



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

Case reference: MAN/00BY/HMF/2020/0018

Property: 15 Ashton Street, Liverpool, L13 3BE

**HMCTS code
(audio,video,paper):** V:FVHREMOTE

The Applicants: Ms Leanne Holloway &
Mr John DeSilva

Respondents: Mr Kevin Cringle & Mr Derek Cringle

Type of Application: Application for a rent repayment order
under Section 41 of the Housing and
Planning Act 2016

Tribunal Members: Judge J.M.Going
J.Faulkner FRICS

**Date of
Hearing:** 13 May 2021

Date of Decision: 8 June 2021

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. 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 were in a series of electronic document bundles, statements, and submissions as described below, the contents of which were noted.

The Decision and Order

Messrs Cringle are ordered to repay, jointly and severally, rent of £2820 to Ms Holloway and Mr DeSilva.

Background

1. By an Application (“the Application”) dated 23 February 2020 received on 2 March 2020 the Applicants (“Ms Holloway and Mr DeSilva”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order in respect of rents paid to the Respondents (“Messrs Cringle”) as the landlords of the property.
2. The Tribunal issued Directions to the parties on 26 November 2020.
3. The bundle of documents supplied by Ms Holloway and Mr DeSilva included copies of their Tenancy Agreement, bank statements, and a Witness Statement by Jennifer Driscoll, a Private Sector Housing Licensing Enforcement Coordinator with Liverpool City Council.
4. A Full Video Hearing was held on 13 May 2021. Ms Holloway and Mr DeSilva attended. Messrs Cringle did not.
5. The Tribunal reconvened on 8 June 2021 following receipt of evidence of the amounts of universal credit paid during the tenancy.

Facts

6. The Tribunal did not inspect the property, but understands that it is a 2 bedroom mid terraced house.
7. On 1 April 2015 Liverpool City Council (“the Council”) introduced citywide selective licensing in accordance with part 3 of the Housing Act 2004, meaning that all privately rented properties in the city required a licence, during the 5 year term of the scheme which ended on 31 March 2020.
8. Ms Holloway and Mr DeSilva signed an Assured Shorthold Tenancy of the property with Messrs Cringle on 1 February 2019 for an initial 6 month term. The rent payable was £475 per calendar month, with Ms Holloway and

Mr DeSilva also responsible for paying separately the council tax and utilities charges.

Ms Holloway and Mr DeSilva's written submissions

9. Copies of Ms Holloway's bank statements show the payment of a deposit of £250 to Kevin B Cringle on 4 February 2019, followed by rental payments made between 6 February 2019 and 23 December 2019 of £475 in February, March, April and May, £470 in June and July, £500 in August and September, £470 in October and November, and a final payment of £410 in December, which rental payments together totalled £5190.

10. The Witness Statement by Ms Driscoll of Liverpool City Council was dated 3 February 2021 and confirmed that her duties included ensuring that licences were issued, and where needed, licence holders complied with licence conditions, and to investigate, and take action as appropriate, in respect of allegations of unlicensed properties.

11. She stated that, on 1 February 2021 following a request, she had checked the Council's computer records. That showed no application for, or issue of, a licence for the property. The only information held was an advisory letter "sent to Kevin Cringle on 13 January 2020 in respect of an allegation of the property being unlicensed at that time. This letter was sent to what appeared from the Council records to be his home address."

12. Ms Driscoll confirmed that separate checks of the Council's computer records had found no record of either Kevin Cringle or Derek Cringle as a licence holder.

Messrs Cringle's submissions

13. Despite reminders, and warnings as the consequences of non-compliance contained in the Directions, Messrs Cringle have not provided any evidence, submissions, or response to the Application.

The Hearing

14. The Hearing on 13 May 2021 was initially delayed because of connectivity issues.

15. The timeline and core events referred to in the written submissions were discussed and amplified.

16. Ms Holloway and Mr DeSilva explained that they had for family reasons needed to move back into the area at short notice, and had found, on the web, that the property was available to let. There was no letting agency as such, and they viewed the property with one of Messrs Cringle. Various dilapidations to a door and flooring were noted, which it was said would be attended to. The requested deposit was paid, but without any evidence of that being protected within an authorised scheme as required under the relevant legislation.

17. Ms Holloway and Mr DeSilva described wallpapering and decorating the property, removing a door which was rotten, and putting in new carpets as well as some laminate flooring.

18. They understood that Messrs Cringle had at least 2 other let properties including one in the same street.

19. The tenancy continued on a statutory monthly basis following the expiry of the initial 6 month term.

20. There were intermittent problems with the boiler, which was initially attended to by one of Messrs Cringle's relatives. Unfortunately it failed again in the winter, and Ms Holloway and Mr DeSilva were left without any heating or hot water. They described contacting Mr Cringle, then in Thailand, but who was unwilling to arrange for the problem to be dealt with until his return. Ms Holloway and Mr DeSilva had, as a consequence, to move out temporarily to a hotel in order to be able to have a shower.

21. It was because of these problems with the property, and in an attempt to secure rehousing, that they contacted Liverpool City Council. It was only then that they were advised and became aware that the property had not been licensed.

22. Ms Holloway and Mr DeSilva confirmed that during parts of the tenancy they had been in receipt of universal credit, but were unable to recall the precise amounts.

23. They confirmed that after vacating the property in January 2020, Messrs Cringle refused to return any part of the deposit of £250 because of a door that had been removed. Ms Holloway and Mr DeSilva confirmed that thereafter they had no further contact with Messrs Cringle.

24. The Tribunal found both Ms Holloway and Mr DeSilva credible.

25. Following the Hearing, further Directions were issued confirming that they should provide written evidence of the amount of universal credit, particularly the housing elements, received during their tenancy.

26. The Tribunal subsequently received copies of 6 separate monthly universal credit statements, from Gov.uk and addressed to Ms Holloway and Mr DeSilva jointly, beginning on 15 July 2019 and ending on 14 January 2020. Each referred to a monthly housing payment of £395. The Tribunal was also provided with a screenshot of a text message, from the civil servant dealing with their universal credit payments, confirming that there had been no claim before 15 July 2019.

Law

27. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

28. The list, repeated in the Directions, includes the offence under Section 95 (1) of the Housing Act 2004 (“the 2004 Act”) of a person controlling or managing of an unlicensed house. Section 95(4) states that it is a defence that he had a reasonable excuse.

29. Where the offence was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.

30. Section 41(2) provides that 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.

31. Section 43(1) of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

32. When the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

33. If the order is made on the ground that the landlord has committed the offence or offences of controlling or managing an unlicensed house, the amount must relate to rent paid during a period not exceeding 12 months, during which the landlord was committing the offence (section 44(2)).

34. Section 44(3) confirms that the amount that the landlord may be required to repay must not exceed:

- (a) the rent paid in respect of the period in question, less
- (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

35. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it 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 any of the specified offences.

The Tribunal's Reasons and Conclusions

36. The first issue for the Tribunal to address was whether it was satisfied, beyond reasonable doubt, that Messrs Cringle had committed an offence mentioned in Section 40(3) of the 2016 Act.

37. The documentation was persuasive providing clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

38. The Tribunal is satisfied, beyond reasonable doubt, from the written evidence provided the Council, and the oral evidence provided by Ms Holloway and Mr DeSilva at the Hearing, that Messrs Cringle committed the offence of controlling or managing the property without the necessary selective licence throughout the whole of the term of the tenancy i.e. from 1 February 2019 until its end in January 2020.

39. No evidence was provided of any defence of Messrs Cringle having a reasonable excuse. The need for a licence had been a citywide local requirement which had been well-publicised, and subsisted for over 3 1/2 years before the beginning of the tenancy, and should have been well known, particularly to those with more than one letting property within the area. The importance of failure to obtain a licence should not be underestimated. An unlicensed property undermines the Housing Authority's regulatory role and poses a risk for harm. Messrs Cringle as landlords have a duty to ensure that relevant legislation is complied with.

40. The Tribunal is satisfied therefore, beyond reasonable doubt, that Messrs Cringle's conduct amounts to an offence under Section 95(1) of the 2004 Act.

41. Because the offence was committed within the period of 12 months before the Application, the Tribunal is also clear that it has jurisdiction.

42. The Tribunal (particularly having regard to the objectives behind the statutory provisions i.e. to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property, to help prevent a landlord from profiting from renting properties illegally, and resolve the legal problems arising from the withholding of rent by tenants) is satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.

43. Having decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent to be repaid.

44. The maximum possible amount for which a rent repayment order could be made equates to the full amount the of rent paid during the tenancy (because Messrs Cringle were committing an offence throughout the whole of the tenancy which itself did not exceed 12 months) less any universal credit paid in respect of that rent.

45. The Tribunal is satisfied from the evidence supplied that Ms Holloway and Mr DeSilva made rental payments to Messrs Cringle totalling £5190.

46. Following the Hearing it was confirmed in documentary evidence that the amount of universal credit in respect of the rent under the tenancy amounted to £2370, which sum has to be deducted from the rent paid, in accordance with Section 44(3)(b).

47. It is important to note however that the Tribunal is not required to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount.

48. Nevertheless, the Upper Tribunal in the recent case of *Vadamalayan v Stewart and others (2020) UKUT 0183 (LC)* has confirmed that the starting point must be the rent itself for the relevant period, and that “the only basis for deduction is section 44 itself”. It also confirmed “there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum.”

49. Section 44(4) of the 2016 Act mandates the Tribunal to, in particular, take into account the conduct of the parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of a specified offence.

50. The Tribunal considered each of these matters in turn.

The conduct of the parties

51. There has been no evidence of any unreasonable or inappropriate conduct by the Ms Holloway and Mr DeSilva.

52. Messrs Cringle has not provided any explanation of their failure to comply with the licensing requirements. They appear to be landlords of more than one property within the city, and the Tribunal can find no reason for excusing or mitigating the failure. They either were, or should have been, fully aware of the licensing requirements, and the Tribunal can only assume that they deliberately chose to ignore the same.

The landlord's financial circumstances

53. Messrs Cringle have not acknowledged the application and have not provided any evidence of their financial circumstances. They have however clearly profited from the rent paid.

Whether the landlord has any relevant convictions

54. There is nothing to indicate that Messrs Cringle have ever been convicted of any of the offences specified in section 40(3) of the 2016 Act.

The Tribunal's determination

55. Having reviewed all the circumstances of the case, the Tribunal noted that:

- Messrs Cringle appear to be landlords with a portfolio of letting properties, who either ignored, or should have known, that the property required licensing,
- the offence was ongoing throughout the whole of the tenancy,
- they appear to have also ignored various other statutory requirements, including those relating to the proper treatment and protection of the deposit,
- Messrs Cringle have offered no explanation or mitigation, and have chosen to not to engage with the Tribunal at all,
- no details of their financial circumstances have been forthcoming, and they have offered no evidence of financial hardship,
- there is no evidence of any misconduct by Ms Holloway and Mr DeSilva.

56. The Tribunal, when exercising its discretion, concluded that there was nothing that should be deducted from the maximum possible amount of the rent repayment order, and thus the amount to be repaid should be the rent paid of £5190, less £2370 (being the 6 monthly universal credit housing payments of £395) resulting in a net figure of £2820.

Judge: Mr J. Going
8 June 2021