



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

Case Reference : CHI/21UD/HMG/2020/0001

Property : Flat 2, 8 Warrior Square, St Leonards on Sea, TN37 6BX

Applicant : Nadine Gobet

Representative : -

Respondent : Jazmine Hammond

Representative : -

Type of Application : Application for a rent repayment order by tenant
Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016

Tribunal Members : Judge E Morrison
Mr M J F Donaldson FRICS MCI Arb MAE
Mr P A Gammon MBE BA

Date of hearing : 21 July 2020 (by video conferencing)

Date of decision : 24 July 2020

DECISION

The application

1. By an application made on 5 February 2020 the Applicant tenant applied for a rent repayment order (“RRO”) against the Respondent landlord, on the ground that the Respondent had committed an offence under section 95 of the Housing Act 2004 while she rented the property.

The law and jurisdiction

2. The relevant parts of section 95 of the Housing Act 2004 read as follows:

“95 Offences in relation to licensing of housing under this Part

(1) A person commits an offence if he is 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.

...

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time –

(a) a temporary exemption notice served by the local authority is in effect

(b) an application had been duly made in respect of the house under section 87.

(4) In proceedings against a person for an offence under subsection (1) ... it is a defence that 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 failing to comply with the condition,

as the case may be...”.

2. Pursuant to section 99 of the Housing Act 2004 a “house” means a building or part of a building consisting of one or more dwellings.
3. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 (“the Act”), reproduced in full in the Appendix to this Decision.
4. Section 41 permits a tenant to apply to the first-tier tribunal for a RRO against a person who has committed a specified offence, one of which is an offence under section 95 of the Housing Act 2004, if it relates to housing rented by the tenant and the offence was committed within the 12 months ending with the day on which the application is made.
5. Under section 43, the tribunal may only make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed one of the specified offences.

6. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 relates to the amount of a RRO. Where an offence under section 95 of the Housing Act 2004 has been committed, the amount must relate to a period, not exceeding 12 months, during which the landlord was committing an offence. It must not exceed the amount of rent paid less any universal credit paid in respect of the rent. In determining the amount tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant (b) the financial circumstances of the landlord.

Background

7. Since 1 October 2015 Hastings Borough Council has operated a selective licensing regime for private rented homes under Part 3 of the Housing Act 2004 in certain wards within the Borough. The respondent's property is within one such ward.
8. The applicant occupied the property, a one bedroom self-contained basement flat, under an assured shorthold tenancy agreement granted for a term of six months at a rent of £500.00 per month. The written tenancy agreement names the Respondent as the landlord. The Applicant occupied the flat from 22 November 2019 to 19 January 2020. She claims a RRO in respect of the sum of £951.45.

The Applicant's case

9. I
In her original application, Ms Gobet relied both on the lack of a selective licence, and an attempt by the Respondent to unlawfully evict her. On 29 June 2020 she advised that she only wished to proceed on the former ground.
10. To establish the lack of licence, she relied on two emails from the Council to Brighton Housing Trust (who were assisting the Applicant) dated 28 and 30 January 2020. Together these state that there was a licence for the property in the name of Mr Charanjit Matharoo, expiring in October 2023. There is no evidence of a licence in the name of the Respondent during the period of the Applicant's occupation. The Respondent was registered as the owner of the property at the Land Registry on 24 July 2019.
11. T
The Applicant produced evidence of rent and deposit payments made to the Respondent by her or on her behalf. She has made a separate claim, in respect of the deposit only, in the county court. In these Tribunal proceedings she seeks the sum of £951.45, made up of £145.00 rent paid for November 2019, £500.00 paid for December 2019, and £500.00 paid for January 2020, less a refund of £193.55 sent to her by the Respondent's mother in respect of the period 20-31 January 2020.

12. The Applicant explains that she left the property mid-tenancy because the Respondent wanted the property back. She agreed to leave after receiving a rent refund for the period in January 2020 which was to follow her moving out.

The Respondent's case

13. T
The Respondent is aware of the proceedings and the hearing date but has not responded to the application or otherwise participated. She did not attend the hearing.

Discussion and determination

14. The Tribunal is satisfied beyond a reasonable doubt on the evidence before it that the Respondent has committed an offence under section 95 of the Housing Act 2004. There is no evidence that anyone but the Respondent had control of or managed the flat. She did not have a licence as required. It is not enough that a third party, who was no longer involved with the property, had previously obtained a licence. In *Taylor v Mina An Ltd* [2019] UKUT 249 (LC) the Upper Tribunal confirmed that a HMO licence under Part 2 of the Housing Act 2004 could not be transferred to a new owner when the property was sold, and that the new owner had to obtain a new licence to avoid committing an offence under section 72. Section 68(6) explicitly provides that “a licence cannot be transferred to another person”. The identical provision appears in Part 3 of the Housing Act 2004 at section 91(6) with respect to selective licences.
15. Therefore the Tribunal concludes that it should make a RRO. In deciding on the amount of a RRO, section 44 of the Act requires the Tribunal to take particular account of the conduct of the parties, and the landlord's financial circumstances. In *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) Judge Cooke said the starting point should be the full rent paid for the relevant period. Looking at conduct, there is no evidence either of poor conduct on the part of the Applicant, or good conduct on the part of the Respondent, which can justify any reduction in the award. Nor is there any evidence about the Respondent's financial circumstances which might warrant a lower amount. Finally, the Tribunal is unaware of any other factors that might affect the amount of the award.
16. **Accordingly we make a rent repayment order in the sum of £951.45, to be paid by the Respondent to the Applicant by 24 August 2020.**

24 July 2020

Judge E Morrison

Appeals

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.
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.

APPENDIX

Sections 40 – 46 Housing and Planning Act 2016

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 <u>Criminal Law Act 1977</u>	<u>section 6(1)</u>	violence for securing entry
2 <u>Protection from Eviction Act 1977</u>	<u>section 1(2), (3) or (3A)</u>	eviction or harassment of occupiers
3 <u>Housing Act 2004</u>	<u>section 30(1)</u>	failure to comply with improvement notice
4	<u>section 32(1)</u>	failure to comply with prohibition order etc
5	<u>section 72(1)</u>	control or management of unlicensed HMO
6	<u>section 95(1)</u>	control or management of unlicensed house
7 This Act	<u>section 21</u>	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).

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.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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).

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</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

45 Amount of order: local housing authorities

(1) Where the First-tier Tribunal decides to make a rent repayment order under [section 43](#) in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord,
- (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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under [section 43](#) and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with [section 44 or 45](#) (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

- (a) is made against a landlord who has been convicted of the offence, or
- (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in [row 1, 2, 3, 4 or 7 of the table in section 40\(3\)](#), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “*no prospect of appeal*”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.