



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

**Case Reference** : CHI/00HB/HMF/2020/0031

**Property** : 16 Camden Road, Southville, Bristol BS3  
1QA

**Applicant** : Natasha Littlewood

**Representative** : -

**Respondent** : Carmelina Giardina

**Representative** : Samuel Mayer of Henriques Griffiths LLP

**Type of Application** : Application by tenant for rent repayment  
order: sections 40-46 Housing and  
Planning Act 2016

**Tribunal Members** : Judge E Morrison  
Mr M J F Donaldson FRICS MCI Arb MAE  
Mr P A Gammon MBE BA

**Date of  
Hearing** : 11 February 2021 (by video conferencing)

**Date of decision** : 17 February 2021

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**DECISION**

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## **The application**

1. By an application dated 29 October 2020 the Applicant applied for a rent repayment order (“RRO”) against the Respondent landlord on the grounds that the Respondent had committed various offences. By the time of the hearing the offences relied on were under section 1 of the Protection from Eviction Act 1977 (“the PEA”) (eviction or harassment of occupiers), and section 72 of the Housing Act 2004 (control or management of unlicensed HMO).

## **Summary of decision**

2. The application for a rent repayment order is dismissed.

## **The law and jurisdiction**

3. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 (“the Act”), reproduced in full in the Appendix to this Decision.
4. Section 41 permits a tenant to apply to the first-tier tribunal for a RRO against a person who has committed a specified offence, which include those mentioned at paragraph 1 above, if the offence relates to housing rented by the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made.
5. Under section 43, the tribunal may only make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed one of the specified offences.
6. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 relates to the amount of a RRO . Where an offence under the PEA has been committed, the amount must relate to the period of 12 months ending with the date of the offence. Where an offence under section 72 of the Housing Act 2004 has been committed, the amount must relate to a period, not exceeding 12 months, during which the landlord was committing an offence. It must not exceed the amount of rent paid less any universal credit paid in respect of the rent. In determining the amount of a RRO the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant (b) the financial circumstances of the landlord.

## **Procedural background and representation**

7. On initial consideration of the application, the Tribunal convened a case management hearing, one of the stated purposes being to consider whether the Applicant was “a tenant” who could apply for a RRO. The Tribunal felt it necessary to raise the issue, because a previous application for a RRO made by an occupier of the same property had named Room Rental Specialists Ltd “RRSL”, a company owned and

controlled by Ms Littlewood, as the respondent. The ground relied on in that case was that RRS� was in control or management of a unlicensed HMO. This application had been withdrawn after RRS� agreed to refund the rent paid by the occupier.

8. At the case management hearing Ms Littlewood confirmed that she was making this application as an individual and not on behalf of RRS�. She said she had been granted an assured shorthold tenancy by the Respondent “c/o RRS�” to her, and that she had lived at the property herself for a period, paying rent to RRS�. These matters were clearly recorded in the Tribunal’s Directions of 4 December 2020.
9. At the hearing on 11 February 2020, the Applicant was in person and the Respondent was represented by her solicitor, Mr Mayer. Both parties had served witness statements as directed, and both gave additional oral evidence at the hearing.

### **The Applicant’s case**

10. The Applicant did not produce a copy of any tenancy agreement granted to her, and at the hearing she admitted that she had never lived at the property. She said she had been mistaken about this at the earlier case management hearing, confusing 16 Camden Road with another property in the same area, where “I rented several properties”.
11. She instead relied on the fact that the Respondent had granted a lease to RRS� for a two year term commencing 31 January 2019, and said she was making the application on behalf of RRS�. When it was pointed out to her that this was directly contrary to what she had said at the case management hearing, and that she as an individual and RRS� were two different legal entities, she accepted that, and said she wanted RRS� to be the applicant.
12. The Tribunal then considered, in light of the overriding objective which requires cases to be dealt with proportionately, whether permission should be given to substitute RRS� as applicant, and for the hearing to proceed on that basis. It was pointed out that an application made by RRS� would have to be taken as made on 11 February 2021, as it would be unfair to allow RRS� to “backdate” its application to 29 October 2020. This would affect the grounds relied upon (as the relevant offence must have been committed in the period of 12 months prior to the application).
13. Ms Littlewood was asked whether, in light of this, RRS� might wish to rely on other evidence beyond that produced in relation to the current application. When she answered in the affirmative, the Tribunal decided it would not be right to allow a substitution of the applicant in these proceedings.
14. The hearing therefore proceeded on the original basis i.e. Ms Littlewood was the Applicant.

### Alleged offences under section 1 of the Prevention from Eviction Act 1977

15. Ms Littlewood said that the property was constantly entered by either Ms Giardina or her sister without prior notice or permission. The evidence relating to the period of 12 months prior to the date of the RRO application consisted of:
- Letters from the Council and utility providers addressed to Ms Giardina at 16 Camden Road, which the Respondent's sister had then sent to Ms Littlewood via WhatsApp. Ms Littlewood said these letters could only have been obtained by visiting the property to collect them.
  - A letter dated 20 June 2020, said by Ms Littlewood to have been received by her on 2 July 2020, from agents acting on behalf of Ms Giardina. The letter stated "We will be changing the locks" due to non-payment of rent.
  - Ms Littlewood told the Tribunal at the hearing that she had then tried to re-enter the property to remove furniture but had been unable to get in as the key no longer worked. This was "just after lockdown"; she could not recall the date.
  - When asked whether anyone was in occupation, Ms Littlewood said that "all the tenants had left at that point", but one came back later from his home country and was unable to retrieve belongings that were still in the property.

### Alleged offence under section 72(1) Housing Act 2004

16. Ms Littlewood said that the Respondent had committed an offence under section 72(1) of the Housing Act 2004. Ms Giardina had known that the property was going to be sublet like her sister's properties – also leased to RRSL – which were HMOs, and that an HMO licence would be needed as the property filled up. It was not an HMO when the lease was granted but two rooms downstairs were then converted into bedrooms, making five bedrooms in all. Ms Littlewood had agreed to complete the HMO licence application on Ms Giardina's behalf, asking only that she check it and pay the application fee. When she didn't pay, RRSL paid the first part of the fee and deducted it from the rent paid to Ms Giardina. The Council wrote to Ms Giardina requesting the second part of the fee in June 2019 but she didn't pay that either. The fee was eventually paid by RRSL on 10 January 2020, again deducting the sum from the rent.
17. Ms Littlewood relied on a witness statement from an officer of Bristol City Council dated 25 November 2020 which confirmed that the HMO licence application was submitted by Ms Littlewood of RRSL, and showed RRSL as the manager and Ms Giardina as the proposed licensee. The witness concluded: "If the property was occupied by 5 or more persons living in 2 or more households for the period of 25<sup>th</sup> June 2019 and 10<sup>th</sup> January 2021 it was an unlicensed property at this time".

18. Ms Littlewood said that Ms Giardina was responsible, as the property owner, for getting the licence. She relied on the lease to RRSL under which the landlord covenanted “To obtain all necessary consents for the Permitted Use [residential accommodation] ...”. She accepted that the lease also contained a covenant by RRSL “To comply with all laws relating to the Property ... including but not limited to all laws relating to renting of residential accommodation... HMO licensing...”, but said that Ms Giardina as landlord was also responsible for the licensing.

### The rent paid

19. Ms Littlewood said that RRSL paid £1700.00 per month in rent to Ms Giardina, £1000.00 by bank transfer and the balance in cash as requested by Ms Giardina. The bank statements produced corroborated the payments of £1000.00 in most months up to February 2020, although in some months the amount was lower. The statements also showed cash withdrawals in varying amounts.
20. The Tribunal asked Ms Littlewood why £1700.00 per month was paid when the rent under the lease was £10,800 per annum, payable monthly i.e. £900.00 per month. Her first answer was that this was “an error”, but she quickly amended her answer to say that the Respondent’s sister had asked for £1700.00 with £700.00 of this in cash, and that she had agreed “in the interests of our working relationship”.

### **The Respondent’s case**

21. The Respondent’s primary submission was that Ms Littlewood could not apply for an RRO as she was not a tenant. The lease had been granted to RRSL, not to her. However, it was also denied that Ms Giardina, as landlord had committed any relevant offence.

### Alleged offences under section 1 of the Prevention from Eviction Act 1977

22. Ms Giardina, whose address is 23 Camden Road, said that she had never been to the property, and that she had “no involvement”, as her sister, who was a friend of Ms Littlewood, dealt with it. She had not even read the lease, which she said was prepared by Ms Littlewood.
23. She confirmed that she had instructed agents to send the letter dated 20 June 2020 because no rent was being paid, but denied that the locks had been changed. Then she said that the agents had told her that the locks were changed in September 2020.
24. Based on this evidence Mr Mayer submitted that the evidence did not make out any offence under the PEA. There was no evidence that the

Respondent had ever attended the property, and the letters from the Council etc. could have been obtained by other means than by being collected from 16 Camden Road. Even if post had been collected, that did not constitute an offence under the PEA.

#### Alleged offence under section 72(1) Housing Act 2004

25. Ms Giardina's case was that RRSLS was solely responsible for getting the HMO licence, as stated in the lease. Mr Mayer suggested that this would provide a defence of "reasonable excuse" to an offence under section 72(1).

#### The rent paid

26. Ms Giardina accepted that the rent was £1700.00 pm. When the Tribunal asked her why it was that amount, when the lease required only £900.00 per month, she said she didn't know, and would not be drawn any further.

#### **Discussion and determination**

27. There is no evidence that Ms Littlewood as an individual was ever a tenant of the Respondent. She misled the Tribunal and the Respondent about this at the case management hearing. Because she was never a tenant she is not entitled to make an application for an RRO under section 40 of the Act and accordingly the application must be dismissed.
28. However, the Tribunal will also consider the other issues raised at this hearing. It finds neither Ms Littlewood nor Ms Giardina to be credible witnesses. Their lack of candour is best illustrated by their failure satisfactorily to explain why payments of £1700.00 per month, including a large cash element for which there are no receipts, were being made when the written lease required only £900.00 per month. Clearly neither was prepared to tell the Tribunal the whole truth about the financial arrangements.
29. In order to obtain a RRO it must be proved, beyond a reasonable doubt, that the landlord has committed one of the specified offences.

Offences under section 1 of the Prevention from Eviction Act 1977

30. The relevant parts of section 1 of the PEA are as follows:

*1.— Unlawful eviction and harassment of occupier.*

*(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.*

*(3) If any person with intent to cause the residential occupier of any premises—*

*(a) to give up the occupation of the premises or any part thereof; or*

*(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;*

*does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.*

*(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—*

*(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or*

*(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,*

*and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises*

*(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.*

31. The Applicant has not proved that the Respondent attended or instructed anyone else to attend the property during the relevant period, until the locks were changed. The allegation is that there was attendance to pick up post. Even if that had been proved, simply calling in to pick up post, without more, would not constitute a breach

of any of the relevant provisions of the PEA.

32. Changing the locks, which the Respondent admits eventually happened, although the date is not clear, might well constitute an offence under section 1(2) if there were residential occupiers at the time. However, there is no reliable evidence that anyone was in occupation when the locks were changed.
33. The Tribunal therefore does not find that a relevant offence under the PEA has been committed by the Respondent.

#### Offence under section 72(1) Housing Act 2004

34. Under section 72(1) a person commits an offence if he is a person having control or managing an HMO which is required to be licensed but is not licensed. Under section 72(4) it will be a defence if, at the material time, an application for a licence had been made and was still effective. Section 72(5) provides for a defence of reasonable excuse.
35. The Applicant has failed to provide evidence that at any time between 25 June 2019 and 10 January 2020 – the period when the license application was ineffective due to non-payment of the second part of the Council’s fee – the property was occupied by the necessary number of persons/households triggering the need for a licence.
36. Had such evidence been provided, the Tribunal would have been satisfied that the Respondent had committed an offence under section 72(1). In *Rakusen v Jepsen* [2020] UKUT 0298 (LC) the Upper Tribunal considered whether this offence can be committed not only by the immediate landlord of an occupier, but also by a superior landlord. Having considered the statutory definitions of “person having control” and “person managing” in section 263 of the Housing Act 2004, the conclusion was that a superior landlord who receives a rack rent is a “person having control”. Ms Giardina therefore had control of an unlicensed HMO if a licence was needed. The suggestion that she can avail herself of a defence of reasonable excuse is wholly without merit. Whatever the lease said, she was aware - because the Council wrote directly to her about it – that the Part 2 fee had not been paid, and she did nothing to rectify the situation. Nor can she plead reliance on a clause in a lease which she has told the Tribunal she did not even bother to read.

#### The discretion to make an RRO

37. Even if RRS� had made the application for an RRO, and even if the Applicant had established beyond reasonable doubt that Ms Giardina had committed an offence under section 72(1), the Tribunal would not have exercised its discretion to make an RRO. The plain fact of the matter is that if Ms Littlewood, acting through RRS�, let out 16



Camden Road in circumstances which meant an HMO licence was required, she and/or RRSL as the manager of that property also committed the offence. The person who created the licensable situation, and managed the property, would in our view have the primary liability to ensure a licence was obtained.

38. Furthermore, RRSL was itself the landlord of the property, receiving market rents from the occupiers, and presumably was operating with a view to making a profit. Part 2 of the Act, which includes the RRO provisions, is “about rogue landlords and property agents” (section 13). RROs are one measure intended to discourage and penalise the activities of such landlords. It would be entirely contrary to the spirit and purpose of the statutory provisions to award an RRO to a person who was themselves a landlord that had committed a relevant offence.

## Appeals

1. 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.
2. 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.
3. 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.
4. 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 the party making the application is seeking.

## APPENDIX

### Sections 40 – 46 Housing and Planning Act 2016

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

## 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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in <a href="#">row 1 or 2 of the table in section 40(3)</a>	the period of 12 months ending with the date of the offence
an offence mentioned in <a href="#">row 3, 4, 5, 6 or 7 of the table in section 40(3)</a>	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.

## 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 <a href="#">row 1 or 2 of the table in section 40(3)</a>	the period of 12 months ending with the date of the offence
an offence mentioned in <a href="#">row 3, 4, 5, 6 or 7 of the table in section 40(3)</a>	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.