



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

Case Reference : **MAN/00DA/HMF/2019/0082**

Property : **53 Temple Avenue, York YO10 3RS**

Applicant : **Mr Leif Peter Talorc Barlow Olsen**
Applicant's Representative : **Ms Judith Olsen**

Respondent : **Mr. James Whitaker**

Type of Application : **s72(1) Housing Act 2004**
s41 Housing and Regeneration Act 2016

Tribunal Members : **Mr. J Murray LLB**
: **Ms. S D Latham**

Date of Determination : **27 November 2019**

Date of Decision : **5 December 2019**

DECISION

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DECISION

1. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £572.18. The Respondent shall also reimburse the application fee of £100 to the Applicant.

APPLICATION

2. The Applicant issued an application to the Tribunal dated 23rd September 2019 for a Rent Repayment Order against the Respondent pursuant to 41 of Housing and Planning Act 2016 (“the Act”) in relation to 53 Temple Avenue York YO10 3RS (“the Property”) on the basis that during the period in question (1 October 2018 to 11 March 2019) the Respondent was controlling or managing an unlicensed HMO under s72(1) Housing Act 2004.

DIRECTIONS

3. Directions were made by a Procedural Judge on the 10 October 2019.
4. The parties were both directed to file and serve bundles containing statements and supporting evidence, with the Respondent to the Application being directed to file and serve first. Provision was made by the Directions for the application to be considered on the papers alone and without an inspection.

THE LEGISLATION

5. The Legislation is contained in s72(1) of the Housing Act 2004 and s41 of the Housing and Regeneration Act 2016 which read as follows:

s72 Housing Act 2004 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is 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.

s41 Housing and Planning Act 2016 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.

- (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.

THE SUBMISSIONS

THE CASE FOR THE APPLICANT

6. The Applicant asserted that the Respondent had control and management of an unlicensed HMO from 1 October 2018 to 12 April 2019, and that any HMO licence that might have been obtained in respect of that period was null and void because the Property did not meet the relevant fire safety regulations.
7. The Applicant's tenancy ran from 1 July 2018 midday to 28th June 2019 midday, and the Applicant sought a Rent Repayment Order for £5082 being 362 days/ 51.88 weeks rent at £98 per week. The Applicant stated he understood that there might be a deduction for utilities. The Applicant further sought the applicant fee of £100 to be paid by the Respondent.
8. The Applicant stated that from 1 April 2019 to 12 April 2019 the Applicant's room was entirely out of use, but the rent was not repaid by the Respondent for this period.
9. The Property was described as a five bed roomed house being part of a terrace, and the Applicant was one of five tenants living in the Property, occupying the front ground floor bedroom. It was submitted that the Property did not have a valid HMO licence until 12 April 2019.
10. The Applicant stated that the City of York Council online HMO registered showed a licence was issued on 11 April 2019, and backdated to 11 March 2019. He produced a copy of the online certificate, and a photograph of the certificate exhibited in the house, which both confirmed these dates.
11. Officers of the Council had told the Applicant that due to volume of applications from 1 October 2018, many licences were issued late, but backdated to the date of application. The Applicant believed the delay in the licence for the Property was because the Respondent could not provide a fire assessment, as the work was not completed until 12 April 2019. The Applicant believed the HMO Licence should not have been backdated and should have run from 12 April 2019. The Applicant quoted the City Of York Council application form, which states that "any

application submitted without copies of these documents ...” (including a Fire Risk Assessment) ... “will be returned, and the property considered unlicensed until they are received”.

12. The City of York Council had apparently refused to provide details of the HMO application over the phone or by email in response to a Freedom of Information Request. The Respondent had emailed the Applicant to confirm that fire safety works were to be carried out on 1 April 2019.
13. The Applicant asserted that an HMO licence could not be issued before April 2019, and if one had been issued it would have been invalid as the Property would not pass the necessary fire assessment. The Applicant further stated (but provided no evidence) that the Property failed to meet the requirements of the Housing Act 2004, the Regulatory Reform (Fire Safety) Order 2005, and the Housing Health and Safety Rating System. Work was undertaken to the Applicants room between 1 April 2019 and 12 April 2019. The Applicant asserted that he should have a Rent Repayment Order for the entire period of the tenancy because he challenged the validity of the HMO licence granted.
14. The Applicant sought repayment of his rent for the period of non occupation, but the Respondent had told him that it could not be demanded retrospectively and he could have stayed in someone else’s bedroom.

THE CASE FOR THE RESPONDENT

15. The Respondent stated that the Property was licensed as an HMO from 14th November 2018, and provided email correspondence with York City Council, and a copy of the licence certificate. This was dated 1st October 2018, with an expiry date of 1st October 2023.
16. An email, from Senior Officer Pamela Shaw at York City Council confirmed that the application for the licence for the Property had been received on 14th November 2018. Due to delays caused by the volume of applications made following the introduction of mandatory licensing on 1st October 2018, the licence was not issued until 11 March 2019. The paperwork was confusing owing to computer errors, but was later rectified when decision notices were granted.
17. The email went on to state that a fire risk assessment was necessary to be sent with the application form, which would enable a desk top risk assessment to be undertaken, and an inspection programmed for the lifetime of the licence. She confirmed that the information would not prevent a licence being issued, but if the information suggested the property was poor, an inspection of the property would be programmed in sooner, to look at all aspects of the property using the Housing Health and Safety Rating System. The inspection of the Property was currently programmed to take place before 31 March 2020.

18. In his statement, the Respondent stated that a fire safety assessment was conducted in August 2018. The Respondent subsequently discovered in February 2019 that improvements were required in terms of fire safety. He contacted the tenants in March 2019 to state that he would carry out works in the Easter holidays. He received no response to his correspondence. Works commenced on 1 April 2019 and to his knowledge the Applicant was out of York on holiday. Had he received a response he would have carried out work at a different time. The fire safety window in the bedroom took around two hours to fit, but other improvement works unrelated to fire safety were carried out during the same period. The room could have been decorated and cleaned in less than one day had it been necessary.
19. The Respondent accepted liability for a Rent Repayment Order to be made between the 1st October 2018 and the 14th November 2018. He calculated this to be 45 days at £98 per week, being £630 less any amount reduced for utility costs.
20. The Respondent produced evidence that he had paid for broadband and landline, Gas, Electricity and Water, and TV Licence during this time.
21. The costs were as follows:
 - (a) Broadband and Landline October and November : £58
 - (b) Gas and Electricity October and November £192
 - (c) Water October and November £105
 - (d) TV Licence £150.50 Annual

DETERMINATION

22. The Tribunal has jurisdiction to impose a Rent Repayment Order if a relevant offence has been committed and application is made to the Tribunal by a tenant within 12 months of that offence having been committed.
23. The Applicant in this case asserts that the Respondent has been in control of management of an unlicensed HMO under s72(1) of the Housing Act 2004.
24. The law changed on the 1st October 2018 extending the licensing of HMOs to properties with less than three floors. The Respondent applied for a licence which has been confirmed by the Local Authority as having been issued on 18th November 2018.
25. The Respondent produced evidence explaining the discrepancy between the dates on the certificates the Applicant produced, and the date on the certificate he produced, and the Tribunal is satisfied, on the balance of probability, that the Property was licensed from the 18 November 2018.

26. The Tribunal does not have jurisdiction in this case to look behind the issue, or make findings, in relation to the validity of the licence.
27. The Tribunal further does not have jurisdiction to make any findings in relation to rent repayable for non occupation of the Applicant's bedroom. This is a matter of contract law which would fall to be dealt with in the County Court if it cannot be negotiated between the parties. There would be no reason for the money to be irrecoverable simply because it was requested retrospectively.
28. The Tribunal must consider the Landlords' conduct and financial circumstances, whether the Landlord has been conducted of an offence, the conduct of the Tenant, and any other factors.
29. The Tribunal makes no findings of any particular conduct on the part of the Landlord or the Tenant, other than there was a delay on the Landlord's part. The Rent Repayment Order should be for a maximum of the amount of rent payable for the period concerned. The cost of utilities, and TV licence was included in rent, but the Tribunal exercising its discretion finds it reasonable to deduct the Landlord's expenditure for those from the rent payable.
30. The Tribunal orders the Respondent to pay the following :
Rent 45 days at a £13.96 (£98 per week): £628.27
Less his share of the utilities for the period :

Broadband and Landline October and November : daily rate £0.95 x 45 = £42.79
Gas and Electricity October and November: daily rate £3.15 x £141.64
Water October and November : daily rate £1.72 x 45 £77.45
TV Licence : daily rate £0.41 x 45 = £18.55
Total £280.42 on utilities for the Property; the Applicant's fifth share would be £56.09

The Rent Repayment Order to the Applicant should be £572.18
31. The Tribunal makes an order reimbursing the fees of the application to the Applicant under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

J Murray
Tribunal Judge
5 December 2019