FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AE/HMG/2019/0029P**
Property	**:**	**143B Harvist Road, London NW6 6HB**
Applicant	**:**	**Julie Kemp**
Representative	**:**	**Advice for Renters**
Respondent	**:**	**Orla O'Brien**
Representative	**:**	**Ringley Law LLP**
Type of Application	**:**	**Application for a rent repayment order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Tribunal Judge Dutton**
Date of Decision	**:**	**16th July 2020**

DECISION

DECISION

This has been a remote determination on the papers, which has not been objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined on papers before me as was requested by the applicants in their application. The documents that I was referred to are in a digital bundle of some 132 pages for the applicant and a similar digital bundle for the respondent comprising some 33 pages, the contents of which I have noted but will not repeat in detail as they are common to both parties.

The Tribunal determines that the Respondent has breached section 95(1) of the Housing Act 2004 (the 2004 Act) and determines that the Respondent must pay to the Applicants the sum of £4,917.08 by way of Rent Repayment Order (RRO) within the next 28 days.

BACKGROUND

1. On 2nd December 2019 the applicant, Ms Julie Kemp, applied to the tribunal for a Rent Repayment Order (RRO) in respect of her occupancy of the property, 143B Harvest Road, London NW6 6HB (the Property) for the period 26th November 2018 until 25th November 2019, the date upon which it is said the respondent applied for a Selective Licence for the Property with the London Borough of Brent (the Period). Directions were issued on 9th December 2019 initially indicating a hearing but, as a result of the Covid-19 pandemic, no such hearing could be arranged.

2. In support of her case the applicant produced a bundle of papers including statement of reasons, a witness statement and a response to the respondent's statement. In addition, I was provided with statements of account showing the rent paid, the housing benefit received and the sum said to be due for repayment. In the application this is recorded as being £16,512.28. However, in her expanded statement of reasons this figure and the Period has altered. The Period is said to be from December 2018 to December 2019 and appears to take into account payments and arrears incurred during the lockdown period associated with the Covid pandemic. I will return to the calculation of the amount due later in this decision.

3. What is agreed between the parties is that the applicant went into possession of the Property on 18th April 2017 under the terms of an AST, a copy of which is included in both parties bundles. The monthly rental is and was £1,776.66. The applicant holds over under that tenancy agreement as a statutory periodic tenant. It is also accepted that the Property became part of the London Borough of Brent's selective licensing scheme from 1st June 2018. Further it appears to be accepted by the applicant that the respondent applied for a selective licence on 25th November 2019 and such a licence was granted to the respondent for the Property on 6th January 2020.

4. The respondent seeks to defend the application in a witness statement actually signed by her legal representative. It cites arrears of rent and failure to pay on time. Indeed, as a result, possession proceedings were commenced, initially it seems resulting in a hearing in January 2020 but now listed for September 2020. I understand that the matter has progressed from a simple possession claim to one involving lack of repair. Within both bundles were reports from surveyors intended for the County Court proceedings setting out alleged issues with the Property.

5. On the question of the licence, whilst it has now been obtained it is said by the respondent that the selective licensing came into force after the tenancy had originally been entered into. However, she accepts that one was required and applied for same. However it is suggested that the Council had not sufficiently advertised the scheme and that she would argue she has the defence of 'reasonable excuse' under s95(4) of the Housing Act 2004 (the 2004 Act). I will return to this point in the findings section of this decision.

6. An allegation is also made that the applicant has sublet the Property, but no details are provided.

7. The applicant sought to rebut these issues in a response dated 8th June 2020. I have noted all that was said. I have also been provided with correspondence passing between the applicant's legal representatives and the Council. This includes the Public Notice of Designation including the Ward in which the Property is situated becoming an area requiring a selective licence from 1st June 2018. There is a sheet setting out frequently asked questions and email exchanges with Mr Jemmott, a Private Housing Services Manager with the Council. These exchanges confirm that the licence is not retrospective, as suggested by the respondent in correspondence to the applicant. In addition, I was provided with examples of the advertising undertaken by the Council to bring the scheme to the attention of Landlords in the Borough.

8. I have noted the exchange of correspondence between Advice4Renters and Ringley Law prior to the commencement of these proceedings and subsequently. They take the matter no further and are covered in the statements and responses by the parties included in the bundles before me.

FINDINGS

9. I am satisfied beyond reasonable doubt that an offence of failing to obtain a licence for the Property as provided for at s95(1) has been committed. The Council has, in my finding, fully complied with the requirements necessary to designate the Ward in which the Property is situated as one requiring a selective licence under s79 and 80 of the 2004 Act. It meets the requirements set out under section 80 – 83 of the 2004 Act. Once so designated the Property is required to be licensed under s85 of the 2004 Act from 1st June 2018. I do not accept that the licence is retrospective. There is nothing in the legislation to that effect, indeed s91(3) clearly sets out the timing. I cannot see that the 'reasonable excuse' defence at s95(4) applies in this case. The Council has done all that was required of it to bring the licensing provisions to the attention of the public and landlords. It is for the respondent to ensure that she complies with current

legislation. I do accept that some comfort is afforded to the respondent by applying for a licence and it is accepted by the applicant that such application was made on or about 25th November 2019. That I find is the end date for which any liability for a RRO applies. The period for which an RRO can be made is set out a s44 of the Housing and Planning Act 2016 (the 2016 Act). I have set out the requirements at the foot of this decision. Essentially the RRO is for a maximum of 12 months with the offence having been committed within 12 months of the application. The start date would be 1st June 2018. However, the application to the tribunal was made on 2nd December 2019. The offence ceased on 25th November 2019 and therefore the period for which an RRO can be claimed is back to 26th November 2018.

10. The matters I am to consider in determining the sum to be paid are those set out at section 44(4) of the 2016 Act and are the conduct of the landlord and a tenant, the financial circumstances of the landlord and whether the landlord has been convicted of an offence. The latter does not apply in this case.

11. As to conduct I note the allegations of lack of repair but it seems to me those are issues to be determined in the County Court and it would be inappropriate for me to make any findings. I do note that the applicant has been in arrears of rent and it is said has been late making some payments. The email chain included in the applicant's bundle does not help me to any degree. It relates to repair issues but does evidence reminders from Mr Davison, the co-owner of the Property about payment of rent.

12. I have no information on the financial circumstances of the respondent.

13. I turn then to the sum which should be ordered as payable by the respondent to the applicant. There are differing sums in the applicant's papers. At clause 7 of the Expanded Statement of Reasons it is said that the sum personally paid by the applicant from December 2018 to December 2019 was £11,344.43. The current arrears are said to be £5,536.62, they having increased during lockdown, leaving the sum of £5,807.72 being claimed. The respondent provides no indication other than a statement of rent from the start of tenancy. What does appear to be consistent is that by 18th November 2019 the applicant was some £4,806.64 in arrears. I consider that I should deal only with the sums that should have been paid in the Period less any Housing Benefit/Universal Credit.

14. Relying on the schedule produced by the applicant at page 46 of the bundle this shows that the sum actually being paid from the applicant's own resources is £810.31 per month. It would seem that the Housing Benefit was paid to the applicant but was not passed on. In July 2019 and November 2019 no rent is paid and the rent in August and October is reduced to £1000 and £1300 respectively.

15. My arithmetic indicates that 12 months at £810.31 gives a sum of £9,723.72. From this I deduct what appears to be the agreed arrears of £4,806.64. I do not consider I should reflect any further arrears that may have accrued after the November 2019 date. They will be a matter for the County Court. This leaves the sum of £4,917.08.

16. Should I make any further deduction in respect of the conduct of the applicant in failing to pay the rent during the period, sometimes at all and sometimes late or in part? I have noted the contents of the applicant's witness statement setting out her employment difficulties and the health of her daughter. The applicant says the respondent was 'patient' but that she, the applicant, came to the conclusion that the rent was unaffordable. I have concluded that the 'conduct' is not something I should take into account. There is an explanation for the arrears and I note that prior to July 2019 the rent was paid regularly. Accordingly, I find that the sum for which the RRO should be made is £4,917.08.

17. I am mindful that there are proceedings underway in Court. These may result in the applicant having to pay arrears of rent but could include some level of damages in respect of her repair claim. I cannot say what the outcome may be. However, I do not consider it would appropriate to impose any restriction on the sum to be paid in respect of these proceedings. It appears to be accepted by the applicant that the arrears now stand at £5,536.62, which after deducting the RRO figure leaves a modest sum outstanding. Accordingly, I order that the sum of £4,917.08 should be paid to the applicant within 28 days.

Judge: Andrew Dutton

A A Dutton

Date: 16th July 2020

ANNEX – 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 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 to 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 (ie 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.

Extract from the 2016 Act

44 Amount of order: tenants

(1)Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2)The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3)The amount that the landlord may be required to repay in respect of a period must not exceed—

(a)the rent paid in respect of that period, less

(b)any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

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

(a)the conduct of the landlord and the tenant,

(b)the financial circumstances of the landlord, and

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