



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

Case Reference : **MAN/OOCA/HSD/2019/007**

Property : **10 Church Street, Southport, PR9 0QT**

Applicants : **Sefton MBC**

Respondent : **Heather Jackson**

Type of Application : **Rent Repayment Order by a Local Housing Authority under Section 41 Housing and Planning Act 2016**

Tribunal Member : **J White (Judge)**
S D Latham
(Valuer)

Date of Determination : **2 June 2020**

Date of Decision : **22 June 2020**

DECISION

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Decision

Mrs Jackson to pay the Rent Repayment Order of £14,785.31. to Sefton MBC by 4 pm on 30 July 2020.

Application

1. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 (“the Act”) for a Rent Repayment Order (RRO) in respect of 10 church St Southport PR 90QT (“the Property”).
2. The Applicant is Sefton MBC and is the Local Housing Authority (“LHA”). The Respondent is Mrs Heather Jackson resident at the Property. She is the owner and Landlord in accordance with the Act. The Property is a former care home. It consists of 3 self-contained flats and 10 bedsits. Mrs Jackson lives at the property with her family.
3. On 23rd of January 2020 the Tribunal gave Directions. The purpose of such Directions is to identify the relevant issues that the Tribunal will need to consider determining the application fairly and in a proportionate manner.
4. Pursuant to these Directions the Applicant filed their Bundle of Documents. This included 3 witness statements and supporting evidence as set out below.
5. On the 19th of March 2020, a reminder letter was sent to the Respondent as she had not sent a bundle of documents in breach of those directions. She had not made any response to the application.
6. The Tribunal convened on 18 May 2020 to determine the application. The Tribunal considered that it was able to make a decision on the papers, considering the straightforward issues to be decided, that Applicant had agreed, and the Respondent had not made any representations or submissions. It was in the interests of Justice and in accordance with the Overriding Objective to do so.

The Issues

7. The Tribunal has the power to make to make a RRO requiring the Landlord to pay a LHA an amount in respect of housing benefit/universal credit paid in respect of rent under a tenancy of the Property, in accordance with s40 – 56 of the Act.

8. The Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the Landlord has been convicted of or has been subject to a financial penalty for a relevant offence. Section 72(1) of the Housing Act 2004 is a relevant offence.
9. The LHA must consider applying for a RRO if it becomes aware that a person has been convicted of a relevant offence.
10. In addition, the LHA must have given the Landlord a notice of intended proceedings which complies with Section 42 of the Act.
11. If there has been a conviction under s72(1) of the Housing Act, the amount of the RRO must relate to rent paid under a tenancy of the Property during the relevant period. The period must not exceed 12 months during which the Landlord was committing the offence. The amount must not exceed any award of housing benefit/universal credit paid in relation to the rent for the period.
12. The Tribunal must make the maximum RRO in favour of the LHA if the landlord has been convicted of the offence under s72(1) of the Housing Act.
13. The law in this area is complex. We annex further relevant statutory provisions to this decision.

The Findings

14. The Property was a former care home which was changed in 2015 into a house in multiple occupation for 10 residents. The owner, and person having control, Mrs Heather Jackson applied for a mandatory licence to Sefton MBC. The licence was granted on the 14th of September 2015 . It expired on the 13th of September 2018. Despite the LHA sending two reminders, on the 16th of August 2018 and the 1st of October 2018, Mrs Jackson failed to submit a renewal application.
15. On 7th December 2018, the local authority's Housing Standards Team entered the premises under a warrant and found it to be an occupied three storey mandatory HMO with seven tenants. Mrs Jackson also resided in the premises with her family..
16. Mrs Jackson was summoned to appear before South Sefton Magistrates Court on the 19th of June 2019 and pleaded guilty under the Housing Act 2004. She had control of a house in multiple occupation which was required to be

licenced under Part 2 of the Housing Act 2004, but which was not, contrary to section 72 (1) and (6) of the Housing Act 2004. She was fined £7,500 for this offence.

17. The council's revenues and benefits system confirms that housing benefit payments in respect of five of the tenants were paid and made directly into a bank account in the name of Heather Jackson for the period 14th of September 2018 to date. On 17th of June 2019 Mrs Jackson submitted an application for an HMO licence. Housing benefit has been paid for the five tenants between 14th September 2018 and 16th of June 2019. The total paid for the period and the amount reclaimed is £14,785.31.
18. Notice of intention under Section 42 of the housing and planning act 2016 was sent to Mrs Jackson on the 16th July 2019 giving her 28 days to make representations. The notice was hand delivered and Mrs Jackson made no representations within the prescribed period.
19. The case is set out the main witness statement of Noeline Cuthbertson together with a number of exhibits supporting the claim. There is an additional Statement of Michael Balshaw who sets out the housing benefit payments made [73-81]. The third witness statement is of Clare Taylor who is employed by the LHA as part of the Housing Standards Team.

Determination

20. The Property is a House in Multiple Occupation (HMO) as defined by S254 Housing Act 2004 and as such it is required to be licenced. It has at least 7 tenants sharing occupancy with Mrs Jackson and her family.
21. On 19 June 2019 Mrs Jackson was convicted of 12 offences relating to the Property. Of those, 11 related to failure to comply with The Management of Houses in Multiple Occupation (England) Regulations 2006. In addition she was convicted of an offence under section 72 (1) of the Housing Act 2004 in that on 7 December 2018 she was a person having control of an HMO which is required to be licenced and is not so licenced (offence 8). Mrs Jackson pleaded guilty to the offence. She was fined £7500. On 18 November 2019, the conviction in relation to that offence was upheld, though the sentence was varied. The conviction is evidenced clearly in the main Witness Statement, Exhibit NC 4 [31], 18 [52-69] and Exhibit 19 [70-71]. The Tribunal is satisfied beyond reasonable doubt that she was committed and was convicted of a relevance offence. She continued to be guilty of the same offence until she obtained a new licence. There is no evidence to show otherwise.

22. The Tribunal is satisfied that the LHA complied with the Notice of intended proceedings as required by s42 of the Act. They sent a Notice to the landlord informing her that they proposed to apply for a RRO, explained why, stated the amount, invited representations within 28 days and the Notice was within 12 months of the offence committed on 7 December 2018. It was served by hand on 16 July 2019. No representations were made. This is evidenced by the witness statement of Claire Taylor, including exhibits of the covering letter and Notice. [84, 89-90]
23. The Tribunal is satisfied that the LHA had authority to make the application for a RRO. It must consider doing so in accordance with s48 of the Act and has taken into account the Guidance produced by the Department for Communities and Local Government.
24. The Tribunal is satisfied that it must order the maximum amount payable and £14,785.31. represents the maximum penalty. It is the amount of housing benefit paid to the 5 tenants of the Property during the period of 14 September 2018 to 16 June 2019 as calculated in the main witness statement and supported in Exhibit 16 and 17A [50]. The calculations are supported by the Witness Statement of Michael Balshaw, an employee of the LHA Corporate Resources and Benefits Service and is supported by a printout of housing benefit payments made to 5 tenants for the period [73-82]. The rent paid amounts to £277.32 every 4 weeks for 4 tenants and £320 for the 5th tenant.
25. Mrs Jackson had a licence from 14 September 2015. The licence expired on 13 September 2018 [8] and so the offence was committed from 14 September 2018. A RRO cannot be made before that. The conviction related to an offence committed on 7 December 2018 and so the maximum penalty applied for that period. Mrs Jackson submitted a renewed licence application on 17 June 2019 [5]. On 19 June 2019 she was convicted of the offence found to be committed on 7 December 2018. The Tribunal are satisfied beyond reasonable doubt that she continued to commit the offence until the renewal application. There is no evidence to the contrary.
26. There are no exceptional circumstances put forward by Mrs Jackson as to why it would be unreasonable to pay. The Tribunal found none based on the limited information. Though Mrs Jackson had been fined a total of £28,659.67, she had sold a property for £169,950 on 24 August 2018 and continued to receive a substantial amount of rent for the Property.
27. In addition the other 11 offences ranged in seriousness but as a whole showed serious neglect, lack of repair, uncleanliness, obstruction of escape routes, lack of supply of essential services including gas, electricity and hot water, and

safety issues including no early fire warning system. Throughout the period of the licence several complaints have been received regarding poor housing conditions from various sources as outlined in paragraph 12 and 17 of the main Witness statement [3].

28. If Mrs Jackson had not been convicted this would not be a case where either the conduct or financial circumstances of the landlord would have led to reducing the RRO to below the maximum amount in accordance with s45(4).

Conclusion

29. The Tribunal makes an order that Mrs Jackson pays to Sefton MBC £14,785.31. by 30 July 2020.

Cost applications

30. There were no cost applications and we found no grounds to make an order for costs.

Judge J White
15 June 2020

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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 (Shalash) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. 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.

Appendix of Relevant Legislation

Housing Act 2004 (the Act)

55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where—
 - (a) they are HMOs to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see [section 61\(1\)](#)).
- (2) This Part applies to the following HMOs in the case of each local housing authority—
 - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
 - (b) if an area is for the time being designated by the authority under [section 56](#) as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

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)

Meaning of “house in multiple occupation”

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—
 - (a) it meets the conditions in subsection (2) (“the standard test”);
 - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
 - (c) it meets the conditions in subsection (4) (“the converted building test”);
 - (d) an HMO declaration is in force in respect of it under section 255; or
 - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if—
 - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Licensing of Houses in Multiple Occupation (Prescribed Descriptions)
(England) Order 2018

This Order comes into force on 1st October 2018.

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

- (a) is occupied by five or more persons;
- (b) is occupied by persons living in two or more separate households; and
- (c) meets—
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.

Housing and Planning Act 2016 (the 2016 Act)

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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.

42. Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must –

- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
- (b) state the amount that the authority seeks to recover, and

(c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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).

45 Amount of order: local housing authorities

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

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

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

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

- (a) the conduct of the landlord,
- (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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

- (a) is made against a landlord who has been convicted of the offence, or
- (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

48 Duty to consider applying for rent repayment orders

If a local housing authority becomes aware that a person has been convicted of an offence to which this Chapter applies in relation to housing in its area, the authority must consider applying for a rent repayment order.