



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

Case Reference : **LON/00AG/HMK/2018/0023**

Property : **17a Prince of Wales Road, Kentish
Town, London NW5 3LH**

Applicants : **Barry Brosnan (1)
James Murfitt (2)
Sam Connolly (3)**

Representatives : **James Murfitt**

Respondent : **Mark Scott-Fleming (landlord)**

Representative : **Not known**

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

Tribunal Members : **Judge N Hawkes
Ms S Coughlin MCIEH**

**Date and venue of
hearing** : **22 November 2018 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **27 November 2018**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the applicants' application and makes a rent repayment order in the total sum of £9,966.
- (2) This sum is to be distributed between the applicants in proportion with the amount that each has paid.

The application

1. By an application dated 30 May 2018, the applicants applied for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").
2. Directions were issued on 28 June 2018 and further directions were issued on 4 October 2018, leading up to a final hearing which took place on 22 November 2018.

The hearing

3. Mr James Murfitt attended the hearing on behalf of the applicants. The respondent landlord did not attend and was not represented at the hearing.
4. The Tribunal heard oral evidence from Mr Murfitt. The Tribunal found Mr Murfitt to be a straightforward and careful witness and it accepts the entirety of the evidence which he gave.

The evidence and determination

5. Section 41 of the 2016 Act provides:
 - (1) *A tenant ... 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.*
6. Section 43 of the 2016 Act provides:

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.

7. In seeking to establish beyond reasonable doubt that the landlord has been convicted of a relevant offence, Mr Murfitt relied upon a letter dated 4 May 2018 which was sent to him by the London Borough of Camden, Private Sector Housing Team (“the Council”).
8. In this letter, the Council states that, on 23 April 2018 at the Highbury Corner Magistrates Court, the landlord was found guilty in his absence of being in control of an unlicensed house in multiple occupation and that he was fined £2,400 and ordered to pay costs in the sum of £1,300.
9. Mr Murfitt also gave evidence that Mr Toby Deans (a Council Officer who has signed an improvement notice dated 11 September 2018 relating to the respondent’s property) confirmed orally to Mr Murfitt that the respondent has been convicted of being in control of an unlicensed house in multiple occupation.
10. The Tribunal was not provided with a memorandum of conviction or with direct evidence from a person who was present at the Magistrates Court hearing on 23 April 2018. However, on the basis of the Council’s letter of 4 May 2018, Mr Murfitt’s oral evidence, and in the absence of any attempt on the part of the respondent to challenge the assertions made in the letter of 4 May 2018, the Tribunal is satisfied so that it is sure that the respondent was convicted.
11. Accordingly, the Tribunal finds that the applicants have established beyond reasonable doubt that, on 23 April 2018, the respondent landlord was convicted of being in control of an unlicensed house in multiple occupation.
12. This is an offence to which Chapter 4 of the 2016 Act applies (see section 40 of the 2016 Act) and the amount of any rent repayment order must relate to rent paid by the applicants in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).
13. The applicants seek a rent repayment order in respect of the rent which they paid in the period of 12 months ending with the date of their application.

14. Mr Murfitt presented the Tribunal with evidence, which the Tribunal accepts, that during this 12 month period:
 - (i) Mr Murfitt paid rent in the sum of £5,546.64;
 - (ii) Mr Brosnan paid rent in the sum of £5,544; and
 - (iii) Mr Connolly paid rent in the sum of £5,546.64.
15. Further, Mr Murfitt gave evidence, which the Tribunal accepts, that none of the applicants were in receipt of benefits during this 12 month period.
16. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that in certain circumstances the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
17. Accordingly in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.*
18. In determining the amount to be repaid, the Tribunal has had regard to two decisions of the Upper Tribunal relating to the amount of a rent repayment order under the 2004 Act, namely *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*.
19. The principles which the Tribunal derived from these cases were put to Mr Murfitt during the course of the hearing in order to give him the opportunity to make representations. Mr Murfitt did not seek to argue that any alternative principles are applicable.
20. Under the 2004 Act, section 74(4) provided that where there has not been a conviction the Tribunal shall order such amount as it considers reasonable in the circumstances.

21. Whilst sections 44 and 45 of the 2016 Act do not include the word “reasonable”, given the similarities between these provisions and the relevant provisions of the 2004 Act, the Tribunal considers that the guidance provided in these Upper Tribunal decisions remains relevant under the 2016 Act.
22. Accordingly, the Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, and (ii) the benefit obtained by the tenants in having had the accommodation is not a material consideration.
23. Further, the Tribunal has deducted the amount of the £2,400 fine referred to in the Council’s letter of 4 May 2018 from the sum under consideration and it has also considered the level of culpability of the landlord and the length of time during which the offence was committed.
24. In the letter of 4 May 2018, the Council states that the London Borough of Camden additional licensing scheme commenced on 8 December 2015. Mr Murfitt gave evidence that all three applicants were already tenants at the property at that time. He also gave evidence that the Council has informed him that the respondent applied for a licence on 14 June 2018. Accordingly, the offence was committed for a period of approximately two and a half years.
25. Mr Murfitt informed the Tribunal that he does not know of any other properties which the respondent lets to tenants. Accordingly, in determining the amount of the rent repayment order, the Tribunal has assumed that the respondent is not a professional landlord.
26. Mr Murfitt also gave evidence that:
 - (i) The property is in poor decorative condition with scuff marks on the walls, particularly in the bedrooms and kitchen.
 - (ii) The electric shower in the bathroom is not working. Mr Murfitt reported this defect to the landlord’s agents on 25 April 2016 but the shower has still not been repaired over two and a half years later.
 - (iii) Water penetration from the bathroom at the property has resulted in dampness and damage to plaster in the corridor below. Although the bathroom has now been sealed and the water penetration is not ongoing, the area of damaged plaster has not been repaired.

- (iv) Cockroach and mice infestations have periodically occurred at the property. These have been reported to the landlord's agents but no remedial action has been taken with the result that the applicants have taken measures to abate the infestations themselves.
 - (v) The windows at the property are in a poor state of repair. An improvement notice dated 11 September 2018 served on the respondent sets out a variety of defects including windows with distorted frames which do not close effectively. Mr Murfitt gave evidence that the applicants do not notice the condition of the windows during the summer months but when the weather is cold, for example during the two weeks leading up to this hearing, the applicants find the windows draughty. Mr Murfitt stated that the applicants did not complain to the respondent's agents about the windows but the Tribunal notes that an improvement notice has been served and that defects of this nature would have been apparent on inspection.
 - (vi) Mr Murfitt gave evidence that the handle to the door leading to the patio at the property has been broken for a year and a half and that he understands that this defect was reported to the landlord's agents (although he did not personally report this matter).
27. It is not, however, the case that no repairs have been carried out during the tenancy. For example, Mr Murfitt also gave evidence that a fridge and a washing machine supplied by the respondent landlord were repaired within a reasonable period of time after defects had been reported.
28. As stated above, the respondent did not attend and was not represented at the hearing. Accordingly, no evidence was given or submissions made on behalf of the respondent landlord.
29. The applicants paid rent in the total sum of £16,637.28 during the relevant 12 month period. From this, the Tribunal has deducted the fine of £2,400, leaving balance of £14,237.28.
30. Having carefully considered all of the facts and matters set out above, the Tribunal determines that it is appropriate to make a rent repayment order in the sum of £9,966, representing 70% of £14,237.28. This sum is to be distributed between the applicants in proportion with the amount that each has paid.

Name: Judge Hawkes

Date: 27 November 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).