



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

Case Reference : **BIR/00FY/HMK/2020/0008**

Subject Property : **Flat 2
64 Addison Street
Nottingham
NG1 4HA**

Applicants : **Mr Omar Iorio**

Representative : **None**

Respondent : **Mr Dexter Blackstock**

Representative : **None**

Type of Application : **Application under sections 40, 41, 43 and
44 of the Housing and Planning Act 2016
for a rent repayment order**

Date of Hearing : **26th May 2020. The matter was dealt with by a
paper determination**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr V Ward FRICS (Regional Surveyor)**

Date of Decision : **28 May 2020**

DECISION

INTRODUCTION

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. Under section 80 of the Housing Act 2004 ('the 2004 Act'), Local Housing Authorities can introduce a Selective Licensing Scheme covering some or all of its area, whereby any rented dwelling will need to be licenced. Originally local housing authorities were permitted to designate areas within their district as subject to selective licensing for up to 5 years where the area suffered with problems of low demand or high levels of antisocial behaviour. In 2015, the conditions which could permit designation if the local authority considered they existed was extended to include poor property conditions, high levels of inward migration, high levels of deprivation and high levels of crime. Nottingham City Council introduced such a scheme on 1st August 2018 in respect of the area in which 64 Addison Street, Nottingham NG1 4HA ('the subject property'), is located.
3. Section 95(1) of the Act provides that a person having control of or managing a house which is required to be licensed under this part (see Section 85(1)) but is not so licensed commits an offence.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 96 of the 2004 Act, where a person who controls or manages an unlicensed property in an area designated for selective licensing has been convicted, the occupiers (or former occupiers) of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6th April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the occupiers (or former occupiers) if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 95(1) of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

6. The Applicant, Mr O Iorio, is the former tenant of Flat 2, 64 Addison Street, Nottingham, NG1 4HA. The Respondent is the owner of the subject property.
7. By Application dated 19th March 2020 and received by the Tribunal on 23rd March 2020 the Applicant referred to above applied for a rent repayment order under section 41 of the 2016 Act. The Applicant alleged that the Respondent was controlling or managing the subject property which was required to be licensed under Selective Licensing.
8. It is apparent from the documentation received from the Applicant that the property was occupied by him on an Assured Shorthold Tenancy dated 28th August 2018 for a period of 6 months commencing on the same date and expiring on 28th January 2019 at a rental of £350.00 per calendar Month inclusive of gas, electric, water and internet charges.
9. The Applicant confirms that he is requesting a rent repayment for the period 1st September 2018 until 2nd July 2019 being a period of 10 months and 2 days. The Applicant requests a rent repayment order in the sum of £3200.00.

10. The Tribunal notes that although the Monthly rent was confirmed in the Tenancy Agreement as being £350.00 per calendar month the lower amount of £300.00 per calendar month was actually paid for the months of November and December 2018 and January, February, May and June 2019. The Tribunal agrees with the Applicant that this amounts to a total of £3200.00.
11. The Tribunal also notes that the Applicant is not claiming for the period 1st July 2019 – 2nd July 2019 and sees no reason to amend the amount claimed to reflect such a small amount.
12. Based on the documentation provided the Tribunal therefore calculates the maximum amount of any repayment order as follows:

4 months @ £350.00 =	1,400.00
<u>6 months @ £300.00 =</u>	<u>1,800.00</u>
Total	£3,200.00

THE LAW

13. The relevant provisions of the 2016 Act, so far as relevant, are as follows –

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 ...

(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
6	Housing Act 2004	Section 95(1)	Control or management of unlicensed house

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.

...

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);

...

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 an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence</i>
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(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.

THE PROPERTY INSPECTION

14. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the Application Form understands that it comprises of a two bedroom flat in a house which has been converted to four self-contained flats.

15. The Tribunal makes no further assumptions regarding the accommodation.

THE APPLICANT'S SUBMISSIONS

16. In his written submission the Applicant submitted that he was seeking a rent repayment order as the landlord (Respondent) had failed to apply for a Selective Licence.

17. The Applicant submitted in support of his application a copy of an undated letter from the Environmental Health and Community Protection Department of Nottingham City Council addressed to him confirming that the landlord (Respondent) committed an offence between 1st September 2018 until 2nd July 2019 as he had failed to apply for a Selective Licence.
18. The Applicant also submitted a copy of his bank statements confirming the rent payments made.

THE RESPONDENT'S SUBMISSIONS

19. The Tribunal originally wrote to the Respondent (with a copy to the Applicant) on 9th April 2020 requiring him to confirm by 22nd April 2020 whether or not he opposed the application. The Tribunal received no response from the Respondent.
20. The Tribunal wrote to both the parties on 27th April 2020 requiring the Respondent to provide submissions as to any financial circumstances he wished the Tribunal to take into account by 15th May 2020. No submissions were received from the Respondent.
21. The Tribunal noted that the rent charged by the Respondent to the Applicant included the utility costs for water rates, gas, electric and internet (Clause 1.7.1 of the Tenancy Agreement). Although the Applicant has not provided to the Tribunal any evidence of these costs, using its own knowledge and experience the Tribunal determined that the following monthly costs would be appropriate:

Water	20.00
Gas/Electric	40.00
<u>Internet</u>	<u>20.00</u>
Total	£80.00 per calendar month

DETERMINATION OF THE TRIBUNAL

22. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed under Parts 2 and 3 of the 2004 Act but was not so licensed.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
 - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
 - (iv) Determination of the amount of any order.

Offence under section 95(1) of the 2004 Act

23. In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 95(1) of the 2004 Act.

Throughout the period from 1st September 2018 until 2nd July 2019 the subject property was a property subject to Selective Licensing.

- (i) The subject property was not licensed.
- (ii) The Respondent was the person having control and/or managing the subject property.

Entitlement of the Applicants to apply for rent repayment orders

24. The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence from 1st September 2018 to 2nd July 2019.

Discretion to make rent repayment orders

25. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.

Amounts of Rent Repayment Orders

26. In accordance with section 44 of the 2016 Act, first, the amount of an order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing an offence under section 95(1) of the 2004 Act. The Applicants' claims satisfy that condition.

Second, the amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. The Applicant claims for the period 1st September 2018 – 2nd July 2019.

Third, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

27. The discretion afforded to the Tribunal at the final stage of the determination of the amount of any rent repayment order was considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC); and the observations of the President in that case have received express approval in subsequent decisions of the Upper Tribunal. Although those observations were made in the context of the rent repayment order regime contained in the 2004 Act, in the view of the Tribunal many of them remain relevant in the context of the 2016 Act regime.

28. The following observations, contained in paragraph 26 of the decision in *Parker v Waller*, would appear to be relevant in the present case –

(iii) There is no presumption that the Rent Repayment Order (RRO) should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should be. The Residential Property Tribunal (RPT) [now the First-tier Tribunal (Property Chamber)] must take an overall view of the circumstances in determining what amount would be reasonable.

(iv) [The 2004 Act] requires the RPT to take into account the total amount of rent received during any period during which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's

application. But the RPT ought also to have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) [The Act] requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

29. However, as no submissions regarding his financial circumstances were received from the Respondent the Tribunal cannot make any deduction from the maximum amount as set out in paragraph 12 to reflect same.

30. However, the Tribunal does make a deduction of £80.00 per calendar month to reflect the estimated costs attributable to the Respondent as set out in paragraph 21 and provided for in the tenancy agreement.

31. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of both parties. The Tribunal finds that there is no evidence of conduct on the part of the Applicant which would affect its decision. However, the Tribunal is disappointed that the Respondent did not have the courtesy to respond to correspondence sent to him.

32. The Tribunal therefore calculates the amount of the Rent Repayment Order as follows:

Maximum Amount	3,200.00
<u>Less: £80.00 per month for 10 months</u>	<u>800.00</u>
Amount of Rent Repayment Order	£2,400.00

33. The Tribunal therefore confirms the total amount of the Rent Repayment Order in the sum of £2,400.00 (Two thousand Four Hundred Pounds).

34. Payment should be made within 28 days of the date of this decision.

APPEAL

35. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Date: 28th May 2020

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber)