



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

**Case Reference** : **BIR/OOCQ/HMK/2020/0037**

**Subject Property** : **Room 1  
19 St Georges Road  
Coventry  
CV1 2DJ**

**Applicant** : **Mr M G H Karunakaran**

**Representative** : **None**

**Respondent** : **Mrs J Bell**

**Representative** : **None**

**Type of Application** : **Application under sections 40, 41(1), 43 &  
44 of the Housing and Planning Act 2016  
for a rent repayment order**

**Tribunal Members** : **Graham Freckelton FRICS (Chairman)  
Mr R Chumley Roberts MCIEH, J.P**

**Date and Place  
of Hearing** : **29<sup>th</sup> September 2020. The matter was  
dealt with by a Skype Hearing**

**Date of Decision** : **8<sup>th</sup> October 2020**

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**DECISION**

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## **INTRODUCTION**

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Housing Act 2004 ('the 2004 Act') introduced licensing for houses in multiple occupation (HMOs). Originally, licensing was mandatory for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. Since 1<sup>st</sup> October 2018 all HMOs which are occupied by five or more persons forming two or more households, are subject to mandatory licensing. Under additional licensing, a local housing authority can require licensing for other categories of HMO in its area which are not subject to mandatory licensing. The local housing authority can do this if it considers that a significant proportion of these HMOs are being managed sufficiently ineffectively so as to give rise to one or more particular problems, either for the occupants of the HMOs or for members of the public.
3. In addition, Part 3 of the Housing Act 2004 allows local housing authorities to designate areas within their district as subject to selective licensing for up to 5 years where the area suffers with problems of low demand or high levels of antisocial behaviour.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as Rent Repayment Orders. Under section 96 of the 2004 Act, where a person who controls or manages an unlicensed property has been convicted, the (former) occupiers of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6<sup>th</sup> April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the (former) occupiers if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 95(1) of the 2004 Act, *whether or not the landlord has been convicted*.

## **BACKGROUND**

6. The Applicant is the former tenant of Room 1, 19 St Georges Road, Coventry, CV1 2DJ ('the subject property').
7. The Respondent is the landlord of the subject property.
8. The Application was received by the Tribunal on 18<sup>th</sup> May 2020. The Applicant referred to above applied for a Rent Repayment Order under section 41 of the 2016 Act. The Applicant alleges that the property was unlicensed. The Application was dated 13<sup>th</sup> May 2020.
9. Directions were issued on 20<sup>th</sup> May 2020 following which submissions were made and copied to the other party.
10. It is apparent from the documentation received from the Applicant that the property was occupied by him on an Assured Shorthold Tenancy dated 1<sup>st</sup> January 2020 for a term of six months from the same date at a rental of £400.00 per calendar month.

11. The Application infers that the Applicant is requesting a rent repayment for the period 1st January 2020 to 31<sup>st</sup> May 2020 (Five Months). This was amended at the Hearing to the period 1<sup>st</sup> January 2020 to 30<sup>th</sup> June 2020 (six months), being the period during which the Applicant paid rent.

## **THE LAW**

12. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
- (a) repay an amount of rent paid by a tenant, or ...
- (3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	Section	General description of offence
1	Housing Act 2004	Section 95(1)	Houses to be Licenced by the Local Authority

### **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 the period.
- (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 PROPERTY INSPECTION**

13. Due to the Covid-19 Pandemic, in accordance with the revised Tribunal Regulations the Tribunal was unable to inspect the property. This was accepted and agreed by the parties.
14. The Tribunal understands that the subject property comprises of a ground floor room with en-suite facilities. There is a shared kitchen and living room.

#### **THE SUBMISSIONS**

15. Both parties provided written submissions. These, together with submissions made at the hearing are summarised as follows:

##### **The Applicant's Submissions**

16. The Applicant submitted that at the commencement of the tenancy he paid a deposit but this was not placed in a deposit protection scheme until 3<sup>rd</sup> July 2020. In the opinion the Applicant, the Respondent had only placed the deposit into a scheme as a knee-jerk reaction to his enquiries. At the same time, he remained concerned that the Respondent was not fulfilling her basic legal responsibilities and he had disputed the amounts for repairs and cleaning costs totalling £398.67 deducted from his deposit yet waived to any of the other residents.
17. The Applicant further submitted that the Respondent committed the offence with the full knowledge at the commencement of the tenancy that the property required an HMO licence although she had not applied for one. The property comprised of a total of six separate rooms advertised as being available to students and from January onwards there were five separate active tenancy agreements. The Applicant did not therefore accept that it was acceptable for the Respondent to blame the estate agent for not advising her as to the number of tenants occupying the property. In the opinion of the Applicant it was the Respondent's responsibility to be aware of the occupancies in her property.
18. The Applicant submitted that the lockdown period caused by Covid-19 could not be used as justification for not having an HMO licence or having submitted a

pending application as this should have been done prior to the commencement of the various tenancies. The Respondent had provided documentation confirming that builders had undertaken works in October 2019 to comply with HMO licensing standards. There was therefore no reason why the licence application should not be submitted immediately thereafter.

19. It was further submitted by the Applicant that had the HMO licence application been submitted in October 2019 it would easily have been approved and the property would have been licensed. This was a clear act of negligence by the Respondent landlord which could have placed the Applicant's and other occupiers' safety and lives at risk. As far as the Applicant was aware although the property continues to be advertised as "student friendly" he had been informed by Coventry City Council that there was no record of an application for or a current HMO licence on the property.
20. The Applicant stated that it was never his intention to avoid paying rent although he acknowledged that he did have some difficulties in paying rent at the commencement of the lockdown period. However, the Respondent did not show any sympathy or consideration and contacted the guarantor for payment and added additional charges to the amount outstanding.
21. The Applicant submitted that he did not disrespect the property during his tenancy although he acknowledged it was an oversight on his part to have left three empty plastic bags in his room. However, he did not accept that this meant that he left the property in a dirty condition and in his opinion, it would not have required any form of cleaning charge for its removal.
22. In her submission the Respondent had referred to a 'large hole in the wall'. The Applicant submitted that the wall was cracked when he took up occupation and it gradually worsened over time and eventually the plaster fell off resulting in a hole appearing.
23. In conclusion the Applicant stated that landlord had committed the offence in not obtaining a valid HMO licence for the property. The Applicant was of the opinion that the Respondent's general behaviour had been despicable and that she was not fit to be a responsible landlord as she did not abide by the standards and practices that are in place to ensure the safety and security of tenants residing in the property. The Applicant felt that the Respondent had tried to manipulate him and believed that she could get away with having a total disregard for legal standards and practices as students were naïve in these matters. In addition, in the opinion of the Applicant, the Respondent had acted fraudulently in providing bogus deposit scheme details on the tenancy agreement and had a total disregard for safety in not ensuring an HMO licence was in place.

### **The Respondent's Submissions**

24. The Respondent submitted that she felt the application was disingenuous and brought by the Applicant because she would not agree to waive the outstanding rent when he decided to leave early. The Applicant's guarantor appeared to try and 'blackmail' the Respondent into allowing the Applicant to end the tenancy early despite the fact that he was always aware that the property was in a safe and well-presented condition. As a result of the property not having been ready for the commencement of the 2019/2020 academic year the Applicant was able to secure a room in a high-quality

brand-new student property with en-suite facilities including gas, water and electricity charges within the rent.

25. In the opinion of the Respondent the Applicant did not respect the property but left it in a dirty condition with rubbish under and behind the bed, on top of the wardrobe and a large hole in the wall behind the bed where the plasterboard had been broken through to the brickwork. During the tenancy the Applicant was late with rental payments and required chasing.
26. The Respondent submitted that the Applicant was not placed in danger or disadvantaged in any other way as the property was renovated to a standard which met with HMO requirements. There was very little time when five people were resident in the property at the same time and when the Respondent discovered that this was the case the Country was put into lockdown and she was not able to make an application to Coventry City Council for an HMO Licence.
27. The Respondent confirmed that she had never been charged with (or found guilty of) a criminal offence.
28. As part of the written submission the Respondent included a copy of the report from Coventry City Council dated 15<sup>th</sup> August 2019 which confirmed the pre-licensing advice for the property and a further letter from ED Building Services confirming that all the works required following the inspection in August 2019 had been completed in October 2019.

#### **DETERMINATION OF THE TRIBUNAL**

29. The Tribunal considered the application in four stages –

- (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 79(1) of the 2004 Act in that at the relevant time she was a person who controlled or managed a property that was required to be licensed but was not so licensed.
- (ii) Whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.

#### *Offence under section 95(1) of the 2004 Act*

30. In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 95(1) of the 2004 Act.
31. Throughout part of the period from 1<sup>st</sup> January 2020 to 30<sup>th</sup> June 2020 the subject property was subject to mandatory Licensing as an HMO.
  - (i) The subject property was not licensed.
  - (ii) The Respondent was the person having control and/or managing the subject property.

### *Entitlement of the Applicants to apply for rent repayment orders*

32. The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence throughout part of the relevant period when the subject property was let to the Applicant; and the offence was committed in the period of 12 months ending with the day on which the application was made to the Tribunal (13<sup>th</sup> May 2020).

### *Discretion to make rent repayment orders*

33. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.

### *Amounts of Rent Repayment Orders*

34. In accordance with section 44 of the 2016 Act, first, the amount of an order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing an offence under section 95(1) of the 2004 Act. The Applicants' claim satisfies that condition.

Second, the amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. The Applicant claims rent of £2,400.00, being six months' rent at £400.00 per calendar month. The Tribunal was initially provided with evidence of rent being paid for £2,000.00 in that period. However, at the Hearing the Applicant submitted that he had actually paid £2,400.00 to June 30<sup>th</sup> 2020. This was not disputed by the Respondent.

Third, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

35. In the first instance the Tribunal considered the period during which the property required to be licensed. In order to require an HMO licence, a property must be occupied by five or more persons forming two or more households.
36. During the Hearing the Tribunal asked detailed questions and received evidence from both parties regarding the occupancy of the property. During this time the Applicant confirmed that he left the property to return home on 28<sup>th</sup> March 2020. It was evident to the Tribunal that the Respondent's understanding of the occupancy was based largely on hearsay and no factual evidence was submitted whereas the Applicant was actually residing in the property. Overall, the Tribunal preferred the submission of the Applicant on this point.
37. It is generally agreed that the last occupant commenced his tenancy (in respect of Room 4) on 15<sup>th</sup> January 2020. Up to this time there had been four occupants and the property was not therefore required to be licensed as an HMO. However, from 15<sup>th</sup> January the property was required to be licensed as there were five tenants.

38. It is agreed by both parties that the property was occupied by five tenants in February. There is some dispute as to the number of occupants in March but the Tribunal accepts the Submission of the Applicant that there were five tenants up to March 28<sup>th</sup> when the Applicant vacated. Thereafter, there is some dispute as to the number of occupants and when they vacated but this is not relevant as there were no more than a maximum of four at any time up to 30<sup>th</sup> June 2020 so the property did not require an HMO licence during that period.

39. The Tribunal therefore determined that the eligible period for a Rent Repayment Order (when the property was being operated as a licensable HMO) was from 15<sup>th</sup> January 2020 to 28<sup>th</sup> March 2020.

40. The rent was £400.00 per calendar month which equates to £4,800.00 per annum. The daily rate for rent is therefore £13.15 per day ( $£4,800.00 \div 365 = £13.15$ ).

41. Based on the above time frame determined in paragraph 39 the Tribunal assessed the maximum amount of any Rent Repayment Order as follows:

Rent due 15 <sup>th</sup> – 31 <sup>st</sup> January 2020 (17 days @ £13.15 per day)	223.55
Rent due for February 2020	400.00
<u>Rent due 1<sup>st</sup> - 28<sup>th</sup> March 2020 (28 days @ £13.15 per day)</u>	<u>368.20</u>
Maximum Rent Repayment Order	£991.75

42. The Tribunal had regard to the case of *Vadamalayan-v-Stewart and others* (2020 UKUT 0183) which concerned the calculation of a rent repayment order under section 44 of the 2016 Act. In that case Judge Elizabeth Cook held that:

*18. ... under the current statute, in the absence of the provision of reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.*

*19. The only basis of deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.*

*53. The provisions of the 2016 Act are rather more hard edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker-v-Waller* [2012 UKUT0301]. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances.*

43. Therefore, distilling the substance of the Act in this case the Tribunal determines that deductions should be made from the maximum amount set out in paragraph 41. The reasons for this are:

- 1) The Respondent has never been convicted of any offence.



- 2) The rent included £50.00 per calendar month for the whole of the property in respect of both gas and electricity charges. This equates to £10.00 per let room, per month in respect of each charge. The Tribunal therefore allows £20.00 per month from the rent repayment order to cover the costs paid by the Respondent to a third party on behalf of the Applicant.
- 3) Although detailed invoices have not been provided in respect of water charges, using its knowledge and experience the Tribunal determined that the sum of £500.00 per annum is reasonable for the whole house which equates to £100.00 per annum per tenant.

44. The Tribunal calculates the daily charge in respect of the gas, electric and water charges as follows:

Gas and Electric Charges

£20.00 per month x 12 = £240.00 per annum ÷ 365 = £0.66 per day.

Water Charges

£100.00 per annum ÷ 12 = £8.33 per month

£100.00 per annum ÷ 365 = £0.27 per day

Therefore, the deductions relevant to this determination are calculated as follows:

Gas and Electric Charges

15 <sup>th</sup> – 31 <sup>st</sup> January (17 days @ £0.66)	11.22
February	20.00
1 <sup>st</sup> – 28 <sup>th</sup> March (28 days @ £0.66)	18.48
Deduction	£49.70

Water Charges

15 <sup>th</sup> – 31 <sup>st</sup> January (17 days @ £0.27)	4.59
February	8.33
1 <sup>st</sup> – 28 <sup>th</sup> March (28 days @ £0.27)	7.56
Deduction	£20.48

45. Further, in accordance with section 40 of the 2016 Act the Tribunal is obliged to take into account the personal circumstances of the Respondent. Although no written submissions have been made by the Respondent, at the hearing it was confirmed that the Respondent had a mortgage on this and some of the other approximately 45 properties she owned (either singularly, jointly or within a company). On a personal basis, the company run by the Respondent and her husband had to furlough staff due to the Pandemic but she was still required to pay for repairs and outgoings on the properties.
46. On the basis of information provided the Tribunal determined that it was not appropriate to make any deduction due to personal circumstances.
47. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of the Applicant and Respondent.
48. The Applicant alleges that the Respondent had acted fraudulently in not putting his deposit in a recognised tenant deposit scheme and had acted

illegally in not obtaining a licence. At the same time the Respondent had also shown a lack of compassion when the Applicant asked to leave early due to the COVID-19 pandemic. For her part, the Respondent alleges that during the tenancy the rent was regularly not paid on time and that the property was left in a dirty and untidy condition.

49. The Tribunal determines that these allegations are not significant enough to have a material effect on the amount of the rent repayment order. The Tribunal accepts that the deposit was not protected and that the property did not have a valid HMO licence. Had it done so there would be no need for the current application to be considered by the Tribunal.
50. The Applicant was clearly aware that the property required an HMO licence. It had been inspected by Coventry City Council in August 2019 and works had been undertaken as confirmed by ED Building Services and completed in October 2019.
51. The Respondent submitted at the hearing that she did not apply for a licence as she thought the property was only occupied by four tenants and that when she found that there were five, the COVID-19 lockdown prevented her for applying for a licence.
52. The Tribunal does not accept that the lockdown as a result of the COVID-19 Pandemic would have prevented an application for a licence being submitted particularly as the lockdown in March 2020 was some seven months after the inspection by the City Council. An application for a Licence could have been made on-line at any time regardless of the lockdown.
53. Neither does the Tribunal accept the submission of the Respondent that she was unaware of the number of people residing in the property. Ultimately such responsibility is hers and not her agents.
54. The Tribunal therefore determines that it will make a Rent Repayment Order for the Period 15<sup>th</sup> January 2020 – 28<sup>th</sup> March 2020 as detailed in paragraph 39 above.
55. The Quantification of the rent repayment order is therefore:

Maximum amount of any order as set out in Paragraph 41	991.75
Less:	
Gas and Electric (as per paragraph 44)	49.70
<u>Water Charges (as per paragraph 44)</u>	<u>20.48</u>
Total deduction	<u>70.17</u>
Amount of Rent Repayment Order	£921.57

56. The Tribunal therefore confirms the total amount of the Rent Repayment Order of £921.57 (Nine Hundred and Twenty-One Pounds, Fifty-Seven Pence) Payment should be made in full within 28 days of the date of this decision.

#### **APPLICATION UNDER RULE 13(2)**

57. Although the Applicant, in his Application to the Tribunal did not submit an Application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requesting reimbursement of the Application Fee and Hearing Fee paid, this is a matter which the Tribunal can consider on its own initiative.

58. After careful consideration the Tribunal determined that it would be just and equitable that the Hearing Fee of £200.00 should be reimbursed to the Applicant in this case.

59. Payment of £200.00 should be made by the Respondent to the Applicant in full within 28 days of the date of this Decision.

**APPEAL**

60. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date of this Decision specified above stating the grounds on which that party intend to rely in the appeal.

Graham Freckelton FRICS  
Chairman  
First-tier Tribunal (Property Chamber) (Residential Property)