



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

Case Reference : **MAN/00BN/HMF/2020/0059 (FVH)**

Property : **Mansion Point, 1 Cromwell Range
Manchester M14 6FQ**

Applicant : **Miss Amber Williams**
Representative : **Mr Stuart Stanley**

Respondent : **Mansion Properties Management Limited**
Representative : **Mr Paul Winrow**

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

Tribunal Members : **Deputy Regional Judge L Bennett
Regional Surveyor N Walsh**

Date of Decision : **17 June 2021**

DECISION

Application

1. Miss Amber Williams applies under Section 41(1) of the Housing & Planning Act 2016 (the 2016 Act) for a Rent Repayment Order (RRO) against Mansion Properties Management Limited (MPML) in respect of her tenancy of Mansion Point, 38 Block D, 1 Cromwell Range, Manchester M14 6FQ (the Property).

Hearing

2. A hearing took place on 1 June 2021 using video (FVH).
3. Miss Williams attended the hearing with her representative, Mr Stuart Stanley, her father.
4. MPML was represented by Mr Paul Winrow, a Director. Its witnesses were Mrs Donna Montagnier, Student Group Manager and Mrs Elaine Swainson, Student Administration Manager.

Background

5. Miss Williams' application is dated 7 July 2020.
6. The application requests repayment of rent in the sum of £8,990 representing a period of 12 months under Miss Williams' tenancy of the Property created by an agreement signed 21 August 2019 by Miss Williams and her Guarantor, Mr Stanley for a term commencing 13 September 2019 to 4 September 2020 (p.67).
7. Following a case management hearing and in compliance with directions the parties have provided written submissions and documentary evidence.
8. The electronic bundles submitted to the Tribunal comprised 584 pages. They were not paginated.
9. In this decision reference to page numbers relates to the Word file page numbers.

The Law

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

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or ...

(3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	Section	General description of offence
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

Section 41 provides –

(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. ...

Section 43 provides -

(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); ...

Section 44 provides-

(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 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.
4. Section 72(1) of the Housing Act 2004, (“the 2004 Act”), provides -
- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (5) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1) or
 - (b) for permitting the person to occupy the house

Evidence and submissions

- 11. Miss Williams’ application and written submissions, confirmed in Mr Stanley’s opening remarks, identified the offence alleged and pivotal issue, whether the Property is required to be licensed under Section 61 of the 2004 Act as a house in multiple occupation (HMO).
- 12. Miss Williams submissions and evidence also address the quality of accommodation, the state of repair, living experience, safety and occupational risks of the Property. Having identified the pivotal or initial issue following the parties’ oral submissions, the Tribunal asked the parties to concentrate on that issue.
- 13. Mr Stanley has undertaken extensive research on behalf of Miss Williams and has sought advice. This includes comparisons and licencing requirements for other student accommodation developed by the Respondent and discussions with Housing Officers at Manchester. Miss Williams submitted a statement by Mr James Dooley, Housing Officer.
- 14. MPML’s evidence includes details of enquiries made by the Respondent at relevant times and copy correspondence which includes a letter dated 6 October 2020 from Ms Fiona Sharkey, Head of Compliance, Enforcement & Community Safety, Neighbourhood Services, Manchester (p.77). This summarises advice from the City Council’s Legal Department and “sets out Council’s position.” Ms Sharkey confirms the development Mansion Point comprising Allen Hall, Newman, Teilhard and More is not exempt from licensing. She analyses the nature of the accommodation and concludes that

parts of that accommodation require licences: “13 mandatory HMO licences in total.” These do not include licensing requirements in respect of Studio Apartment 38.

15. Miss Williams and Mr Stanley dispute Manchester’s conclusions. They believe the Property cannot be considered self contained as it does not have the required facilities without access to shared facilities. Reference was made to the limited cooking equipment and need to access the communal laundry, kitchen, cinema and other shared facilities. They submit that the Tribunal should determine the Property requires to be licensed.

Tribunal’s considerations with reasons

16. We have borne in mind Section 43 of the 2016 Act and the requirement for the Tribunal to be satisfied beyond reasonable doubt that the Respondent has committed an offence. The specific offence alleged is clear. Taking into account the relevant provisions of the 2004 Act, we must determine whether the Property requires a licence and as it is not disputed that licence was not obtained, whether the Respondent has a defence under the 2004 Act, that is: “A reasonable excuse.”
17. The arguments put forward by Mr Stanley are extensive and a product of considerable research. The comparison of the subject Property with the Respondent’s other developments is difficult to take into account as each has individual features and Local Housing Authority licensing requirements may involve discretion. Submissions relating to risks arising from lack of regulatory oversight are besides the point and appear a commentary on the quality of the statutory regime. Conduct may be relevant at a later stage in our consideration. In essence, Mr Stanley submits that Manchester was in error when considering the nature of the particular Studio accommodation and its facilities.
18. Mr Winrow stated that the Property was “Deemed safe and appropriate for occupancy by the required regulatory statutory authorities prior to the students moving in.” (p.76). He refers to practical completion certificates and inspections although we note Mr Stanley does not consider sufficiently rigorous inspection has taken place.
19. At the hearing Mr Winrow and Mrs Swainson explained enquiries that had been made. A timetable of events is available within submissions (p.87). We note delays encountered within the online application process whilst Manchester added the addresses to their electronic premises record.
20. We note and comment upon Mr Stanley’s contact with Mr Dooley and the information he gave to the Applicant. Whilst this might be confusing, the 2016 Act makes specific provision for a Local Authority to assist an Applicant in proceedings of this nature. We observe Manchester’s comments in a letter dated 12 August 2020 (p.97) that public domain information only has been provided and confirmation has not been given that the Property requires a licence.
21. The evidence shows the position is not straightforward. The Licencing Authority, Manchester has considered the position following discussion and correspondence culminating with a requirement for certain parts of the

development to be licensed. This does not include the subject Property. Taking into account the depth of enquiry and the evidence presented by both parties, we find on a balance of probabilities that the Property did not require an HMO licence. However, this is one step of the procedural process.

22. We have reached a conclusion relating to the requirement for the Property to be licensed. If our conclusion is correct, then an offence has not been committed by the Respondent. If incorrect, noting the efforts made by the Respondent to clarify the position and that licences advised were applied for, we reach the strong conclusion that the Respondent has a reasonable excuse. We find clear evidence of attempts to ascertain the position and obtain required licences and of the Licensing Authority's conclusion that a licence is not necessary for the Property. It is hard to see clearer circumstances in which the statutory defence within Section 72(5) of the 2004 Act arises. At the hearing Mr Stanley stated that he accepted it could not be established to the level of beyond reasonable doubt that a licence was required.
23. In summary, we conclude that the Respondent has not committed the offence of having control or managing an HMO which is required to be licensed in respect of the Property. As this is the sole offence alleged, we find this primary requirement for the making of a RRO is not satisfied and Miss Williams' application fails.

Order

24. Miss Williams' application is dismissed.

Laurence J Bennett – Tribunal Judge

21 June 2021