



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

Case reference: MAN/00BN/HMF/2020/0074

**HMCTS code
(audio,video,paper):** V:FVHREMOTE

Property: 29 Cawdor Road, Fallowfield, Manchester
M14 6LS

Applicants: (1) Jennifer Weir
(2) Rachel Sinclair
(3) Alice Mead
(4) Rebecca Owens
(5) Bethany Williamson

**Applicants'
representative:** Jennifer Weir

Respondents: Gafs and Pads Ltd

Type of Applications: Applications for a rent repayment order
under Section 41 of the Housing and Planning
Act 2016

Tribunal Members: Judge J.M.Going
J. Faulkner FRICS

Date of Hearing: 5 October 2021

Date of Decision: 17 October 2021

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were in an electronic document bundle, statements, and submissions as described below, the contents of which were noted.

The Decision

The Tribunal is not satisfied, beyond reasonable doubt, that a relevant housing offence was committed in the period of 12 months ending on the day on which the Application was made, and consequently has no power to make a Rent Repayment Order in response to the Application.

Background

1. By a paper Application dated 16 October 2020 received on 27 October 2020 the first named Applicant ("Ms Weir") applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under Section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order in respect of rents paid to the Respondents ("Gafs and Pads Ltd") as the landlord of the property.

2. Each of the remaining 4 Applicants ("Ms Sinclair, Ms Mead, Ms Owens and Miss Williamson") asked to be, and were later, joined into the Application and the Tribunal issued Directions to the parties on 18 December 2020.

3. Those Directions clearly set out the issues for the Tribunal to consider, making it clear that the Tribunal "will need to be satisfied *beyond reasonable doubt* that the offence has been committed" and that the Applicants' bundle of relevant documents should include "...(viii) the name(s) of any witnesses, with a signed and dated statement/summary of their evidence, stating that it is true..."

4. The bundle of documents supplied by the Applicants included copies of the Tenancy Agreement, bank statements, various photographs, and a screenshot of an email which is more particularly referred to later.

5. A Full Video Hearing was held on 5 October 2021. In attendance were Ms Weir, Ms Sinclair, Ms Owens and Miss Williamson.

The Property

6. The Tribunal did not inspect the property but understands that it is a 2- storey end of terrace house with a shared living room, shared bathroom and kitchen facilities,

with two bedrooms on the ground floor and four bedrooms on the first floor. It is located in Fallowfield being convenient for Manchester's universities.

Facts

7. None of the following matters have been disputed.

8. Since April 2006 it has been a national legal requirement for specified Houses in Multiple Occupation ("HMOs") meeting certain designated tests to be licensed under part 2 of the Housing Act 2004 ("the 2004 Act") with a mandatory HMO licence. These included houses with 3 storeys, occupied by 5 or more people, living as 2 or more households containing shared facilities such as the kitchen bathroom and toilet.

9. On 1 October 2018 the types of buildings requiring a mandatory HMO licence were extended to include those with less than 3 storeys, occupied by 5 or more people, living as more than 1 household, containing shared facilities.

10. The Applicants together with Summayah Hamadu (the "6 Tenants") entered into an Assured Shorthold Tenancy Agreement ("the Tenancy Agreement") with Gafs and Pads Ltd on 8 February 2019 for a 12-month term beginning on 1 July 2019 and ending on 30 June 2020.

11. The Tenancy Agreement stated that "the rent is £2618 every calendar month". It also referred to a separate £2400 deposit and that "Mr Randhawa will hold the deposit".

12. The Applicants gave evidence, supported by copies of various bank statements and screenshots, that it was agreed at the outset with Mr Randhawa that each tenant should pay rent of £100 per week throughout the tenancy, except for the first 2 months when that rent was halved. It was also agreed that the rent would be paid in 3 separate instalments, coinciding with the 3 University terms, rather than monthly.

13. The Applicants exhibited a screenshot of part of an email sent by from Grace Crampton, a Housing Enforcement Officer employed by Manchester City Council, to Ms Weir on 28 January 2020 ("Ms Crampton's email") stating
"... The Landlord submitted the Application on the 22 October 2019. You can claim for any rent prior to this date and you have until 22 October 2022 to apply for the Rent Repayment Order (this means you can wait until you move out in June to claim if you are worried (a)bout repercussions.)

Please see below for further information about Rent Repayment Orders:

Rent repayment

So the first point to mention is that the Council cannot do the process for you but we can hopefully provide a statement for you should the courts require it. I also want to stress that by the landlord not applying for a licence sooner, you as tenants were denied the important and substantial protections of the licensing system.

Cost

The cost of applying for a rent repayment order paper hearing is £100 but if the house apply then that is less than £20 each. Following this, the Tribunal will inform the landlord of the Application and ask them to present evidence to disprove beyond all reasonable doubt. If the Tribunal decides that a hearing is necessary an additional £200 will be payable by you. You can claim this money back if it is found in the favour.

Offence to prove

Offence to prove – control or management of unlicensed HMO”

The written submissions

14. Ms Wear in her expanded reasons for the Application explained that “... in September 2019, we were visited by two council representatives who had had previous issues with the landlord. We were informed by Grace Crampton that our landlord had not submitted a licence to rent the house to 6 people until 22 October 2019. Therefore, we were living in the house illegally. In effect, this impacted our safety in the residency. Not to mention the subpar living conditions in the house. We had issues such as extreme amounts of mould, silverfish, a leak in Jennifer Weir’s room to name a few. All of which wouldn’t be an issue if the landlord was efficient at replying to text/phone calls. Any time we saw improvement in the conditions it was because he was expecting a visit from the council or showing the house to prospective tenants.” Photographs were exhibited as evidence of the substandard conditions. Also exhibited were copies and screenshots of various bank statements and Ms Crampton’s email.

15. There were no written submissions from the Respondents. Neither Gafs and Pads Ltd, nor Mr Randhawa (who is registered at Companies House as a director of Gafs and Pads Ltd) have made any submissions or sought in any way to engage with the Tribunal in these proceedings. This is despite its Directions and correspondence having been addressed both to the Company’s registered office and its address for service of notices as specified in the Tenancy Agreement.

The Hearing

16. The timeline and core events as referred to above were discussed and amplified at the Hearing.

17. There was no attendance by or representation from Gafs and Pads Ltd.

18. The Applicants confirmed that all 6 Tenants were students at university during the tenancy, with the majority being in their final year and concentrating on their studies.

19. The actual payments of rent were confirmed, and that the charges for July and August 2019 were at half the rate charged for the remaining 10 months of the tenancy.

20. It was confirmed that the rents charged were inclusive of the costs of services with the Landlord being responsible for paying the costs of the utilities -i.e. water, drainage, gas and electricity. The Landlord also paid for a broadband connection with Virgin media. As students the Applicants were exempt from Council Tax.

21. It was explained that the sixth tenant Ms Hamadou had left the property towards the end of the year and had not wanted to be joined into the Application.

22. The Tribunal found all of the participants honest, straightforward and credible.

23. The Applicants confirmed that there were various physical problems with the property, which only became fully apparent when they began to occupy the same. One who had stored some of her possessions in the property before the beginning of the academic year immediately noted that it smelt damp and musty. When the majority arrived in September, they found considerable amounts of mould behind the sofa in the living room. One of the exhibits was a photograph taken at the time. When complaints were made to the Landlord his response was to paint over the same attempting to blame the problem on condensation caused by their lifestyle. Problems were also encountered with the heating. Ms Weir also detailed, with the help of photographs, when water had leaked through the ceiling of her first-floor room making it uninhabitable for a period of time.

24. The Applicants related that in September 2019, without having lodged any complaint, they were visited by Ms Crampton and a colleague, who explained that they wanted to check on the number of occupants at the property because of problems with a previous tenancy. They voiced concerns that the numbers occupying the property exceeded that which was allowed.

25. The Applicants mentioned that the maximum number specified by Ms Crampton was 4.

26. The Applicants described that, immediately before a subsequent visit by Ms Crampton when Mr Randhawa was present, he had hastily attempted to introduce what were assumed to be intumescent strips to some of the doors. The Applicants did not feel that all the doors were properly fire resistant, with only some having self-closing mechanisms.

27. At the same meeting Mr Randhawa was overheard complaining to Ms Crampton that the problems with the property had been inherited, that his business would be made bankrupt, and he would be forced to return to Pakistan.

28. Ms Crampton's email was discussed. It was acknowledged that it fell short of a fuller statement of truth as had been envisaged both in the email and by the Tribunal in its Directions. Ms Weir explained that she had on numerous occasions tried to contact Ms Crampton or her colleagues but despite her best efforts, which included telephone calls, emails and text messages, she had not received any response. She understood that the problems may have been exacerbated by increased working from home due to the pandemic, and Ms Crampton by then being on maternity leave.

29. Ms Weir confirmed that she had posted the Application to the Tribunal office. She could not recall the exact date of posting but did confirm that the Application was put in the ordinary post and had not been sent by recorded delivery. She remembered the email sent by the Tribunal to her on 27 October 2020 confirming its receipt of the Application, and that the appropriate fee was still required. The Applicants confirmed that they then each paid £20 towards that fee, which was paid by Ms Weir by direct bank transfer.

30. Reference was also made to an email sent to the Tribunal Office by Ms Sinclair on 28 October 2020 registering her involvement in the Application, after having been informed of its email address by Ms Weir and quoting its case reference.

31. The Applicants confirmed that none of them had been in receipt of Universal Credit.

The Law

32. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

33. The list, repeated in the Directions, includes the offence under Section 72 (1) of the 2004 Act of controlling or managing an unlicensed HMO. Subsection (4) states that “...it is a defence that at the material time- .. (b) an application for a licence has been duly made....” Section 72(5) also states that it is a defence that he had a reasonable excuse.

34. Where the offence was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.

35. Section 41(2) provides that 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.

36. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

37. When the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

38. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period not exceeding 12 months, during which the landlord was committing the offence (section 44(2)).

39. Section 44(3) confirms that the amount that the landlord may be required to repay must not exceed:

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

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

40. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it 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 any of the specified offences.

The Tribunal's Reasons and Conclusions

41. The first issues for the Tribunal to address are whether it is satisfied, beyond reasonable doubt, that Gafs and Pads Ltd committed an offence mentioned in Section 40(3) of the 2016 Act, and whether any such offence was committed in the period of 12 months ending on the day on which the Application was made.

42. The written evidence that was presented to the Tribunal was less than expected or had been requested. The only written evidence of the alleged offence is that contained in Ms Crampton's email.

43. The Applicants themselves do not have and did not have any direct knowledge of when any HMO application to regularise the position may have been made to the Council as the Licensing Authority. As such their testimony at the Hearing, whilst supportive of an offence having been committed, could not be conclusive as to the date on which it may have ceased.

44. Having carefully considered all the evidence, the Tribunal found that it fell short of meeting the criminal standard of proof which is required, being that the Tribunal must be satisfied beyond all reasonable doubt as to the correctness of the factual matrix referred to in Ms Crampton's email.

45. This should not be taken as inferring that the Tribunal knows that the facts as stated in that email are incorrect, simply that it is not sure, or satisfied beyond reasonable doubt, that they are necessarily fully correct.

46. The evidence that has been provided can best be described as "thin". Ms Crampton's exact role has not been clearly confirmed, nor is it clear what checks were made, or by whom, within the Council's records as to the status of the property, the conditions attaching to any licence that it may have had, and crucially the date on which the relevant HMO application to the Council was made. The Tribunal also notes in passing that the advice given in the email as to the time limits for the Applicants to apply to the Tribunal is misquoted by a day.

47. Even if the Tribunal were to assume that all of the information contained in Ms Crampton's email is correct, it would also need then to be satisfied that the Application was made in time for it have the necessary jurisdiction.

48. The wording of section 41 is clear. A tenant is *only* allowed to make an application if the conditions set out in subsections (2)(b) are satisfied.

49. The evidence is that the Application was submitted by post, and that, accordance with standard practice, it was date stamped on the day of arrival at the Tribunal office being 27 October 2020. An email was sent from the Tribunal office to Ms Weir on that date pointing out that no fee had been received. The fee was subsequently paid by direct bank transfer on 30 October 2020.

50. The Application can only be said to have been made when it was actually received at the Tribunal office. Any prior date specified in the Application is not the date when

the Application is made. Nor is the date of posting (of which there is little evidence) necessarily significant in circumstances, such as this, where there is evidence of the date of actual receipt, in the form of the date stamp, the email sent on the same day, and the subsequent correspondence from the Tribunal referring to the date of receipt, none of which was questioned or disputed by the Applicants.

51. For all these reasons, the Tribunal is not satisfied that the Application was made in time.

52. In summary, the Tribunal found the evidence as to the timing of the offence insufficient. It also found, based on such evidence as there was, that the Application was out of time. Having found that it did not have jurisdiction, the Tribunal is bound, and has no option but to reject the Application.