



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

**Case Reference** : **MAN/00BN/HSD/2021/0001**

**Property** : **16 Frodsham Street  
Manchester  
M14 4AU**

**Applicant** : **Manchester City Council**

**Respondent** : **Mrs Tehmina Nadeem**

**Type of Application** : **For a Rent Repayment Order  
Housing and Planning Act 2016 – s41**

**Tribunal** : **Judge J Holbrook  
Regional Surveyor N Walsh**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Decision** : **16 March 2022**

**DECISION**

## **DECISION**

**The application for a rent repayment order is dismissed.**

## **REASONS**

### **Background**

1. On 30 December 2020, Manchester City Council applied to the Tribunal under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order. The respondent to the application is Mrs Tehmina Nadeem of 12 Cotham Hill, Bristol BS6 6LF.
2. We understand that Mrs Nadeem is the landlord of a tenanted residential property at 16 Frodsham Street, Manchester M14 4AU (“the Property”). By virtue of this application, the council seeks an order requiring her to pay it the sum of £4,963.56, being the amount allegedly paid by the council in housing benefit in respect of the Property during the 12-month period ending on 21 October 2019.
3. The Tribunal issued directions for the conduct of these proceedings on 5 July 2021. It was at that time anticipated that the application would be dealt with at a hearing. However, there was then delay on both sides in complying with the directions and, indeed, Mrs Nadeem has still not engaged with the proceedings at all. The Tribunal has therefore notified the parties that the application will now be dealt with on the papers. No objection to that proposal has been received and we confirm that we consider this matter suitable for a paper determination.

### **Law**

4. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to pay a local housing authority an amount in respect of a relevant award of universal credit or housing benefit paid (to any person) in respect of rent under the tenancy. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. One of those specified offences is the offence (under section 95(1) of the Housing Act 2004 (“the 2004 Act”)) of controlling or managing an unlicensed (but licensable) house in an area of designated selective licensing.
5. The relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(3) provides that a local housing authority may apply for a rent repayment order only if:
  - a) the offence relates to housing in the authority’s area, and
  - b) the authority has complied with section 42 of the 2016 Act.

6. Section 42(1) provides that, before applying for a rent repayment order, a local housing authority must give the landlord a notice of intended proceedings. Subsection (2) explains what information must be included in a notice of intended proceedings, and subsection (5) provides that:

*A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.*

### **Facts**

7. According to a witness statement provided by Ms Eva Gillies (a Neighbourhood Compliance Officer employed by the council), the Property is situated in an area which has been designated for selective licensing purposes since 2 October 2017. Enquiries made by the council in 2019 revealed that the Property was privately rented; Mrs Nadeem was the landlord; the Property was required to be licensed (and had been so since the designation came into force); but no application for a selective licence had been made.
8. Follow-up action was taken and, on 22 October 2019, a valid application for a selective licence was received by the council.
9. On 23 June 2020, the council imposed a financial penalty of £7,500 on Mrs Nadeem under section 249A of the 2004 Act in respect of an offence under section 95(1) of that Act in relation to the Property. The 28-day period for appealing against that financial penalty expired without an appeal having been made.
10. The council subsequently gave Mrs Nadeem notice that it intended to apply for a rent repayment order against her. The notice of intended proceedings (which was given for the purposes of section 42 of the 2016 Act) is dated 10 November 2020.

### **Discussion and conclusion**

11. It is apparent that the council has made a fundamental, and fatal, procedural error in this case: it has failed to give Mrs Nadeem a notice of intended proceedings within the 12-month period permitted by section 42(5) of the 2016 Act.
12. Such a notice must be given within the period of 12 months beginning with the day on which the landlord committed the offence to which the notice relates. In the present case it is clear that, if an offence under section 95(1) of the 2004 Act was being committed at all, it was only being committed until 22 October 2019 (the date on which a valid selective licensing application in respect of the Property was submitted to the council (see section 95(3)(b))). It follows that the latest date on which the council could properly have given a notice of intended proceedings pursuant to section 42 of the 2016 Act was 21 October 2020.

But the council did not, in fact, give notice until three weeks later: on 10 November 2020.

13. Section 41(3) of the 2016 Act makes it very clear that a local housing authority may apply for a rent repayment order only if it has complied with section 42, and compliance with section 42 requires that a notice of intended proceedings be given to the landlord within the 12-month period specified in section 42(5). That period cannot be extended.
14. In this case the applicant council has not complied with section 42 of the 2016 Act because it failed to give the landlord a notice of intended proceedings within the permitted time period. It therefore has no right to apply to the Tribunal under section 41 for a rent repayment order.
15. Accordingly, the application is dismissed.

Signed: J W Holbrook  
Judge of the First-tier Tribunal  
Date: 16 March 2022