



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

Case Reference : **BIR/00FY/HMK/2019/0014**

Property : **Flat 2, 1 Alpha Terrace, North Sherwood Street
Nottingham NG1 4EP**

Applicant : **Ms Leah Sharpe**

Respondents : **Mr Tariq Hussain (1)
Aurum Estates Group Ltd (2)
Aurum Residentials Ltd (3)**

**Representative for
Respondents (1) and
(3)** : **Gawain Briars of Arkwright Law**

Type of Application : **Rent Repayment Order
Housing and Planning Act 2016**

Tribunal Members : **Judge T N Jackson
A Lavender BSc (Hons) Dip Law Dip Surv**

Date of Decision : **18 June 2019**

DECISION

Decision

The Tribunal makes a Rent Repayment Order against Respondent 1, the landlord, in the amount of £1274 to be paid to the Applicant within 28 days of the date of this decision.

Reasons for decision

Background

1. Ms Sharpe occupied Flat 2, 1 Alpha Terrace, North Sherwood Street, Nottingham NG1 4EP. She occupied as a tenant under an Agreement dated 10th September 2018 between herself and Aurum Residentials Ltd, Respondent 3, as managing agent, for a fixed term of 12 months from 10th September 2018 at a rent of £620 per calendar month. The rent would be reviewed on 10th October 2019 and annually thereafter. The rent excluded services which were charged separately under Clause 5(b) of the Agreement.
2. The property was owned by Mr Tariq Hussain, Respondent 1, who lived in the flat below.
3. Ms Sharpe occupied the property from on or around 10th September 2018.
4. In August 2018, Nottingham City Council introduced a Selective Licensing Scheme to a geographical area in which the property is situated.
5. On 11th December 2018, Ms Sharpe became aware from Council officers that the property was not licensed under the Licensing Scheme. She was advised to seek a Rent Repayment Order. She made her application to the Tribunal on 21st February 2019.
6. Ms Sharpe made 3 rent payments in October, November and December 2018 of £580, £620 and £620 respectively, totaling £1820. She paid a deposit of £100.
7. On 15th March 2019, the Council received a licence application proposing Respondent 2 as the licence holder. On 29th March 2019, the application was rejected as the room measurements were not fully accurate. The measurements needed to be resubmitted within 14 days failing which the application would be considered cancelled. As at 8th May 2019, a licence had not been granted.
8. Respondents 2 and 3 are companies represented by Mr Qunber Ali, a letting agent, who manages property.

Inspection

9. We inspected the property on 14th June 2019 in the presence of Ms Sharpe. Nobody attended on behalf of the Respondents. The Property is a first floor flat in a Victorian 3 storey house, converted into 3 flats with a flat on each floor. The Property comprised a combined living/kitchen, bathroom and one double bedroom.

10. Neither party requested a hearing and we considered the matters on the papers submitted by Ms Sharpe and the Respondents' legal representative.

Preliminary issue

11. The Respondents' representative submitted that there was no agreement, contractual or otherwise, between Ms Sharpe and Respondent 2 in relation to this Property or at all and requested that Respondent 2 be removed from the proceedings.
12. On the licence application, Respondent 2 was the proposed licence holder and was described as 'a person having control of the HMO or house'. The application for the licence was made by Mr Qunber Bhatti, (who we understood was also known both as Mr Qunber Ali and Mr Kenny Ali). Mr Bhattis' email address and telephone number were the same email address as Respondent 2. As Respondent 2 was the proposed licence holder, and Mr Qunber/Kenny Ali had been the prime player in the licence application and had been using the kenny@arumestatesgroup.com email address in his dealings with the Council, we considered it appropriate that Respondent 2 was a party to the proceedings. In Companies House against both Companies his name is Mr Qunber Ali Bhatti

Submissions

The Applicant

13. Ms Sharpe said that she was unaware that the property was unlicensed until made aware by Council officers on 11th December 2018. Environmental Health Officers had inspected the property and had found disrepairs and other concerns and she was awaiting a copy of a schedule of works to be completed.
14. In April 2019, Mr Ali arranged to visit the property to take measurements. On the first occasion he cancelled and on the second occasion he did not attend at the agreed time and she was unable to wait for him any longer.
15. Ms Sharpe referred to Mr Ali providing false information in the licence application form. She said he did not apply for a licence until 6 months after she had signed the tenancy and the property continued to be rented out and, as at 8th May 2019 a licence had not been granted.

Respondents

16. It was submitted that on or around 10th September 2018, Respondent 1 instructed Respondent 3 to apply for a licence for Flat 2. Respondent 3 attended the property to take measurements, check appliances and any certification as required by the licence application. Early October 2018, Mr Ali, on behalf of the Respondents, commenced an application on a Council online portal. After having submitted information, the portal advised that the Property did not require a licence. Mr Ali repeated the application on the same day with the same result.
17. On 1st October 2018, Mr Ali was advised by the Council that he needed 2 licences in relation to 1 Alpha Terrace, one of which related to Flat 2 and was asked to notify Council officers once he had submitted the application. On the same date, Mr Ali confirmed that he had submitted one application and would submit the second one later. He was again asked to advise the Council when he had done so.

18. The Council wrote to Mr Ali, (although we have not seen a copy) but the receipt of this letter prompted him to contact the Council on 19th November 2018 to say that he had attempted to apply online through the portal but that the IT system had said that a licence was not required.
19. On 20th November 2018, the Council emailed Mr Ali to confirm that one licence had been submitted but that they were still awaiting one for Flat 2. He was asked to confirm when he was submitting the application. On the same day Mr Ali contacted the Council to say that the portal would not allow him to submit the application as it said it was not needed. The Selective Licensing Team offered to help him with the portal and a phone conversation took place. The Environmental Health Officer asked Mr Ali to confirm once he had submitted the application. At around this time Mr Ali made another application using the portal but did not receive a payment receipt. He assumed that the application had been received.
20. In January 2019, Mr Ali checked the portal and noted that the application was not uploaded and neither had the fee been taken from his bank.
21. On 8th and 11th February 2019, Mr Ali emailed the Council officer for an urgent discussion. He received an out of office email on 18th February 2019 to say the Council officer was on leave until 25th February 2019. On 28th February 2019 the Council Officer confirmed that they had not received an application and that the Property was still unlicensed.
22. On 15th March 2019 a licence application was made by Mr Ali on behalf of Respondent 2. On 29th March 2019, the application was rejected due to wrong room sizes and further information needed to be provided within 14 days.
23. The Respondents stated that Ms Sharpe refused to allow Mr Ali access to the Property in order to check the room size measurements and had been obstructive.
24. The Respondents submitted that there was a defence to these proceedings under section 95(3)(b) of the Housing Act 2004 as an application had been duly made to the Council at the material time. The Respondents further submitted the defence in section 95(4)(a) of the Housing Act 2004 applied namely that they had a reasonable excuse for having control of or managing the house where a licence was required but was not so licensed. The Respondents submitted that they had proceeded in a timely manner with the application for the licence and that any delay had been caused as a result of possible teething problems with the electronic licensing portal rather than any actions by the Respondents.
25. The Respondents submitted that the provisions of section 96 (5)(a) and (b) of the Housing Act 2004 regarding the making of a Rent Repayment Order did not apply as none of the Respondents had been found guilty in a court of the commission of an offence under that section.
26. The Respondents said that Ms Sharpe had made only 3 rent payments totaling £1860 but had failed to make payments for January to April 2019 inclusive and a total of £2480 remained outstanding and due.
27. The Respondents submitted that Ms Sharpe was in breach of her tenancy conditions as she was causing a nuisance to other occupants of the house and further, that

another party was also living in the property when the tenancy agreement stated it was to be occupied by one person.

28. The Respondents requested that the application be dismissed and Ms Sharpe be ordered to pay the outstanding rent of £2480.

Law

29. Section 41 of the Housing and Planning Act 2016 provides that a tenant may apply to the Tribunal for a Rent Repayment Order against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an offence committed under section 95(1) of the Housing Act 2004 (control or management of an unlicensed house).
30. Section 43 provides that the Tribunal may make a Rent Repayment Order if satisfied, beyond a reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies.
31. Section 44 of the Act provides for how the Rent Repayment Order is to be calculated. In relation to an offence under section 95(1) of the Housing Act 2004 the period to which a Rent Repayment Order relates is a period, not exceeding 12 months during which the landlord was committing the offence. The rent the landlord may be required to pay in respect of that period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.
32. Section 44(4) of the 2016 Act states that in determining the amount of a Rent Repayment Order, we should take account of the following factors:
- 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 that Chapter of the Act applies.

Deliberations

Offence

33. A licence for the Property was required under the Selective Licensing Scheme and there was no licence or a duly made application between 10th September 2018 and 29th March 2019 during which period Ms Sharpe was a tenant.
34. Section 43 of the 2016 Act permits a Tribunal to make a Rent Repayment Order if satisfied, beyond a reasonable doubt, that a landlord has committed an offence to which the Chapter applies (whether or not the landlord has been convicted).
35. On the face of it, it appeared to us that Respondent 1, had committed an offence under section 95(1) of the 2004 Act, namely being a person having control or managing a house which was required to be licensed under section 85(1) of the 2004 Act but was not so licensed.
36. We were satisfied, that Respondent 1, acting through Respondent 3, and for the purposes of the licence application itself, through Respondent 2, (both in the form of

Mr Ali), was ‘a person managing a house’ as defined in section 263 of the Housing Act 2004.

37. We considered the defences raised. We did not accept that a licence application had been duly made. The words ‘duly made’ connote that an application is complete, has all relevant information and in such a condition including any payment of fees that it can be considered by the authority without the need for further information. We noted the email dated 29th March 2019 from Nottingham Council which rejected the application of 15th March 2019 and sought further information stating ‘*The application has not been properly completed and, is, therefore not a duly made application*’.
38. We considered whether the landlord had a reasonable excuse to not have a licence during the relevant period. Whilst there may have been teething problems with the online portal, Mr Q Ali was aware of that at the beginning of September 2018 when he attempted to use it and the onus was on the landlord and his agents to make sure that an application had been received by the Council. On several occasions the Council asked Mr Ali to confirm when an application had been submitted but the evidence suggests that he did not do so. If he had, he would have been aware that an application had not been received. We did not accept the teething problems of the IT as a reasonable excuse. It was also open to the client to make a paper application to the Council.
39. Neither did we accept that the alleged conduct of Ms Sharp prevented the landlord from gaining access to take measurements. We were not satisfied that Ms Sharpe prevented access. We saw screenshots of texts supporting Ms Sharpe’s account of the reasons for no access. Further, the arrangements relate to gaining access in April 2019, some 7 months after a licence was required. We therefore did not accept that this amounted to a reasonable excuse.
40. On the basis of the evidence, we were satisfied, beyond a reasonable doubt, that the landlord had committed an offence to which the 2016 Act applies, namely section 95(1) of the Housing Act 2004. We were also satisfied that the offence was committed within the 12 months preceding Ms Sharpe’s application to the Tribunal dated 21st February 2019.

Exercise of discretion

41. We then considered whether or not to exercise our discretion to make a Rent Repayment Order. On the basis of the evidence, and having regard to the fact that the landlord, (acknowledged by his actions in asking Respondent 3 to obtain a licence), knew that a licence was required at the beginning of the tenancy but by 29th March 2019 had not ensured that an application was duly made, we determined that it was appropriate to make a Rent Repayment Order.

Conduct

42. We have had regard to the conduct of the landlord and tenant. We considered that the landlord, through his managing agent Mr Ali, had not conducted matters well. We did not consider that they had acted in a timely manner throughout the matter. We accepted that there may have been teething problems with an online portal, but the onus was on the landlord to ensure that an application was duly made and received by the Council. Mr Ali had already submitted an application successfully for

another property before applying for a licence for Flat 2. On 2nd October 2018 Council officers asked for confirmation as to when the application had been submitted but there appeared to have been no contact by Mr Ali for approximately 6 weeks when he contacted the Council after having received a letter. On 20th November 2018, Mr Ali was offered assistance by an officer from the Selective Licensing Team regarding how to use the portal and once again was asked to confirm once he had submitted the application but there is no evidence that he did so.

43. It was submitted that Mr Ali did not know until January 2019 that the third application through the portal had not gone through despite not having received a payment receipt. The onus was on him to check, particularly as he had previously experienced difficulties with the portal. The Respondents' evidence did not show that they confirmed to the Council, as requested, when the application had been submitted. This would have flagged up that the application had not been received. There appeared to have been no further contact by Mr Ali until 8th and 11th February 2019 when he tried to contact the Council. Reference is made to Mr Ali having received an email to say the officer was on leave 18-25th February 2019 but we noted that the out of office email gave details of another officer that could be contacted. A conversation took place between the Council officer and Mr Ali on 28th February 2019 where he was advised that no application had been received and that the Property was still unlicensed. The application was not submitted until 15th March 2019, some 2 weeks later and then it was not complete and was rejected for further information. We found that the landlord and Mr Ali were tardy in dealing with the matter and were reactive rather than proactive leading to unnecessary delays. Having known and started to take steps to apply for a licence on or around 10th September 2018, an application was not made for over 6 months and as it was rejected as being incomplete, a licence had still not been issued by 8th May 2019, some 8 months after knowing one was required.

44. Ms Sharpe made her application to the Tribunal within a reasonable time of becoming aware that a licence was required. She was unaware that a licence was required until advised by Council officers. Ms Sharpe did not wait until 12 months to submit the application to maximise any Rent Repayment Order (although we note that she had not paid her rent from January to April 2019 inclusive.) She had not prevented access to the Property. In relation to the licensing issue we considered that she had acted in good faith and there was no conduct for us to take into account in considering the amount of the Rent Repayment Order. Rent arrears and alleged breaches of tenancy agreement were matters to be considered by the County Court.

Financial

45. We were not provided with any details of the landlord's financial circumstances and were not able to take them into account.

Conviction

46. We noted that the landlord had not been convicted of the offence or received a fine.

Amount

47. Based on all the evidence and the factors identified above, we decided that an appropriate level for the Rent Repayment Order would be 70% of the rent paid. This reflected that the landlord, (and his managing agent), had not shown blatant

disregard for the process. They had made some effort to obtain a licence, even though belated, reactive and inadequate. Mr Ali was in contact with the Council but sporadically and on a timetable that suited him rather than that required by the issue.

48. The landlord committed the offence between 10th September 2019 and 29th March 2019. We were not aware of whether an application had yet been duly made. In the 12 months preceding 29th March 2019, according to Ms Sharpe's bank statement, she had paid 3 months' rent in October, November and December 2018 totaling £1820. We noted that this was £40 less than the rent due, but preferred the evidence of the bank statement as to what was actually paid. Applying 70% to £1820 equated to £1274. We make a Rent Repayment Order in the amount of £1274.

49. Matters relating to unpaid rent and breach of tenancy agreements were matters for the County Court and we made no orders in relation to those matters.

50. By Section 47 of the 2016 Act, a Rent Repayment Order is recoverable as a debt. If the Respondents do not make the payment to Ms Sharpe in the above amount within 28 days of the date of this decision, or fail to come to an arrangement for payment of the said amount which is reasonable and agreeable to Ms Sharpe, then she can recover the amount in the County Court.

Costs

51. Neither party applied for costs and we made no such order.

Appeal

52. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson