



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

Case Reference : **LON/00AY/HMF/2020/0180**

**HMCTS code
(paper, video,
audio)** : **V - Video**

Property : **11, Greenham Close, London SE1 7RP**

Applicant : **Mr. A. Beaumont**

Representative : **Ms. C. Sherratt of Justice for Tenants**

Respondent : **Mr. C. Bancroft**

Representative : **Not represented**

Type of Application : **Application for a rent repayment order by
tenant**

Tribunal : **Tribunal Judge S.J. Walker
Mr. S. Wheeler MCIEH CEnvH**

**Date and Venue of
Hearing** : **9 June 2021 - video hearing**

Date of Decision : **11 June 2021**

DECISION

- (1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the Applicant the sum of £10,500.**
- (2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursalment of the fees of £300 paid by the Applicant in bringing this application against the Respondent is granted. Payment is to be made within 28 days.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

The Application

1. The Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") for the period from 2 August 2018 until 1 August 2019 in the total sum of £10,500.
2. The application was made on 3 July 2020, so is in time, and alleges that the Respondent has committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") – having control or management of an unlicensed House in Multiple Occupation ("HMO").
3. Directions were made on 1 February 2021. They required the parties to produce bundles of documents for use at the hearing. The directions were issued to the parties on 3 February 2021 when they were also notified of the hearing date.
4. In response to the directions the Applicant produced a bundle of documents consisting of 103 pages. Nothing was received from the Respondent.

The Law

5. The relevant legal provisions are set out in the Appendix to this decision.
6. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the 2004 Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
7. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description. Those prescribed descriptions are to be found in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Orders 2006 and 2018. As the latter only came into force on 1 October 2018, part way through the period for which an order is sought, the most relevant order is that of 2006. Under that an HMO falls within the prescribed description if it

comprises three or more storeys, is occupied by five or more people, and is occupied by people living in two or more single households.

The Hearing

8. Both parties attended the hearing. The Applicant was represented by Ms. C. Sherratt from Justice for Tenants. The Respondent was not represented.
9. Although the Respondent had not complied with any of the directions which applied to him, he confirmed to the Tribunal that he had received the directions – though he had not looked at them – and that he had also received the bundle of documents produced by the Applicant in support of his case.

Matters Not In Dispute

10. The Respondent accepted that the property has three storeys and was, throughout the period in question, occupied by at least 5 people comprising at least two households. He accepted that an offence had been committed under section 72(1) of the 2004 Act.
11. On that basis the Tribunal is satisfied so that it is sure that such an offence has been committed and that it has the power under section 43(1) of the Act to make a rent repayment order.
12. The Respondent also accepted that the Applicant had paid a total of £10,500 in rent in respect of his occupation of the property during the period from 2 August 2018 to 1 August 2019 as claimed by him. It follows that the maximum amount that the Tribunal may order to be paid is £10,500.

Matters In Dispute

13. The only matter remaining for the Tribunal to consider is the question of what sum the Tribunal should order to be paid. Section 44(4) of the Act requires the Tribunal to have particular regard to the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has ever been convicted of a relevant offence.
14. The decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) makes it clear that when the Tribunal has the power to make a rent repayment order, it should be calculated by starting with the total rent paid by the tenant within the time period allowed under section 44(2) of the Act, from which the only deductions should be those permitted under sections 44(3) and (4).
15. In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the “starting point” in the sense that it is used in criminal proceedings, not least because, unlike in criminal proceedings, the amount cannot go up in aggravated cases, but can only come down. Although in the case of *Awad v Hooley*

[2021] UKUT 0055 (LC) Judge Cooke said that this issue may be a matter for a later appeal, at present the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered below, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.

16. In seeking to reduce the amount of the order which he accepted would be made the Respondent initially invited the Tribunal to have regard to the fact that included within the rent was the cost of council tax payments, water rates and the provision of internet services. He accepted that the water and internet charges were both flat rates and were not metered. There was no dispute that the Applicant himself paid for any gas and electricity use.
17. The actual rent is specified in the tenancy or licence agreement. As an expert tribunal, the Tribunal can state that the rent is the price the landlord is prepared to offer, and the tenant is prepared to accept, not just for the property itself but for whatever services or inclusive bills it comes with. Landlords and letting companies offer services and inclusive bills not out of some altruistic motives but to ensure that the property is attractive in the market, so that they can find tenants prepared to pay the amount asked in rent. Therefore, there is no basis, either in law or in practice, for disregarding part of the rent to reflect the costs of such services or inclusive bills as council tax, water rates or the provision of the internet.
18. In relation to the question of the Respondent's conduct, the Tribunal bears in mind the following. He accepted that he had been late in protecting the Applicant's deposit. He admitted that he found it difficult to manage the relevant paperwork. This is consistent with his approach to these proceedings, in which he took no steps to comply with the Tribunal's directions and did not even look at them when he received them.
19. The Tribunal finds this to be particularly concerning as on his own account the Respondent has a lot of other properties which he lets out. The proper management of an HMO is a task which requires a degree of responsibility which is not consistent with a failure to deal properly with the relevant paperwork. This Tribunal is satisfied that this is an aggravating feature of the Respondent's conduct.
20. The Respondent invited the Tribunal to take into account the fact that he had installed fire doors to all the rooms in the property and had installed some fire alarms, and that he had since applied for an appropriate licence. However, he also accepted that when he applied for that licence he had to undertake further fire safety work including installing additional alarms and boxing-off electrical appliances in the property.

21. When asked about his financial circumstances the Respondent initially pointed out that he had a significant mortgage on the property and that interest payments alone were some £20,000 per annum. However, he also accepted that he owned a lot of other properties and he made it clear that he would be able to pay any sum ordered.
22. The Respondent did not raise any issues in respect of the Applicant's conduct and he has no convictions.
23. Taking all the matters set out above into account, the Tribunal is satisfied that there is no basis for deducting any amounts from the maximum amount which the Tribunal may order. It therefore decides to make a rent repayment order for the benefit of the Applicant in the sum of £10,500.

Application Under Rule 13(2)

24. The Applicant applied for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which enables the Tribunal to make an order requiring a party to re-imburse any fees paid.
25. In view of the matters set out above the Tribunal is satisfied that it is just and equitable to make such an order requiring the Respondent to re-imburse the total of £300 in fees paid by the Applicant.

Name: Tribunal Judge S.J.
Walker

Date: 11th June 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.
- 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.
- 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(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 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

Section 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) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

- (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,
 and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (1) For the purposes of subsection (4) a notification or 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 to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are—
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
 - (a) receives (whether directly or through an agent or trustee) rents or other payments from—
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
 - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
 - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 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 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
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).

Section 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.

Section 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).

Section 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.

If the order is made on the ground that the landlord has committed ***the amount must relate to rent paid by the tenant in respect of***

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—

(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.

Section 52 Interpretation of Chapter

(1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.