



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

Case Reference : **MAN/00DA/HMF/2018/0001**

Property : **34 Ash Road, Leeds, LS6 3JF**

Applicants : **B. Leonard; S. Flinders; C.Hind;
P.Murphy; I.Parker**

Respondent : **P.J. Hiles**

Type of Application : **Housing Act 2004, Section 73(5)**

Tribunal Member : **P. Barber (Tribunal Judge)
E. Scull (Tribunal Member)**

DECISION AND REASONS

DECISION

- **The Tribunal makes a Rent Repayment Order in the following terms:**

○ Mr B Leonard	£909.13
○ Ms S Flinders	£909.13
○ Mr C Hind	£2084.62
○ Ms P Murphy	£2084.62
○ Mr I Parker	£2274.13

REASONS

1. This is an application by the former tenants of the Respondent, Mr Hiles, their former landlord, for a Rent Repayment Order (RRO).
Facts
2. The Applicants occupied as tenants, pursuant to a tenancy agreement dated 18 April 2017, 34 Ash Road, Leeds LS6 3JF, between the beginning of August 2017 through to the end of June and in some cases July 2018. A period during which the property was required to have a licence under part 2 of the Housing Act 2004 as a house in multiple occupation, but did not.
3. At the commencement of the tenancy, Mr Hiles did not have a licence in place under the 2004 Act. The property did previously have a licence for use as a HMO but that licence expired on the 26 June 2017 and despite the Local Authority bringing the requirement of the need to renew the licence to his notice, Mr Hiles did not renew that licence until a new licence was applied for on 10 July 2018.
4. There was no dispute about the amount of rent and the fact that each of the applicants had paid their rent. The monthly rent for each tenant who had exclusive use of one room (C. Hind, P. Murphy and I. Parker) was £325. The monthly rent of B.Leonard and S. Flinders, who shared a room, was £162.50 each.
5. The rent included an amount for services: gas, electricity, water and internet, which could not be included in the RRO and it was agreed between the parties that the amounts set out on page 105 of Mr Hiles' bundle of documents represented an accurate reflection of the actual costs incurred in the provision of those services at the property. Accordingly, over the year in question gas and electricity came to £2797.75; water rates came to £629.65 and internet costs came to £479.81. The total amount of the costs was therefore £3907.21 or a monthly average of £54.27 per person. We determined that in fairness to all occupants, regardless of whether they shared a room or were party to these proceedings (I. Cliffe was not an applicant) the cost of services should be split equally, i.e. 1/6 each.

6. The applicants occupied the property as follows:

- | | |
|-----------------|-------------------------------------|
| a. B Leonard | 12 months (01/08/2017 – 31/07/2018) |
| b. S Flinders | 12 months (01/08/2017 – 31/07/2018) |
| c. Charles Hind | 11 months (01/08/2017 – 30/06/2018) |
| d. Page Murphy | 11 months (01/08/2017 – 30/06/2018) |
| e. Isaac Parker | 12 months (01/08/2017 – 31/07/2018) |

7. Mr Hiles pleaded guilty to an offence under section 72(1) of the Housing Act 2004 on the 01 March 2019 and he received a conditional discharge of 12 months.

The Applicable Law

8. Section 41 of the Housing and Planning Act 2016 provides that a tenant may apply to the First-tier Tribunal (FtT) for a RRO against a landlord who has committed an offence to which the 2016 applies. The 2016 Act applies to an offence committed under section 72(1) of the Housing Act 2004 (section 40(3) of the 2016 Act).
9. 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.
10. Section 44 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under section 72(1) the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence.
11. By section 44(4) in determining the amount, we had 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.

Application of facts to the law and our Reasons

12. On the basis of the evidence we were satisfied beyond reasonable doubt that Mr Hiles has committed an offence to which the 2016 Act applies. We were also satisfied that it was appropriate to make a RRO against Mr Hiles and in favour of each of the Applicants.
13. On the basis of the above facts and law we decided that there was no poor conduct on the part of the tenants such that that might have an impact on the amount of the RRO. Mr Hiles' conduct was not described by anyone as poor with the exception that he was aware of the need to obtain a licence but failed to do so. We also noted that Mr Hiles pleaded guilty to an offence at the first opportunity. Accordingly, we took note of the fact that Mr Hiles was not guilty of poor conduct to any appreciable extent.

14. In relation to his financial circumstances, we noted that Mr Hiles claimed not to make much money out of his letting business, however he did not provide any detailed accounts or other material (such as his tax returns) as suitable evidence of that claim. We noted that he has recently sought to purchase a new car and runs other cars and he told us that he has a property portfolio of some £2.8 million with outstanding mortgage liabilities of some £2.2 million. Accordingly, by his own reckoning he holds capital of some £600,000. Accordingly, we were not in a position to take into account to any significant extent, Mr Hiles' claim to impecuniosity so as to reduce the level of the RRO by an appreciable amount.
15. Finally, we noted that Mr Hiles has been convicted of an offence and we take this into account accordingly.
16. Based on all of the evidence and the factors identified above, we decided that an appropriate level for the RRO would be set at 70% of the monthly rent less 1/6th of the monthly utility charges per occupant. This produced the following calculations in relation to each applicant:
 - a. B. Leonard – 12 (months) x (£162.50 - £54.27) x 70% = £909.13
 - b. S. Flinders – 12 (months) x (£162.50 - £54.27) x 70% = £909.13
 - c. C. Hind – 11 (months) x (£325 - £54.27) x 70% = £2084.62
 - d. P. Murphy - 11 (months) x (£325 - £54.27) x 70% = £2084.62
 - e. I. Parker – 12 (months) x (£325 - £54.27) x 70% = £2274.13
17. It follows that we make a Rent Repayment Order in the above amounts.
18. By section 47 of the 2016 Act, a Rent Repayment Order is recoverable as a debt. If Mr Hiles does not make a payment to each of the Applicants in the above amounts, which he now owes them, or fails to come to an arrangement for payment of the above amounts which is reasonable and agreeable to each of the Applicants, then the Applicants can recover such amounts in the county court.

Signed



Dated

02 April 2019

Phillip Barber, Judge of the First-tier Tribunal