



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

Case Reference : **CHI/00HA/HMF/2020/0004**

Property : **84 Newbridge Hill, Bath, BA1 3QA**

Applicants : **Anna Savage, James Palmer, Sophie Lucas, Finlay Fox, and Ben Hancocks**

Respondent : **Graham Price, 3 The Acorns, Oakhill, Radstock BA3 5BT;**

Respondents Agents : **Trustease Residential Lettings**

Type of Application : **Application for a rent repayment order by tenants; sections 41-43 and 45 of the Housing and Planning Act 2016**

Tribunal Members : **Judge Professor David Clarke
Brandon Simms, FRICS
Tat Wong**

Date : **16 September 2020**

DETERMINATION AND STATEMENT OF REASONS

DETERMINATION

The Tribunal determines that the Respondent do pay to the Applicants the sum of One Thousand Six Hundred and Fifty Pounds (£1,650) by way of a Rent Repayment Order in respect of rent for the period 13-30 September (18 days) when the property that was let to the Applicants known as Upper Flat, 84 Newbridge Hill, Bath, BA1 3QA, was a House in Multiple Occupation (an ‘HMO’) and the Respondent was the person having control or management of that property which was unlicensed for that period of time.

The Tribunal further determines that the Respondent should refund the Applicants the application fee paid in this case of £100 which was paid by the Applicants.

The Tribunal further determines that the Respondent should refund to the Applicants the hearing fee paid in this case of £200 which was paid by the Applicants.

The total amount payable by the Respondent to the Applicants is therefore One Thousand Nine Hundred and Fifty pounds (£1,950).

STATEMENT OF REASONS

Background to the Application

1. This application (“the Application”) was made by Anna Savage, James Palmer, Sophie Lucas, Finlay Fox, and Ben Hancocks (“the Applicants”) on 28 June 2020. The Applicants are students and together signed an Assured Shorthold Tenancy Agreement (“the Tenancy”) in respect of the property known as the First Floor Maisonette, 84 Newbridge Hill, Bath BA1 3QA (“the Property”). The landlord in respect of that agreement was the Respondent, Graham Price. The term of the Tenancy was one year commencing on 13 September 2019. The evidence of that Tenancy was supplied by the Applicants at the hearing, set out in written statements and was supported by bank statements supplied to the Tribunal detailing rent payments made. The Applicants have entered into a further assured shorthold tenancy of the Property for the period of one further year from 13 September 2020 and a copy of that tenancy agreement was supplied to the Tribunal.

2. The Respondent to this Application is Graham Price. His postal address is not stated in the Application but is revealed by a local authority witness statement (discussed below) as 3 The Acorns, Oakhill, Radstock, BA3 5BT. The letting agents that acted for him are a firm known as Trustease Residential Lettings of 16 St Peter’s Terrace, Bath BA2 3BT (“the Letting Agents”). By Directions dated 30 June 2020, that firm was required to notify the Tribunal by 5 July 2020 whether they acted for the Respondent

and to provide the Tribunal with contact details for the Respondent including an email address. An email address for the Respondent was supplied to the Tribunal.

3. The Directions of 30 June also set out for the parties what was required of them. The Applicants were to provide a statement from each student authorizing Anna Savage (who made the Application in her name) to act for them, a statement of the amount of rent claimed and the period for which it was claimed and written evidence for the local authority regarding the alleged offence by the Respondent. This direction was complied with by the Applicants. The Directions also set out how the Respondent should prepare for the hearing and required a response by 25 August 2020.

4. Amended Directions were made on 1 July 2020 and sent to the Respondent's email address and providing for a video hearing on 16 September 2020. Despite efforts in the Tribunal Office, the Respondent did not, as required, submit a statement of case nor did he file any documentation.

5. The video hearing took place on 16 September 2020. All five of the Applicants attended on-line and the case was presented by Anna Savage on behalf of all the Applicants. The Respondent did not appear and was not represented.

The Applicants' case

6. The Applicants seek a Rent Repayment Order in respect of the Property on the basis that it was unlicensed on 13 September 2019 and a licence for an HMO was only granted in February 2020. The Applicants have filed, in support of the Application, a report and witness statement made by Rachael J Locke, an Environmental Health Officer in the Housing Standards and Improvement Team employed by Bath and North East Somerset Council. The Applicants also seek an order for refunds of the application fee of £100 and of the hearing fee of £200 which has been paid by them.

7. The case as presented by Anna Savage was that the Property was unlicensed on 13 September 2019 when their Tenancy commenced. She gave evidence that they moved in on that day. It was not until February 2020 that they received notice that a licence permitting an HMO in the Property had been granted. She sought a rent repayment order for that period amounting to £19,250.

8. The Applicants submitted that not all the works required by the local authority, to enable a licence to be granted, were completed satisfactorily. In particular:

1. No copy of the licence is displayed in the Property.
2. There is no updated EPC report.
3. The Property lacks fire extinguishers – they were removed before Christmas 2019 and have not been replaced.
4. The sash windows in the living room were not properly repaired. The former does not open, the latter does not close, and the weights are frayed and broken.

9. Some other matters were raised by the Applicants as possibly relevant to their Application:

1. Their regular complaints about the state of the windows are never actioned.

2. The boiler keeps breaking down.
3. Obtaining return of deposits from this landlord is very difficult.
4. The Applicants had to pay a 'retainer fee' in advance of £1,375 while the Property was still unlicensed which has not been refunded or credited to them.
5. The Applicants had to pay a reservation fee to the Respondent's agents of £3,250 again in the period while the Property was unlicensed.

10. In respect of their claim for a refund of the Application fee paid, and of the hearing fee paid, it was pointed out that despite the time allowed, the Respondent had not responded in any way to the Application, had not complied with the Tribunal's Directions and had not shown up for the hearing or otherwise communicated in any way to the Applicants or to the Tribunal.

The Local Authority's witness statement

11. The local authority witness statement is dated 2 July 2020 and is made by Rachael J Locke, an Environmental Health Officer in the Housing Standards and Improvement Team employed by Bath and North East Somerset Council. From that statement the following facts emerge:

1. A complaint was received by the Council from the parent of a student residing in the ground floor flat at the 84 Newbridge Hill. The Council sent a letter to the Respondent, care of the Letting Agents.
2. Having determined that the Property, as a dwelling occupied by five persons, was covered by the extended mandatory licensing conditions of section 55 of the Housing Act 2004 that came into effect on 1 January 2019, that letter, dated 24 September 2019, advised the Respondent to make an HMO licence application for the Property.
3. The Respondent made such an application on 26 September 2019. On receipt of all supporting documentation on 30 September 2019, the Council declared the application to be valid on 30 September 2019.
4. The Respondent admitted that the property had been occupied by students since 1 January 2019.
5. The Council inspected the Property on 1 October 2019 and thereby confirmed that the Property was operating as an HMO of the description that required a mandatory licence.
6. An inspection report was sent to the Letting Agents listing works that were required to comply with the Council's licensing conditions and the Management of Houses in Multiple Occupation Regulations 2006. The matters required are listed and attached to the report.
7. The Council confirmed compliance with the matters outlined in that report by an email to the Respondent on 11 February 2019.

12. The witness statement concludes by stating that it is Ms Locke's understanding that the Property was operating without a licence from 1 January 2019 until the valid application was received on 30 September 2019.

The determination of the Tribunal and reasons for the decision

13. The Tribunal determines that the Respondent do pay to the Applicants the sum of £1,650 by way of a Rent Repayment Order in respect of rent for the period 13-30 September (a period of 18 days) when the Property that was let to the Applicants and was a House in Multiple Occupation (an 'HMO') that was required to be licensed. The Respondent was the person having control or management of that property which was unlicensed for that period and thereby committed an offence under section 72 of the Housing Act 2004. The Tribunal makes the order under section 43 of the Housing and Planning Act 2016 ("the 2016 Act") being satisfied beyond reasonable doubt that the Respondent has committed that offence.

14. Though the Property was occupied as an unlicensed HMO between 1 January and 12 September 2019, the occupants during that period were not the Applicants.

15. Though the Property was occupied by the Applicants during the period 1 October 2019 to 11 February 2020, the Respondent had made a valid application for a licence on 30 September 2019 and that licence was granted by virtue of that application in February 2020. No offence was committed during that period. This is because section 72(4) of the Housing Act 2004 provides that it is a not an offence under that section if an application for a licence has been duly made and that application is, as in this case, effective.

16. The Applicants complain that some matters that were required to be completed were not in fact remedied as required. The Tribunal cannot look beyond the licence and determine that the property should not have been licensed. The Applicants will need to find an alternative remedy and may wish to contact the Council to discuss their concerns.

17. The retainer fee and the reservation fee about which the Applicants complained at the hearing do not appear to qualify as 'rent' paid in respect of an unlicensed HMO; and were paid at a time when the Applicants were not resident at the property. They cannot therefore be the subject of a Rent Repayment Order under the 2016 Act.

18. The Tribunal determines that the Respondent should refund the Applicants the application fee paid in this case of £100 which was paid by the Applicants. Having been advised that the Property required a licence, the Respondent should have been aware that he could not validly collect rent while the Property was unlicensed. Moreover, the Respondent has made no response to this Application.

19. The Tribunal further determines that the Respondent should refund to the Applicants the hearing fee paid in this case of £200 which was paid by the Applicants. If the Respondent had considered and responded to this Application in a timely and responsible manner and complied with the Directions from the Tribunal, this matter could almost certainly be settled without a hearing.

20. The total amount payable by the Respondent to the Applicants is therefore One Thousand Nine Hundred and Fifty pounds (£1,950).

Right of Appeal

21. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

22. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

23. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

24. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.