



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

**Case Reference** : **MAN/00CJ/HMK/2019/0003**

**Property** : **136 Sackville Road, Heaton, Newcastle upon Tyne NE6 5TB**

**Applicant** : **Alec Jones**

**Respondent** : **John Scott**

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

**Tribunal** : **J. A. Platt FRICS, FIRPM (Chairman)  
J. Gallagher**

**Date of Decision** : **28 July 2022**

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**DECISION**

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## **APPLICATION**

- (1) Mr Jones made an application on 14 September 2021 for a rent repayment order (RRO) against Mr Scott under section 41 of the Housing and Planning Act 2016 (the Act).
- (2) The Tribunal issued directions on 2 February 2022. Both parties have substantially complied with those directions.

## **AGREED FACTS**

- (3) Mr Scott is the leasehold proprietor of 136 Sackville Road (“the Property”). The Property is a ‘Tyneside flat’ and, as is the usually situation with this type of property, Mr Scott is concurrently the freeholder of 134 Sackville Road.
- (4) Mr Jones was the tenant of the Property from 9 February 2019 until 15 January 2021.
- (5) Initially, Mr Jones was a joint tenant along with Ms Julia Falk on a 6 month assured shorthold tenancy. The tenancy was renewed for further 6 month terms on 9 August 2019 and 9 February 2020. The tenancy was renewed on 9 August 2020 in Mr Jones’ sole name.
- (6) On 6 April 2020 Newcastle City Council (“the Council”) introduced a ‘selective and additional licensing scheme’ within part of the City. The Property is within the boundary of the selective licensing scheme.
- (7) Mr Scott submitted a selective licence application in respect of the Property on 2 November 2020.
- (8) The property was unlicensed between 6 April 2020 and 2 November 2020.
- (9) Mr Scott has not been convicted of an offence of being a person having control of or managing a house which is required to be licensed under S95 Housing Act 2004 but is not so licensed.
- (10) Mr Scott has not received a civil penalty from the Council by virtue of being a person having control of or managing a house which is required to be licensed under S95 Housing Act 2004 but is not so licensed.
- (11) Mr Scott is the landlord of one other property.

## **RESPONDENT’S SUBMISSIONS**

- (12) Mr Scott has made submissions that:
  - (i) He was unaware of the Council’s selective licensing regime until he received notification from the Council of an application in respect of 134 Sackville Road of which he is the freeholder.

- (ii) That notification was dated 7 October 2020 but was received sometime shortly after 15 October 2020.
  - (iii) Having been alerted to the selective licensing regime, he submitted a licence application in respect of the Property, as soon as he was able, on 2 November 2020.
  - (iv) The Council extended the period in which to obtain a licence, due to Covid-19 restrictions, until 6 July 2020. Mr Scott submits that should the Tribunal find he has committed an offence, the relevant date of commencement of the offence was 6 July 2020 not 6 April 2020.
- (13) Mr Scott has provided evidence that he was suffering from a serious medical condition from (at least) July 2020 and he underwent invasive surgery on 15 October 2020. It is not necessary to include those details within this decision, further than to record Mr Scott's submissions that his state of health may have contributed to his lack of knowledge of the Council's licensing scheme between July – October 2020 and having been alerted to the scheme in October 2020, his treatment prevented him applying for a licence before 2 November 2020.

### **APPLICANT'S SUBMISSIONS**

- (14) Mr Jones made both written submissions and oral submissions at the hearing. Those submissions are detailed (as necessary) within the deliberations below.

### **THE LAW**

- (15) Housing Act 2004

#### ***95 Offences in relation to licensing of houses under this Part***

*(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.*

...

*(4) 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)*

- (16) Housing and Planning Act 2016

#### ***41 Application for rent repayment order***

*(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.*

### **43 Making of rent repayment order**

*(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);*

### **44 Amount of order: tenants**

*(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.... 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.*

## **THE HEARING AND DELIBERATIONS**

- (17) A remote video hearing was held on 15 July 2022. Both parties attended and represented themselves.
- (18) Submissions were made and considered by the Tribunal on a sequential issue by issue basis:

### **Was an offence committed?**

- (19) The 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).*

- (20) It is therefore, necessary in the first instance, for the Tribunal to consider if it is satisfied, beyond reasonable doubt, that Mr Scott has committed an offence.
- (21) Mr Scott's submissions were interpreted by the Tribunal as an assertion that he had a reasonable excuse for having control of or managing a house which was required to be licensed but was not so licensed.
- (22) Mr. Scott submitted that he was unaware of the selective licensing scheme until he received notification from the Council of its intention to licence the neighbouring flat. He received no notification from the Council of the selective licensing scheme. He is not a professional landlord only managing one other property. He does not use a letting agent. The Council has taken no enforcement action nor commenced prosecution. He was suffering from a serious medical condition from July – October.
- (23) Mr Jones expressed sympathy for Mr Scott's health issues but the requirement to obtain a licence pre-dated those issues. He submitted that the Council had advertised their intention to introduce the selective licensing scheme widely in 2019. Mr Scott, as a landlord, should have been aware of the regime. Mr Jones is aware of a number of letting agents who advertise their services by reference to the licensing regime.
- (24) The Tribunal considered all the evidence and submissions and had regard to a number of Upper Tribunal decisions which, although fact specific, provide helpful guidance on the threshold for finding a landlord had a 'reasonable excuse'. The Tribunal considered whether there was a difference between a landlord letting a property without it being licensed and a landlord controlling or managing a property that had been let to the sitting tenant prior to the introduction of the licensing scheme. The Tribunal reminded itself, however, of the wording of the Act:

*A person commits an offence if he is a person having control of or managing a house which is required to be licensed*

Which specifically relates the offence to 'having control of or managing' and not 'letting'. Having let the property prior to the introduction of the licensing

scheme may, however, be a relevant factor to be taken into account in determining the level of any RRO (below).

- (25) The Tribunal decided, on the balance of probabilities, that Mr Scott did not have a reasonable excuse. The Tribunal is satisfied, beyond reasonable doubt, that Mr Scott has committed an offence of having control of or managing a house which is required to be licensed and was not so licensed.

#### Period of the offence

- (26) It is agreed that the Council introduced the selective licensing scheme on 6 April 2020. Mr Scott provided evidence from the Council's website that, due to the impact of Covid-19 and the lock down restrictions, they extended the period for obtaining a licence until 6 July 2020. Mr Jones questioned the source of the document which Mr Scott confirmed was the Council's website. The Tribunal advised that they were aware, from their own knowledge, of the notification of an extended period for compliance being announced on the Council website. Mr Jones, therefore, accepted the fact as agreed.
- (27) Mr Jones submitted that irrespective of the extended period to obtain a licence, the property was unlicensed from 6 April 2020 and that was the start date of the offence. Mr Scott submitted that no offence could have been committed prior to the last date for compliance of 6 July 2020.
- (28) The Tribunal had regard to the Council's notification of an extension which states that the Act 'does not allow for the implementation date to be amended' but the Council are 'extending the date for compliance'. It appears to the Tribunal, therefore, that despite the implementation date of 6 April 2020, it is unlikely that the Council would be able to successfully prosecute or issue a Civil Penalty in respect of the period 6 April 2020 to 5 July 2020. The Tribunal is not satisfied beyond reasonable doubt that Mr Scott committed an offence during this period and the offence commenced on 6 July 2020.
- (29) It is agreed that Mr Scott submitted a licence application on 2 November 2020 and the Tribunal, therefore, finds the period of the offence was 6 July 2020- 1 November 2020 (inclusive).

#### Rent Repayment Order?

- (30) The Tribunal is satisfied that it is appropriate to make a RRO. We considered whether, in the alternative, a caution would have been sufficient but, having regard to the stated purposes of a RRO, decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.
- (31) The amount of the RRO *must relate to rent paid during.... a period... during which the landlord was committing the offence*. We have determined that period to be from 6 July 2020 to 1 November 2020.
- (32) Mr Scott submitted that the appropriate period should be from 9 August 2020, when Mr Jones became the sole tenant. Alternatively, that the RRO should only relate to half the rent for the period prior to 9 August 2020 when Mr Jones was a joint tenant. Mr Jones contends for the full amount of rent paid during the

period of the offence and has submitted evidence, supported by a witness statement of Ms Julia Falk, that he paid the rent throughout the period of the tenancies. There is no dispute that the rent was paid in full throughout the period of the offence.

- (33) The Tribunal finds that Mr Jones was a tenant throughout the period of the offence and that he made payment of all the rent due throughout that period. The Tribunal notes the rent was £550 per calendar month and calculates the rent for the period 6 July 2020 – 1 November 2020 as being:

Period	No of days	Days in calendar month	Rent payable
6 July to 8 July	3	31	£53.23
9 July - 8 August			£550.00
9 August - 8 September			£550.00
9 September - 8 October			£550.00
9 October - 1 November	24	31	£425.81
<b>Total</b>			<b>£2,129.03</b>

- (34) Mr Jones submitted that in accordance with *Vadamalayan v Stewart and others* [2020] UKUT 183, the Tribunal should make a RRO for the maximum amount. The Tribunal advised the parties that the Upper Tribunal has taken a different approach in more recent cases and the maximum is not to be taken as the starting point for the Tribunal. Mr Jones noted this.
- (35) The Tribunal had regard to Government Guidance: Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities (“the Guidance”) and para 44(4) of the Act which requires that:

*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.*

The Tribunal may take into account additional factors to those detailed within the Act and the Guidance.

- (36) Mr Jones made submissions about dampness in the property and Mr Scott’s behaviour at the end of the tenancy. Mr Scott admitted that he was disappointed in his own behaviour during that period, which was limited to a few days when he was seeking to arrange viewings for potential tenants, and was totally out of character. Mr Scott submitted that the property was not in disrepair and that he was a good landlord who, for example, had agreed to insert a break clause into the tenancy which Mr Jones eventually took advantage of. The Tribunal is grateful to both parties for presenting their evidence in a respectful manner and it is pleasing to note they remain on first name terms.

- (37) The Tribunal considered the submissions in the round and are not convinced there was any significant disrepair nor any exacerbating conduct issues by Mr Scott to take account of in setting the amount of the RRO. It is the view of the Tribunal that the maximum RRO should be reserved for the worst offenders and therefore, in considering the conduct of the landlord, the Tribunal considers the lack of these issues to be a mitigating factor to apply against the maximum level of RRO.
- (38) It is agreed that the rent was paid in full and there were no submissions relating to the conduct of Mr Jones as tenant.
- (39) It is agreed that Mr Scott has not, at any time, been convicted of a relevant offence nor has the Council issued any Civil Penalty notice.
- (40) Mr Scott made no submission relating to his financial circumstances.
- (41) The Tribunal consider there were a number of additional mitigation factors in this case:
- (i) Mr Scott is the landlord of 2 properties in total. He does not use a letting agent to manage the properties.
  - (ii) Mr Scott was entirely ignorant of the licensing requirements throughout the period of the offence.
  - (iii) Mr Scott applied for a licence as soon as possible after becoming aware of the requirement. The Tribunal notes that Mr Scott also applied for a HMO licence in respect of his other property (which is subject to the additional licensing scheme) around the same time which supports both of the above statements.
  - (iv) The property was subject to an existing (renewed) tenancy when the licensing scheme was introduced.
  - (v) Mr Scott was suffering serious health issues throughout the period of the offence.
- (42) Having regard to all of the above factors, the Tribunal considers that it is appropriate to reduce the RRO by 30%. The resulting RRO is £1,490.

### **APPLICATION FEES**

- (43) Mr Jones also made an application for an order that Mr Scott reimburse his fees incurred in making the application. The Tribunal can make such an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
- (44) The Tribunal considered the purposes of a RRO as detailed in the Housing Act 2004, the Housing and Planning Act 2016 and the accompanying explanatory notes. A RRO is a ‘penalty’ which may be imposed on the landlord. RROs form part of the overall enforcement regime intended to punish offenders and deter other landlords from committing similar offences.



- (45) The Tribunal has determined the appropriate level of RRO considered necessary in this case to meet those objectives. Having done so, the Tribunal does not consider it just or equitable to increase that level of penalty above the amount determined as being appropriate.
- (46) The Tribunal can only make a RRO on receipt of an application. An application requires the payment of a fee. A tenant deciding to seek a RRO therefore commits to incurring a fee. The primary purpose of a RRO is not to compensate the tenant for rent paid or other costs incurred. The tenant has suffered no harm in this case and is to a large degree, an incidental beneficiary. The fact that the tenant will benefit by less than the level of RRO, once fees are taken into account, is not a factor for the Tribunal to take into account in determining the appropriate level of penalty to impose on the landlord.
- (47) The Tribunal does not consider it just or equitable to make an order under Rule 13 and declines to do so.

### **THE ORDER**

- (48) The Tribunal orders the sum of £1,490 to be paid by Mr Scott to Mr Jones.

**J A Platt (Chairman)**

## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.