



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

**Case Reference** : **LON/00BA/HMF/2020/0267**

**HMCTS code  
(paper, video,  
audio)** : **V - Video**

**Property** : **44, Lammas Avenue, Mitcham. CR4 2LU**

**Applicant** : **Mr. Avish Singh**

**Representative** : **Not represented**

**Respondent** : **Ms. Sue Mao**

**Representative** : **Not represented**

**Type of Application** : **Application for a rent repayment order by  
tenant**

**Tribunal** : **Tribunal Judge S.J. Walker  
Mr A. Parkinson MRICS**

**Date and Venue of  
Hearing** : **4 June 2021 - video hearing**

**Date of Decision** : **4 June 2021**

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**DECISION**

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**The Applicant's application for a Rent Repayment Order is refused.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

## Reasons

### The Application

1. The Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”) for the period from 30 September 2019 until 30 September 2020 in the total sum of £7,020.
2. The application was made on 10 December 2020 and alleges that the Respondent has committed an offence under section 72(1) of the Housing Act 2004 – having control or management of an unlicensed House in Multiple Occupation (“HMO”).
3. The application also asserts that there has been a failure to use the tenant deposit scheme. However, this is not itself an offence which falls within the table in section 40(3) of the Act and so cannot give rise to a rent repayment order.
4. Directions were issued on 4 February 2021. They made it clear that the Tribunal needed to be satisfied beyond reasonable doubt that an offence had been committed. They also required the Applicant to produce a bundle which should include any witness statement of fact and any other documents relied on. Specific reference was made in direction 8(d) for the need for full details of the alleged offence with supporting documents from the local housing authority if available.
5. Both parties produced bundles of documents. That of the Applicant contained a total of 32 pages and that of the Respondent a total of 138 pages spread over three parts.

### The Law

6. The relevant legal provisions are set out in the Appendix to this decision. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence under section 72(1) of the Housing Act 2004 is one such offence.
7. It is important to bear in mind that section 43(1) of the Act makes it clear that a tribunal may only make a rent repayment order if it is satisfied **beyond reasonable doubt** that such an offence has been committed. The burden of proving this is on the Applicant.

### The Hearing

8. Both parties attended the hearing. Neither was represented.

### The Applicant’s Case

9. The only documents produced by the Applicant in support of his case were as follows; a single-page statement of case, copies of the application and the directions, a copy of his tenancy agreement, and a number of

bank statements. He provided no documents from the local housing authority and no witness statement.

10. The Applicant's case is that he was living at 44, Lammas Avenue and that he rented a room there from the Respondent. His oral evidence was that although the rental agreement referred to a weekly rent of £135 (see page 10 of his bundle) the agreed rent was actually a monthly rent of £585. The Applicant's case is that the property is, he says, a two-storey terraced house which has five bedrooms. His oral evidence was that on the ground floor there was a kitchen and two double bedrooms and that on the first floor there was a bathroom and three bedrooms. He said that all the bedrooms were occupied by different people and that this was the case throughout the period for which he sought an order.
11. The Tribunal asked the Applicant about the evidence provided by the Respondent, which consisted of a number of different tenancy agreements and proof of rental payments by those tenants (see pages 6 to 45 of the Respondent's bundle). He was asked if it was his case that there were more people living at the property than disclosed in those documents. He said that there were. However, he was unable to provide their names and gave only the vaguest information about them – suggesting that there were two Chinese men and an African lady. He was also unable to give any detail about when each of these additional people first started living at the property and when they ceased to do so.
12. The Applicant relied on his bank statements to show that he had paid the agreed rent of £585 per month during the relevant period. The Tribunal pointed out that there did not appear to be any payment for the month of October 2019 (see page 12 of his bundle) and he said that this must have been because the bank had made a mistake.
13. The Applicant said that he had had telephone conversations with the local housing authority who said that a licence was needed, but he had not obtained any documents from them.

### **The Respondent's Case**

14. The Respondent's case is set out in her bundle, which includes a statement of case and witness statements from two of her tenants.
15. There was no dispute that the Respondent was the Applicant's landlord. She also accepted that if her property contained 5 bedrooms which were each being used by an occupier from a different household then she would need an HMO licence. She accepted that she did not have such a licence because, she said, she did not need one. Her case was that the property at no time contained more than 4 occupiers. Her oral evidence was that one of the rooms which the Applicant had described as a bedroom was not used as such and, in fact, did not have a bed in it.

16. The Tribunal analysed the documentation provided by the Respondent about the various occupiers of the property and noted that at no point did it show that there were more than 4 people in occupation, though there were times when one occupation came to an end and was immediately followed by a new tenant. The Respondent was asked if there were ever times when the periods of occupation overlapped so that more than 4 people were present. Her response was that there once had been an occasion when one of the tenants was not able to move out when they said they would, but on that occasion the other person had been accommodated elsewhere by a friend.
17. The witness statements of Mr. Benjamin and Mr. Zhu at pages 4 and 5 of the Respondent's bundle state that the maximum number of tenants they have witnessed at the property is 4.

### **The Tribunal's Decision**

18. In reaching its conclusion the Tribunal bears in mind that to be satisfied beyond reasonable doubt means that it must be satisfied so that it is sure. To succeed in this case the Applicant must provide sufficient evidence to satisfy the Tribunal so that it is sure that more than 4 people were living at 44, Lammas Avenue.
19. The Tribunal takes account of the lack of evidence put forward in support of the Applicant's case and the vagueness of his evidence about the additional people he claimed lived at the property. It also takes account of the clear evidence of the Respondent as to who was living at the property when, and her evidence that only 4 of the rooms were used as bedrooms and not 5 as asserted by the Applicant.
20. In summary the Tribunal concludes that the Applicant's case is simply not made out. The Tribunal is not satisfied so that it is sure that there were more than 4 people living at the property at any time during the 12-month period in question. It follows that it is not satisfied that the property was an HMO and therefore it is not satisfied that an offence has been committed under section 72(1) of the Housing Act 2004.
21. The Tribunal therefore refuses the application for a rent repayment order.
22. There were no other applications, and the Tribunal is not satisfied that there is any reason why it should make an order on its own initiative requiring the re-imbusement of any fees paid by the Applicant in bringing this application.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 4<sup>th</sup> June 2021

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

### **Appendix of relevant legislation**

#### **Housing Act 2004**

##### **Section 72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.

- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
- (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,
- and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence 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 permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,
- as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

### **263 Meaning of “person having control” and “person managing” etc.**

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
- (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
- (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## **Housing and Planning Act 2016**

### **Chapter 4 RENT REPAYMENT ORDERS**

#### **Section 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.

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

**Section 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.

**Section 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).

**Section 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.

***If the order is made on the ground that the landlord has committed***      ***the amount must relate to rent paid by the tenant in respect of***

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.

**Section 52 Interpretation of Chapter**

(1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.