



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

Case Reference : **BIR/00FY/HMK/2020/0006**

Subject Property : **32 Bullfinch Road
Basford
Nottingham
NG6 0NJ**

Applicants : **Ms L F Mathers**

Representative : **Pudsey Legal**

Respondent : **Ms D Glennard**

Representative : **None**

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

Date of Hearing : **3rd June 2020. The matter was dealt with by a
paper determination**

Tribunal Members : **Graham Freckelton FRICS (Chairman)
Tribunal Judge Peter Ellis
Robert Chumley-Roberts MCIEH, J.P**

Date of Decision : **11 June 2020**

DECISION

INTRODUCTION

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. Under section 80 of the Housing Act 2004 ('the 2004 Act'), Local Housing Authorities can introduce a Selective Licensing Scheme covering some or all of its area, whereby any rented dwelling will need to be licenced. Originally local housing authorities were permitted to designate areas within their district as subject to selective licensing for up to 5 years where the area suffered with problems of low demand or high levels of antisocial behaviour. In 2015, the conditions which could permit designation if the local authority considered they existed was extended to include poor property conditions, high levels of inward migration, high levels of deprivation and high levels of crime. Nottingham City Council introduced such a scheme on 1st August 2018 in respect of the area in which 32 Bullfinch Road, Basford, Nottingham NG6 0NJ ('the subject property'), is located.
3. Section 95(1) of the Act provides that 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 commits an offence.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 96 of the 2004 Act, where a person who controls or manages an unlicensed property in an area designated for selective licensing has been convicted, the occupiers (or former occupiers) of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6th April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the occupiers (or former occupiers) if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 95(1) of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

6. The Applicant, Ms L F Mathers is the former tenant of 32 Bullfinch Road, Basford, Nottingham NG6 0NJ. The Respondent is the owner of the subject property.
7. By Application dated 3rd March 2020 and received by the Tribunal on 6th March 2020 the Applicant referred to above applied for a rent repayment order under section 41 of the 2016 Act. The Applicant alleged that the Respondent was controlling or managing the subject property which was required to be licensed under Selective Licensing.
8. It is apparent from the documentation received from the Applicant that the property was occupied by her on an Assured Shorthold Tenancy dated 18th January 2018 for an initial period of 12 months commencing on 26th January 2018 at a rental of £800.00 per calendar Month.
9. The Applicant confirms that she is requesting a rent repayment for the period 24th January 2019 until 24th January 2020 when her tenancy ended being a

period of 12 months. The Applicant requests a rent repayment order in the sum of £9,600.00.

10. The Tribunal notes that although the Monthly rent was confirmed in the Tenancy Agreement as being £800.00 per calendar month the Applicant has only provided evidence of eleven payments having been made rather than twelve. This totals £8,800.00 rather than £9,600.00 and the Tribunal therefore determines that the maximum amount of any rent repayment order shall be the sum of £8,800.00.

THE LAW

11. The relevant provisions of the 2016 Act, so far as relevant, are as follows –

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 ...

(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.

	Act	Section	General description of offence
6	Housing Act 2004	Section 95(1)	Control or management of unlicensed house

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.

...

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);

...

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.

<i>If the order is made on the ground that the landlord has committed an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>the amount 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</i>
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(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 PROPERTY INSPECTION

12. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the Application Form and submissions of the parties understands that it is a detached house comprising entrance hall, living room, fitted kitchen, three bedrooms (one having an ensuite) and family bathroom. The property is understood to have gas fired central heating, a fitted burglar alarm and smoke alarms to the hallway and landing. It is described in the letting agent's details as having a new kitchen and bathrooms. There is understood to be gardens to the front and rear together with a single garage.

13. The Tribunal makes no further assumptions regarding the accommodation.

THE APPLICANT'S SUBMISSIONS

14. In her written submission the Applicant submitted that she was seeking a rent repayment order as the landlord (Respondent) had failed to apply for a Selective Licence.

15. In support, the Applicant submitted a copy of a letter dated 16th January 2020 from the Environmental Health Community Protection Department of Nottingham City Council confirming that at that date the Local Authority had not received a Selective Licence Application for the subject property.

16. The Applicant submitted that during the entire two years of her tenancy the property had been unlicensed and therefore had not had the benefit of a local authority inspection.

17. In addition to this the Applicant submitted that she had been forced to take legal action regarding the Respondent's failure to keep the property in good repair. This had extended to sanitary equipment (namely a broken tap in the kitchen and broken toilet) which had persisted even during her pregnancy.

THE RESPONDENT'S SUBMISSIONS

18. The Respondent submitted that she was the owner of the subject property and that she had entered into an Assured Shorthold Tenancy agreement with the Applicant. The Respondent confirmed that she owned no other property and had never previously rented out the subject property which was no longer rented and was due to be sold.
19. The Respondent further submitted that when she initially let the property from 26th January 2018 a selective licence was not required although it subsequently became a requirement from 1st August 2018. By that time the Respondent was not living in the area of Nottingham and was not aware of any local publicity regarding the new licence requirement. At the same time, her letting agent, Purple Bricks did not advise her that a licence was required.
20. As such, it was submitted that the Respondent was not aware of any issues until October/November 2019 when the Applicant made a request to terminate her tenancy three months early.
21. The Respondent further submitted that in November 2019 she was informed by Purple Bricks that the Applicant had requested that some maintenance work was required to the property to remedy a broken kitchen tap, broken toilet flush and an electrical socket which was hanging off the wall. The Respondent was subsequently informed that when the contractor attended at the property the kitchen tap was not broken but due to its height was leaning but continued to work, that the toilet flush worked satisfactorily when the contractor was in attendance although this type of fitting was prone to stick and that the socket only required a new screw. Despite being charged for this call out the Respondent did not seek any redress from the Applicant.
22. Following this call out it appeared that the Applicant was not satisfied and threatened to report the letting agents to the Ombudsman as she claimed to have been charged over £450.00 for the additional water usage due to the sticking toilet flush. Without recourse to the Respondent the letting agent paid the Applicant £150.00 as a goodwill gesture.
23. The Respondent submitted that around 20th December 2019 she received a letter from the Applicant's representative claiming that the Respondent was in breach of the tenancy agreement. This was on the basis that the property was not in the condition that had been agreed at the commencement of the tenancy, that there had been faults with the toilet resulting in a financial loss of £454.00 and that the applicant had incurred legal costs of £250.00. In total the Applicant sought compensation in the sum of £896.00.
24. The Respondent submitted that she had already given a credit of £100.00 towards paint so that the Applicant could redecorate a bedroom and was subsequently informed that the Applicant was claiming a rent repayment because there was no Selective Licence. The Applicant left the property in December 2019 having failed to carry out repairs, cleaning and clearance of all items from the property. It was submitted that the property was in immaculate condition before the Applicant took up occupation but when she

left expenditure in the region of £1,200.00 - £1,300.00 was required. This was currently subject to a dispute.

25. In conclusion the Respondent submitted that she had updated the property to include the replacement of the kitchen, main bathroom, en-suite, ground floor toilet, redecoration and new carpets throughout prior to the commencement of the tenancy.
26. The Respondent accepted that she did not have the required licence but was not aware that a licence was required despite the fact that she had a full management contract with Purple Bricks.
27. The Respondent submitted details of her financial position which detailed the following monthly expenses she had incurred in respect of the subject property:
 - 1) Mortgage payment £670.62
 - 2) Property insurance £27.36
28. In addition to this the Tribunal notes from the Lettings Guide and Agreement provided by Purple Bricks that there was a monthly management charge of £66.00 inclusive of VAT.
29. The Respondent also submitted details of her general living expenditure which showed a shortfall each month of £652.22. In addition to this there were further expenses in respect of the subject property which were yet to be confirmed. The Respondent submitted that she was not in a position to pay the sum of £9,600.00 as sought by the Applicant.

DETERMINATION OF THE TRIBUNAL

30. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time she was a person who controlled or managed a property that was required to be licensed under Parts 2 and 3 of the 2004 Act but was not so licensed.
 - (ii) Whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
 - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
 - (iv) Determination of the amount of any order.

Offence under section 95(1) of the 2004 Act

31. In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 95(1) of the 2004 Act.

Throughout the period from 24th January 2019 until 24th January 2020 (when the tenancy agreement ended) the subject property was a property subject to Selective Licensing.

- (i) The subject property was not licensed.

- (ii) The Respondent was the person having control and/or managing the subject property.

Entitlement of the Applicants to apply for rent repayment orders

32. The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence from 24th January 2019 to 24th January 2020.

Discretion to make rent repayment orders

33. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.

Amounts of Rent Repayment Orders

34. In accordance with section 44 of the 2016 Act, first, the amount of an order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing an offence under section 95(1) of the 2004 Act. The Applicants' claim satisfies that condition.

Second, the amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. The Applicant claims for the period 24th January 2019 – 24th January 2020.

Third, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

35. The discretion afforded to the Tribunal at the final stage of the determination of the amount of any rent repayment order was considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC); and the observations of the President in that case have received express approval in subsequent decisions of the Upper Tribunal. Although those observations were made in the context of the rent repayment order regime contained in the 2004 Act, in the view of the Tribunal many of them remain relevant in the context of the 2016 Act regime.
36. The following observations, contained in paragraph 26 of the decision in *Parker v Waller*, would appear to be relevant in the present case –
- (iii) *There is no presumption that the Rent Repayment Order (RRO) should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should be. The Residential Property Tribunal (RPT) [now the First-tier Tribunal (Property Chamber)] must take an overall view of the circumstances in determining what amount would be reasonable.*
- (iv) *[The 2004 Act] requires the RPT to take into account the total amount of rent received during any period during which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's application. But the RPT ought also to have regard to the total length of*

time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) [The Act] requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

37. Distilling the substance of those observations and applying them to the facts of the present case, the Tribunal determines that various deductions should be made from the maximum amount as set out in paragraph 10.
38. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of both parties. The Tribunal finds that there is no evidence of conduct on the part of the Respondent which would affect its decision. The Respondent has fully accepted that she should have had a licence but did not do so. She is not a professional landlord and was not residing in the area so it is not surprising that she was unaware of the requirement by the local authority for the property to be licensed. Upon discovering that she should have had a selective licence she approached the local authority but was informed that she could not obtain a licence retrospectively. There is no evidence of any intention to profit from not obtaining a licence and she has not been convicted of any offence.
39. With regard to the conduct of the Applicant the Tribunal notes that there is no conduct during the application process which would affect its decision. However, although not relevant to this decision the Tribunal is disappointed in noting some of the behaviour of the Applicant. In particular the Tribunal noted the Applicant's comments on social media which could be described as aggressive and is of the opinion that, notwithstanding the contents of the Applicant's Representative's email dated 12th May 2020 the condition of the property, based on the evidence submitted had deteriorated during the tenancy.
40. Although not strictly relevant to this decision the Tribunal is not surprised that the Respondent submits that she was not aware that the area was to be included in the City Council's Selective Licensing Scheme. Indeed, from the Tribunal's experience many landlords actually living in Nottingham were unaware that a Selective Licensing scheme was to be introduced.

41. In order to make a designation that an area is subject to selective licensing a local authority has to consider that at least one of six conditions exist as described in paragraph 2. The property is modern (Valuation Office Agency records indicate it was completed in 2001) and from the Tribunal's experience there is little evidence of the conditions required for designation as a selective licensing area or typically associated with such areas.
42. The Tribunal also considered the agreement between the Respondent and Purple Bricks. The Tribunal notes that in 'Section 17 Landlord Duties' it is the landlord's (and not the agents) responsibility to obtain and renew a licence if the property falls under a selective licensing scheme.
43. In this case at the commencement of the tenancy the property did not require a selective licence but such a licence was required part way through the tenancy. The Respondent was obviously unaware of this as she was not living in the area and although not strictly relevant to this decision the Tribunal is disappointed that Purple Bricks did not think it was appropriate to inform her accordingly. The Tribunal would have expected a reputable agent to take its obligations on behalf of its clients more seriously and professionally than has been apparent in this case.
44. Following the Tribunal's determination in paragraph 10 that the maximum amount of any rent repayment order should be limited to 11 months, based on the evidence provided by the Applicant the Tribunal determines that some deductions are appropriate as referred to in paragraphs 27 and 28 above.
45. With regard to the mortgage payment the Tribunal determined to allow 75% of the gross payment of £670.62 per month as no evidence has been provided to suggest it is anything other than a repayment mortgage. The Tribunal therefore calculates the allowable amount at £502.97 per month.
46. The Tribunal therefore calculates the amount of the Rent Repayment Order as follows:

Maximum Amount	8800.00
Less: Mortgage - 11 months @ 502.97 =	5532.67
Insurance – 11 months @ 27.36 =	300.96
Management – 11 months @ 66.00 =	<u>726.00</u>
<u>Total deductions</u>	<u>6559.63</u>
Balance	£2,240.37
47. The Tribunal then considered the Respondent's personal financial circumstances referred to and summarised in paragraph 29. There is clearly a shortfall each month which the Respondent calculates as being in the region of £652.22. Indeed, the true figure is likely to be in excess of this as several ongoing expenses in respect of the subject property are not yet known.
48. To reflect the Respondent's personal financial circumstances the Tribunal reduces the amount shown in paragraph 46 above by 50%.
49. The Tribunal therefore confirms the Rent Repayment Order in the sum of £1120.19 (One Thousand One Hundred and Twenty Pounds Nineteen Pence).
50. Payment should be made within 28 days of the date of this decision.

APPEAL

51. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Date: 11th June 2020

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber)