



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

Case Reference : **MAN/00BY/HMG/2019/0027**

Property : **16 Devondale Road, Liverpool, L18 1LY**

Applicant : **Harriet Emily Afriat**

Respondent : **Amra Rafiq**

Type of Application : **Application for a Rent Repayment Order,
section 41 of the Housing and Planning Act 2016**

Tribunal Members : **Judge C. P. Tonge LLB, BA
Mrs S. A. Kendall BSc, MRICS**

Date of Determination : **27 November 2019**

Date of Decision : **10 December 2019**

DECISION

Application and Background

1. On 6 March 2018 the Applicant became the tenant at 16 Devondale Road, Liverpool, L18 1LY "the property".
2. At all material times the Respondent Amra Rafiq has been the owner of the property.
3. The Applicant was a tenant at the property by virtue of an Assured Shorthold Tenancy Agreement, commencing on 6 March 2018 for an initial term of 12 months at a rent of £750 per calendar month (Respondent's bundle, exhibit 3). This tenancy agreement permits the Applicant and her child to reside at the premises and a reduction in rent was negotiated on the basis that only a lone parent and child would be in residence.
4. The Applicant remained in occupation of the property until 28 May 2019.
5. By an application received on 13 July 2019 the Applicant seeks a rent repayment order in relation to her occupancy of the property from 6 March 2018 to an unspecified date, which has later been determined by this Tribunal as being 27 January 2019, at the rate of £750 per calendar month.
6. A rent repayment order is applied for on the basis that as of 1 April 2015 Liverpool City Council designated the whole of the Liverpool city wide area as a selective licensing scheme in accordance with Part 3 of the Housing Act 2004, as a result of which the property, whilst being privately rented requires a licence for this to be done and it is an offence under section 95 (1) of the Housing Act 2004 to operate the property without a licence. It is admitted by the Respondent that she operated the property without a licence. The application for the licence was received by Liverpool City Council on 28 January 2019 and the licence issued on 27 February 2019.
7. Directions were issued on 26 September 2019 by Regional Judge Duffy indicating that this case could proceed without the need for the Tribunal to inspect the property and could be determined without the need for an oral hearing. The Parties agreed with this procedure and submitted separate hearing bundles. This Tribunal sat on 27 November 2019 to determine the issues in the case upon consideration of the evidence contained within those bundles.

The law

Housing Act 2004

Section 87 Applications for licences

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify.
- (3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.
- (4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).
- (5) The appropriate national authority may by regulations make provision about the making of applications under this section.
- (6) Such regulations may, in particular—
 - (a) specify the manner and form in which applications are to be made;
 - (b) require the applicant to give copies of the application, or information about it, to particular persons;
 - (c) specify the information which is to be supplied in connection with applications;
 - (d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);
 - (e) specify cases in which no fees are to be charged or fees are to be refunded.

Section 95 Offences in relation to licensing of houses 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.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or

- (b) an application for a licence had been duly made in respect of the house under section 87,
and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine .
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (6B) 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.
- (7) For the purposes of subsection (3) 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 (8) is met.
- (8) 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.
- (9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

The Housing and Planning Act 2016

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.

The Determination

8. The Tribunal determines that this offence of controlling or managing a property that requires a licence, but that is not licensed, committed under section 95 (1) of the Housing Act 2004 is an offence that is covered by section 40 of the Housing and Planning Act 2016, being mentioned in row 6 of the table in section 40.
9. The Tribunal notes that as at 28 January 2019 Liverpool City Council received an application from the Respondent for a licence for the property. The Tribunal then considers section 95 (3) (b) of the Housing Act 2004 and determines that by virtue of the operation of that part of the section, as at 28 January 2019 the Respondent has a statutory defence to this offence in that the application was effective in a licence being issued on 27 February 2019. (Applicant's bundle, exhibit 1, statement of Jennifer Driscoll, Private Sector Housing Licensing Compliance Co-ordinator).

10. The Tribunal determines that the Applicant was a tenant of the unlicensed property within the terms of section 41 of the Housing and Planning Act 2016 "the Act" and considering section 41 (2) (b) the Tribunal notes that the application for the rent repayment order was received by the tribunal office on 13 July 2019. This is within 12 months of the date that the offence ceased to be committed on 28 January 2019.
11. The Tribunal then considers the requirements of section 43 of the Housing and Planning Act 2016. The Tribunal can only make a rent repayment order if it is satisfied beyond reasonable doubt that an offence listed in section 40 of that Act has been committed. This Tribunal is so satisfied relying upon the evidence of Jennifer Driscoll (Applicant's bundle, exhibit 1, statement of a Private Sector Housing Licensing Compliance Co-ordinator) and also upon the Respondent's admission of guilt (Respondent's bundle, page 6, Respondent's Statement, paragraph numbered as 6, but referring to row 6 of section 40 of the Act).
12. The Tribunal next considers the requirements of section 44 of the Act, sub section 2 states that the amount (of the rent repayment order) must relate to the rent paid during the period mentioned on the table, and for this offence that requires that the rent be in a period not exceeding 12 months, during which the landlord was committing the offence. This Tribunal notes that the offence was committed from 6 March 2018 to 27 January 2019. This period is less than 12 months and the Tribunal therefore determines that the whole period is relevant for these purposes. This is a period of 327 days at £24.66 per day, making £8,064.
13. The Tribunal then considers the remainder of the section and in particular sub section (4) (a). The conduct of the landlord and tenant.
14. The Tribunal now goes through the allegations made by the Applicant as to poor conduct of the Respondent (Applicant's Reasons for application).
15. First, the allegation that there was a problem with damp in the property, causing plaster to come off the walls and that the Respondent said that she was not going to do anything about it. The Applicant adduces four photographs said to be of the damp (Applicant's exhibit 3).
16. The Respondent deals with this in her Respondent's Statement (Respondent's bundle, page 3). The Respondent states that there was some damp in the kitchen. It had not caused any mould to grow. The parties met on 9 October 2018 (this date has been altered by a year from 2019 by the Tribunal after reading material at Respondent's exhibit 6). The parties agreed (in effect) that the damp was caused by condensation forming due to the Applicant drying washing on the radiator. The next day an email was sent by the Respondent to the Applicant setting out the details of what had been agreed. (Respondent's exhibit 6). The Tribunal accepts the Respondent's evidence in this regard, supported as it is by the email referred to. The Tribunal determines that the Respondent acted properly.

17. Second, the allegation that there was a problem involved in the Applicant installing a washing machine in the property. The Applicant alleges that it took a substantial period of time for the Respondent to arrange to have the washing machine that was being replaced removed from the property, causing the Applicant to have to leave the unwanted washing machine left unplugged in the middle of the kitchen. This constituted a hazard with a young child in the property and caused stress over Christmas with relatives visiting.
18. The Respondent deals with this at page 4 of the Respondent's bundle, exhibiting a floor plan and photographs (Respondent's exhibit 8.1 and 8.2). The Respondent states that the Respondent's washing machine was plumbed into the utility room (not the kitchen) and that there was plenty of room in the utility room for both machines to be housed temporarily and that there was no reason to have the machine in the middle of the kitchen. The Respondent refers to personal difficulties that she and her family were experiencing at that time. Emails establish that the Applicant did ask that the machine be removed over the weekend of 15/16 December 2018 and that it was removed on 27 December 2018 (Respondent's exhibit 8.31 and .32). Where there are differences in the cases as put forward, the Tribunal prefers the evidence of the Respondent. In all the circumstances the Tribunal determines that the Respondent did act with some delay, but not sufficiently for this to be considered poor conduct.
19. Thirdly, that Applicant alleges that the Respondent harassed the Applicant with regard to arranging viewings of the property. The Applicant relies particularly on a messages received during the night, one at 2 am .
20. The Respondent deals with this at page 4 of the Respondent's Statement contending that it "took 35 days just to get the estate agent in to take pictures". The Applicant had cancelled appointments made for this purpose. The Tribunal notes that the lease at clause 6.2 , page 10 (Respondent's exhibit 3) requires the Applicant to permit viewings by prior mutually acceptable appointment (which shall not be unreasonably withheld). Further, that between 17 April 2019, after giving notice that the Applicant was leaving, and 28 May 2019 when the Applicant left, the Applicant only let one person in to view the property. The Respondent produces 5 pages of screen shots of emails that relate to this issue (Respondent's exhibit 10.)
21. The Tribunal determines that it prefers the evidence of the Respondent on this issue. The emails do not show anything but proper behaviour from the Respondent, involved in friendly messaging with the Applicant. Messages are often sent outside normal office hours by both Parties to the case. The Respondents exhibits include messages from the Applicant that establish that the Applicant rather than being harassed had enjoyed her time in this property (Respondents' exhibits 11.9, page 9, message 44 and 11.7, page 7, message 38).
22. Fourth, the Applicant states that she had to apply to the Deposit Protection Service to get a full return of her deposit and that failing to return the deposit promptly caused distress and anxiety.

23. The Respondent deals with this issue at page 5 and 6 of her Respondent's Statement. Upon the Applicant vacating the property items were found to be damaged and in need of cleaning. There is also reference to a broken door window. These could all have been adduced in evidence to the Deposit Protection Agency, However, the Respondent refers to technical difficulty that she experienced in attempting to do so, that her estate agent was on holiday and personal difficulties that she was experiencing. The Respondent failed to respond in the allotted time.
24. The Tribunal accepts the evidence as given by the Respondent and determines that this is not poor conduct by the Respondent.
25. The Respondent alleges poor conduct by the Applicant in breaching the terms of the tenancy agreement on numerous occasions. There is a comprehensive list of the 19 alleged breaches (Respondent's bundle, exhibit 13).
26. The alleged breach in permitting Mr Peter Richard Craig to also reside at the property is singled out for attention (Respondent's bundle, exhibit 12). The Applicant is representing herself as having been a lone parent residing at the property with her young child, having obtained a reduction in the rent as a result of representing this to be the case to the Respondent. The Tribunal notes that the lease at clause 7.1 and 7.2 (the lease, page 10) act to prevent Mr Peter Richard Craig residing at the property without the consent of the landlord or her agent.
27. The Respondent exhibits an envelope addressed to Mr Peter Richard Craig of 16 Devondale Road, Liverpool, this being the address of the property (Respondent's bundle, exhibit 12.1). Further, the Respondent adduces a screen shot of an email from Mr Peter Richard Craig, dated 17 June 2019, indicating that the DVLA have sent his driving licence to the property. (Respondent's bundle, exhibit 12.2). The DVLA require a driving licence holder to supply his permanent address. The Respondent also produces two bank statements that establish that on three consecutive months, outside the period relevant for calculation of the rent repayment order, Mr Peter Richard Craig paid the £750 monthly rent himself. The Tribunal also notes that in a bank statement (Respondent's bundle, exhibit 4.8, page 8) the statement records payment by Mr Peter Richard Craig of 16 Devondale Road. The Tribunal determines that, based on this evidence, Mr Peter Richard Craig was resident at the address for at least some of the tenancy and that the Applicant has therefore breached the terms of the lease. The Tribunal determines that this is poor conduct by the Applicant tenant and that this conduct has caused a financial loss to the landlord.
28. The Tribunal notes that the lease requires that rent be paid by standing order on the sixth day of each month (the lease, page 2, main terms of the tenancy agreement, term 3). The Respondent alleges that rent payments were made by manual means and not by standing order on some occasions and that there were payments made other than on the sixth day of a month and that some payments

were only part payments. The Tribunal agrees with these submissions, they are all clearly established by the content of the Respondent's exhibit 4. This did not cause financial loss, but is a breach of the terms of the lease and is poor conduct by the Applicant.

29. The Tribunal notes that the lease requires the Applicant to take reasonable steps to keep the interior of the property in good repair (lease, page 8, clause 4.1) and to report damage (lease, page 8, clause 4.3). The Tribunal accepts the Respondent's case that a pane of glass was broken in the front door of the property, this should have been reported and was not. There is an email message about this issue (Respondent's bundle, exhibit 11.6, page 6). The bundle also contains a photograph of the damage. Damage was also caused to some blinds, see also paragraph 23 above. The Tribunal determines that there have been breaches of the lease. The breakages and cleaning will have caused financial loss to the Respondent Landlord. The Tribunal determines that this is poor conduct by the Applicant.
30. The Tribunal notes that clause 6.2 of the lease, page 10 (Respondent's exhibit 3) requires the Applicant to permit viewings by prior mutually acceptable appointment (which shall not be unreasonably withheld). The Respondent contends that in taking 35 days to afford access to the Respondent's estate agent to take photographs with a view to advertising the property, the Applicant was in breach of this term. The Tribunal determines that the Applicant was in breach of this term and that this is poor conduct by the Applicant.
31. The Tribunal notes that clause 8.16 (page 11 of the lease) prevents the Applicant from using nails or by any other means affixing pictures etc to the walls of the property. The Respondent contends that the Applicant did this, in breach of the clause, causing damage in the holes that were made in walls. The Respondent provides a screen shot of emails dealing with these holes and an undertaking by the Applicant to repair them (Respondent's bundle, exhibit 11.6, page 6). The Tribunal determines that the Applicant did breach this term of the lease and that this was poor conduct on the part of the Applicant tenant.
32. The Respondent also contends clause 18 (page 14 and 15 of the lease) was breached by the Applicant. These provisions are intended to permit the inventory at the start of the lease to be an agreed basis of checking the condition of the property and its contents at the end of the lease. With the evidence provided it is not possible to determine this issue.
33. The lease (clause 21.7, page 15, Respondent's bundle) requires that all the tenants belongings be removed from the property at the end of the lease. There is screen shot evidence that this was not done (exhibit 11.9, page 9, Respondent's bundle). The Tribunal determines that the Applicant did breach this term of the lease and that this was poor conduct on the part of the Applicant tenant.

34. The lease (clause 21.9, page 15, Respondent's bundle) requires that a forwarding address be given upon moving out of the property. The Tribunal accepts the Respondent's evidence that this was not done (page 2, Respondent's bundle, exhibit 13). The Tribunal determines that the Applicant did breach this term of the lease and that this was poor conduct on the part of the Applicant tenant.
35. The lease (condition 1.1.1, schedule 3, page 19, Respondent's bundle) requires that if at any point the rent remains unpaid for 14 days the landlord may give written notice to seek possession. The Tribunal accepts the Respondents case that in July 2018 a part payment was not completed for 25 days. The Tribunal determines that this is poor conduct on the part of the Applicant.
36. In conclusion the Tribunal determines that the Respondent, other than committing the offence that gives rise to this rent repayment order, did not act poorly. In Fact the Tribunal determines that the Respondent landlord conducted herself as a good landlord.
37. On the other had the Tribunal determines that the Applicant tenant acted poorly, as determined above, causing financial loss to the Respondent.
38. The Tribunal determines that a fair and just order in these circumstances is that the Respondent pay to the Applicant by means of a rent repayment order, the sum of £4,000.

Decision

39. The Tribunal decides that the a fair and just order in these circumstances is that the Respondent pay to the Applicant, by means of a rent repayment order, the sum of £4,000. Payment should be made in full within 28 days of this decision being sent to the Parties.
40. If either Party wishes to appeal against this decision to the Upper Tribunal, that Party has 28 days from the date that this decision is sent to the Parties to ask this Tribunal for permission to appeal. That must be done by delivering to this Tribunal an application for permission to appeal, stating the grounds of the appeal, the particulars of the appeal and the outcome that the party seeks to achieve by making the application.

C. P. Tonge
Tribunal Judge
10 December 2019