



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

Case references : CAM/00KA/HMF/2020/0007

Property : 14 Kenneth Road, Luton, Beds LU2 0LE

Applicant : Brendan Lewis

Applicant's Representative : Did not attend and was not represented

Respondent : Marco Caruso

Respondent's Representative : Did not attend and was not represented

Type of application : For a Rent Repayment Order pursuant to ss. 40-46 Housing & Planning Act 2016

Tribunal members : Mr Max Thorowgood

Venue : Decision on the papers

Date of Decision : 21st October 2020

DECISION

1. The application

- 1.1. By his application dated 28th February 2020 the Applicant, who has been a tenant of a room in the Property since 2012, seeks a Rent Repayment Order pursuant to Chapter 4 of the Housing & Planning Act 2016 (“the Act”) in respect of the total sum which he has paid at the rate of £282 pcm either to the Respondent or his agent, The Right Property, between November 2012 and January 2020.

2. The applicable law

- 2.1. The relevant legislation is set out in ss. 40-46 of the Act which is set out in Appendix 2 below.

- 2.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a tenant of a property if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004 in relation to the property of which the Applicant is a tenant and that the application is made within 12 months of the date on which the offence was committed.

- 2.3. The maximum amount which a Tribunal can order a landlord to repay to a tenant is fixed by s. 44 which provides, in relation to offences under s. 72(1) Housing Act 2004 (namely operating an unlicensed HMO) with which I am concerned, that the maximum possible award is either the sum of rent paid in the 12 months ending with the date of the commission of the offence or the amount of rent received by the Respondent from the Applicant in any 12 month period during which the offence was being committed.

- 2.4. In considering the amount of the order s. 44(4) provides that the Tribunal is bound to consider:

2.4.1. the conduct of the landlord and the tenant,

2.4.2. the financial circumstances of the landlord, and

2.4.3. whether the landlord has at any time been convicted of an offence to which this Chapter applies.

3. The Respondent's commission of an offence under s. 72(1) Housing Act 2004

3.1. On 5th November 2019 the Respondent pleaded guilty to the following offences relating to the Property:

3.1.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

3.1.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges against him were withdrawn. It is unclear on the basis of the information before me whether the charge under s, 72 Housing Act 2004 to which the Respondent pleaded guilty related to a specified date or whether it was said to extend over a period. I shall assume for these purposes that it referred to a single specific date and that the date was 6th March 2019, that being the date on which the Property was inspected by Mr McCrossan.

3.2. The Respondent was represented at the hearing on 5th November 2019 in the course of which it was submitted that the offences were serious, that the potential for serious harm to result was high and that there was a high degree of culpability on the part of the Respondent.

3.3. At the adjourned hearing on 13th December 2019, at which the Respondent was again represented by counsel, he was fined £27,000.00 and ordered to pay a Victim's Surcharge of £170.00 and costs of £848.70.

3.4. I was informed by Ms Susan Desfontaines, who represented Luton Borough Council in relation to another application made against the

Respondent in relation to the Property which was ordered to be heard at the same time as this, that the Respondent paid those sums in full within 14 days and that part of the material which he placed before the Court, by way of defence or mitigation of his offences, was that he had been unable to take the time necessary to comply with the HMO Regulations because all of his time was taken up by his job in respect of which he received a salary of £60,000.00 p.a.

- 3.5. It is also worthy of note that according to Ms Desfontaines the Respondent owns and operates two other unlicensed HMO's within Luton BC's area, one at 12 Kenneth Road and the other at 35 Axe Close. On 1st March 2019 a serious fire at 12 Kenneth Road, started as a result of defective wiring, caused Luton BC to inspect the Property and to identify the commission of the offences to which the Respondent later pleaded guilty and in respect of which this application is made.
- 3.6. A subsequent inspection of the Property on 22nd August 2019 revealed that, despite the notices served by the Applicant in respect of the breaches of the HMO regulations, no steps had been taken to remedy them. Needless to say, no application for an HMO licence had been made either. As a result of that inspection the Applicant commenced work to remedy the breaches following which solicitors instructed by the Respondent wrote to the Applicant demanding that it cease work and confirming that the Respondent would carry out the necessary works himself. I have no information as to whether he has in fact done so. I was informed, however, by Ms Desfontaines that the Property is still not and never has been licensed to be operated as an HMO.

4. Evidence that the Applicant has paid rent

- 4.1. Despite what he has said in his application notice, the Applicant has produced evidence in the form of bank statements that he paid rent in the sum of £282.00 pcm between August and September 2018 and March 2019 to April 2020. In the last two of those months, the rent was paid to The Right Property which the Applicant says is the Respondent's

nominated agent following the outcome of the proceedings before the Magistrates' Court. The Applicant says that he has been unable to prove that he paid rent in the months between October 2018 and March 2019 because he has lost his bank statements for those months. I am satisfied nevertheless, in the absence of any evidence to the contrary, that he did so.

5. The date(s) on which the offence occurred or was in the course of occurring

- 5.1. It is manifest that the offence was occurring on 6th May 2019 because the Respondent pleaded guilty to such an offence.
- 5.2. It is also plain from the information placed before me by Mr Lewis, Ms Desfontaines in relation to Luton BC's application which I heard today and from the information placed before me by Mr Dermot Mealey in support of the application made by Tomas Prochazka which I heard together with Ms Krisko on 13th January 2020, that the Respondent has let the Property as an unlicensed HMO throughout the period between August 2018 and the date on which the Applicant made his application.

6. My decision

- 6.1. I am satisfied beyond reasonable doubt that at all material times between August 2018 and April 2020 the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 for the reasons which I have explained above.
- 6.2. I am also satisfied that the application was made within 12 months of the date of the offence, the nominal date of which has been taken as 6th March 2019 but which continued at all material times thereafter.
- 6.3. Finally, I am satisfied, that in the period of 12 months ending with the date of his application the Applicant paid the Respondent the sum of £3,384.00 in rent.

6.4. On the basis of the provisions of ss. 44 it is clear that that is maximum sum which I may order the Respondent to repay. However, I need also to consider the provisions of s. 44(4). Taking the factors there identified in turn:

6.4.1. So far as I am aware the Applicant's conduct has been unimpeachable. The conduct of the Respondent on the other hand has been reprehensible in a high degree, not the least instances of which are: i) his continued letting of this Property as an unlicensed HMO despite his conviction on 5th November 2019 and the Rent Repayment Order which has since been made against him; and ii) his failure to engage with these or any other proceedings relating to Rent Repayment Orders in respect of the Property. It seems plain that he believes he can treat the regulations with contempt and this Tribunal with contempt.

6.4.2. I know nothing about the financial circumstances of the Respondent beyond what I was told by Ms Desfontaines. That information suggests that he is able to pay any order which I have power to make. He has had the opportunity to put material before me to show that he is not able to pay but has failed to do so.

6.4.3. The last relevant consideration is whether the Respondent has ever been convicted of an offence to which the Act relates. He has of course as I have related above. How that consideration is intended to be relevant is unclear but I was helpfully referred by Ms Desfontaines to the case of *Parker v Waller* [2012] UKUT 301 @ §26 which suggests that it is for the Tribunal to resolve the tension inherent in the twin track criminal and civil punitive regimes. In this case since I have heard nothing from the Respondent to suggest that the making of an order in the sum sought will cause him any undue hardship, I do not consider that this is a factor which I need consider further save to say this. The Applicant has had to pay rent to the Respondent for the doubtful privilege of

living in a dangerous, unhealthy property which falls below the minimum standard set by Parliament for such properties. He has seen no benefit from the £27,000.00 fine paid by the Respondent upon his conviction. In the absence of any other considerations therefore, I consider it just and equitable that the Respondent should repay the sum of £3,384.00 to the Applicant within 28 days of the service of this decision upon him.

Dated this 21st day of October 2020

Max Thorowgood

BY ORDER OF THE TRIBUNAL

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

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).

Application for rent repayment order

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.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Making of rent repayment order

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).

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</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

45 Amount of order: local housing authorities

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.
- (2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord,

(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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local **housing** authority.

(4) For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Enforcement of rent repayment order

47 Enforcement of rent repayment orders

(1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.