



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

Case reference : **MAN/00BY/HMF/2020/0012**

Property : **Flat 28, Catherine House,
96 – 98 Upper Parliament Street
Liverpool L8 7LQ**

Applicant : **Daniel Monks**

Respondent : **Robert Broadhurst**

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
P. E. Mountain**

Date of Deliberations : **11th September 2020**

Date of Decision : **17th September 2020**

DECISION

The Decision and Order

Mr Broadhurst is ordered to repay rent of £5635 together with fees of £100 to Mr Monks.

Background

1. By an Application (“the Application”) dated 21st January 2020 the Applicant (“Mr Monks”) 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 rent paid to the Respondent (“Mr Broadhurst”) as the landlord of the property.
2. The Tribunal on 17th February 2020 issued Directions to the parties stating that the matter would be dealt with on the basis of the written representations and documentary evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing.
3. Mr Monks papers included copies of the tenancy agreement, bank statements, emails and photographs as well as a witness statement.
4. After allowing various extensions of the times set out in the Directions, and without there being any engagement from Mr Broadhurst, the Tribunal convened on 11th September 2020 to consider the Application.
5. The Tribunal did not inspect the property, but understands that it is a one bedroomed flat in a large Grade 2 listed building, at one time part of a hospital in Liverpool’s Georgian Quarter close to the Anglican Cathedral, which has been converted into up to 32 flats.

Facts

6. None of the following matters have been disputed.
7. On 1st 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, to be effective for a period of five years.
8. Mr Monks entered into an Assured Shorthold Tenancy Agreement (“the Tenancy Agreement”) with Mr Broadhurst in February 2019, for one year beginning on 18th February 2019 until 17th February 2020 at a rent of £575 per calendar month (exclusive of the cost of services) and payable in advance.

9. Despite reminders and warnings as the consequences of non-compliance with its Directions, Mr Broadhurst has not provided any evidence, submissions or responded to the Application.

Mr Monks' Submissions

10. Mr Monks rental payments were paid to Trophy Homes, who acted as property managers for Mr Broadhurst.
11. Mr Monks complained that they were slow and ineffective resolving issues and that “On moving to the property, there were several issues, including the dishwasher not working, the kitchen extractor fan not working, the living room light not working and a front door lock being faulty. These issues were later resolved.”
12. Of greater concern were ongoing and recurring leaks into the property. Mr Monks on returning to the property on 28th July 2019 after a holiday found that “much of the floor was flooded. There had been a leak coming from the flat above and down through my kitchen fire alarm... and the fire alarms were going off”. He called the property managers for Catherine House who sent out an emergency plumber “who simply changed the fire alarms...The flooding caused cosmetic damage to the property but also left a smell of damp and urine and very large amounts of mould then grew under the kitchen units. On 29th July 2019... another 5 to 10 litres of murky water leaked down into my kitchen through the night... I had to disconnect my fire alarms again.... I did not feel safe in the flat as nothing had been done to stop the leak or check the safety of the electrics. I felt that the flat was unsafe and unsanitary so my only option was to vacate the property until the issues were sorted”. Despite being told that the cause of the leak been resolved, when Mr Monks went back to the property it was clear more water had come down and the problem had not been cured.
13. Mr Monks, who works in paediatric health care, has stated “the communication of the property managers and building managers was quick but they were ineffective in showing any progress in terms of fixing the problems for a long time. It took Trophy Homes 41 days to address the internal issues, such as removing the statutory nuisance of mould and repainting, however they did nothing to clean the carpet which still smelled strongly of damp, so I was forced to do this myself. I have asked them about reimbursement of rent and current living costs (as I was at the time forced to pay for two different properties) but my landlord, my property managers (Trophy Homes) and my building managers... went on to send me in a loop of advising me that they would not reimburse me but to ask for reimbursement from one of the other companies/people”.
14. Copies of numerous emails between the various parties confirm the above.

15. Following a report made to the Council about the leaks on 9th August 2019, it checked its licensing records, and found that the property was not licensed under part 3 of the 2004 Act.
16. Christopher Williams, a senior Compliance Officer in the Council's Private sector Housing Department, has provided a witness statement dated 3rd March 2020, confirming his inspection of the Council's records and correspondence.
17. He has confirmed that Mr Broadhurst is a director of Trophy Homes, and that a letter was sent to him on 15th August 2019, care of Trophy Homes, advising him of the requirement to obtain a licence.
18. Mr Williams has also stated that a full and valid licence application was submitted by Mr Broadhurst to the Council on 12th December 2019.
19. Mr Monks has provided bank statements and other documentary evidence confirming the monthly rental payments made by direct debit to Trophy Homes throughout the tenancy.

The Law

20. 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.
21. The list, repeated in the Directions, includes the offence under Section 95 (1) of the 2004 Act of controlling or managing of an unlicensed house. Section 95(4) states that it is a defence that he had a reasonable excuse.
22. Where the offence was committed on or after 6th April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.
23. 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.
24. Section 43 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).
25. 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.

26. If the order is made on the ground that the landlord has committed the offence 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)).
27. 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.
28. 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

29. The Tribunal began with a general review of the papers in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).
30. Neither party has requested an oral hearing and, having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. Although the parties are not legally represented, the issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.
31. The next issue for the Tribunal to address was whether it is satisfied, beyond reasonable doubt, that Mr Broadhurst has committed an offence mentioned in Section 40(3) of the 2016 Act.
32. The sole evidence has been provided by Mr Monks. However, the documentation is 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.
33. The Tribunal is satisfied, beyond reasonable doubt, from the evidence including that provided by the Council, that Mr Broadhurst committed the offence of controlling or managing the property without the necessary selective licence throughout the period from 18th February 2019 until the Council's receipt of a valid licence application on 12th

December 2019 (“the period of the tenancy when the property was unlicensed”), and has not made out any defence of having a reasonable excuse. The Tribunal is satisfied therefore, beyond reasonable doubt, that Mr Broadhurst’s conduct amounts to an offence under section 95(1) of the 2004 Act.

34. Because this offence was committed within the period of 12 months before the Application, the Tribunal is also clear that it has jurisdiction.
35. The Tribunal (particularly having regard to the objectives behind the statutory provisions, and the factors to be taken into consideration as referred to in the Guidance to Local Authorities published by the Department for Communities and Local Government, i.e. to punish the offender and 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 deter an offender from repeating the offence, to dissuade others from committing the offence and to remove any financial benefit as a result of committing the offence) is satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.
36. Having decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent which had to be repaid.
37. The maximum possible amount for which a rent repayment order could be made equates to the rent paid by Mr Monks in respect of the period of the tenancy when the property was unlicensed.
38. The Tribunal is satisfied, from the copy bank statements and direct debit confirmations, that Mr Monks made rental payments totalling £5635 in respect of the period of the tenancy when the property was unlicensed. There is nothing to indicate that he was in receipt of universal credit which would need to be deducted from that maximum amount.
39. It is important to note that 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 must always be for the maximum amount.
40. 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”.
41. Section 44(4) of the 2016 Act mandates the Tribunal to specifically have regard to the conduct of the parties, the financial circumstances of the landlord, and whether he has at any time been convicted of a specified offence.

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

The conduct of the parties

43. There has been no evidence of any unreasonable or inappropriate conduct by Mr Monks, who has provided compelling evidence that the leaks suffered by the property meant that he could not safely occupy it for some weeks.
44. Mr Broadhurst has not provided any explanation of its failure to comply with the licensing requirements. He is clearly a professional landlord, and the Tribunal can find no reason for excusing or mitigating the failure. He either was, or should have been, fully aware of the licensing requirements, and the Tribunal can only assume that he deliberately chose to ignore the same.

The landlord's financial circumstances

45. Mr Broadhurst has not acknowledged the application and has not provided any evidence of his financial circumstances. He has however clearly profited from the rent paid.

Whether the landlord has any relevant convictions

46. There is nothing in the case papers to indicate that Mr Broadhurst has been convicted of any of the offences specified in section 40(3) of the 2016 Act.
47. The Tribunal is however aware from Court records that on 27th February 2020 at Liverpool, Knowsley and St Helens Magistrates Court, Trophy Homes, which company Mr Broadhurst is a director of, pleaded guilty and was fined £5000 for each of 9 properties which it had failed to licence (i.e. a total of £45,000).

The Tribunal's determination

48. Having reviewed all the circumstances of the case the Tribunal noted that:
- Mr Broadhurst, is a professional landlord, the director of a company with a portfolio of letting properties, who either ignored, or should have known, that the property required licensing,
 - an offence was ongoing from the beginning of the tenancy until 12th December 2019,

- Mr Broadhurst has offered no explanation or mitigation, and has chosen to not to engage at all with the Tribunal,
 - no details of his financial circumstances have been forthcoming, and
 - there is no evidence of any misconduct by the tenant.
49. 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 £5635.
50. Mr Monks incurred a fee of £100 in making the Application. Because the Application has succeeded the Tribunal decided that Mr Broadhurst should also reimburse that fee.

J Going
Tribunal Judge
17th September 2020