



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

Case Reference : **BIR/00FY/HMK/2019/0091**

Property : **35c Hucknall Road, Nottingham
NG5 1BJ**

Applicants : **Mr Pawel Kownacki &
Mrs Agnieszka Kownacka**

Respondent : **Mr Dexter Blackstock**

**Respondent's
Representative** : **Cartwright King Solicitors**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for a
rent repayment order**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Peter Wilson
BSc (Hons) LLB MRICS MCIEH CEnvH**

Date of Hearing : **10 March 2020 (papers only)**

Date of Decision : **2 April 2020**

DECISION

- a. The Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed*
- b. Consequently, the Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)*
- c. The period for which rent is repayable is 1 August 2018 to 5 April 2019*
- d. The sum payable after applying the principles described in s44 of the 2016 Act is £842.10*

Introduction

1. This is an application for a rent repayment order pursuant to s41 Housing and Planning Act 2016 by Pawel Kownacki and Agnieszka Kownacka of 14, Woodland Avenue, Nottingham NG6 9BY. The matter was decided on the papers without an inspection of the Property. The papers included helpful written submissions by or on behalf of both parties. No inspection was carried out as the Respondent no longer owns the property.
2. The Applicants who represented themselves, were tenants of the Respondent Mr Dexter Blackstock at 35c Hucknall Road Nottingham (the Property) from 24 March 2014 to 5 April 2019. With effect from 24 February 2017 the Applicants occupied the Property pursuant to a 12 month assured shorthold tenancy. They held over after its expiration.
3. The Respondent Mr Dexter Blackstock of Horse Chestnuts, Hall Lane, Papplewick, Nottingham owned the Property at all material times although since issue of these proceedings he has sold it. He was also the owner of 11 other properties in the same area of Nottingham. He was represented by Cartwright King solicitors and Nicholas Grant of counsel.

Factual summary

4. The Property is an area designated for selective licensing since 1 August 2018 pursuant to Part 3 Housing Act 2004 (the 2004 Act). Although the Respondent

had appointed an agent to manage the Property neither he nor the agent on his behalf had applied for a licence pursuant to s85 of the 2004 Act. On 17 February 2019 the Respondent admitted his failure to apply for a licence for this and 11 other properties to the Nottingham Magistrates. He was fined a total of £10,800.00 for all offences. The charges against him all arose from his failure to licence properties and not the condition of the properties.

5. On 26 November 2019 the Applicants issued this application by which they seek repayment of 12 months rent of £400.00 per calendar month being £4800.00 in total. Their assured shorthold tenancy agreement of 24 February 2017 provided at clause 1.7.1
“the rent shall be £400.00 per calendar month for the first two months payable in advance. The tenant is responsible for all utilities, to in(sic) Council Tax, Gas, Electricity, Water Rates, tv licence if applicable”
6. The Applicants referred in their submission to complaints they made during their occupation of the Property about its condition. The local housing authority had inspected the Property and detected some matters which were the subject of notices to the landlord. They assert that they left the Property because they could no longer live in it.
7. The Respondent by Mr Grant, on his behalf, admits the conviction. He does not deny that he is liable to make a rent repayment but denies that the Applicants are entitled to the total sum claimed. Mr Grant submitted that alleged transgressions of a landlord should not be punished by a rent repayment order.
8. He further asserts that the Respondent had left the Property in the hands of an agent who failed to discharge his duties. The failings of the agent were drawn to the attention of the magistrates and also noted in other decisions of the Tribunal noted below.
9. The Respondent’s submission also pointed out that he accepted his guilt when prosecuted by the local housing authority and was fined a total of £10,800.00 for the offences relating to 12 properties.

The Issues for Determination

10. The issues for determination by the Tribunal were:
 - a. Whether or not the Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed
 - b. Consequently, whether or not the Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)
 - c. If so, the period for which rent is repayable and
 - d. What sum is actually payable after applying the principles described in s44 of the 2016 Act.

The Law and Statutory Framework

11. This is not the first case in which tenants have claimed repayment of rent from Mr Blackstock. The Tribunal has delivered decisions relating to flats 3 & 4 Addison Street Nottingham being case numbers
BIR/OOFY/HMK/2019/0079
BIR/OOFY/HMK/2019/0086
BIR/OOFY/HMK/2019/0087
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BIR/OOFY/HMK/2019/0089 and
BIR/OOFY/HMK/2019/0090
12. Another case dealt with by the Tribunal, **BIR/OOFY/HMJ/2019/0002** related to 385 Haydn Road Nottingham.
13. All cases involved substantially the same claim and response by the parties as arises in this case. The Respondent admitted his failure to licence the properties both before the Nottingham Magistrates and the Tribunal. The claims for repayment of rent relied on the conviction by the Magistrates. This Tribunal respectfully agrees with the summary of the statutory framework and relevant law governing these applications. Accordingly, it adopts and reproduces here the summary given by the Tribunal in the cases relating to 3 & 4 Addison Street.

14. The 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.

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
5	<i>Housing Act 2004</i>	<i>Section 95(1)</i>	<i>Control or management of unlicensed house</i>

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.

15. The Respondent admits that he did not hold a licence during the period when the Applicants were in occupation of the Property from 1 August to 2 February 2019 within the period of 12 months ending with the date of the application. He contends that applied for a licence to the local housing authority on 2 February 2019 thereby ending the unlicensed period pursuant to s86 of the 2004 Act.

16. In response to a written question from the Tribunal the representative of the Respondent asserted

“The respondent contends that the period should end on the 2nd February 2019 as at that time he had instructed his managing agent to sell various properties and apply for temporary exemption certificates. This had been relayed to Mr Paul Harrison of Nottingham City Council as of that date. This happens to be a period of 6 months from 1st August 2019 to 2nd February 2019.”

Decision.

17. The Tribunal is satisfied the offence contrary to s95 of the 2016 Act was committed. There is no dispute the Applicants made the payments of rent in accordance with the tenancy agreement.

18. By reason of ss40(3) 43(3) and 44(3) Housing Act 2016 the Respondent is potentially liable to the making of a rent repayment order for a period not exceeding 12 months during which (he) was committing the offence. When the Tribunal exercises the power to make such an order it must take into account the conduct of the parties and the financial circumstances of the landlord (s44(4) 2016 Act).

19. The 2004 Act provided at s 74(5) that the amount to be repaid in a case such as this was such amount which the Tribunal considered reasonable. S74(6)(d) provided that the conduct and financial circumstances of the appropriate person among other matters set out in subsection 6 must be taken into account in determining what sum is reasonable.

20. The two notable cases on rent repayment orders under the 2004 Act namely *Parker v Waller [2012] 301 UKUT(LC)* and *Fallon v Wilson [2014] UKUT (LC)* gave guidance as to the exercise of discretion by the Tribunal in deciding upon the reasonableness of the amount to be repaid. At paragraph 26 of its Decision in *Parker* the Upper Tribunal found:

(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 –*

21. In Fallon HH Judge Huskinson said when allowing an appeal in which the First-tier Tribunal had not exercised its discretion properly

“In Parker v Waller it is stated in paragraph 26(ii) that there is no presumption a RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances determining what amount would be reasonable”.

22. The 2016 Act does not include an equivalent provision to s75(5) but the same or substantially equivalent words used in s74(6)(d) are used in s44(4)(a) & (b) of the 2016 Act. Also, the 2016 Act directs the Tribunal to have regard also to the conduct of the tenant.
23. Having decided the Respondent is guilty of the offence and therefore liable to a Rent Repayment Order the next step is to decide what period of rent payment is due and what sum is payable having regard to the statutory directions and the decisions of the Upper Tribunal.
24. The 2004 Act provided at s 74(8)(b) that the repayment order may not require payment of any amount which is in respect of any time falling outside the period of twelve months ending with the date of the occupier’s application under s73(5) of that Act. The 2016 Act does not impose such a restriction but specifically provides that the limitation period is defined by reference to the period of occupation while the offence was being committed.
25. In this case the period is not as defined in the Respondent’s statement of case namely 1 August 2018 to 2 February 2019 but it runs until the Applicants vacated the Property on 5 April. The Respondent is correct that an application for a licence will have a suspensory effect of the offence but the Tribunal is not satisfied a formal application was made. The Respondent was not able to produce a temporary exemption notice. Relying intention to sell does not amount to a Temporary Exemption Notice. Section 86 provides that LHA has to actually serve a TEN.
26. The tenancy agreement required the tenants to discharge all utility payments consequently the entire rental sum of £400.00pcm is susceptible of repayment subject to any decisions which the Tribunal makes exercising its discretion under s44 of the 2016 Act. The rent payment date was 24th of each month.

27. This is a case which is not subject to a mandatory maximum repayment.
Accordingly, the Tribunal will exercise its discretion when determining what sum is repayable in accordance with the new statutory framework but with the benefit of the approach adopted by the Upper Tribunal in the cases mentioned.
28. The starting point is the gross sum repayable before the exercise of discretion by the Tribunal. The rent was £400.00 pcm and the period of repayment is 8 months and 12 days. The gross sum is £3257.00 after allowing for apportionment on a daily rate in August 2018 and April 2019.
29. The Respondent was formerly a professional footballer. Information disclosed about his income is that although he received substantial income in that profession, he has incurred substantial debts and expenses related to his property portfolio by reason of the conduct of the agent, Mr James. The Respondent submitted the same evidence of his financial circumstances to the magistrates and to the Tribunal determining the other cases. The Tribunal accepts the evidence when considering the Respondent's financial circumstances.
30. In relation to the Respondent's conduct the Applicants describe some complaints they had about the condition of the Property. On behalf of the Respondent Mr Grant submits that a Rent Repayment Order is not a punishment for other matters in addition to the relevant housing offence of failure to obtain a licence.
31. In this case the Tribunal accepts that submission. The relevant conduct relates to s44(4) per se. The Respondent was badly served by his agent who failed in all respects to carry out proper management of the Property. Nevertheless, the Respondent accepted responsibility for his agent's default. He entered a plea of guilty before the magistrates and made an unequivocal admission of guilt in this Tribunal.
32. Although the Respondent was found to have failed to licence multiple properties, the magistrates and the Tribunal have treated his failure as one and the first offence.
33. There was no complaint about the behaviour of the Applicants.
34. As stated above Rent Repayment Orders were made by the Tribunal (albeit differently constituted from the present Tribunal) in respect other properties

owned by the Respondent. This Tribunal will adopt and apply the same principles in this as determined for the other cases.

35. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
36. Having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50%.
37. The Tribunal was not satisfied with the explanation given for the contention by the Respondent that the period of repayment should be restricted to 2 February 2019. In this case the Tribunal makes a further deduction of 20% in recognition of the Respondent's conduct by admitting guilt. It has reduced the discount when compared with the other cases as it was not satisfied the Respondent had not limited the period of repayment by making an application for a licence in this case in a timely manner.
38. The Financial Penalty paid by the Respondent amounted to £10,800.00 which referred to twelve properties. This sum represents £900.00 per property including this Property. S44(4)(c) requires the Tribunal to take into account "*whether the landlord has at any time been convicted of an offence to which this Chapter applies.*" In line with the other cases the Tribunal reduces the repayment by 50% of the apportioned fine.
39. Therefore, the sum payable by the Respondent is:

£3257.00 less £450.00 =	£2807.00
Deduct 70%	£1964.90
Balance Payable	£842.10

Appeal

40. 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.

Tribunal Judge PJ Ellis



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PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

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Respondent : **Mr Dexter Blackstock**

**Respondent's
Representative** : **Cartwright King Solicitors**

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Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Peter Wilson
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Date of Hearing : **10 March 2020 (papers only)**

Date of Decision : **2 April 2020**

DECISION

- a. The Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed*
- b. Consequently, the Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)*
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had appointed an agent to manage the Property neither he nor the agent on his behalf had applied for a licence pursuant to s85 of the 2004 Act. On 17 February 2019 the Respondent admitted his failure to apply for a licence for this and 11 other properties to the Nottingham Magistrates. He was fined a total of £10,800.00 for all offences. The charges against him all arose from his failure to licence properties and not the condition of the properties.

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The Issues for Determination

10. The issues for determination by the Tribunal were:
 - a. Whether or not the Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed
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The Law and Statutory Framework

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

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41 Application for rent repayment order

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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—

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(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.

15. The Respondent admits that he did not hold a licence during the period when the Applicants were in occupation of the Property from 1 August to 2 February 2019 within the period of 12 months ending with the date of the application. He contends that applied for a licence to the local housing authority on 2 February 2019 thereby ending the unlicensed period pursuant to s86 of the 2004 Act.

16. In response to a written question from the Tribunal the representative of the Respondent asserted

“The respondent contends that the period should end on the 2nd February 2019 as at that time he had instructed his managing agent to sell various properties and apply for temporary exemption certificates. This had been relayed to Mr Paul Harrison of Nottingham City Council as of that date. This happens to be a period of 6 months from 1st August 2019 to 2nd February 2019.”

Decision.

17. The Tribunal is satisfied the offence contrary to s95 of the 2016 Act was committed. There is no dispute the Applicants made the payments of rent in accordance with the tenancy agreement.

18. By reason of ss40(3) 43(3) and 44(3) Housing Act 2016 the Respondent is potentially liable to the making of a rent repayment order for a period not exceeding 12 months during which (he) was committing the offence. When the Tribunal exercises the power to make such an order it must take into account the conduct of the parties and the financial circumstances of the landlord (s44(4) 2016 Act).

19. The 2004 Act provided at s 74(5) that the amount to be repaid in a case such as this was such amount which the Tribunal considered reasonable. S74(6)(d) provided that the conduct and financial circumstances of the appropriate person among other matters set out in subsection 6 must be taken into account in determining what sum is reasonable.

20. The two notable cases on rent repayment orders under the 2004 Act namely *Parker v Waller [2012] 301 UKUT(LC)* and *Fallon v Wilson [2014] UKUT (LC)* gave guidance as to the exercise of discretion by the Tribunal in deciding upon the reasonableness of the amount to be repaid. At paragraph 26 of its Decision in *Parker* the Upper Tribunal found:

(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.*

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(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.*

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21. In Fallon HH Judge Huskinson said when allowing an appeal in which the First-tier Tribunal had not exercised its discretion properly

“In Parker v Waller it is stated in paragraph 26(ii) that there is no presumption a RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances determining what amount would be reasonable”.

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23. Having decided the Respondent is guilty of the offence and therefore liable to a Rent Repayment Order the next step is to decide what period of rent payment is due and what sum is payable having regard to the statutory directions and the decisions of the Upper Tribunal.
24. The 2004 Act provided at s 74(8)(b) that the repayment order may not require payment of any amount which is in respect of any time falling outside the period of twelve months ending with the date of the occupier’s application under s73(5) of that Act. The 2016 Act does not impose such a restriction but specifically provides that the limitation period is defined by reference to the period of occupation while the offence was being committed.
25. In this case the period is not as defined in the Respondent’s statement of case namely 1 August 2018 to 2 February 2019 but it runs until the Applicants vacated the Property on 5 April. The Respondent is correct that an application for a licence will have a suspensory effect of the offence but the Tribunal is not satisfied a formal application was made. The Respondent was not able to produce a temporary exemption notice. Relying intention to sell does not amount to a Temporary Exemption Notice. Section 86 provides that LHA has to actually serve a TEN.
26. The tenancy agreement required the tenants to discharge all utility payments consequently the entire rental sum of £400.00pcm is susceptible of repayment subject to any decisions which the Tribunal makes exercising its discretion under s44 of the 2016 Act. The rent payment date was 24th of each month.

27. This is a case which is not subject to a mandatory maximum repayment. Accordingly, the Tribunal will exercise its discretion when determining what sum is repayable in accordance with the new statutory framework but with the benefit of the approach adopted by the Upper Tribunal in the cases mentioned.
28. The starting point is the gross sum repayable before the exercise of discretion by the Tribunal. The rent was £400.00 pcm and the period of repayment is 8 months and 12 days. The gross sum is £3257.00 after allowing for apportionment on a daily rate in August 2018 and April 2019.
29. The Respondent was formerly a professional footballer. Information disclosed about his income is that although he received substantial income in that profession, he has incurred substantial debts and expenses related to his property portfolio by reason of the conduct of the agent, Mr James. The Respondent submitted the same evidence of his financial circumstances to the magistrates and to the Tribunal determining the other cases. The Tribunal accepts the evidence when considering the Respondent's financial circumstances.
30. In relation to the Respondent's conduct the Applicants describe some complaints they had about the condition of the Property. On behalf of the Respondent Mr Grant submits that a Rent Repayment Order is not a punishment for other matters in addition to the relevant housing offence of failure to obtain a licence.
31. In this case the Tribunal accepts that submission. The relevant conduct relates to s44(4) per se. The Respondent was badly served by his agent who failed in all respects to carry out proper management of the Property. Nevertheless, the Respondent accepted responsibility for his agent's default. He entered a plea of guilty before the magistrates and made an unequivocal admission of guilt in this Tribunal.
32. Although the Respondent was found to have failed to licence multiple properties, the magistrates and the Tribunal have treated his failure as one and the first offence.
33. There was no complaint about the behaviour of the Applicants.
34. As stated above Rent Repayment Orders were made by the Tribunal (albeit differently constituted from the present Tribunal) in respect other properties

owned by the Respondent. This Tribunal will adopt and apply the same principles in this as determined for the other cases.

35. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
36. Having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50%.
37. The Tribunal was not satisfied with the explanation given for the contention by the Respondent that the period of repayment should be restricted to 2 February 2019. In this case the Tribunal makes a further deduction of 20% in recognition of the Respondent's conduct by admitting guilt. It has reduced the discount when compared with the other cases as it was not satisfied the Respondent had not limited the period of repayment by making an application for a licence in this case in a timely manner.
38. The Financial Penalty paid by the Respondent amounted to £10,800.00 which referred to twelve properties. This sum represents £900.00 per property including this Property. S44(4)(c) requires the Tribunal to take into account "*whether the landlord has at any time been convicted of an offence to which this Chapter applies.*" In line with the other cases the Tribunal reduces the repayment by 50% of the apportioned fine.
39. Therefore, the sum payable by the Respondent is:

£3257.00 less £450.00 =	£2807.00
Deduct 70%	£1964.90
Balance Payable	£842.10

Appeal

40. 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.

Tribunal Judge PJ Ellis



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

Case Reference : **BIR/00FY/HMK/2019/0091**

Property : **35c Hucknall Road, Nottingham
NG5 1BJ**

Applicants : **Mr Pawel Kownacki &
Mrs Agnieszka Kownacka**

Respondent : **Mr Dexter Blackstock**

**Respondent's
Representative** : **Cartwright King Solicitors**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for a
rent repayment order**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Peter Wilson
BSc (Hons) LLB MRICS MCIEH CEnvH**

Date of Hearing : **10 March 2020 (papers only)**

Date of Decision : **2 April 2020**

DECISION

- a. The Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed*
- b. Consequently, the Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)*
- c. The period for which rent is repayable is 1 August 2018 to 5 April 2019*
- d. The sum payable after applying the principles described in s44 of the 2016 Act is £842.10*

Introduction

1. This is an application for a rent repayment order pursuant to s41 Housing and Planning Act 2016 by Pawel Kownacki and Agnieszka Kownacka of 14, Woodland Avenue, Nottingham NG6 9BY. The matter was decided on the papers without an inspection of the Property. The papers included helpful written submissions by or on behalf of both parties. No inspection was carried out as the Respondent no longer owns the property.
2. The Applicants who represented themselves, were tenants of the Respondent Mr Dexter Blackstock at 35c Hucknall Road Nottingham (the Property) from 24 March 2014 to 5 April 2019. With effect from 24 February 2017 the Applicants occupied the Property pursuant to a 12 month assured shorthold tenancy. They held over after its expiration.
3. The Respondent Mr Dexter Blackstock of Horse Chestnuts, Hall Lane, Papplewick, Nottingham owned the Property at all material times although since issue of these proceedings he has sold it. He was also the owner of 11 other properties in the same area of Nottingham. He was represented by Cartwright King solicitors and Nicholas Grant of counsel.

Factual summary

4. The Property is an area designated for selective licensing since 1 August 2018 pursuant to Part 3 Housing Act 2004 (the 2004 Act). Although the Respondent

had appointed an agent to manage the Property neither he nor the agent on his behalf had applied for a licence pursuant to s85 of the 2004 Act. On 17 February 2019 the Respondent admitted his failure to apply for a licence for this and 11 other properties to the Nottingham Magistrates. He was fined a total of £10,800.00 for all offences. The charges against him all arose from his failure to licence properties and not the condition of the properties.

5. On 26 November 2019 the Applicants issued this application by which they seek repayment of 12 months rent of £400.00 per calendar month being £4800.00 in total. Their assured shorthold tenancy agreement of 24 February 2017 provided at clause 1.7.1
“the rent shall be £400.00 per calendar month for the first two months payable in advance. The tenant is responsible for all utilities, to in(sic) Council Tax, Gas, Electricity, Water Rates, tv licence if applicable”
6. The Applicants referred in their submission to complaints they made during their occupation of the Property about its condition. The local housing authority had inspected the Property and detected some matters which were the subject of notices to the landlord. They assert that they left the Property because they could no longer live in it.
7. The Respondent by Mr Grant, on his behalf, admits the conviction. He does not deny that he is liable to make a rent repayment but denies that the Applicants are entitled to the total sum claimed. Mr Grant submitted that alleged transgressions of a landlord should not be punished by a rent repayment order.
8. He further asserts that the Respondent had left the Property in the hands of an agent who failed to discharge his duties. The failings of the agent were drawn to the attention of the magistrates and also noted in other decisions of the Tribunal noted below.
9. The Respondent’s submission also pointed out that he accepted his guilt when prosecuted by the local housing authority and was fined a total of £10,800.00 for the offences relating to 12 properties.

The Issues for Determination

10. The issues for determination by the Tribunal were:
 - a. Whether or not the Respondent was guilty of a housing offence namely having control of or managing a house which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed
 - b. Consequently, whether or not the Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)
 - c. If so, the period for which rent is repayable and
 - d. What sum is actually payable after applying the principles described in s44 of the 2016 Act.

The Law and Statutory Framework

11. This is not the first case in which tenants have claimed repayment of rent from Mr Blackstock. The Tribunal has delivered decisions relating to flats 3 & 4 Addison Street Nottingham being case numbers
BIR/OOFY/HMK/2019/0079
BIR/OOFY/HMK/2019/0086
BIR/OOFY/HMK/2019/0087
BIR/OOFY/HMK/2019/0088
BIR/OOFY/HMK/2019/0089 and
BIR/OOFY/HMK/2019/0090
12. Another case dealt with by the Tribunal, **BIR/OOFY/HMJ/2019/0002** related to 385 Haydn Road Nottingham.
13. All cases involved substantially the same claim and response by the parties as arises in this case. The Respondent admitted his failure to licence the properties both before the Nottingham Magistrates and the Tribunal. The claims for repayment of rent relied on the conviction by the Magistrates. This Tribunal respectfully agrees with the summary of the statutory framework and relevant law governing these applications. Accordingly, it adopts and reproduces here the summary given by the Tribunal in the cases relating to 3 & 4 Addison Street.

14. The 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.

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
5	<i>Housing Act 2004</i>	<i>Section 95(1)</i>	<i>Control or management of unlicensed house</i>

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.

15. The Respondent admits that he did not hold a licence during the period when the Applicants were in occupation of the Property from 1 August to 2 February 2019 within the period of 12 months ending with the date of the application. He contends that applied for a licence to the local housing authority on 2 February 2019 thereby ending the unlicensed period pursuant to s86 of the 2004 Act.

16. In response to a written question from the Tribunal the representative of the Respondent asserted

“The respondent contends that the period should end on the 2nd February 2019 as at that time he had instructed his managing agent to sell various properties and apply for temporary exemption certificates. This had been relayed to Mr Paul Harrison of Nottingham City Council as of that date. This happens to be a period of 6 months from 1st August 2019 to 2nd February 2019.”

Decision.

17. The Tribunal is satisfied the offence contrary to s95 of the 2016 Act was committed. There is no dispute the Applicants made the payments of rent in accordance with the tenancy agreement.

18. By reason of ss40(3) 43(3) and 44(3) Housing Act 2016 the Respondent is potentially liable to the making of a rent repayment order for a period not exceeding 12 months during which (he) was committing the offence. When the Tribunal exercises the power to make such an order it must take into account the conduct of the parties and the financial circumstances of the landlord (s44(4) 2016 Act).

19. The 2004 Act provided at s 74(5) that the amount to be repaid in a case such as this was such amount which the Tribunal considered reasonable. S74(6)(d) provided that the conduct and financial circumstances of the appropriate person among other matters set out in subsection 6 must be taken into account in determining what sum is reasonable.

20. The two notable cases on rent repayment orders under the 2004 Act namely *Parker v Waller [2012] 301 UKUT(LC)* and *Fallon v Wilson [2014] UKUT (LC)* gave guidance as to the exercise of discretion by the Tribunal in deciding upon the reasonableness of the amount to be repaid. At paragraph 26 of its Decision in *Parker* the Upper Tribunal found:

(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 –*

21. In Fallon HH Judge Huskinson said when allowing an appeal in which the First-tier Tribunal had not exercised its discretion properly

“In Parker v Waller it is stated in paragraph 26(ii) that there is no presumption a RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances determining what amount would be reasonable”.

22. The 2016 Act does not include an equivalent provision to s75(5) but the same or substantially equivalent words used in s74(6)(d) are used in s44(4)(a) & (b) of the 2016 Act. Also, the 2016 Act directs the Tribunal to have regard also to the conduct of the tenant.
23. Having decided the Respondent is guilty of the offence and therefore liable to a Rent Repayment Order the next step is to decide what period of rent payment is due and what sum is payable having regard to the statutory directions and the decisions of the Upper Tribunal.
24. The 2004 Act provided at s 74(8)(b) that the repayment order may not require payment of any amount which is in respect of any time falling outside the period of twelve months ending with the date of the occupier’s application under s73(5) of that Act. The 2016 Act does not impose such a restriction but specifically provides that the limitation period is defined by reference to the period of occupation while the offence was being committed.
25. In this case the period is not as defined in the Respondent’s statement of case namely 1 August 2018 to 2 February 2019 but it runs until the Applicants vacated the Property on 5 April. The Respondent is correct that an application for a licence will have a suspensory effect of the offence but the Tribunal is not satisfied a formal application was made. The Respondent was not able to produce a temporary exemption notice. Relying intention to sell does not amount to a Temporary Exemption Notice. Section 86 provides that LHA has to actually serve a TEN.
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30. In relation to the Respondent's conduct the Applicants describe some complaints they had about the condition of the Property. On behalf of the Respondent Mr Grant submits that a Rent Repayment Order is not a punishment for other matters in addition to the relevant housing offence of failure to obtain a licence.
31. In this case the Tribunal accepts that submission. The relevant conduct relates to s44(4) per se. The Respondent was badly served by his agent who failed in all respects to carry out proper management of the Property. Nevertheless, the Respondent accepted responsibility for his agent's default. He entered a plea of guilty before the magistrates and made an unequivocal admission of guilt in this Tribunal.
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34. As stated above Rent Repayment Orders were made by the Tribunal (albeit differently constituted from the present Tribunal) in respect other properties

owned by the Respondent. This Tribunal will adopt and apply the same principles in this as determined for the other cases.

35. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
36. Having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50%.
37. The Tribunal was not satisfied with the explanation given for the contention by the Respondent that the period of repayment should be restricted to 2 February 2019. In this case the Tribunal makes a further deduction of 20% in recognition of the Respondent's conduct by admitting guilt. It has reduced the discount when compared with the other cases as it was not satisfied the Respondent had not limited the period of repayment by making an application for a licence in this case in a timely manner.
38. The Financial Penalty paid by the Respondent amounted to £10,800.00 which referred to twelve properties. This sum represents £900.00 per property including this Property. S44(4)(c) requires the Tribunal to take into account "*whether the landlord has at any time been convicted of an offence to which this Chapter applies.*" In line with the other cases the Tribunal reduces the repayment by 50% of the apportioned fine.
39. Therefore, the sum payable by the Respondent is:

£3257.00 less £450.00 =	£2807.00
Deduct 70%	£1964.90
Balance Payable	£842.10

Appeal

40. 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.

Tribunal Judge PJ Ellis