



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

Case Reference : **BIR/00FY/HMJ/2021/0007**

Property : **9A Lismore Close, Nottingham, NG7 3BW**

Applicants : **Mitzie Williams and Timothy Williams**

Applicants' Representative : **Chris Rudd Solicitors**

Respondent : **Maria Del Carmen Jimenez Garcia**

Type of Application : **Application under section 41(1) of the Housing and Planning Act 2016 for a rent repayment order**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Mr A McMurdo MSc Env Health, MCIEH**

Date of Hearing : **17 September 2021**

Date of Decision : **19 October 2021**

Decision

- A. The Respondent was guilty of a housing offence namely having control of or managing a house, which was required to be licensed under Part 3 Housing Act 2004 (the 2004 Act) but was not so licensed***
- B. There was no reasonable excuse for the failure to licence the property.***
- C. The Applicants are entitled to a rent repayment order under s43 Housing and Planning Act 2016 (the 2016 Act)***
- D. The period for which rent is repayable is 21 June 2019 to 20 June 2020***
- E. The sum payable for rent in the period is £6000.00***
- F. After applying the principles described in s44 of the 2016 Act the Applicants are entitled to a rent repayment order of £6000.00***

Introduction

1. This is an application for a rent repayment order under section 41(1) and chapter 4 Part 2 Housing and Planning Act 2016 (the 2016 Act) The application relates to an apartment in a block known as 9A Lismore Close Nottingham NG7 3BW (the Property).
2. The Applicants were tenants of the Property from 21 December 2017 to 20 June 2020. The Respondent landlord is Maria Del Carmen Jimenez Garcia whose whereabouts are not known although the Applicants and the Tribunal has an email address for her.
3. The application for this order was issued on 7 May 2021. It was issued by solicitors instructed by the Applicants who served the application by sending a copy by email to the Respondent at her email address and by post addressed to her at the Property.
4. Directions were issued on 14 May 2021 which required the parties to serve their respective Statements of Case. The directions urged the Respondent to seek independent legal advice and directed that her statement of case be provided not later than 25 June 2021. The Applicants complied with the direction for service of their evidence but by 23 July 2021 the Respondent had failed to provide her Statement of Case. The Tribunal notified the Respondent that unless she complied with the directions for providing a Statement of Case by 6 August 2021 it may bar her from taking any further part in these proceedings and determine

the case, pursuant to rules 9(7) & (8) the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules).

5. The Respondent failed to comply with the further direction and by a decision of the Tribunal on 9 August 2021 the Respondent was barred from taking further part in the proceedings pursuant to rule 9(3) (a) and rule 9(7) a of the 2013 Rules and further directed under rule 9(8) that the Tribunal need not consider any response or other submission made by the Respondent and may summarily determine any or all issues.
6. The matter was then listed for hearing by cloud video platform without an inspection.

The Hearing

7. At the hearing the Applicants were represented by Mr Matthew Scanlon of Chris Rudd Solicitors. The Respondent did not appear, was not represented and had submitted no evidence or other communication to the Tribunal or the Applicants. Before proceeding with the substantive application, the Tribunal wished to be satisfied that all reasonable efforts have been made to bring this application to the attention of the Respondent.
8. Mr Scanlon told the Tribunal that he was originally instructed by the Applicants in connexion with recovery of the deposit which the Applicants had paid to the Respondent at commencement of the tenancy. Although the only address for post which he had for the Respondent was that of the Property he had correspondence with the Respondent by email in connexion with the claim for repayment of the deposit to which there had been no response.
9. The reason why documents and correspondence were sent to the Property is that Mrs. Williams told the Tribunal the Respondent visited the Property frequently to collect all mail which had arrived for her at that address. It was part of the substantive case that the Respondent had not given the Applicants her address contrary to the requirements of section 48 Landlord and Tenant Act 1987. Mr Scanlon has carried out further investigations into the possible whereabouts of the Respondent and had taken the following steps:
 - He had made searches at the 192.com website which revealed that the Respondent appeared to use multiple names.
 - He had identified a number of addresses which he believed were associated with or belonged to the Respondent.
 - He had written to those addresses without response.

- He had made telephone calls to a mobile phone number owned by the Respondent (which were unsuccessful).
10. Mr Scanlon had sent all documents relating to this case including the Applicants' evidence and the barring order to the Respondent by both email and post. As the Applicants had left the Property before commencement of these proceedings, they could not say whether or not the Respondent had collected documents delivered by post. However, Mrs. Williams was aware that the Property was occupied as the Applicants live nearby and had seen signs of occupation when walking by the Property. Mrs. Williams assumed that the Respondent continued with her visits to the Property to collect mail.
 11. Having heard the evidence of Mrs. Williams and from the submissions of Mr Scanlon the Tribunal was satisfied pursuant to rule 34(a) of the 2013 Rules, that the Respondent had notice of these proceedings and considered the application for a rent repayment order to be properly made. The Tribunal further considered it was in the interests of justice to proceed with the hearing pursuant to rule 34(b) of the 2013 Rules.

The Applicants' Evidence

12. Mrs. Williams described the circumstances leading to her occupation with her husband Paul at the Property. They were looking for somewhere suitable to live in late December 2017. This Property was advertised by an agent but as it was close to Christmas and the agent's office was closing, Mrs. Williams was advised to deal directly with the Respondent.
13. Mrs. Williams agreed a rent of £500 per calendar month with the respondent. In addition, the Applicants paid a deposit of £500. The Applicants were responsible for all outgoings including council tax and utilities.
14. The Respondent did not provide the Applicants with a tenancy agreement, nor did she give her address to them. Mrs. Williams stated that the lack of information about the landlord became highly prejudicial because they could not obtain a reference from the Respondent when they applied for tenancies of other properties. The Respondent came to the Property from time to time to collect mail. On these visits, Mrs. Williams would repeat her requests for a tenancy agreement and an address for her, but the Respondent consistently failed to supply either.
15. It was apparent to the Applicants that the Respondent was using the address of the property as a correspondence address because they noticed mail from

Nottingham City Council, the local Housing Authority, addressed to the Respondent coming to the property where it was collected by the Respondent. Moreover, officers of the Nottingham City Council visited the property looking for the Respondent in relation to their requirement that a selective licence application be made. These visits caused anxiety to Mrs. Williams as she did not know the reasons for the visits and was worried they might affect her right to remain in the property.

16. Notwithstanding the lack of a tenancy agreement and information regarding the address of the landlord, the Applicants continued to make their monthly payments of £500 into the nominated bank account of the Respondent on or about the 20th of each month from June 2019 until May 2020.
17. Officers of the council told the Applicants that the property was in an area of selective licensing and that it was unlicensed. On 24 June 2020 in response to a request for information from the Applicants by email, an officer of Nottingham City Council notified Mrs. Williams that the property required a licence under Part 3 of the Housing Act 2004 with effect from 1 August 2018 to the date the Applicants vacated the property on 20th of June 2020. The council had not received a valid licence application for the property and advised therefore that for the duration of their occupation at the property it was unlicensed.
18. When the Applicants vacated the property, the Respondent failed to return the deposit without explanation or so far as the Applicants are concerned any good reason.
19. Mr Scanlon submitted that on this evidence it was clear the Respondent had committed a housing offence namely managing an unlicensed property and there was no reasonable excuse for so doing (contrary to s95 of the 2004 Act).
20. He contended that the Respondent's behaviour throughout the tenancy amounted to misconduct relevant for the purposes of s44(4) of the 2016 Act. He referred to the Respondent's failure to give a tenancy agreement or her address and characterised the repeated visits of the council officers as tantamount to a breach of the tenants' entitlement to quiet enjoyment of the Property.

The Statutory Framework

21. The Act of 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing unlicensed premises. Chapter 4 of the Housing and Planning Act 2016 replaced the jurisdiction to make a rent repayment order where a landlord has

committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.

22. S40(2) of the 2016 Act defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides;

“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”

and at item 6 of the table in subsection 3 having control or management of an unlicensed house under the selective licensing requirement of the 2004 Act is identified as behaviour amounting to an offence.

By s41 of the 2016 Act

(1)A tenant 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.

23. S43 Provides that a Tribunal may make a rent repayment order under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

24. S44 provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicensed period. 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 been convicted of an offence to which the Chapter applies.

25. It is a defence to a charge of letting an unlicensed house that the person had applied for a licence (s95(3)) or had a reasonable excuse for having control or managing the house without a licence. Sections 95 (4) of the 2004 Act which provides:

“In proceedings against a person for an offence under subsection (1), (2) or 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

Decision

26. In this case the Tribunal is satisfied to the required standard that the Respondent has committed the housing offence of being the person in control or manager of an unlicensed house contrary to s 95(1) of the 2004 Act. The evidence supplied by the Applicant is from the local housing authority who confirm the Property is an area of selective licensing and that it was not licensed throughout the period when the designation of selective licensing came to be in force.
27. The Tribunal has considered whether the Respondent had a reasonable excuse for failing to licence the Property. In *Thurrock Council v Palm View Estates [2020] UKUT 0355 (LC)* HHJ Cooke said *“this is a defence that the defendant, in criminal proceedings, or the respondent in these civil proceedings, must prove to the civil standard of proof”*. In the absence of evidence from the Respondent the Tribunal has not heard any reason for the failure to obtain a licence but it takes into account that the local housing authority has stated it has not received any application for a licence even though it has made efforts to contact the Respondent. The Tribunal has decided the Respondent has ignored her responsibility and has no excuse for failing to obtain a licence.
28. Although no written tenancy agreement was made between the Applicants and the Respondent the Tribunal is satisfied that the relationship between the parties was one of landlord and tenant. The Applicants were entitled to occupy the entire Property, they paid rent and were responsible for the council tax and utilities.
29. The application was issued within twelve months of the end of the tenancy.
30. The Tribunal will make a rent repayment order.
31. S44 (4) of the 2016 Act requires the Tribunal to take into account the conduct of both the landlord and the tenant. The Applicants paid their rent throughout the tenancy on time according to a bank statement showing regular payments to the Respondent. Their requests for a tenancy agreement were ignored as was their request for the address of the landlord, causing them prejudice in their search for a new tenancy as they could not produce a reference.

32. The Respondent disregarded her obligations as a landlord by these failures. Moreover, it appears from the search enquiries conducted by the Applicants' solicitor that the Respondent has tried to evade responsibility by using different names.
33. In *Vadamalayan v Stewart & Others [2020] UKUT 0183(LC)* HHJ Cooke confirmed the regime is intended to be harsh and fiercely deterrent and described the rent as "*the obvious starting point*" in deciding upon a rent repayment order. In *Rakusen v Jepsen & Ors (Rev 1) [2021] EWCA Civ 1150* the regime introduced by Chapter 4 of Part 2 Housing and Planning Act 2016 is described as "*intended to deter landlords from committing the specified offences*".
34. The Tribunal has a discretion whether or not to make a rent repayment order. In *Ficcara & Ors v James (2021) UKUT 0038 (LC)* the Upper Tribunal, referring to the Vadamalayan decision that rent is the obvious starting point said "*The concept of a "starting point" is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role. A full assessment of the FTT's discretion as to the amount to be repaid ought also to take account of section 46(1).*"
35. In this case the Tribunal will not reduce the sum payable having regard to the Respondent's conduct. It determines that the sum payable is £6000.00 being the rent paid in total for the period of twelve months ending 20 June 2020.

Appeal

36. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Tribunal Judge Peter Ellis