



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

Case Reference : **MAN/30UP/HMF/2020/0063 and 0069-70**

Property : **236, Southport Road, Ormskirk
Lancashire L39 1LZ**

Applicants : **Georgia Jackson
Charleigh Whiteman
Callum Andrew Smith**

Respondent : **Lixi Limited (represented by Austen
Robinson, Director)**

**Type of
Application** : **Application for a rent repayment order by
tenant (no conviction)
Sections 40-44 Housing and Planning Act
2016**

Tribunal Member : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **18th June 2021**

Order : **The application for a Rent Repayment Order
is granted in respect of each Applicant as
follows;
Georgia Jackson - £629.85
Charleigh Whiteman - £700.32
Callum Andrew Smith - £628.85
together with issue fees of £100.00 each**

A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

5. The Applicants were, from 6th September 2019, three tenants of the property at 236, Liverpool Road, Ormskirk, Lancashire. They were tenants under an assured shorthold tenancy agreement dated 19th February 2019, a copy of which has been provided to the Tribunal by the parties. It was contained in their respective bundles of documents supplied to assist the Tribunal and it would express its appreciation for the clarity of both bundles and the indexing and pagination thereof.
6. The Respondents are the owners of the property, which appears from the information provided in their statement to be one of a number that they own and in respect of which day to day management is conducted by managing agents, NSW Properties of 42, Church Street, Ormskirk.
7. The property is a house which has been adapted with the specific intention of supplying the demand for student accommodation associated with the a nearby academic institution.
8. The application for a rent repayment order is founded upon the fact that the property is a house in multiple occupation (HMO) and falls within the licensing scheme of the Housing Act 2004 whereby the house must be licenced in accordance with the scheme, otherwise an offence of managing or controlling an unlicensed HMO, contrary to Section 72 of that Act may be committed
9. It was not until 19th November 2019 that a licence application was considered by the local housing authority, West Lancashire Borough Council, to have been duly made. The property was deemed from that point to be a licensed HMO.

- 10 For that period from 6th September to 18th November 2019 the Respondent was operating an unlicensed dwelling house contrary to the requirements of that Act and the Applicants seek to recover the rent paid for the period of 10 weeks and 4 days from 6th September to 18th November.
- 11 The rents payable, were not the same. Miss Whiteman, having a larger room was paying £115.00 per week and the other two Applicants were paying £105.00 per week each. The rents were inclusive of utilities (gas, electricity and water) and were paid in four instalments over the academic year.

The Law

In relation to a rent repayment order:

- 12 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
 - (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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
- 13 Section 40 of the H&PA
 - (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenant

Subsection 3 then sets out a table of 7 offences to which the Tribunal's powers apply:

 - 1 using violence to secure entry to residential premises
 - 2 eviction of harassment of occupier
 - 3 failure to comply with an improvement notice
 - 4 failure to comply with a prohibition notice
 - 5 and 6 offences in relation to houses required to be licenced
 - 6 breach of banning orders in relation to the provision of housing

The offence under Section 72 Housing Act 2004 in relation to HMOs is specifically number 5.

- 14 18 Section 43 H&PA then provides that
 - (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with

(a) Section 44 (where it is made by a tenant)

- 15 Section 44 provides a table (Sub-section 2) whereby the amount of the order must relate to rent paid by the tenant in respect of a period not exceeding 12 months during which the landlord was committing the offence and, (Sub-sections 3 and 4):
- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
 - In determining the amount the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

In relation to the requirements for a licence:

16 Section 72 of the 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... but is not so licenced
- (2) ...
- (3) ...
- (4) ...
- (5) In proceedings for an offence under subsection (1)... it is a defence that he had a reasonable excuse-
 - (a) for having control or managing the house in the circumstances mentioned in sub-section (1) or
 - (b) for permitting the person to occupy the house...
 - (c) ...

Submissions

- 17 The Tribunal received submissions and witness statements from the Applicants and from Mr Robinson, on the part of the Respondents, which limited themselves to the very narrow factual situation which had occurred in relation to the period for which the property had been unlicensed. The Applicants, particularly, were reliant upon information contained in correspondence from West Lancashire Borough Council as to the precise circumstances of the licensing process and the progress of the Respondent's application.
- 18 On behalf of the Respondent Mr Robinson was quite clearly aggrieved that an application had been delivered by hand to the Council on 16th September, but had not been received, according to its officer, until 26th September. The Council had then communicated in late October its view that the application was not complete as certain essential supporting

documentation was not provided. This was then provided on 19th November and the application regarded as duly made on that date.

- 19 Mr Robinson also provided a suggested breakdown of the sort of amounts that he considered would be appropriate in a repayment order, if the Tribunal was to consider an order at all, for the period from 6th September 2019 until he handed in the application form on 16th September.

Hearing

- 20 A remote hearing took place on 18th June 2021 attended by the parties and in view of the current situation no inspection of the property was carried out by the Tribunal, either before or after. The issues raised by the parties in their submissions, particularly those raised by Mr Robinson on behalf of the Respondent, were explored more fully.
- 21 Mr Robinson made the following points:
- a) The Application was submitted on 16th September and there was no satisfactory explanation as to why it had then taken 10 days to reach the back office from the reception desk.
 - b) He had submitted the application personally on the basis of what he had received from the respondent and the managing agents.
 - c) It was a considerable time later that the Council made further enquiries as to the missing documentation which was then provided very quickly to complete the essential paperwork.
 - d) This was not a case where the paperwork was not in place nor had there been any attempt to avoid obtaining it. It had merely been overlooked at the time of the original submission because it had not been appreciated that it was required.
 - e) There was no suggestion that the Respondent was a poor landlord providing poor quality accommodation, or failing to provide a satisfactory service through the agents, who were always responsive to incidents and repairs.
 - f) Although the Respondent was a landlord with a significant property portfolio this was the only HMO, requiring it to be managed in a different way.
 - g) If an order was to be made, it should be limited to the initial 10-day period between 6th and 6th September and the utility and management costs of the Respondent, from which it derived no benefit, should be deducted.
- 22 When those issues were explored by the Tribunal, some having been addressed by the Applicants in questions put to Mr Robinson it was apparent that he relied upon a professional agent to assist him with the information provided for the application and he had not appreciated the difference between an application form submitted and one that was

sufficiently complete to allow it to be considered as duly made. He was clearly of the view that the application process was unfair and opaque. Indeed, the Council appears to have embarked upon an inspection of the property pursuant to the incomplete application which took place on 18th October.

- 23 There was little that the Applicants could add, other than to rely upon the facts relating to the processing of the application, as recounted in the correspondence from the council. They were happy to confirm that the accommodation provided was satisfactory with only one significant issue arising from a leaking shower. The work required to be carried out to comply with the licensing requirements imposed by the Council were undertaken, so far as smaller items were concerned, quickly, with major items being carried out after the applicants had returned home when the university moved on-line during the first lockdown.

Decision

- 24 The first step in the process to determine the matter is for the Tribunal to determine if the relevant housing offence has been committed, notwithstanding there being no criminal conviction in any court exercising that jurisdiction. The Tribunal does have to establish such an offence to the criminal standard of proof, that it is so satisfied that the offence has been committed.
- 25 It has some sympathy with the Respondent's position. These offences were introduced to assist with remedying the problem of "rogue landlords". The Tribunal is satisfied that such a description is not applicable to Lixi Limited. There are however situations where landlords of better character get caught out. This is such an occasion.
- 26 Clearly, there is no application made for a licence until 16th September and then it is not complete as supporting documentation is missing. Mr Robinson may not have appreciated that situation, but he did have the assistance of professional managing agents. Furthermore, the Respondent was not so proactive as to have made enquires as to progress before the council made further enquiry as to the missing documentation.
- 27 Section 72(1) is quite explicit. It is an offence to have control or management of a HMO without a licence, unless there is a reasonable excuse for exercising such control or management without a licence. The Tribunal's view is that there is no such excuse for not having a licence. Those factors that have been drawn to the attention of the Tribunal may amount to mitigation, but not a defence. The offence is one that continues until such time as the application is complete and can be processed by the council.

28 The Tribunal then moves on to consider whether an order should be made. It has taken into account all matters raised by the parties and considers these to be the most pertinent:

- (1) If a relevant offence has been committed the Applicants are entitled to make application for an order.
- (2) The Tribunal has a very wide discretion as to whether it should make an order, and if so for what amount.
- (3) The property was required to be licensed from 6th September. The Applicants took up occupancy of a property that needed to be licensed, but was not.
- (4) The culpability, noted above, on the part of the Respondent was limited in that it made application and remedied any defect in the application with reasonable haste, once the defects in the application were brought to its attention.
- (5) There appear to be only very limited issues raised in relation to the standard of accommodation provided and which the Applicants enjoyed, licensed, or not, for the whole of the tenancy.
- (6) That would appear to be borne out by the very limited requirements imposed upon the Respondents to secure a licence following the licensing application.
- (7) The Applicants are entitled to expect the Respondent to comply with statutory requirements in relation to licensing.
- (8) Neither party should be entitled to an unmeritorious financial benefit from a failure to comply with the requirements, either by an automatic return of all rent, or retention of undeserved rental payments from the period in which there was no licence.
- (9) The Tribunal must take into account those factors referred to in Section 44 H&PA 2016 as regards the conduct of the parties and the fact that the Respondent has no previous convictions. Clearly the Applicants' conduct has not been an issue and the landlord cannot be regarded as having deliberately flouted the licensing requirements for financial gain.
- (10) The Tribunal accepts (as indeed did the Applicants) that the amounts charged for utilities within the rent should not form any part of the calculation of rent for the purposes of the order. It does not accept that any management charges of the agent should also be disregarded. The whole rent has been paid by the Applicants, it is no concern of theirs, as to how the Respondent applies it.

29 The Tribunal has sought to weigh all the relevant factors in order to reach what it considers to be a just and equitable determination for all parties. It is of the view that to reflect the matters raised in the preceding paragraph it is appropriate for **an order to be made in favour of each Applicant for repayment of 2/3rds of the rent paid in respect of the period from 6th September to 24th November, allowing for the utilities payments that were made.**

30 The Tribunal has effected the following calculations:

Mr Smith and Miss Jackson – gross rent	£105.00 per week
Deduct utilities	<u>£ 15.63 per week</u>
Net rent	£ 89.37 per week

Unlicensed period 6 th September to 18 th November -10 weeks	£893.70
4 days	<u>51.07</u>
	<u>£944.77</u>
x 2/3rds	£629.85

Miss Whiteman	gross rent	£115.00 per week
	Deduct utilities	<u>£ 15.63 per week</u>
	Net rent	£ 99.37 per week

Unlicensed period 6 th September to 18 th November - 10 weeks	£993.70
4 days	<u>£ 56.78</u>
	<u>£1050.48</u>
X 2/3rds	£ 700.32

31 **The Applicants should also recover from the Respondents their Application fees of £100.00 each in respect of this application.**

J R RIMMER (CHAIRMAN)

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