



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

Case Reference : **MAN/OOCG/HMF/2020/0002**

Property : **77 Glencoe Road, Sheffield, S2 2SG**

Applicant : **Mr Mohammed Farooq**

Respondent : **Mr William McLean**

Type of Application : **Housing and Planning Act 2016-Section 41(1)**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

Date of Determination : **9th December 2020**

Date of Decision : **17th December 2020**

DECISION

Decision

1. Mr McLean is ordered to repay rent to Mr Farooq in the sum of £1212.

Background

1. On 7th January 2020 Mr Mohammed Farooq (“Mr Farooq”) applied to the First-tier Tribunal for a Rent Repayment Order (“RRO”) pursuant to Section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The application relates to 77 Glencoe Road, Sheffield (“the Property”).
3. The Respondent to the application is the Landlord William McLean (“Mr McLean”).
4. The Applicant has been a tenant of the Property, on two occasions, from 1st August 2018 to 30th November 2018 and from 11th February 2019 to 6th June 2019.
5. On 27th January 2020 the Tribunal issued directions to the parties providing for the filing of statements, outlining how the Tribunal must approach the application and thereafter for the matter to be listed for a paper determination. The directions confirmed the Tribunal would endeavour to deal with the application in March 2020.
6. However, due to the Covid19 outbreak the determination could not take place at that time. This has now been a paper hearing on the papers that has not been objected to by the parties and is not provisional. A face to face hearing was not held because it was not practicable to do so and all issues could be determined on paper. The documents referred to in this decision are those contained in the papers submitted by the parties to the Tribunal.
7. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.
8. The Tribunal has made previous determinations upon similar applications made by former tenants of the same Property and the same Respondent, these being **Edward Harford v William McLean MAN/00CG/HMF/2019/0062** and **Joe Hensey v William McLean MAN/00CG/HMF/2020**. This application details the same issues upon which determinations were made in those matters.

The Law

9. A RRO is an order that the Tribunal may make requiring a Landlord to repay rent paid by a tenant. In order for such an order to be made the Landlord must have committed one of the offences set out in Section 40(3) of the 2016 Act. Those offences were set out in the Tribunal’s directions referred to in paragraph 5 above.
10. In the earlier decisions, referred to in paragraph 8 above, the Tribunal determined Mr McLean was guilty of the offence of managing or being in control of an unlicensed HMO. Whilst Mr McLean had not been charged with any offence, he had been fined the sum of £5000 by Sheffield City Council.

Submissions

11. Mr Farooq sought repayment of rent in the sum of £2800, being 7 months rent at £400 per month, this being the rent paid in the 12 month period prior to the application to the Tribunal, dated 13th December 2019. He advised he had been a tenant at the Property from 1st August to 30th November 2018 and again from 11th February to 6th June 2019.
12. In respect of this application, Mr McLean made no representations to the Tribunal, other than to accept his liability for a RRO.

Determination

13. In order for the Tribunal to make a rent repayment order, it must first be satisfied, beyond reasonable doubt, Mr McLean has committed an offence as set out in section 40(3) of the 2016 Act. Mr McLean admitted he had committed the offence of managing or being in control of an unlicensed HMO.
14. The Tribunal is therefore satisfied, beyond reasonable doubt, that Mr McLean has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the periods of the tenancy as advised by Mr Farooq.
15. Mr Hensey made his application to the Tribunal on 13th December 2019. This is within 12 months of the end of the relevant period, namely 6th June 2019 and the Tribunal can therefore make a RRO as asked.

Rent Repayment Order

16. The amount claimed by Mr Farooq of £2800 represents rent for a period of 7 months at a rate of £400 per month. The Tribunal must take into account any housing benefit or universal credit received during the same period, but there is no evidence any such payments have been made.
17. Section 44(4) of the 2016 Act provides that when making an order the Tribunal must take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence.
18. Mr McLean has not been convicted of a relevant offence.
19. The Tribunal notes from earlier decisions that a conditional HMO licence was granted on 23rd October 2019. Mr McLean was no longer committing the offence of controlling or managing an unlicensed property from that date. However, this is after the end of Mr Farooq's tenancy and therefore does not affect the amount due under a RRO.
20. The Tribunal calculates the amount payable under the RRO is for the period of 11th February to 6th June 2019. This the period of the tenancy within 12 months of the date of the application and is in the sum of £1512. The previous tenancy is outside the time period in which a RRO can be claimed.
21. In the decisions of **Harford and Hensey** the Tribunal accepted the evidence given by Mr McLean in respect of expenses paid by him and included within the rent. Mr McLean confirmed the rent included all bills and TV licence. In those matters this Tribunal found those expenses to be £849 per room/tenant per year. The Tribunal finds here those expenses should be deducted from any RRO since it would be inequitable for Mr Farooq to recover his living

expenses, having had the benefit of those services during his tenancy. The relevant amount is £300.

22. The Tribunal had previously determined in **Harford and Hensey** whether Mr Maclean's conduct should affect the amount to be paid under the rent RRO and determined it would not. Mr McLean had not made any further or different submissions to the Tribunal. Accordingly this Tribunal finds there is nothing in Mr McLean's conduct to affect its determination upon the amount to be repaid under a RRO.
23. The Tribunal therefore determines Mr McLean is to repay rent to Mr Farooq of £1212. This is the sum of £1512, less the amount allowed for bills of £300.

Tribunal Judge J Oliver
9th December 2020