



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

Case Reference : **MAN/00FF/HMF/2019/0045
MAN/00FF/HMF/2019/0048**

Property : **16 Thief Lane, York YO10 3HS**

Applicants : **Mr Matthew Jago (1)
Mr Lloyd Banner (2)**

Representative : **N/A**

Respondent : **Mr David North**

Representative : **N/A**

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

Tribunal : **Judge J Holbrook
Deputy Regional Valuer N Walsh**

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

Date of Decision : **23 September 2019**

DECISION

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- A. Mr North is ordered to repay rent to Mr Jago. The amount which he must repay is £980.00.**
- B. Mr North is also ordered to repay rent to Mr Banner. The amount which he must repay to him is £40.00.**
- C. In addition, Mr North must reimburse Mr Jago and Mr Banner £100 each for the tribunal application fees they have incurred in these proceedings.**

REASONS

Background

1. On 9 July 2019, Matthew Jago applied to the Tribunal under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order. A similar application was made by Lloyd Banner on 15 July.
2. Both Applicants seek repayment of rent which they have paid to the Respondent, David North, in respect of their occupation of the Property, 16 Thief Lane, York YO10 3HS. The Tribunal must determine whether it has jurisdiction to make a rent repayment order and, if so, the amount which Mr North must repay to each Applicant.
3. On 25 July 2019, the Tribunal issued Directions to the parties in respect of both applications stating that the matter would be dealt with by way of a determination on the basis of the written submissions and documentary evidence, without the need for an oral hearing unless any party requested one. No party requested an oral hearing and therefore the Tribunal convened on the date of this decision to consider the applications on the basis of the written representations of the parties.
4. The Tribunal did not inspect the Property, but we understand it to comprise a four-bedroom house with an extension, providing six bedrooms in total, two toilets, two showers and one kitchen.

Law

5. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. 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. A list of those offences was included in the Directions issued by the Tribunal on 25 July. The list includes the offence (under section 72(1) of the Housing Act 2004 (“the 2004 Act”)) of controlling or managing an unlicensed house in multiple occupation (“HMO”). The offence must

have been committed by the landlord in relation to housing in England let by him.

6. Where the offence in question 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. 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.
7. Section 43 of the 2016 Act provides that, if a tenant makes such an application, 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) (whether or not the landlord has been convicted).
8. Where 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 of the 2016 Act. 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 that offence (section 44(2)). However, by virtue of section 44(3), 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 under the tenancy during that period.
9. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:
 - 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.

Facts

10. Since at least 1 October 2018 (when the law changed in order to bring more HMOs within the mandatory licensing scheme under the 2004 Act), the Property has been an HMO which requires to be licensed under Part 2 of the 2004 Act. Mr North has been the landlord of the Property at all material times. He has held an HMO licence for the Property since 17 May 2019, having completed the submission of his licence application to the local housing authority on 17 February 2019.
11. The Applicants occupied the Property, together with four other students, as joint tenants from 21 July 2018. They had all entered into an assured shorthold tenancy agreement on 3 May 2018 for a term of one year from 21 July. The rent payable under the tenancy was expressed to be £8,463 (£1,410.50 per person) for each three calendar month period of the term. The rent included the cost of gas, electricity, water, internet and TV licence. It did not include telephone or council tax bills.
12. The person named as landlord in the tenancy agreement was not Mr North, but was another individual who appears to have been acting as Mr North's agent in respect of management of the Property. This appears to have been merely an error, in recognition of which – and also in recognition of the fact that there seems to have been some irregularity in the handling of a deposit provided by the tenants – Mr North subsequently agreed to discount the total rent payable under the tenancy by £1,200 (£200 per person). We are satisfied that Mr Jago paid Mr North his share of the total rent (i.e., £5,442). However, it appears that Mr Banner paid only £4,501.69. In other words, the period for which Mr Banner paid rent ran from 21 July 2018 to 18 May 2019.

Jurisdiction to make a rent repayment order

13. It is necessary first to consider whether Mr North has committed one of the offences specified in section 40(3) of the 2016 Act. He has not been convicted of such an offence, but the Applicants assert that he has nevertheless committed the offence, under section 72(1) of the 2004 Act, of being a person having control of or managing an HMO (namely the Property) which is required to be licensed under Part 2 of that Act but is not so licensed.
14. Mr North accepts that the Property is an HMO and that it was required to be licensed under Part 2 of the 2004 Act from 1 October 2018 onwards. However, he denies that such a licence was required for any earlier period. Prior to 1 October 2018, an HMO only required a mandatory licence under Part 2 of the 2004 Act if, among other things, it comprised three or more storeys. We have been provided with no evidence to indicate that the Property satisfied that condition and thus we are not satisfied that any licensing offence was committed prior to 1 October 2018.

15. It is nevertheless clear that the Property was unlicensed between 1 October 2018 and 17 May 2019. We are satisfied that this constituted a breach of the mandatory licensing requirement in section 61 of the 2004 Act, but that any offence under section 72(1) would have ceased to be committed on 17 February 2019, when Mr North completed the submission of his licence application (see section 72(4)(b)).
16. Section 72(5) of the 2004 Act provides a defence to the offence created by section 72(1): if a person has a reasonable excuse for controlling or managing an unlicensed HMO, then he does not commit the offence. So, in the present case, if Mr North can prove, on the balance of probabilities, that he had a reasonable excuse for failing to complete the submission of his licence application until 17 February 2019, then he has not committed an offence.
17. Mr North acknowledges that he had been aware of the relevant licensing requirements from at least 23 August 2018 (when he corresponded with York City Council's housing standards team). However, he argues that he had a reasonable excuse for not completing the necessary licence application until almost five months later because of the obstructive behaviour of his tenants. In particular, Mr North says that the tenants did not co-operate in affording access to a number of tradesmen and professionals who needed to carry out tests and inspections, and to draw floor plans, as part of the licensing process. He argues that this lack of co-operation resulted in delays in the production of documents which had to be uploaded as part of the online licence application process.
18. Whilst we accept that Mr North experienced difficulties in gaining access to some parts of the Property, we are not satisfied that the circumstances he describes amount to a reasonable excuse for such a long delay in completion of the licence application process. It is incumbent upon a landlord to comply with all applicable licensing and other regulatory requirements concerning an HMO and to use all legal means available to ensure that occupiers of the HMO do not prevent this. We have not seen evidence to satisfy us that Mr North did so (or did so sufficiently promptly) in the present case. We note from the copy correspondence provided with the local housing authority that the works required as part of the licensing process included an upgrade of the Property's fire safety measures. It was therefore all the more important that Mr North should have attended to the matter as soon as possible.
19. We are therefore satisfied, beyond reasonable doubt, that Mr North has committed an offence under section 72(1) of the 2004 Act in relation to the Property. That offence was committed between 1 October 2018 and 17 February 2019. Given that each of the Applicants applied for a rent repayment order within 12 months of the end of that period, the Tribunal does have jurisdiction to make such an order.

Whether a rent repayment order should be made

20. We are satisfied that it is appropriate to make a rent repayment order on the ground that Mr North has committed an HMO licensing offence. In coming to this decision, we are mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants.

Amount of the order

Maximum possible amount

21. The maximum amount for which a rent repayment order could be made in favour of each Applicant in the present circumstances is £2,072.49. That is the apportioned amount of rent which each of them paid in respect of the period of 139 days during which the offence was being committed. There is nothing to indicate that either Applicant was in receipt of universal credit which would need to be deducted from that maximum amount.

Principles guiding the Tribunal's determination

21. It is important to note that the Tribunal is not *required* to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount. Rather, the Tribunal should take an overall view of the circumstances in determining what amount to order the landlord to repay (taking particular account of the factors listed in paragraph 9 above). The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration, but the circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to obtain a licence would merit a larger amount than instances of inadvertence, and a landlord who is engaged professionally in letting is likely to be dealt with more harshly than a non-professional landlord.

Whether the landlord has any relevant convictions

22. There is nothing to indicate that Mr North has ever been convicted of any of the offences specified in section 40(3) of the 2016 Act.

The financial circumstances and conduct of the landlord

23. Mr North states that he is not a professional landlord, but that he derives his principal income from letting the Property. He has not provided detailed information about his financial circumstances, but he does state

that the Property is mortgaged and is the only property he owns (the property in which Mr North lives being one which he rents).

24. During the period of the tenancy, Mr North's mortgage payments in respect of the Property totaled £8,301.81. Other outgoings in respect of the Property during this period were in the region of £6,000 (of which £2,500 represents payments for utilities which were included in the rent).
25. The Applicants complain that Mr North was not a good landlord. They point out that he did not properly register their payment of an initial deposit. They also complain that the back garden was not tended to; that the washing machine was not replaced with a washer-dryer (despite assurances that this would happen); and that problems with the boiler were not properly dealt with.
26. Mr North refutes the Applicants' complaints about him. He points out that the tenants' deposits were returned to them during the period of the tenancy, and that they were also given a rent reduction to compensate them for the error which had occurred. The boiler was replaced in May 2019. Mr North maintains that, throughout the tenancy, he had been actively pursuing the HMO licence application process but that he had been in a "battle" with the tenants to do so.

The conduct of the Applicant tenants

27. Mr North is highly critical of the conduct of his tenants. He considers that their uncooperative behaviour thwarted his efforts to obtain an HMO licence for the Property sooner. He also says that:

“... the tenants left the house in an appalling and shameful condition, making no attempt to clean or tidy the house or remove food from the kitchen, clean the oven, hob, fridge or kitchen generally. The kitchen floor has had to be replaced completely including underlay as they misused the bathroom above causing water to leak through onto the kitchen floor. They removed a shower curtain from the shower room so that water was not contained in the shower enclosure and necessitated relaying the floor. There were complaints to the Council about the overflowing and unemptied rubbish piling up outside before they vacated the property. There was rubbish left in the hallway. The lavatories and bathroom were left in an unhygienic and disgusting state.”
28. Mr North believes that the tenants left the Property in this condition because they were no longer worried about losing their deposits (which had already been repaid). He provided photographic evidence to show the condition in which the Property was vacated, together with a copy of an invoice for the necessary remedial works, which cost him £1,105.70.
29. For the most part, Mr North's complaints about his tenants concern their conduct collectively. It is not apparent that the obstructive behaviour he says occurred is attributable to either of the Applicants in particular.

Nevertheless, they must each bear some responsibility for the poor condition in which the Property was left at the end of the tenancy. Moreover, we note that Mr Banner failed to pay some of the rent due from him in respect of the final period of the tenancy: he still owes Mr North £940.32 in this regard.

The Tribunal's determination

30. Notwithstanding our finding that Mr North should have acted more expeditiously in completing his application for an HMO licence, we are satisfied that he otherwise conducted himself as a reasonably responsible and considerate landlord. In determining the appropriate amount of the rent repayment order to make in favour of each Applicant, we therefore consider that the maximum amount should be reduced by an amount equivalent to a proportionate part (i.e., one sixth) of the mortgage payments and other outgoings which Mr North incurred in respect of the Property (pro rata'd for the period during which the offence was committed).
31. In order to take account of the conduct of the Applicants, we consider it appropriate to make a further reduction equivalent to a proportionate part of the cost of the works which were required to reinstate the Property after the tenants had vacated it at the end of the tenancy. Finally, in the case of Mr Banner, we consider that a further deduction should be made in respect of his outstanding arrears of rent.
32. The amount of the rent repayment order in each case is therefore calculated as follows:

| | <i>Matthew Jago</i> £ | <i>Lloyd Banner</i> £ |
|--------------------------------------|--------------------------|--------------------------|
| Maximum amount | 2,072.49 | 2,072.49 |
| Less:- | | |
| Property-related outgoings | 907.74 | 907.74 |
| Costs of re-instatement | 184.28 | 184.28 |
| Arrears of rent | - | 940.32 |
| Total | 980.47 | 40.15 |
| Amount of rent repayment order (say) | 980.00 | 40.00 |

Reimbursement of tribunal application fees

31. Each of the Applicants has incurred a tribunal application fee of £100 in connection with these proceedings. As they have succeeded in obtaining a rent repayment order, it is appropriate for Mr North to reimburse them for those fees in addition to repaying rent.