



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

**Case Reference** : **MAN/00DA/HMF/2018/0002, 0005-0008**

**Property** : **166 Ash Road Leeds LS6 3HD**

**Applicant** : **1. Mr. Alexander Isherwood  
2. Miss Catherine Croome  
3. Mr. Benjamim Merrywood  
4. Miss Kaisha Rimmer  
5. Mr. Joseph Wilson**

**Respondent** : **Mr. Simon Lewis**

**Type of Application** : **Housing and Planning Act 2016 Section 41(1)**

**Tribunal Members** : **Mr John Murray LLB  
Ms Aisling Ramshaw MRICS**

**Date of Determination** : **20 May 2019**

**Date of Decision** : **21 May 2019**

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**DECISION**

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## **ORDER**

1. The Tribunal makes Rent Repayment Orders against the Respondent in favor of the Applicants Miss Catherine Croome, Mr. Benjamin Merrywood, Miss Kaisha Rimmer and Mr. Joseph Wilson in the sum of £3500 per applicant.'
2. The Tribunal orders that the Respondent pay each applicant names above £100 in respect of their application fee.

## **INTRODUCTION**

3. The Applicants made applications to the Tribunal to make Rent Repayment Orders against the Respondent pursuant to s41(1) Housing and Planning Act 2016 in relation to 166 Ash Road Headingley Leeds LS6 3HD ("the Property").
4. The Tribunal made directions on 7 January 2019 (in relation to the four 2018 applications) and 20 March 2019 in relation to the single 2019 application) and set out clearly within those directions the issues that the Tribunal would need to consider.
5. The Applicants were directed to provide full details of the alleged offence, with supporting documentation from the Local Authority, if available, and a calculation of the amount of rent paid (excluding any Universal Credit/Housing Benefit).
6. The Respondent was urged to take legal advice. He was to provide a statement setting out reasons for opposing the application, evidence of the amount of rent received, correspondence relating to any application for a licence any licence now granted, a statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order, and evidence of any outgoings paid by the Landlord for the let property.
7. The Tribunal convened to determine the application without the need for a hearing.

## **LEGISLATION**

8. Rent Repayment Orders are governed by Chapter 4 Housing and Planning Act 2016 the relevant sections of which read:

## 40 Introduction and key definitions

- (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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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	Housing Act 2004	section 32(1)	failure to comply with prohibition notice etc
5	Housing Act 2004	section 72(1)	control or management of unlicensed HMO
6	Housing Act 2004	section 95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	section 21	breach of banning order

### **S41 Application for rent repayment order**

(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.

(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

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

### **43 Making of rent repayment order**

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

### **44 Amount of order: tenants**

(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.

<b>If the order is made on the ground that the landlord has committed</b>	<b>the amount must relate to rent paid by the tenant in respect of</b>
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—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

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

(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.

## **EVIDENCE/SUBMISSIONS FOR THE APPLICANT**

9. The Applicants provided a tenancy agreement dated 8 March 2017 made between the Respondent (although he was not named, it being prepared by his Agents A -Team Properties), and 6 tenants, being the five named Applicants within these applications, and another tenant, Matthew Pedley-Thomson, who is not a party to the current applications.

10. The Tenancy agreement was for a twelve-month term commencing 1st July 2017, to 30th June 2018. Rent was a sum of £83 per person, per week, to be paid as a single payment of £1798.33 in advance from the 1st day of each month. Rent was to include utilities, (gas, electricity, water) Council tax TV licence and internet/TV subscription. An additional clause provided that rent was to be reduced to £78 per person, per week from 1st October 2017, when a sixth tenant (Alexander Isherwood) joined the original five.

11. A statement was provided by Sabrina Su, a Senior Housing Officer employed by Leeds City Council, dated 16th January 2019. She confirmed that her main role was to deal with the licensing and regulation of Houses in Multiple Occupation under Part 2 of the Housing Act 2004.
12. Ms. Su stated that the HMO Licence for the Property had expired on the 10th July 2017, and new licence application was not received until 9th July 2018. She had written to Mr. Lewis on the 28th February and the 11th May 2018 to remind him that his licence had expired. He was sent email newsletter on the 24th May 2018 to advise him that the Council were visiting unlicensed properties where HMO licences had not been renewed, and warning that anyone who had not renewed their licence would face prosecution or a civil penalty.
13. Ms. Su visited the property on the 30th May 2018 and established that the Property met the criteria for mandatory licensing. She confirmed that the tenants were the five applicants within this application, and Matthew Pedley-Thomson.
14. Ms. Su had interviewed the Respondent under caution by letter on the 9th July 2018. He admitted he was sorry and accepted responsibility for licensing. He had enclosed his HMO Licence application form. A prosecution file had been prepared and was (at the time of the statement) expected to be heard at Leeds Magistrates Court on 6th March 2019. No evidence was provided as to the outcome of the criminal proceedings.
15. The Applicant Alexander Isherwood provided no evidence to support his claim, over and beyond his application. The Applicant Kaisha Rimmer stated in a letter dated 15th April 2019 to the Tribunal that two of the former tenants, Matthew Pedley Thomson and Alexander Isherwood, had settled their "rent claims" with the Respondent directly in the sum of £3000 and £2500 respectively and therefore revoked their applications. No other evidence was before the Tribunal of any application having been made by Mr Pedley -Thomson, and there was no formal notification of withdrawal of Mr. Isherwood's application.
16. The Applicant Catherine Croome provided a statement stating that the Property had been rented without an HMO licence for a full twelve-month period, less twelve days. She stated that rent was paid monthly, at £360 for July to September, and £338 for October to June, totaling £4122. She provided bank statements in support. She reduced this amount for the first ten days of the tenancy (during which there was a licence in force) by £120, or £12 per day. Her bank statements show payments of a total of £4372; less deposit of £150, and reference fee of £100 would be £4122. She sought repayment of £4,000, of her original £4,122 paid.

17. The Applicant Benjamin Merrywood said that he had paid a total sum of £4279.68; including a deposit of £150, total rent therefore for the 12 months being £4129.68
18. The Applicant Kaisha Rimmer stated that she had paid £4121.01 for the year, which was confirmed in her supporting bank statements.
19. The Applicant Joseph Wilson provided a statement that he had made payment of £3956.37 in total to A-Team Properties, by way of ten instalments of £359.67, and a further payment of £359.67 made by a payment sent to Kaisha Rimmer on 30th June, for a total of £509.67 which included £150 deposit., which is supported by his bank statements provided.

## **SUBMISSIONS FOR THE RESPONDENT**

20. The Respondent made the following submissions:
21. In a letter to the Tribunal dated 13th February 2019 he stated that the tenants had paid their rent to an agent which included payment for utilities and none of those monies were received by him. He provided statements which he stated showed the actual rent received by him. He said that the rent received by him had commission of 12% deducted to pay the agents, A-Team Properties.
22. He stated that he received the following for each tenant
  - (a) Catherine Croome: Gross rent after utility costs £3341.01 less 12% managing agent fees: £2940.01 rent received.
  - (b) Ben Merrywood: Gross rent after utility costs £2795 less 12% managing agent fees: £2459.60 rent received.
  - (c) Kaisha Rimmer: Gross rent after utility costs £3038.01 less 12% managing agent fees: £2673.45 rent received.
  - (d) Joseph Wilson: Gross rent after utility costs £2184 less 12% managing agent fees: £1921.92 rent received.
23. He made no reference to rent received from Alexander Isherwood, which appeared to confirm that Mr. Isherwood's claim for a Rent Repayment Order was indeed settled between them both, as Miss Rimmer had stated.
24. The Respondent's figures were disputed by the Applicant Kaisha Rimmer, under a letter dated 15th April 2019 she stated that some rent payments were missing from the Respondent's document.

25. He stated that he has no previous offences and had always tried to conduct himself in a fair and diligent manner as a landlord and will endeavour to ensure that the situation never happened again. He provided no information as to his financial circumstances.

## **DETERMINATION**

26. The Tribunal must be satisfied beyond reasonable doubt that the Respondent has committed one of the offences as set out in s40(3); that the housing, subject matter of the offence, was at that time let to the Applicants, and that the offence was committed by the Respondent in the period of twelve months ending with the date the application was made.
27. The Tribunal must determine the applicable twelve-month period, the maximum amount that can be ordered under section 44(4) of the Act, and, what account must be taken of:
- (a) The conduct of the Landlord and the Tenant
  - (b) The financial circumstances of the Landlord
  - (c) Whether the Landlord has at any time been convicted of an offence to which Chapter 4 of the Act applies.
28. The tenancy duration for the applicants was from 1st July 2017 to 30th June 2018. The offence was committed within the period of twelve months before the applications.
29. The Respondent's HMO licence had expired on the 10th July 2017 (10 days into the tenancy) and not been renewed until after the tenancy expired. The maximum period the Rent Repayment Order could be made for would be 355 days.
30. The Upper Tribunal confirmed in *Parker v Waller & Ors* [2012] UKUT 301 (LC) that account should be taken of Utilities paid for by the Landlord. There is no reason however to exclude payments made to Agents.
31. The Tribunal accepted the amounts evidenced by the Applicants as what they had actually paid in rent as being a realistic assessment of what each had paid.
32. No evidence was provided by the Respondent of how much the bills for utilities (water, gas, electricity, internet and television) were for the property. The Tribunal using its own experience expertise and judgment estimated that such costs would be in the region of £300 per month, or £50 per tenant, which would be £600 per tenant over the course of a twelve month period.



33. There was no evidence before the Tribunal as to the amount of fine (if any) imposed upon the Respondent in the Magistrates Court. There was no evidence of his financial circumstances, despite his having been directed to provide the same.
34. The Tribunal was given no evidence of the conduct on of any party to be taken into consideration. The Tribunal noted that the Respondent had been given plenty of warnings by the Local Authority that his licence had expired, and he offered no explanation of why those warnings were not heeded. He had shown contrition, and he had apparently settled rent repayment claims by two of the tenants.
35. In all the circumstances and taking into account the total rent paid by each tenant over the 355 day period, less £600 for utilities, council tax and services, the Tribunal orders a Rent Repayment Order of £3500 per applicant for Miss Catherine Croome, Mr. Benjamin Merrywood, Miss Kaisha Rimmer and Mr. Joseph Wilson.
36. The Tribunal further orders Reimbursement of the application fees for those four applicants in the sum of £100 each.
37. In relation to application MAN/00DA/HMF/2018/0005-0008 made by Alexander Isherwood the Tribunal has reason to believe that his application has been withdrawn but has no formal confirmation of this. In the circumstances no order is made in relation to this application, but should this information be incorrect Mr Ishwerwood shall have liberty to apply back to the Tribunal for further directions.

**Signed: Judge J N Murray**

**Dated: 21 May 2019**