does not place weight on the absence of double glazing from the property. Mr Knight and Mr Gamez would have been aware of this when they took on the tenancy. They remained at the property for four years.

- Mr Knight and Miss Gamez alleged that there were other maintenance issues with the property which were not addressed promptly by Mr Gauthier and his agent. The issues included a leak in the kitchen, broken bannister and fridge door and extractor which occurred in 2017. Mr Gauthier produced evidence that he and his agent acted upon the complaints in a reasonable period of time.
 - There appeared to be only one complaint of disrepair during the period that the property was unlicensed. This concerned the toilet flush and kitchen draw which were repaired promptly at a cost of £132.
 - Mr Gauthier had not increased the rent for the property since March 2016.
- e) The Tribunal is satisfied that Mr Gauthier attended to his obligations as a landlord in a responsible manner, and that the evidence supported a conclusion that the property was in a reasonable state of repair.
- f) During the period that the property was unlicensed Mr Gauthier was in a receipt of a bursary for his full time education and the rental income from the property until 31 August 2018, and thereafter he was in receipt of a well paid salary. Mr Gauthier is currently between jobs and he supports three dependants who include two young children.
- g) Mr Gauthier stated that his expenses incurred on the property during the period 1 April 2018 to 21 February 2019 were the management fee of 10 per cent of the rent plus VAT (£1,263 + £253), landlord's insurance £270.51, repair of toilet flush and kitchen draw (£132) and selective licence fee of £560.
- h) Mr Gauthier had not been convicted of a housing offence to which section 40 applied.
27. Mr Knight and Miss Gamez had paid the rent for the property in accordance with the agreement during the four years that they lived there. The Tribunal noted that there is a current dispute with the last two weeks of the rent and the return of the deposit.
28. Mr Gauthier disputed the statement of Mr Knight and Miss Gamez being model tenants. Mr Gauthier pointed out that their claims regarding disrepair of the property were exaggerated, that they had not co-operated with Townends regarding visits by contractors, that they were largely responsible for the mould that was present in the property and they had left it in a very dirty state when they vacated the property.

29. It was apparent to the Tribunal at the hearing that Mr Gauthier was hurt by the claims that he was somehow responsible for the health issues raised by Miss Gamez. Mr Gauthier was unaware that Miss Gamez suffered from bad health until he received the bundle. It was at this point that Mr Gauthier applied for leave to adduce rebuttal evidence regarding the condition of the property which was granted by the Tribunal. The Tribunal considers an unfortunate consequence of adversarial proceedings is that the parties overstate their cases. The Tribunal has found that Mr Gauthier is a responsible landlord but there will be times such as the boiler breakdown when despite his efforts the repair is not effected as quickly as it should have been. Likewise there was no convincing evidence that Mr Knight and Miss Gamez had persistently contravened their obligations as tenants under the agreement. There was no evidence that their conduct contributed to Mr Gauthier's failure to licence the property.

Decision

30. Mr Mcclenahan for the Applicants pointed out that the wording of section 44 of the 2016 Act was different in material respects from the former provisions in the 2004 Act for dealing with RROs. Mr Mcclenahan said that under the 2016 Act the Tribunal is not required to order such an amount it considers reasonable in the circumstances. Mr Mcclenahan also said that there was no legislative basis for deducting the landlord's outgoings from the rent claimed for repayment. The implication of Mr Mcclenahan's submissions was that the Tribunal should order the maximum amount of rent claimed unless there were good reasons to depart from that amount.
31. Mr Gauthier contended that the rent repayment legislation was aimed at rogue landlords who deliberately let sub-standard accommodation. Mr Gauthier argued strongly that he did not fall within that category and that his failure to licence the property was a genuine oversight.
32. The Tribunal accepts Mr Mcclenahan's submission that the wording of section 44 is different from that of the previous legislation dealing with RROs. The Tribunal, however, observes that section 44 requires the Tribunal to take into account the conduct and financial circumstances of the landlord. The Tribunal agrees with Mr Gauthier's assessment that he is not a rogue landlord who is in the habit of letting sub-standard accommodation. The Tribunal found that Mr Gauthier was not a professional landlord and that he took his responsibilities as a landlord seriously. Further the Tribunal found that the property was in a reasonable state of repair.
33. The Tribunal determined that Mr Gauthier's failure to ensure that the property was licensed during the relevant period was not

deliberate and it was a genuine oversight on his part but he should have taken more care. The Tribunal, however, considers that the thrust of the legislation requires Mr Gauthier to repay at least part of the rent that he received whilst the property was unlicensed for a relatively long period of almost 11 months.

34. Having weighed up the findings the Tribunal considers that an order of 20 per cent of the gross profit that Mr Gauthier received in rent during the period is an appropriate amount to reflect the degree of Mr Gauthier's culpability for managing an unlicensed property.
35. The Tribunal decides that the management fee, costs of landlords' insurance and the cost of the repair to the toilet flush and kitchen drawer but not the selective licensing fee should be deducted from the gross rent. The Tribunal has not considered the tax position relevant to its calculation.
36. The Tribunal orders Mr Gauthier to repay Mr Knight and Miss Gamez the sum of £2,142².
37. Mr Knight and Miss Gamez paid £100 application fee and £200 hearing fee. The Tribunal has a wide discretion to order Mr Gauthier to reimburse Mr Knight and Miss Gamez with the Tribunal fees. In view of the decision, the Tribunal considers that Mr Gauthier should reimburse 50 per cent of the fees (£150).
38. The Tribunal Orders Mr Gauthier to pay the sums due to Mr Knight and Miss Gamez £2,142 and £150 which makes a total of £2,292 within 28 days.

² £12,631 - (£1,263 + £253) - £271 - £132 = £10,712 x 20% = £2,142

RIGHTS OF APPEAL

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.