



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

Case Reference: CHI/43UM/HSE/2019/0002

Property: 6 Eve Road, Woking, Surrey GU21 5JT

Applicant: Woking Borough Council

Respondent: Richard Pitts

Type of Application: For Rent Repayment Order –
Housing and Planning Act 2016
("the Act")

Tribunal Members: Judge A Cresswell (Chairman)

Hearing: On the Papers

Date of Decision: 24 July 2019

DECISION

The Application

1. The Respondent, Richard Pitts, is the owner of the Property, 6 Eve Road, Woking, Surrey GU21 5JT, which was let to a tenant. He was required to have a selective licence for the Property, the Property being within an area designated for Selective Licensing under Section 88 Housing Act 2004, but did not do so. Rent due from the tenant was paid by the Applicant, Woking Borough Council (“the Council”), as housing benefit. The Applicant has applied for a rent repayment order (“RRO”) under section 41 of the Housing and Planning Act 2016 (“the Act”).

Summary Decision

2. The Tribunal orders the Respondent to repay to the Applicant housing benefit payments in the sum of £2,000.

Directions

3. Directions were issued on 17 June 2019. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
4. The Directions also included notification to the parties that the application would be determined without a hearing unless either party objected. No such objection has been received.
5. This determination is made in the light of the documentation submitted in response to those directions.

The Law

6. The statutory provisions are set out in the below Annex.
7. Section 41 of the Housing and Planning Act 2016 provides that a local housing authority may apply to the First-tier Tribunal (“FtT”) for a RRO against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an offence committed under section 95(1) of the Housing Act 2004 (section 40(3) of the 2016 Act). [SEP]
8. Section 43 provides that the FtT may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies. [SEP]
9. Section 45 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under section 95(1) of the 2004 Act the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence. [SEP]
10. By section 45(4) in determining the amount, the Tribunal has 'in particular' [SEP] to take account of the following factors: (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. [SEP] The use of the words 'in particular' suggests that these are not the only considerations the Tribunal is to take into account. [SEP]

Agreed History

11. The Tribunal first records the relevant history specifically agreed by the parties or where there is no challenge made to the case stated by the Applicant.
12. The property is within an area designated from 1 April 2018 for Selective Licensing in accordance with Part 3 Housing Act 2004.
13. The Respondent is owner of the property.

14. There was no licence for the property during the period 1 April 2018 to 19 July 2018 inclusive.
15. The property was occupied under a tenancy by 2 adults and 2 children during that period, the Respondent being the landlord.
16. £2645.86 in housing benefit was paid during that period.

The Issues Before the Tribunal

The Respondent

17. The Respondent stated that he had never been convicted of an offence and always kept the property in good repair.
18. He believes that he did apply for a licence in February 2018. Living in Australia, he received no advertising or leaflets about the proposed changes.
19. After mortgage and letting agent fees, there is money left for repairs and maintenance only. He received nothing by post or phone since sending his contact details on 17 February 2018 until receiving a draft licence in January 2019. He only learnt that his application was unsuccessful when receiving an email from his letting agents on 5 June 2018.
20. He only owns half of the house, the other half being owned by Lena Stewart, so should be responsible for only half of any rent repayment.
21. The monies were not paid directly to him in the first place.
22. Once informed of the mistake, he responded quickly and was prepared to pay for 3 weeks.

The Applicant

23. The Applicant states that a public consultation took place between 1 February 2017 and 20 April 2017 which was followed by publicity events and media advertising and letters to all properties within the selective licensing area in January 2018 and a flyer was enclosed with all Council Tax bills in March 2018. As businesses, the Applicant expects landlords to keep up to date with relevant information and legislation.
24. A form was issued to the property on 15 January 2018 to ascertain whether it was owner-occupied or let out to tenants. That form was returned signed by the Respondent stating that he was the owner and that the property was privately rented and giving his address in Australia.
25. On 20 February 2018, an email was sent to the Respondent by the Council explaining how to apply for a licence.
26. On 22 February 2018, the letting agents emailed the Respondent explaining how to apply for a licence.
27. On 5 June 2018, the letting agents informed the Respondent that no application had been received.
28. On 6 June 2018, the Respondent made an online application, but made no payment, so that the application was invalid.
29. On 13 June 2018, the Applicant via email asked the Respondent to re-submit the application with payment of the fee of £560.
30. On 17 June 2018, the Respondent emailed asking what the fee was for.
31. On 25 June 2018, the Applicant replied explaining the fee and informing the Respondent that he had committed an offence and that the tenants could apply for a RRO and stated that the application was not complete/valid.
32. On 26 June 2018, the Respondent replied stating that he was not happy with the administration or paying the fee.
33. On 17 July 2018, the Applicant wrote to inform the Respondent that his application was invalid.

34. Payment was made on 20 July 2018 when the application was re-submitted, this being a valid application.

The Tribunal's Findings and Decision

35. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under section 95(1) of the 2004 Act from 1 April 2018 to 19 July 2018 inclusive ("the relevant period") after which he made a valid application for a licence.
36. The property is within an area designated by the Applicant under Section 80 from 1 April 2018 as subject to Selective Licensing. It was occupied by the Respondent's tenant throughout the relevant period; the tenancy was not an exempt tenancy (Section 79). The Respondent did not have a licence for the property throughout the relevant period.
37. The Respondent does not argue that either of the exemptions in Sections 62 or 86 are applicable.
38. The Respondent argues that he was joint owner of the property, but has provided no actual evidence of another owner and the Tribunal notes that he has himself produced in evidence the form completed by him with his signature stating that the property is owned by him and privately rented.
39. The Respondent asserts that he did apply for a licence, but has provided no evidence to support that contention. That contention is denied by the Applicant on the basis of its own records and the history of communication between the parties. The Respondent failed to rebut the Applicant's denial with any supporting documentary evidence either when the denial was made directly to him by the Applicant or as part of his presentation for this application. The Tribunal finds it very significant that he has never questioned or mentioned what happened to an earlier payment of £560 with the claimed February application and this significance is made even more stark by his subsequent failure to send payment with "later" applications in breach of Section 87 and his questioning as to why he should make payment at all. The Tribunal has concluded from that evidence that there never was an application made in February 2018 and that applications made prior to 20 July 2018 were not valid applications in that they failed to comply with Section 87 because they were not accompanied by the requisite fee.
40. The Applicant served Notice of Intended Proceedings on the Respondent on 15 February 2019 (Section 42).
41. The table in Section 45 provides that for an offence at row 6 of the table in section 40(3) the amount must relate to universal credit paid in respect of the period not exceeding 12 months during which the landlord was committing the offence.
42. In accordance with Section 45(4), the Tribunal has taken account of ^[1]_[SEP]the conduct of the landlord and the tenant, ^[1]_[SEP]the financial circumstances of the landlord, and ^[1]_[SEP]whether the landlord has at any time been convicted of an offence to which this Chapter applies. ^[1]_[SEP]There is no information to suggest any improper behaviour by the tenant; the Respondent landlord failed to make an application in the face of advice from the Applicant and his letting agent to do so and then was reluctant to make payment. Apart from saying where the rental income goes, there is no information available for me to consider relating to the Respondent's financial circumstances. There is no evidence of any other convictions.
43. The offence here was of a relatively short duration.

44. There is persuasive authority in 2 cases dealing with the RRO provisions under the earlier 2004 Act, being **Parker v Waller and others** (2012) UKUT 301 (LC) and **Fallon v Wilson and Others** (2014) UKUT 300 (LC). The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a Tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. Account should be taken of payment for outgoings, such as utilities. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.
45. The Tribunal has weighed all of the relevant factors and concluded that the Respondent should make a partial repayment of the monies paid in Housing Benefit for the relevant period. He knew he needed a licence and yet failed to apply for one; when he did apply, he did not make payment and queried why he should do so. There is little profit involved in an offence over a relatively short period of time when mortgage payments are considered, but the Tribunal has discounted mortgage payments from its consideration as Parliament could not have meant to deal more leniently with those buying a property than those who actually own the property unencumbered. Using the figures supplied by the Respondent, which appear to be reasonable in sum, he has paid out about £100 per month for letting fees and about £50 per month for management fees and £84 for utilities, a total of about £350 in lettings, £175 in management fees and £84 for utilities, a total, therefore, of about £609. Taking a rounded view of all of the circumstances, the Tribunal orders the sum of £2,000 is to be repaid to the Applicant.
46. The Directions required the Applicant to inform the Tribunal by 2 July 2019 whether it wished an order for reimbursement of the Tribunal fee. It did not do so. The Tribunal makes no order for the reimbursement of the £100 fee.

A Cresswell (Judge)

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.

Annex**Housing and Planning Act 2016****Section 40**

(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).....

(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
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry

2	Protection from Eviction Act 1977	Section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	Section 30(1)	failure to comply with improvement notice
4		Section 32(1)	failure to comply with prohibition order etc
5		Section 72(1)	control or management of unlicensed HMO
6		Section 95(1)	control or management of unlicensed house
7	This Act	Section 21	breach of banning order

(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).

Section 41

(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. ^[1]_[SEP]

(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 ^[1]_[SEP]

(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.^[1]

Section 42

Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and

(c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (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).

Section 44

(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.

(3) The amount that the landlord may be required to pay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less ^[11]_[SEP]

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period. ^[11]_[SEP]

(4) in determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant, ^[11]_[SEP]

(b) the financial circumstances of the landlord, and ^[11]_[SEP]

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies. ^[11]_[SEP]

Section 45

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord,
- (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.

Housing Act 2004**95 Offences in relation to licensing of houses under this Part**

(1) 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 (see section 85(1)) but is not so licensed.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to [a fine].

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [the appropriate tribunal]) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

62 Temporary exemption from licensing requirement

(1) This section applies where a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

86 Temporary exemption from licensing requirement

(1) This section applies where a person having control of or managing a Part 3 house which is required to be licensed under this Part (see section 85(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

87 Applications for licences

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify.
- (3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.
- (4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).
- (5) The appropriate national authority may by regulations make provision about the making of applications under this section.
- (6) Such regulations may, in particular--
 - (a) specify the manner and form in which applications are to be made;
 - (b) require the applicant to give copies of the application, or information about it, to particular persons;
 - (c) specify the information [or evidence] which is to be supplied in connection with applications;
 - (d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);
 - (e) specify cases in which no fees are to be charged or fees are to be refunded.
- (7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account--
 - (a) all costs incurred by the authority in carrying out their functions under this Part, and

(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).