



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

Case Reference : **MAN/00BY/HMF/2020/0015**

Property : **51, Herdman Close, Gateacre,
Liverpool L25 2XS**

Applicants : **Jennifer Britton
Christopher Doherty**

Respondent : **David Binks**

**Type of
Application** : **Application for a rent repayment order by
Tenant (no conviction)
Sections 40-44 Housing and Planning Act
2016**

Tribunal Member : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **9th September 2020.**

**Date of
Determination** : **16 September 2020**

DECISION

Order : **The application for a Rent Repayment Order is granted in respect of the Applicants jointly in an amount of £1079.17, together with their application fees, for the reasons set out in paragraphs 28 and 29, herein.**

A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by the Deputy Regional valuer of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application

B Background

- 5 The Applicants were, from 10th May 2018, the tenants of the property at 51, Herdman Close, Liverpool. They were tenants under an assured shorthold tenancy agreement, apparently dated on that date, a copy of which has been provided to the Tribunal. They left the premises by mutual agreement on 9th April 2019.
- 6 The Respondent is the owner of the property, which appears from the information provided, to be the home that he occupied prior to a move to live elsewhere and which thereafter he sought to let on the terms of an assured tenancy.
- 7 There may be some uncertainty as to the precise parties to the tenancy and, thereafter, to this application:
 - (1) The tenancy agreement, on its first page refers to the tenant as being the first named applicant
 - (2) On the final page it is signed by three tenants, being both the Applicants and one Kealan Doherty, whom the Tribunal presumes to be the brother of the second Applicant.
 - (3) The application for the RRO is made by the Applicants, but not Kealan Doherty. There appears to be no suggestion that it is made also on his behalf.

- 8 It would appear to be agreed between the parties that the application for a rent repayment order is founded upon the fact that the letting of the property took place at a time when it should have been licensed under the selective licensing scheme then being operated by the local housing authority, Liverpool City Council. The scheme no longer operates in the same form whereby it was applied across the whole city.
- 9 It is not clear how the absence of an appropriate licence came to light, but it is clear that the Respondent failed to make application until 21st January 2019 and a licence was granted with effect from 21st February 2019.
- 10 For a rent repayment order to be sought it is necessary to show that a relevant housing offence has been committed; the relevant offence alleged in this case is that for the period from 10th May 2018 to 21st January 2019 (the date of making an appropriate application for a licence) the Respondent was letting a dwelling in contravention of the terms of the requirement to possess a licence.

The Law

In relation to a rent repayment order:

- 11 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
 - (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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
- 12 Section 40 of the H&PA
 - (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenant

Subsection 3 then sets out a table of 7 offences to which the Tribunal's powers apply:

 - 1 using violence to secure entry to residential premises
 - 2 eviction of harassment of occupier
 - 3 failure to comply with an improvement notice
 - 4 failure to comply with a prohibition notice
 - 5 and 6 offences in relation to houses required to be licenced
 - 6 breach of banning orders in relation to the provision of housing.

- 13 18 Section 43 H&PA then provides that
- (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence... (whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with
 - (a) Section 44 (where it is made by a tenant)
- 14 Section 44 provides a table (Sub-section 2) whereby the amount of the order 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 and, (Sub-sections 3 and 4)
- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
 - In determining the amount, the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

In relation to the requirements for a licence:

- 15 Section 95 of the Act provides:
- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
 - (2) ...
 - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
 - (a)...
 - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
 - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
 - (a) For having control or managing the house in the circumstances mentioned in subsection (1)
 - (7) For the purposes of subsection (3) an...application is effective at a particular time if at that time it has not been withdrawn and either-
 - (a) The authority have not decided whether or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
 - (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful).

Submissions

- 16 The Tribunal received information from the Applicants and the Respondent which was limited to the narrow factual situation which had occurred. It would appear, in the absence of any contrary information that the Respondent has dealt with the situation appropriately after the breach of the licensing requirements came to light, by immediately making application for the licence, which was subsequently granted without significant difficulty.
- 17 On the information available it would also appear that there have been no proceedings by way of prosecution, or imposition of a financial penalty, undertaken by the Council for the perceived offence. There appears to be no suggestion of any significant failure to maintain suitable housing standards in respect of the property and financial information from the Respondent identifies expenditure on appropriate repairs.
- 18 Given the period over which the breach of the licence occurred, the application is made within the time limit prescribed by Section 41(b) H&PA and relates to a shorter period than the maximum rental period in respect of which an order may be made (Section 44).

Decision

- 19 The Tribunal must firstly consider whether an appropriate offence has been committed. The Application for an order rests upon such a finding.
- 20 The most relevant of these offences to the matter now before the Tribunal is that referred to in paragraph 15 above. Clearly, from the commencement of the tenancy agreement up to the time of making application for a licence on 21st January 2019 there is a situation capable of constituting an offence under section 95(1) Housing Act 2004.
- 21 It is important to note that committing an offence is not synonymous with being convicted of an offence in a court exercising a criminal jurisdiction, but is regarded as requiring any decision as to such an offence being determined, where there is a need to do so, on the criminal burden of proof.
- 22 The Tribunal does not believe that any defences referred to in section 95(3) are available to the Respondent. Error, or oversight, is not sufficient in the opinion of the Tribunal.
- 23 In these circumstances the Tribunal is so satisfied that it is sure that for the relevant period from 10th May 2018 to 21st January 2019 an offence was being committed. The Tribunal does acknowledge that any culpability is limited, and the offence mitigated immediately.

- 24 The Tribunal then moves on to consider whether an order should be made. It has taken into account all matters raised by the parties and considers these to be the most pertinent when applying the relevant law:
- (1) If a relevant offence has been found the Applicants are entitled to make application for an order.
 - (2) They have done so within the time limit of 12 months from when the offence was last being committed.
 - (3) The Tribunal has a very wide discretion as to whether it should make an order, and if so for what amount.
- The property was licensed by the respondent as soon as his error came to light.
- (4) The culpability, noted above, on the part of the Respondent was limited arising from ignorance of, rather than the deliberate flouting of, licensing requirements (the Tribunal assumes that by mistake the Respondent refers in paragraph 9 of his statement to 2018 rather than 2019.)
 - (5) There appears to be no major issue raised in relation to the standard of accommodation provided and which the Applicants appear to have enjoyed for longer than the period up to 22¹st January, when application was made for the licence.
 - (6) The Applicants are entitled to expect the Respondents to comply with statutory requirements within as reasonable a timescale as possible.
 - (7) Neither party should be entitled to an unmeritorious financial benefit from a failure to comply with the requirements of the licence, either by an automatic return of all rent, or retention of undeserved rental payments.
 - (8) The Tribunal takes at face value the observations of the Respondent about his reasons for letting the property and the financial obligation he is under in respect of an existing mortgage
- 25 The Tribunal has sought to take all the relevant factors into account in order to reach what it considers to be a just and equitable determination for all parties. It takes a view that an order should be made.
- 26 It does however take issue with the way in which the Applicants' solicitors have calculated the rental payments that should be considered as being available to satisfy any order. The Tribunal considers that the order must relate to the rent paid in respect of period from 10th May 2018 to 20th January 2019 i.e. rent for the period of 8 months and 11 days: not for 9 months, even if a monthly payment of £775.00 was made for the period from 10th January to 9th February within that period.
- 27 On that basis the Tribunal assesses the maximum amount as £6475.00 (8 full months and thereafter 11 of 31 days).

- 28 It takes the view that it is appropriate to make a repayment order in favour of each of the Applicants for an amount of 25% of the rental payments for the period for which the property occupied, but unlicensed. That would be an amount of £1618.75 of the total rent relating to 3 occupiers as the Tribunal views the intention of the tenancy agreement is to relate to 3 occupiers. In respect of the 2 occupiers making this application the amount is £1079.17 between them.**
- 29 The Applicants should also recover from the Respondents their Application fees in respect of this application.**

JUDGE : J R RIMMER

