



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

- Case Reference** : CHI/00HA/HMF/2021/0032
CHI/00HA/HMF/2021/0036
- Property** : 41 Cameley Green, Bath, BA2 1SA
- Applicant** : Adam Barrett
Peter Jackson
Melissa Pepperell
Jasper Naughton
Paul Gamble
- Representative** : Adam Barrett for Peter Jackson, Melissa Pepperell, and Jasper Naughton
Paul Gamble represented himself
- Respondent** : Simeon Mitchell
Adeline Mitchell
- Type of Application** : **Application for a rent repayment order by tenant**
Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016
- Tribunal Member(s)** : Judge Tildesley OBE
Mr P Turner-Powell FRICS
Miss J Dalal
- Date and venue of the Hearing** : Havant Justice Centre, Elmleigh Road,
Havant PO9 2AL
17 March 2022
- Date of Decision** : 21 March 2022

DECISION

Summary of Decision

1. The Tribunal orders the Respondents to pay Mr Barrett the sum of £2,640.00, Ms Pepperell the sum of £2,064.00, Mr Jackson the sum of £2,160.00, Mr Naughton the sum of £1,298.00 and Mr Gamble the sum of £2,208.00 by way of rent repayment orders and to reimburse the Applicants with the application and hearing fees in the sum of £400.00 within 56 days from the date of this decision.

Background

2. On 4 November 2021 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenants, Adam Barrett, Peter Jackson, Melissa Pepperell and Jasper Naughton for a rent repayment order (RRO) against the Respondent landlords. The amount claimed was Adam Barrett: £6,600 for 12 months at £550 per month, Peter Jackson: £5,400 for 12 months at £450 per month, Melissa Pepperell: £5,160 for 12 months at £430 per month and Jasper Naughton: £3,850 for 7 months at £550 per month.
3. On 17 November 2021 the Tribunal received a further application from the fifth tenant Paul Gamble. The amount claimed was £5,520 for 12 months at £460 per month.
4. The total amount claimed by the Applicants was £26,530.
5. The Applicants had individual assured shorthold tenancy agreements at the Property, 41 Cameley Green, Bath which entitled them to have exclusive occupation of a bedroom and to share communal facilities of a kitchen, living area and bathroom.
6. Simeon Mitchell and Adeline Mitchell were named as the Respondents. They purchased the Property in 2014 and refurbished it for letting which commenced in 2016. Mr and Mrs Mitchell were the landlords and entitled to receive the rent for the letting of the tenancies at the Property.
7. The Property is organised over two floors and had five bedrooms with a kitchen, walk through communal area and toilet on the ground floor and a shower-room on the first floor. The Tribunal understands that since the grant of the HMO licence the Property now has four bedrooms.
8. The Applicants alleged that the Respondents had committed an offence of controlling or managing an unlicensed house in multiple occupation (HMO) contrary to section 72 (1) of the Housing Act 2004.
9. On 11 January 2022 Mrs Cooper, Legal Officer, directed the parties to exchange their statements of case and fixed a hearing for the 17

March 2022 at Havant Justice Centre. The parties were permitted to attend by video. Mrs Cooper also directed that the Applications by Mr Barrett and Mr Gamble to be heard together.

10. On the 17 March 2022 the Applicants appeared in person by video except Ms Pepperell who could not attend for health reasons. Mrs Mitchell attended by video for the Respondents.
11. The Respondents had not submitted a statement of case. Mrs Mitchell explained that she had seen the Applicants' emails with their statements of case but not the email with the Tribunal directions attached. The Tribunal asked Mrs Mitchell whether she required an adjournment. Mrs Mitchell stated that she wished to proceed and saw no reason to delay the hearing. The Tribunal decided to hear the Applications. The parties were given the opportunity to present their cases and ask questions of each other. Mr Barrett and Mr Gamble supplied separate bundles of documents.

Consideration

12. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provided decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.
13. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making an RRO.
14. The Tribunal is satisfied that the Applicants met the requirements for making an application under section 41 of the 2016 Act. The Applicants alleged that the Respondent had committed an offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 whilst the property was let to them. An offence under section 72(1) falls within the description of offences for which an RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 October 2018 to 3 September 2021 which was in the period of 12 months ending on the day in which the Applicants made their applications on 4 and 17 November 2021 respectively.
15. The Tribunal turns now to those issues that it must be satisfied about before making an RRO.

Have the Respondents committed a specified offence?

16. The Tribunal must first be satisfied beyond reasonable doubt that the Respondents have committed one or more of seven specified offences. The relevant offence in this case is under section 72 (1) of the Housing Act 2004, “control or management of an unlicensed HMO”.
17. The Applicants produced a witness statement of Ms Rachel Michelle Crowley, a Senior Environmental Health Officer of Bath and North East Somerset Council, dated 28 September 2021.
18. Ms Crowley stated that from 1 October 2018 a property with two storeys and five bedrooms required an HMO licence under section 61(1) of the 2004 Act. Ms Crowley explained that from 1 January 2019 the Council had introduced an additional licensing scheme where properties occupied by three or more persons from two or more households also required an HMO licence.
19. Ms Crowley said that on the 29 June 2021 she inspected the Property, and confirmed the Property was an HMO occupied by five tenants. Ms Crowley stated that Mrs Mitchell submitted an application for an HMO licence on 9 July 2021 and was duly made on 3 September 2021. The Public Register shows that an HMO Licence was granted for the Property on 3 February 2022 for four persons.
20. The Applicants confirmed that there were always five tenants at the property throughout the period that they lived there.
21. Mrs Mitchell accepted that the Property was an unlicensed HMO during the relevant period for which she and her husband had received separate financial penalties in the respective sums of £6,000 and £3,000. Mrs Mitchell said that they were not appealing the financial penalties and had agreed to pay them by monthly instalments of £1,500.
22. Mrs Mitchell stated that she had been in the business of letting properties since 2006, and had a small portfolio of three properties which all required HMO licences. Mrs Mitchell explained that she let rooms in a shared house at affordable rents to young professional single persons. Mrs Mitchell said that she did not belong to a Landlord’s organisation.
23. Mrs Mitchell said that in 2019 and 2020 she had received several letters from the Council about HMO licensing. Mrs Mitchell stated that she had telephoned the Council following receipt of these letters but had been unable to speak to anyone about HMO licensing. Mrs Mitchell pointed out in 2020 during the Pandemic the Council officers were working from home and the answerphone was not being dealt with. Mrs Mitchell said that she was looking to the Council for help. Following questions from the Tribunal Mrs

Mitchell accepted that she could have tried harder to contact the Council, and that she did not seek advice from elsewhere nor Google the internet about HMO licensing.

24. The Tribunal finds the following facts:
- a. The Property comprised two storeys and had been let to five persons living as separate households. since January 2016.
 - b. The Respondents received rent from the tenants at the Property.
 - c. The Property was required to be licensed as an HMO under the Mandatory licensing scheme from 1 October 2018.
 - d. The Respondents did not have an HMO licence from 1 October 2018 to 3 February 2022.
 - e. The Respondents applied for an HMO licence on 9 July 2021 but it was not validly made until 3 September 2021.
 - f. The Respondents are experienced landlords and should have been aware of the introduction of Mandatory HMO licensing in October 2018 which received national publicity.
 - g. Mrs Mitchell accepted that the Council had sent her letters about HMO Licensing and that she could have tried harder to contact the Council about the letters. Mrs Mitchell also acknowledged that she made no other enquiries about HMO licensing.
 - h. The Respondents admitted that an offence of no HMO licence had been committed and had received and accepted financial penalties for the offence. The Respondents had not appealed the financial penalties.
25. Under section 72(4) of the 2004 Act if a person can demonstrate that s/he has applied for a licence and the application remains effective the person has a defence to the offence of no HMO licence at the material time when the application is made. This defence is relevant to this case because the Respondents made a valid application for a licence on the 3 September 2021 which meant that the offence of no licence stopped on 3 September 2021.
26. The Tribunal considered that on the facts found that the Respondents had no reasonable excuse for the offence of not having an HMO licence. The Respondents were experienced landlords and should have been aware of the changes to mandatory licensing from 1 October 2018. Further Mrs Mitchell had been contacted by the Council about HMO licensing. Mrs Mitchell acknowledged that she could have tried harder to find more about it

from the Council. Mrs Mitchell accepted that she made no other enquiries about HMO licensing.

27. The Tribunal is satisfied beyond reasonable doubt from the findings above that the Respondents had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 1 October 2018 to 3 September 2021 in respect of the Property and that they did not have a defence of reasonable excuse.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?)

28. The amount that can be ordered under an RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondents committed the offence from the 1 October 2018 to 3 September 2021, a period of two years, 11 months and 2 days.
29. The facts of the Applicants' occupation and rent paid are as follows:
- Mr Barrett's tenancy was from 5 August 2020 to 30 October 2021 at a rent of £550 per calendar month
 - Ms Pepperell's tenancy is ongoing and started in January 2016 at a rent of £430 per calendar month
 - Mr Jackson's tenancy was from 2 October 2018 to 28 February 2022 at a rent of £450 per calendar month.
 - Mr James Naughton's tenancy was from 6 March 2021 to March 2022 at a rent of £550 per calendar month.
 - Mr Gamble's tenancy was from 1 July 2018 to 31 December 2021 at a rent of £460 a month.
30. The maximum amount payable under an RRO for Mr Barrett, Ms Pepperell, Mr Jackson and Mr Gamble is 12 months rent for each of them. In the case of Mr Naughton the maximum amount payable is the rent paid for the period 6 March 2021 to 3 September 2021 which equates to five months and 27 days.
31. Section 46 of the 2016 Act which prescribes the amount of RRO following a conviction or the imposition of a financial penalty does not apply in this case because an offence of no HMO licence does not fall within the category of offences as specified in section 46(3)(a) of the 2004 Act

What is the Amount that the Respondent should pay under a RRO?

32. In determining the amount, the Tribunal must have regard in particular, to factors in section 44 of the 2016 Act, namely, the conduct and financial circumstances of the Respondents, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.
33. Mr Justice Fancourt, the President of the Upper Tribunal (Land) , in *Amanda Williams v Kishan Parmar* [2021] UKUT 0244 at [44] set out the approach that should be followed by the FT Tribunal when applying its discretion in the statutory context to determine the amount of the RRO

“A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant”.
34. A particular feature of this case was that the rent included the costs of electricity and gas, the internet and cable TV and Council Tax. Mrs Mitchell was unable to give a figure for the proportion of the rent which was allocated to these costs. The Tribunal applying its general knowledge and its expertise as an expert Tribunal considered that a proportion of 20 per cent was a reasonable estimate of the likely costs for these utilities.
35. Judge Cooke in the Upper Tribunal decision in *Vadamalayan v Stewart* [2020] UKUT 183(LC) stated that the provisions of the 2016 Act were hard edged and that it was not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord had spent on the property during the relevant period including mortgage payments because this ultimately benefitted the landlord. Judge Cooke, however, saw a case for deduction in respect of the costs of utilities included within the rent because that was for the tenant’s benefit.
36. The Tribunal, therefore, intends to deduct 20 per cent for the costs of utilities paid for within the rent by the Applicants which would have the effect of reducing the maximum amount of rent to be included in RRO by 20 per cent.
37. The Tribunal finds the following facts in relation to the factors to be taken into account in determining the amount of the RRO:

- a. The Respondents were established landlords and had been letting rooms in shared houses since 2006. The Respondents had a portfolio of three properties. In the Tribunal's view the Respondents were professional landlords.
- b. The offence committed by the Respondents was serious. It had been ongoing for almost three years. The Council had imposed substantial financial penalties against each Respondent for the contravention of section 72. In order to obtain an HMO Licence for the Property the Respondents were required to install a fire alarm system and reduce the number of occupants which suggested that the Respondents were exposing the tenants to unacceptable risks whilst the Property remained unlicensed.
- c. Despite the Respondents' serious shortcomings in relation to the licensing of the Property, the Tribunal formed the view that Mrs Mitchell had an affinity with the tenants and was doing her best to provide affordable and decent accommodation. This was reflected in the fact that the majority of the Applicants had been at the Property for more than two years, and Ms Pepperell was still there having commenced her tenancy in January 2016. The Applicants had no substantive complaints about Mrs Mitchell and the property other than it was not licensed.
- d. Mrs Mitchell was unable at the hearing to give details of the income received from her three properties. Mrs Mitchell explained that their accountants dealt with their accounts for the letting business. Mrs Mitchell offered to provide the information after the hearing. The Tribunal decided that it had sufficient information to form a view about the Respondents' financial circumstances. The Tribunal understood that Mrs Mitchell had a full-time job as a Carer. Mr Mitchell was self-employed with a trade. The Respondents had no dependants. They were live in landlords at one of their properties. They paid mortgages on their properties and had no savings to speak of. In short, the Tribunal decided that the Respondents' financial circumstances did not give rise to any specific concerns and that they would be able to meet the requirements of a RRO albeit it may take longer than the normal period of 28 days for payment.
- e. The Respondents raised no issues about the Applicants' conduct.

38. The Tribunal's findings on the Respondents' status as professional landlords and the seriousness of their offending are aggravating features and would support an RRO at the high end of the

spectrum. The Tribunal, however, has weighed the aggravating features against the Respondents' provision of affordable accommodation which was meeting a specific need and the genuine relationship that existed between the Respondents and the Applicants. The Tribunal determine that an appropriate Order would be 50 per cent of the net rent after the 20 per cent deduction for utilities.

39. The Tribunal's determination is set out in the table below:

Name	Rent (£)	Net Rent (£)	RRO (£)
Mr Barrett	6,600.00	5,280.00	2,640.00
Ms Pepperell	5,160.00	4,128.00	2,064.00
Mr Jackson	5,400.00	4,320.00	2,160.00
Mr Naughton	3,245.00	2,596.00	1,298.00
Mr Gamble	5,520.00	4,416.00	2,208.00
Total	25,925.00	20,740.00	10,370.00

Decision

40. The Tribunal orders the Respondents to pay Mr Barrett the sum of £2,640.00, Ms Pepperell the sum of £2,064.00, Mr Jackson the sum of £2,160.00, Mr Naughton the sum of £1,298.00 and Mr Gamble the sum of £2,208.00 by way of rent repayment orders and to reimburse the Applicants with the application and hearing fees in the sum of £400.00 within 56 days from the date of this decision.
41. The Tribunal would like to commend both parties for the respect and goodwill they showed to each other throughout the proceedings.

RIGHTS OF APPEAL

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. The application must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk .
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.