



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

**Case Reference** : **BIR/44UD/HMK/2020/0020**

**Property** : **157 Murray Road, Rugby, CV21 3JR**

**Applicant** : **Gabrielle Vella**

**Respondent** : **(1) Guy Rendall  
(2) Newman Property Services Limited**

**Type of Application** : **Application for a Rent Repayment Order,  
section 41 of the Housing and Planning Act  
2016**

**Tribunal Members** : **Judge C. P. Tonge LLB, BA  
Mr D. A. Lavender CIEH, Dip Law, Dip Surv  
Mr V. Chadha MRICS MBA MCI Arb FCIH**

**Date of Decision** : **23 September 2020**

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**DECISION**

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## **Application and Background**

1. On 7 July 2018 Gabrielle Vella "the Applicant" became a tenant in the attic bedroom, bedroom 6, at 157 Murray Road, Rugby, CV21 3JR "the property".
2. At all material times Guy Rendall "Respondent (1)" has been the landlord of the property.
3. At all material times Newman Property Services Limited "Respondent (2)" have been the landlord's letting agent, having been appointed as such by Respondent (1) on 28 February 2018. This company refers to itself in correspondence and official documents (such as the assured shorthold tenancy agreement in this case) as Newman Property Experts.
4. The property has 6 rooms available for occupation by 6 separate tenancies on three floors and as such falls within the definition of a HMO which requires a licence, pursuant to article 3 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006. That order was in force until 31 July 2018 and required that the building have 3 storeys, providing occupancy by 5 or more persons, in two or more households. As from 1 October 2018, the definition of a HMO which requires a licence was modified to remove the requirement that the building have three storeys by article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. The property has at all material times required such a licence.
5. The Applicant was a tenant at the property by virtue of an Assured Shorthold Tenancy Agreement, commencing on 7 July 2018 for an initial term of 6 months at a rent of £433 per calendar month (Applicant's bundle, page 47 to 63), this tenancy rolled until 7 June 2019, the Applicant then leaving the property.
6. Respondent (1) obtained a Completion Certificate, dated 28 February 2018, indicating that as at that date "the works described in the certificate are in compliance with the requirements of the building regulations". The description of work is "Conversion to a HMO" (Respondent (2)'s evidential bundle, item 2).
7. On 21 June 2019 Rugby Borough Council (Local Housing Authority) issued a licence authorising the use of the property as a House in Multiple Occupation, acknowledging that the application for that licence was received by them on 14 May 2019 (Respondent (2)'s evidential bundle, item 12).

8. By an application dated on 6 May 2020 (replacing a faulty application received on 4 May 2020) the Applicant seeks a rent repayment order in relation to her occupancy of the property from 7 July 2018 to 7 June 2019.
9. A rent repayment order is applied for pursuant to section 40, 41, 43 and 44 of the Housing and planning act 2016 "the 2016 Act". The basis of that application being that the landlord, Respondent (1), throughout this period was a person having control of or managing a HMO which is required to be licensed and was not so licensed, contrary to section 72(1) of the Housing Act 2004 " the 2004 Act".
10. Directions were issued on 7 May 2020 by Judge D. Barlow indicating that this case would proceed without the need for the Tribunal to inspect the property and could be determined without the need for an oral hearing, unless such was requested. If such a hearing was requested it would be a remote video hearing due to social distancing under the Covid-19 pandemic restrictions. The Parties did not request an oral (video) hearing and the Applicant and Respondent (2) submitted separate hearing bundles. This Tribunal sat by remote video meeting on 21 August 2020 to determine the issues in the case, upon consideration of the evidence contained within those bundles.

## **The law**

### **Housing Act 2004**

#### **Section 72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

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

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

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

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

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

## **The Housing and Planning Act 2016**

### **Section 40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

***Act***

***section***

***general description of***

			<b><i>offence</i></b>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **Section 41 Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

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

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b)the authority has complied with section 42.

(4)In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

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

(1)The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2)A rent repayment order under this section may be made only on an application under section 41.

(3)The amount of a rent repayment order under this section is to be determined in accordance with—

(a)section 44 (where the application is made by a tenant);

(b)section 45 (where the application is made by a local housing authority);

(c)section 46 (in certain cases where the landlord has been convicted etc).

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

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

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

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

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

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

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

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

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

### **The written evidence**

11. The Applicant's bundle is paginated and is 115 pages in length. It does not contain a statement from the local authority as to the absence of a HMO licence, although this is clearly contended by the Applicant. The Tribunal will refer to pages from this bundle, when necessary, in the determination of the issues in the case.

12. The bundle submitted by Respondent (2) is not paginated and has 16 separate areas of supporting evidence. The Tribunal will refer to pages from this bundle, when necessary, in the determination of the issues in the case.

### **The Determination**

13. The Tribunal notes that the Directions are flawed in that on page 3, paragraph (3) there is a reference to section 95 (1) of the 2004 Act, whereas, this should be a reference to section 72 of the same Act. The Tribunal determines that this error has had no effect upon the preparation of the case by the parties.

14. The Tribunal first considers the issue, is the Tribunal satisfied beyond any reasonable doubt that the landlord, Respondent (1) was a person having control of or managing a HMO, during the period in relation to which a rent repayment order is requested, which is required to be licensed and was not so licensed, contrary to section 72(1) of the 2004 Act.

15. The Tribunal notes that the landlord, Respondent (1) has not made a statement and has not prepared a bundle of evidence. However, it is clear from the evidence contained within the hearing bundle submitted by

- Respondent (2) that they were instructed by the landlord, Respondent (1) to market the property for let on 28 February 2018. They were to let 6 double bedrooms with shared facilities at £100 per bedroom per week and refer to the property as a HMO, discussing with the landlord the need for a HMO licence.
16. They further state that the landlord, Respondent (1) produced to them the building control completion certificate, referred to above ( Respondent (2) bundle, Item 2). Further, that the landlord, Respondent (1) suggested to them that this certificate was in fact a licence issued by the local authority authorising the use of the property as a HMO and that they accepted the certificate as such a licence.
  17. Respondent (2) suggests that the Applicant was a tenant in the property from 7 July 2018 to 7 June 2020 (Respondent (2) statement, first page). The Tribunal notes that the first date is confirmed by the tenancy agreement and determines that the second date is a typographical error in that the tenancy terminated 7 June 2019. Respondent (2) also deals with occupancy of all the other 5 bedrooms during the Applicants tenancy.
  18. On the above facts the Tribunal is satisfied beyond any reasonable doubt that the landlord, Respondent (1) was a person having control of or managing a HMO, during the period in relation to which a rent repayment order is requested, which is required to be licensed and was not so licensed, contrary to section 72(1) of the 2004 Act.
  19. The Tribunal notes that section 72(5)(a) provides a statutory defence to this offence if the landlord has a reasonable excuse for having control or managing the house in the circumstances that exist. Respondent (1) has not himself raised this defence. He has not submitted a statement. However, Respondent (2) states in hearsay evidence that Respondent (1) had accepted the building control completion certificate ( Respondent (2) bundle, Item 2) as a licence to operate a HMO and that they also accepted that building control completion certificate as a licence to operate the HMO.
  20. The Tribunal cannot accept this assertion. The building control completion certificate (Respondent (2) bundle, Item 2) is clearly issued to indicate that the works done to the property are in compliance with the requirements of the building regulations. The description of work is "Conversion to a HMO". It is not a licence to operate a HMO and the Tribunal cannot see how anyone might reasonably think that the certificate is such a licence. This does not provide Respondent (1) with a reasonable excuse for having control or managing the house in these circumstances.
  21. The Tribunal notes that Respondent (1) did obtain a licence to operate the property as a HMO on 21 June 2019 (Respondent (2)'s evidential bundle,



item 12). Documents that item acknowledge that the application for that licence was received by the local authority on 14 May 2019. The Tribunal determines that as a result of the operation of section 72(4)(b) of the 2004 Act the period that the offence under section 72(1) ceases to be committed is the date that the application for the licence was received by the local authority, 14 May 2019.

22. The Tribunal is therefore satisfied beyond reasonable doubt that the landlord, Respondent (1) was a person having control of or managing a HMO, during the period 7 July 2018 to 13 May 2019 inclusive, which is required to be licensed and was not so licensed, contrary to section 72(1) of the 2004 Act. The Tribunal calculates this period in which a rent repayment order will be made as 311 days. The Tribunal notes that the rent paid by the Applicant was £433 per calendar month or £14.23 per day (rounding down). Rent paid for this period of 311 days at £14.23 per day is £4,425.53. Bank statements proving the rent paid are exhibited (Applicant's bundle, page 26 to 28).

23. The Tribunal now turns to consider any deductions that can be made from the starting point of rent paid at £4,425.53.

24. The Tribunal considers the case of *Vadamalayan v Stewart and others* [2020] UKUT 0183 (LC). This is a decision that gives guidance as to how any First-tier Tribunal, such as this Tribunal, should approach this part of this type of case. It is a decision of the Upper Tribunal and as such this Tribunal is bound to follow it. At paragraph 3 of the case, the learned Judge states that this case, "signals a change of approach to be adopted by the FTT (First-tier Tribunal) for the future". It is no longer appropriate to consider how much profit the landlord has made from the rent. The issue of reasonableness of the rent repayment order in relation to mitigation of the rent repayment figure has been withdrawn from the Tribunal. The Tribunal may not make a deduction from the order in relation to mortgage payments. The Tribunal can make a deduction from the order in relation to utilities paid for by the landlord and the Tribunal determines that it is fair and just to do so.

25. The Tribunal notes that Respondent (2) has included a list of the utilities paid for by the landlord, Respondent (1). These are supported by evidence in the bundle (Respondent (2)'s bundle, item 16). The Tribunal accepts them as being an accurate list.

### **Calculations in relation to utility bills**

<b>Service</b>	<b>Cost</b>	<b>Period</b>
British Gas	£284.57	Quarter
Electric	£28.63	Quarter

Severn Trent            £181.54            Quarter  
**Total                    £494.74            Quarter = £1,978.96 per annum**

Wi-Fi                    £25                    Monthly = £300 per annum

Total cost for annual bills paid by Landlord £1,978.96 & £300 = £2,278.96

There are 6 rooms/tenancies - so landlord's cost per room is £2,278.96 / 6  
= £379.83 per room

This is the annual bill per room £379.83 - 365 days = £1.04 per day.

Occupancy liability in relation to RRO = 311 days

So the landlords liability for utilities for the period for the tenants room is  
£323.44, which will be discounted from the rental income

Maximum rental income relevant to the RRO:	£4,425.53
Reductions of bills:	£323.44
RRO Liability:	£4,102.09

The Tribunal therefore determines that the rent repayment order, after allowing for all deductions that are permitted in relation to utilities is £4,102.09

26. The Tribunal now turns to consider the conduct of the parties to ascertain if any adjustment needs to be made to the rent repayment order, relating to their conduct.
27. There is no relevant conduct on the part of the Applicant.
28. In so far as the landlord, Respondent (1) is concerned, it is an agreed fact that on 3 May 2019 a representative of Rugby Council attended at the property stating that the property did not have a licence to be operated as a HMO and made an inspection of the property. As a result, on 7 May 2019, a Prohibition Notice was issued by the local authority preventing the Applicant's bedroom being occupied by the Applicant from being so occupied. This resulted in the Applicant being moved to another bedroom within the property, causing the Applicant to have to share a room briefly

with another tenant and to stay briefly with her mother, Respondent (2) having provided the wrong key for an alternative bedroom. The Tribunal accepts that this caused the Applicant to experience some stress.

29. On the other hand, the Tribunal takes note of the fact that the property had been granted a building control certificate, indicating that the work done to the property was such that structurally it was capable of being used as a HMO as recently as 23 February 2018. The Tribunal finds it difficult to understand how the building control certificate and Prohibition Notice can apply to the same property. In these circumstances the Tribunal determines that it was reasonable for the landlord to expect that the building was in such a condition that a Prohibition Notice should not have been necessary.

30. The manner in which this was dealt with by Respondent (2) as agent of Respondent (1) did cause stress to the Applicant. The Tribunal notes that £15 was repaid to the Applicant. In all the circumstances and being fair and just to all parties the Tribunal determines that this is sufficient to deal with this issue. No further adjustment to the rent repayment order is necessary in relation to the landlord's conduct.

31. The landlord, Respondent (1), has not provided a witness statement and there is nothing within the evidence served to raise any suggestion of financial hardship on his part. No further adjustment to the rent repayment order is necessary in relation to financial hardship

32. In a case like this where two separate departments in one local authority are involved with a HMO ( building regulation and licensing) it is common sense that these departments should communicate with each other. This does not appear to have happened in this case.

## **Decision**

33. The Tribunal decides that the a fair and just order in these circumstances is that the landlord Respondent (1) pay to the Applicant £4,102.09, by means of a rent repayment order. Payment should be made in full within 28 days of this decision being sent to the Parties.

34. Appeal against this Decision is to the Upper Tribunal. If either Party wishes to appeal against this decision, that Party has 28 days from the date that this decision is sent to the Parties to ask this First-tier Tribunal for permission to appeal to the Upper Tribunal. That must be done by delivering to this Tribunal an application for permission to appeal, stating

the grounds of the appeal, the particulars of the appeal and the outcome that the party seeks to achieve by making the application.

Judge C. P. Tonge

Date that this Decision was sent to the parties 23 September 2020