



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

Property : **79 Alton Road,
Birmingham B29 7DX**

Applicant : **Nathan Moorley (0022)
Henry Rousham (0023)
Harry Shersby-Wignall (0024)
Louis Morris (0025)
Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £35,810.04 (Thirty-five thousand, eight hundred and ten pounds and four pence).

Introduction

1. This is an application by eight tenants of a house in Birmingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Birmingham City Council, but was not so licensed. The tenants were due to vacate the property on 30 June 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 12 April 2020.
2. The Tribunal issued Directions on 5 May 2020, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.
3. The Applicants made a submission which accompanied their application dated 12 April 2020 and a further submission on 20 May 2020 which was duly copied to the Respondent.
4. The Respondent made a submission on 12 June 202 which was copied to the Applicants' representative.

Property Inspection

5. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a terraced house comprising eight bedrooms and shared kitchen and bathroom facilities. The property is also understood to have gas fired central heating.
6. The Tribunal makes no further assumptions regarding the accommodation.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

(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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *‘control or management of unlicensed HMO.’*

9. Section 72(1) of the 2004 Act provides:

‘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... but is not licensed.’

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants’ Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

Name	Amount paid	Less Deductions	RRO
Nathan Moorley	£4,970.04	Utilities £750	£4,220.04
Henry Rousham	£5,460	£750	£4,710.00
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Thomas Pye	£5,490	£750	£4,740.00
Luke Hudson	£4,710	£750	£3,960.00
		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
46. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

47. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence

Chair



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Tribunal Decision

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8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *‘control or management of unlicensed HMO.’*

9. Section 72(1) of the 2004 Act provides:

‘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... but is not licensed.’

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants’ Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

Name	Amount paid	Less Deductions	RRO
Nathan Moorley	£4,970.04	Utilities £750	£4,220.04
Henry Rousham	£5,460	£750	£4,710.00
Harry Shersby-Wignall	£5,750.04	£750	£5,000.04
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Megan Cole	£5,229.96	£750	£4,479.96
Thomas Pye	£5,490	£750	£4,740.00
Luke Hudson	£4,710	£750	£3,960.00
		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
46. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

47. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence

Chair



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

Property : **79 Alton Road,
Birmingham B29 7DX**

Applicant : **Nathan Moorley (0022)
Henry Rousham (0023)
Harry Shersby-Wignall (0024)
Louis Morris (0025)
Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £35,810.04 (Thirty-five thousand, eight hundred and ten pounds and four pence).

Introduction

1. This is an application by eight tenants of a house in Birmingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Birmingham City Council, but was not so licensed. The tenants were due to vacate the property on 30 June 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 12 April 2020.
2. The Tribunal issued Directions on 5 May 2020, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.
3. The Applicants made a submission which accompanied their application dated 12 April 2020 and a further submission on 20 May 2020 which was duly copied to the Respondent.
4. The Respondent made a submission on 12 June 202 which was copied to the Applicants' representative.

Property Inspection

5. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a terraced house comprising eight bedrooms and shared kitchen and bathroom facilities. The property is also understood to have gas fired central heating.
6. The Tribunal makes no further assumptions regarding the accommodation.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:
 - (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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *‘control or management of unlicensed HMO.’*

9. Section 72(1) of the 2004 Act provides:

‘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... but is not licensed.’

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants’ Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
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Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
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Anthea J Rawlence

Chair



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Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

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18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

Name	Amount paid	Less Deductions	RRO
Nathan Moorley	£4,970.04	Utilities £750	£4,220.04
Henry Rousham	£5,460	£750	£4,710.00
Harry Shersby-Wignall	£5,750.04	£750	£5,000.04
Louis Morris	£4,970.04	£750	£4,220.04
Delilah Barratt	£5,229.96	£750	£4,479.96
Megan Cole	£5,229.96	£750	£4,479.96
Thomas Pye	£5,490	£750	£4,740.00
Luke Hudson	£4,710	£750	£3,960.00
		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
46. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

47. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence

Chair



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

Property : **79 Alton Road,
Birmingham B29 7DX**

Applicant : **Nathan Moorley (0022)
Henry Rousham (0023)
Harry Shersby-Wignall (0024)
Louis Morris (0025)
Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £35,810.04 (Thirty-five thousand, eight hundred and ten pounds and four pence).

Introduction

1. This is an application by eight tenants of a house in Birmingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Birmingham City Council, but was not so licensed. The tenants were due to vacate the property on 30 June 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 12 April 2020.
2. The Tribunal issued Directions on 5 May 2020, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.
3. The Applicants made a submission which accompanied their application dated 12 April 2020 and a further submission on 20 May 2020 which was duly copied to the Respondent.
4. The Respondent made a submission on 12 June 202 which was copied to the Applicants' representative.

Property Inspection

5. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a terraced house comprising eight bedrooms and shared kitchen and bathroom facilities. The property is also understood to have gas fired central heating.
6. The Tribunal makes no further assumptions regarding the accommodation.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

(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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *'control or management of unlicensed HMO.'*

9. Section 72(1) of the 2004 Act provides:

'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... but is not licensed.'

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants' Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

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		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
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Anthea J Rawlence

Chair



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

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HMCTS Code : **V:SKYPEREMOTE**

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Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

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17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
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30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

Name	Amount paid	Less Deductions	RRO
Nathan Moorley	£4,970.04	Utilities £750	£4,220.04
Henry Rousham	£5,460	£750	£4,710.00
Harry Shersby-Wignall	£5,750.04	£750	£5,000.04
Louis Morris	£4,970.04	£750	£4,220.04
Delilah Barratt	£5,229.96	£750	£4,479.96
Megan Cole	£5,229.96	£750	£4,479.96
Thomas Pye	£5,490	£750	£4,740.00
Luke Hudson	£4,710	£750	£3,960.00
		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
46. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

47. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence

Chair



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

Property : **79 Alton Road,
Birmingham B29 7DX**

Applicant : **Nathan Moorley (0022)
Henry Rousham (0023)
Harry Shersby-Wignall (0024)
Louis Morris (0025)
Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £35,810.04 (Thirty-five thousand, eight hundred and ten pounds and four pence).

Introduction

1. This is an application by eight tenants of a house in Birmingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Birmingham City Council, but was not so licensed. The tenants were due to vacate the property on 30 June 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 12 April 2020.
2. The Tribunal issued Directions on 5 May 2020, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.
3. The Applicants made a submission which accompanied their application dated 12 April 2020 and a further submission on 20 May 2020 which was duly copied to the Respondent.
4. The Respondent made a submission on 12 June 202 which was copied to the Applicants' representative.

Property Inspection

5. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a terraced house comprising eight bedrooms and shared kitchen and bathroom facilities. The property is also understood to have gas fired central heating.
6. The Tribunal makes no further assumptions regarding the accommodation.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:
 - (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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *'control or management of unlicensed HMO.'*

9. Section 72(1) of the 2004 Act provides:

'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... but is not licensed.'

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants' Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
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		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
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Anthea J Rawlence

Chair



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

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Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

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40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
41. The Respondent had given no written evidence of his financial circumstances, as stated in the Directions. His evidence at the hearing (see paragraphs 29 and 30) was considered by the Tribunal. The mortgage payments on his three properties (one owner-occupied) are disregarded for the reasons mentioned in the above paragraph. Although the Respondent stated difficulties with the current letting market, this is viewed by the Tribunal as anticipated rather than actual lack of income. The Respondent is in employment and has not been furloughed during

the pandemic. He advised that he was making a profit of £1000.00 per month from the subject property and intimated that a similar profit was being made from his other (HMO) rented property. He further advised that he lived at his own house with his wife and two school age children. Given the information provided the Tribunal makes no deduction for financial hardship.

42. The Tribunal therefore makes a Rent Repayment order of £35,810.04, being rent paid £41,810.04 less a deduction of £6,000 for the utilities included in the rent.
43. The total rents due under the lease were £41,760 whereas the total amounts paid by the Applicants were £41,810.04. The order is confirmed as follows:

Name	Amount paid	Less Deductions	RRO
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Luke Hudson	£4,710	£750	£3,960.00
		TOTAL	£35,810.04

Payment should be made in full within 28 days of the date of this decision.

44. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
45. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
46. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

47. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence

Chair



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

Case Reference : **BIR/00CN/HMK/2020/0022-29**

HMCTS Code : **V:SKYPEREMOTE**

Property : **79 Alton Road,
Birmingham B29 7DX**

Applicant : **Nathan Moorley (0022)
Henry Rousham (0023)
Harry Shersby-Wignall (0024)
Louis Morris (0025)
Delilah Barratt (0026)
Megan Cole (0027)
Thomas Pye (0028)
Luke Hudson (0029)**

Representative : **Nathan Moorley**

Respondent : **Abdul Majid**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
V Chadha MRICS
R Chumley-Roberts MCIEH J.P.**

Date of Decision : **5th August 2020**

DECISION

Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £35,810.04 (Thirty-five thousand, eight hundred and ten pounds and four pence).

Introduction

1. This is an application by eight tenants of a house in Birmingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Birmingham City Council, but was not so licensed. The tenants were due to vacate the property on 30 June 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 12 April 2020.
2. The Tribunal issued Directions on 5 May 2020, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.
3. The Applicants made a submission which accompanied their application dated 12 April 2020 and a further submission on 20 May 2020 which was duly copied to the Respondent.
4. The Respondent made a submission on 12 June 202 which was copied to the Applicants' representative.

Property Inspection

5. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a terraced house comprising eight bedrooms and shared kitchen and bathroom facilities. The property is also understood to have gas fired central heating.
6. The Tribunal makes no further assumptions regarding the accommodation.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

(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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *'control or management of unlicensed HMO.'*

9. Section 72(1) of the 2004 Act provides:

'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... but is not licensed.'

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

11. Section 44 of the 2016 Act sets out the amount of order:

(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. If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

The Applicants' Submissions

12. The Applicants provided copy tenancy agreement that ran from 1 July 2019 to 30 June 2020. The monthly rent of £3,480.00 included gas, electricity, water and internet bills.

13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 14 May 2020 from Birmingham City Council.

14. The Applicants provided bank details of their individual payments to the Respondent for an 11-month period from 1 July 2019 to early May 2020.
15. The Applicants also submitted screenshots of delays in repairing the central heating boiler during September and October 2019.

The Respondent's Submissions

16. The Respondent made submissions dated 12 June 2020 when he stated that he had applied for a renewal of his HMO licence on 27 June 2019 as it was due to expire on 1 July 2019.
17. He understood from other landlords that the Council was taking over a year to issue renewal of HMO licenses but also believed once the application was with the Council, he could continue to rent the property as an HMO. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

The Hearing

18. At the hearing, the Applicants stated that they further understood that no application had been received by the City Council up to the end of their tenancy on 30 June 2020.
19. They also confirmed that additional payments had been made by all 8 Applicants for the last month of the tenancy and the Respondent confirmed he had received these. They were therefore asking for a rent repayment order covering the full twelve months of the tenancy.
20. They mentioned problems with hot water in the early part of the tenancy and had also contacted Birmingham City Council in December 2019 with regard to repairs. The Council had visited the property and a schedule of works had been drawn up and given to the Respondent at that time.
21. The Respondent stated that he had put in for a renewal of the HMO licence through his agents House Hunt in late June 2019 and had paid a fee of £850 by debit card to the Council and also a fee to House Hunt of £300.
22. He had no official confirmation from Birmingham City Council and had attempted on several occasions to chase the application with no avail.
23. He had been surprised to receive the schedule of works in December 2019 but had carried out the seven items of repair listed in that notice.
24. He had replaced the gas boiler in October 2019 and understood that a new Gas Safety certificate had been left with the tenants but was not aware if it was on display. He, himself, usually put such notices on the actual boiler or placed them nearby.
25. The Respondent stated that it was apparent that the Applicants had reason to believe the property was not licensed from early in their tenancy, but they had not

informed him. After he had received a copy of the Council's letter dated 14 May 2020, he had re-sent his application to the Council but had still not had a response by the time of the hearing.

26. On being questioned by the Tribunal, the Respondent disclosed that he had nothing in writing from the City Council nor had he thought it was necessary to provide proof of applying for a renewal of the licence. He confirmed that no enforcement action, for the lack of an HMO licence, had been undertaken against him.
27. The Respondent had not provided any details of any non-recoverable costs in respect of the ownership, maintenance and running of the property. When asked by the Tribunal, he stated that the cost of utilities including the internet were about £500 a month.
28. The Respondent was also asked about financial hardship as no details about his personal or financial circumstances had been provided, as requested in the Directions dated 5 May 2020.
29. He informed the Tribunal he owned another rented property (also in the Selly Oak area) with 8 tenants which had similar issues to this property. He advised that both the let properties had 25 years mortgages with 15 years left to pay and that he made monthly mortgage payments of £1270.00 for 79 Alton Road and £1060.00 for the other rented house. He also owned his own family home which had a mortgage and worked as a care manager and earned £23,000. He believed he made a net gain of £1,000 a month for the subject property. When questioned by the Tribunal the Respondent was unable to provide an estimate of the capital value of either rented property.
30. Since 1 July 2020 he had not been able to let the subject property, due to uncertainties amongst students about the forthcoming academic year.

Tribunal Decision

31. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (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 – not applicable in this case.
32. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.

- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.
33. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
34. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
35. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
36. The Tribunal determined that the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
37. In accordance with section 41(2), the Respondent was committing the relevant offence from 1 July 2019 to 30 June 2020, when the property was let to the Applicants and that the offence was committed in the period of 12 months during the time of the tenancy.
36. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.
37. The Tribunal determines that a Rent Repayment Order should be made for the period 1 July 2019 to 30 June 2020.
38. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account.
39. In this case the utilities were paid by the Respondent and the Tribunal states that a deduction of £6,000 should be made for the whole period i.e. monthly expenditure of £500.
40. The only remaining matter to be considered was the Respondent's financial circumstances. The costs he incurred for repairs and maintenance were for his own benefit, to get a rental income from the property. What a landlord pays by way of mortgage repayments whether capital or interest only is an investment in the landlord's own property and the Tribunal makes no deduction for any such payments.
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