



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

Case Reference : **MAN/00BY/HMF/2020/0067**

Property : **City View, Studio 3, 373, Scotland Road
Liverpool L5 8TS**

Applicant : **Marlena Postrozny**

Respondent : **Trophy Homes Limited**

**Type of
Application** : **Application for a rent repayment order by
tenant (following conviction)
Sections 40-44 Housing and Planning Act
2016**

Tribunal Member : **Mr J R Rimmer
Mr J Faulkner FRICS**

Date of Decision : **3 December 2021**

Date of Determination : **16 December 2021**

DECISION

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Order: The application for a Rent Repayment Order is granted in favour of the Applicant in an amount of £2116.80 together with the application and hearing fees, (totalling £300.00), for the reasons set out in herein.

A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (H&PA) from the Applicant for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application

B Background

- 5 The Applicant was, from 14th July 2018, the tenant of a studio flat at the property at the property known as City View, 373, Scotland Road, Liverpool L5 8TS. Miss Postrozny occupied the property under an assured shorthold tenancy agreement, dated 23rd March 2018, a copy of which has been provided to the Tribunal.
- 6 The contractual agreement ended on 30th June 2019, but Miss Postrozny remained in occupation of the premises until a date on, or about, 14th July 2019 and until she could move to other accommodation offered by the same landlord.
- 7 The Respondent is the owner of the property and The Tribunal is satisfied from what it has read in the papers presented to it and the comments made by Luke Broadhurst, a property officer of the Respondent company at the hearing of this matter on 28th November 2021 that the Respondent accepts that City View was a development within which there were properties, including the studio rented to the Applicant, that were required to be licensed under the selective licensing requirements of Liverpool City Council pursuant to Section 85 Housing Act 2004 (“the Housing Act”).
- 8 In relation to this obligation, it was accepted that a number of properties let by the Respondent within the city were the subject of proceedings in the Magistrates Court for the offence under section 95 of the Act, that of failing

to have the appropriate licence. There was no licence in place for the entirety of Miss Postrozny's occupation. Although many licences were applied for and granted, a number, by reason of an omission of staff acting on behalf of the Respondent, were not. One such failure was in respect of this property.

- 9 Whilst the Respondent remains concerned as to the cost of the proceedings to the company, Mr Broadhurst accepts the principle that as a consequence of that penalty the Applicant is entitled to make application for a rent repayment order but seeks to challenge the making of an order and the amount thereof.

The Law

In relation to a rent repayment order:

- 10 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
 - (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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
- 11 Section 40 of the H&PA
 - (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenant

Subsection 3 then sets out a table of 7 offences to which the Tribunal's powers apply:

 - 1 using violence to secure entry to residential premises
 - 2 eviction of harassment of occupier
 - 3 failure to comply with an improvement notice
 - 4 failure to comply with a prohibition notice
 - 5 and 6 offences in relation to houses required to be licenced
 - 6 breach of banning orders in relation to the provision of housing
- 12 18 Section 43 H&PA then provides that
 - (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with
 - (a) Section 44 (where it is made by a tenant)

13. Section 44 H&PA provides a table (Sub-section 2) whereby the amount of the order 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 and, (Sub-sections 3 and 4)
- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
 - In determining the amount, the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

Submissions

14. The Tribunal received submissions from the Applicant and the Respondent prior to the hearing on 29th November and was able to hear representations from each of them after sufficient contact had been made for a video hearing to take place.
- 15 The Tribunal was, however, concerned to make its own enquiries of the parties as to the circumstances at the time Miss Postrozny submitted her application to the Tribunal. The application is dated 28th June 2020 and is stamped as received in the tribunal office on 2nd July 2020. Upon hearing from both Miss Postrozny and Mr Broadhurst, the Tribunal was satisfied that she was, in the absence of any evidence to the contrary, occupying her studio by right of the statutory extension of her tenancy following the contractual date of expiry (30th June 2019) and so the application was clearly made within 12 months of a relevant offence under the H&PA and during which time she occupied the studio.
- 16 There was also some disagreement between the parties as to exact condition of the property at the commencement of the tenancy and during its existence.
- 17 Thereafter, the parties addressed the issue as to whether there should be an order made and, if so the amount to be ordered. The Applicant was of the view that an order, in a significant amount, possibly for all rent paid during the relevant period, would be appropriate. Mr Broadhurst was of the view that the Applicant had enjoyed the occupation of good quality accommodation for almost a year and this should be reflected in any order made.

18 The Tribunal also explored with the parties the nature of the accommodation and facilities provided so as to be able to consider appropriately the element of the rent properly attributable for the cost of the utilities included within the overall rent.

Decision

19 Given the Tribunal's views in relation to the relevant date upon which the application was made being within the period of the Applicant's occupation of the studio, it must then consider whether an appropriate offence has been committed. The Application for an order rests upon such a finding. The Respondent did not contest that matter and in any event this Tribunal considers that in relation to a previous finding by a different court being based upon proof being established to the criminal burden it would be inappropriate to reconsider that matter afresh.

20 It is clear that the relevant offence that has been committed is that of failure to licence the property in accordance with Section 85 of the Housing Act.

21 The date upon which that offence is being committed, or continues to be committed, based upon the evidence before the Tribunal, is at the very least, from the start of the tenancy on 14th July 2018 up to and including a date on or about 14th June 2019 when Miss Postrozny moved out. At no time was an appropriate licence in place.

22 Under the provisions of Section 44(3) H&PA the maximum amount of any order is the amount of rent paid in respect of the period of the offence (less any amount of universal credit paid, to which no reference has been made), if the Tribunal considers that an order is appropriate. Miss Postrozny has paid rent of £4704.00 for her occupation during that period. This represents 48 weeks at £98.00 as set out in the tenancy agreement as the full rent for the year.

23 The Tribunal is required to consider those factors referred to in section 44(4) H&PA, that is:

- The conduct of the landlord and the tenant
- The financial circumstances of the landlord
- Whether the landlord has been convicted of an offence (which the Tribunal takes to mean a conviction in a court exercising criminal jurisdiction, not merely a finding that an offence has been committed)

and while that latter interpretation favours the Applicant, it is one of only three factors to be considered.

- 24 The Tribunal is satisfied that so far as the licensing issue is concerned, she is obviously blameless. In the Respondent's case the offence that occurred would appear to arise from carelessness and omission rather than any deliberate act to avoid the licensing process.
- 25 So far as the condition of the property as with other matters to which the parties referred directly; the Tribunal is satisfied that they spoke with candour and without exaggeration. There may have been some relatively minor defects from time to time, but Miss Postrozny's experience was clearly not sufficient to put her off renting a further property from the Respondent. She has also enjoyed the benefit of the occupation of the property for a full 12 months.
- 26 The Respondent should not be allowed to profit from its wrongdoing, but the Tribunal takes at face value the observations that it has suffered a not insignificant financial setback as a result of this and other licensing difficulties, but otherwise seeking to act respectably as a landlord by complying in other situations with the requirements. Neither the Applicant, nor Mr Williams from the Council, in a witness statement on behalf of the Applicant suggest otherwise.
- 27 In the circumstances the Tribunal is of the view that a rent repayment order should be made in respect of 50% of rent paid for the period of occupation, net of charges for utilities and services. The Tribunal notes that the tenancy agreement itself attributes a value of 10% of the rent to those costs. What the Tribunal heard from the parties would suggest that to be a realistic assessment from which it would not seek to depart.
- 28 The order should therefore be for an amount of £2116.80, that being one half of £4704.00 after deduction of 10% from the rent for the utilities and services.
- 29 If the Applicant has paid an application fee of £100 and hearing fee of £200 these should also be reimbursed by the Respondent.

Tribunal Judge : J R RIMMER
03 December 2021

