



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

Case reference : **BIR/37UE/HMK/2020/0033**

Property : **13a Victoria Road, Netherfield,
Nottingham, NG4 2LA**

Applicant : **Mr. Alexander Curtis**

Representative : **In person**

Respondent : **Mr Kyriacos Zannetou**

Representative : **Mark Quinn, Taylor Rose TTKW**

Type of application : **Application by a tenant for a Rent
Repayment Order
Sections 40, 41, 43 & 44 Housing and
Planning Act 2016**

Tribunal members : **Judge A McNamara
P Wilson BSc (Hons) LLB MRICS
MCIEH CEnvH**

**Date and place of
hearing** : **Determined on the basis of written
representations**

Date of decision : **11 January 2021**

DECISION

Introduction & facts

1. By an application dated 14 May 2020, the Applicant seeks a rent repayment order (RRO) from the Respondent for failure to be in possession of an appropriate licence.
2. The Applicant was formerly an assured shorthold tenant of residential premises known as and located at 13a Victoria Road, Netherfield, Nottingham, NG4 2LA (the property).
3. The Respondent is co-owner of the property with his late Father, Anastasis Zannetou. It is registered under title number NT396251.
4. On 10 June 2019, the Applicant and the Respondent entered into an assured shorthold tenancy agreement in respect of the property (the agreement). In the agreement, the Respondent is styled as 'The Landlord'.
5. Amongst other things, the agreement provided that the rent was initially £415 per month; and, from December 2019, that increased to £495 per month.
6. The relevant housing authority is Gedling Borough Council (GBC).
7. Since October 2018, the Netherfield Ward in which the property is located has been subject to a selective licensing requirement under section 80 of the Housing Act 2004 (HA 2004). In other words, at the commencement of the tenancy, the property should have been the subject of such a licence. It is uncontroversial that it was not until an application was submitted to GBC on 5 March 2020.
8. According to an email from DBC, it transpires that a '*duly made application*' was made on 5 March 2020. Therefore, the material period during which the property was unlicensed is a total of 269 days.

9. Initially, the Tribunal convened, remotely, on 22 September 2020. At that stage the Tribunal had neither any evidence of registered title or any support for the Respondent's suggestion that his Airbnb property portfolio, and therefore his finances, had been adversely affected by the restrictions imposed as a response to the COVID-19 pandemic. Accordingly, further directions were issued and the Tribunal reconvened on 4 December 2020, again remotely, by which time additional information had been provided.
10. Given the parties' consent, the case was dealt with as a 'paper' determination. Further, the Tribunal did not carry out an inspection of the property.

The law

11. The relevant sections of the Housing and Planning Act 2016 (HPA 2016) are set out in Appendix 1 to this decision.
12. Before a rent repayment order is made, the Tribunal must be satisfied, beyond reasonable doubt, that a designated offence has been committed (see section 43(1) of the 2016 Act). An offence under section 95(1) of the 2004 Act is such a designated offence.
13. In the event that the Tribunal is satisfied to the appropriate standard of proof that an offence has been committed, it then goes on to consider the level of the RRO. In doing so it has recourse to section 44 HPA 2016 and any prevailing authorities.

Has an offence been committed?

14. As already identified, the Tribunal is satisfied that GBC's selective licensing provision applied to the property from October 2018.
15. In any event, the absence of a licence was implicitly admitted by the Respondent on page 2 of the bundle submitted for the hearing, namely:

Whilst I acknowledge that the applicant was renting a property that should have had a selective licence...

16. Accordingly, the Tribunal is satisfied that:

- a. An offence was committed (so that it is sure);
- b. Although a co-owner, it is appropriate to make the RRO against the Respondent as he was in the person in control/managing the property for the purposes of section 263 HA 2004 and also section 43(1) of the HPA 16 provides that the Tribunal may make an order if satisfied that 'a landlord' has committed a relevant offence and it is possible to make an order against one of joint landlords; and
- c. The application was made in time for the purposes of section 41(2)(b) HPA 2016.

17. Further, despite the shortcomings of the Respondent's agent as set out below, the Tribunal is not satisfied that a reasonable excuse for the absence of the licence is made out.

The Respondent's case

18. Throughout the period of the applicant's tenancy, the Respondent engaged the services of Spencer Birch, Chartered Surveyors, to manage the tenancy. They were responsible for the collection of rent and from that they took a fee. The Tribunal has seen various statements in relation to the property; taking May 2019 as an example it is clear that the fee was 10% of the monthly rent (plus VAT). Accordingly, the net rent forwarded to the Respondent in that month was £338.80. Therefore, there is no issue that the Respondent received rent in relation to the property.

19. The Tribunal has not seen the contract between the Respondent and Spencer Birch and so the extent of their management of the property is not known.

Within his statement to the Tribunal, the Respondent set out his case as follows:

During the relevant period, I engaged an...agent...to manage the property and I trusted that they would take care of any licensing arrangements and also not allow a tenancy to being (sic) without the necessary licence in place.

20. Therefore, it would appear to be the Respondent's position that he was reliant upon his agent to deal with the question of conformity with prevailing standards of housing management. It is clear that that appears not to have happened.

21. It is also noteworthy that the failure of his former agents to bring this application to the attention of the Respondent almost cost him the ability to defend: the Tribunal has in mind the letter of 3 July 2020 sent by Spencer Birch in which, despite any reference to the Respondent being 'cc'd' to earlier correspondence, they had assumed he had also been communicated with.

22. Eventually the Respondent received notification of this application on 20 July 2020 (see his email dated 22 July 2020).

23. What is clear is that the Respondent was not aware of the obligation to obtain a selective licence until it was too late. Even on his own case it was not until May 2019 that he suggests he brought the issue to the attention of his agents.

24. The Tribunal notes an email from the Respondent to his then agents dated 4 November 2019 which referred to the issue of '*getting the licence organised*' for the property. By that stage the selective licence designation had been in place for thirteen months, and a further six months had passed since he suggests he first raised it. Therefore, there is some tension between the

Respondent's assertion about the responsibility of his agent and his own understanding of the need for a licence.

25. However, although guilty of dilatoriness, the Tribunal notes that there is no evidence of the Respondent's management of residential property having been the subject of previous offences.

26. The Respondent's statement also referred to the impact of the death of his sister. During the course of the adjournment, the Tribunal was also told of the death of the Respondent's father.

27. The loss of two close relatives understandably had a significant impact on both the Respondent's personal well-being and finances. The Tribunal extends its sincere condolences to the Respondent.

28. In an email to the Tribunal dated 26 October 2020 his solicitors indicated that the Respondent's '*monthly income does not cover his own living expenses and he has further costs in relation to his sister's headstone fee*'.

29. In earlier email from 20 October 2020, it transpired that the properties formerly marketed through Airbnb (at two addresses in Manchester and Lincoln) were no longer being operated in that way due to the restrictions imposed by the COVID-19 pandemic.

30. The Respondent's position is summarised in his email to his solicitor from 8 October 2020 forwarded to the Tribunal:

Since lockdown, I have no longer any Airbnb business. One apartment, 309 Lincoln Gate was switched to normal tenants giving a monthly gross income of £900pcm. Half of this is my partners as we both own the property. To date since February my gross income from this has been a total of £1,350.

The two apartments in Nottingham (13a and 15a) have remained

vacant and yielded no income since the applicant vacated the property. Tenants in 15a vacated in February, too. As of September 2020, both these apartments are now tenanted. As they have only just moved in, they are yet to yield any income. Between the two, they will give me a gross income of about £1,000/month.

Due to family health concerns as well as my own, I am currently not in any formal employment and this will remain the case for the foreseeable future.

I estimate my gross monthly income to be around £1,450 pcm. After expenses on these properties and consideration in paying tax in the future, I am left with around £800/month.

Due to my father's deteriorating health, I drive to Nottingham at least once a week. Petrol costs is about £200/month.

That leaves me with about £600/month to live off.

I have had to borrow money from friends and family to cover funeral costs for my sister's passing.

31. However, although the former Airbnb properties referred to above appear to be co-owned, the Tribunal notes that the email also indicated that neither property is encumbered by mortgage. The Tribunal also notes that the subject property and its neighbour now have tenants.

The award

32. The Tribunal notes the Applicant's observations about the Respondent's dilatoriness as already identified above.

33. The Tribunal begins with the criteria to which it must pay 'particular' attention set out in section 44(4) HPA 2016.

The conduct of the landlord and the tenant

34. The tenant is blameless in this case.

35. The Landlord has failed to conform to good housing management. It is the landlord alone who bears that responsibility. This case contains a tension in relation to the limits of the Respondent's knowledge of the need for a licence and the obligations of his agents. The Tribunal cannot resolve that tension but notes that the Respondent concedes he appreciated the need for a licence before the material tenancy began: it was within his power to have entirely avoided an offence and the consequent RRO that this Tribunal will make.

The financial circumstances of the landlord

36. The Tribunal notes the Respondent's submissions in this regard and takes Judicial notice of the fact that 2020 must have been a difficult year for those engaging in short term lets such as Airbnb.

37. The Tribunal also notes that the relevant property and its neighbour were empty for some time during 2020; in part due to the ongoing issue in relation to licensing.

38. However, the Tribunal notes that the relevant property and its neighbour are now let; and that one of the former Airbnb properties is also let.

39. The Respondent's sister's and father's deaths clearly impact upon the Respondent's finances and the management of any co-owned property. Nonetheless, the Tribunal repeats the observation that the Respondent's income from property ownership has recovered since the Spring/Summer of 2020.

Whether the landlord has at any time been convicted of an offence...

40. In short, he has not.

41. In the circumstances it is clear, merely as a matter of common sense, that the Tribunal cannot ignore that, for nine out of the twelve months of 2020, the

ability to buy and sell and to lease property has been affected by the impact of the COVID – 19 pandemic

The amount of the award

42. The Tribunal takes the view that although guilty of unexplained delay, the Respondent does not appear to be a duplicitous landlord with a history of poor housing management. It is clear he acted appropriately by dismissing his former agents and assuming responsibility for licensing requirements in the Spring of 2020.

43. Bearing that in mind and having weighed the three factors above, the Tribunal concludes it would be appropriate in all the circumstances to reduce the RRO by 25%.

44. The Tribunal calculates that the total rent paid during the period that the property was unlicensed would have been £3929.81.

45. Accordingly, applying the 25% reduction set out above rounded down, the Tribunal imposes an RRO of £2900.

Appeal

46. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge Andrew McNamara

11 January 2021.

APPENDIX 1

Housing Act 2004

80. Designation of selective licensing areas

(1) A local housing authority may designate either—

(a) the area of their district, or

(b) an area in their district,

as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

(2) The authority must consider that—

(a) the first or second set of general conditions mentioned in subsection (3) or (6), or

(b) any conditions specified in an order under subsection (7) as an additional set of conditions,

are satisfied in relation to the area.

(3) The first set of general conditions are—

(a) that the area is, or is likely to become, an area of low housing demand; and

(b) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area.

(4) In deciding whether an area is, or is likely to become, an area of low housing demand a local housing authority must take into account (among other matters)—

(a) the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority consider to be comparable (whether in terms of types of housing, local amenities, availability of transport or otherwise);

(b) the turnover of occupiers of residential premises;

(c) the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.

(5) The appropriate national authority may by order amend subsection (4) by adding new matters to those for the time being mentioned in that subsection.

(6) The second set of general conditions are—

(a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;

(b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and

(c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

“Private sector landlord” does not include [a non-profit registered provider of social housing or] a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52).

(7) The appropriate national authority may by order provide for any conditions specified in the order to apply as an additional set of conditions for the purposes of subsection (2).

(8) The conditions that may be specified include, in particular, conditions intended to permit a local housing authority to make a designation for the purpose of dealing with one or more specified problems affecting persons occupying Part 3 houses in the area.

- *“Specified” means specified in an order under subsection (7).*

(9) Before making a designation the local housing authority must—

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

(10) Section 81 applies for the purposes of this section.

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.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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), or

(b) for failing to comply with the condition, as the case may be.

263 *Meaning of “person having control” and “person managing” etc.*

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

- (i) *in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*
- (ii) *in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or*
- (b) *would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.*
- (4) *In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).*
- (5) *References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.*

Housing & Planning Act 2016

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*

(b) *pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.*

(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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<i>Criminal Law Act 1977</i>	<i>section 6(1)</i>	<i>violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>section 1(2), (3) or (3A)</i>	<i>eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>section 30(1)</i>	<i>failure to comply with improvement notice</i>
4		<i>section 32(1)</i>	<i>failure to comply with prohibition order etc</i>
5		<i>section 72(1)</i>	<i>control or management of unlicensed HMO</i>
6		<i>section 95(1)</i>	<i>control or management of unlicensed house</i>
7	<i>This Act</i>	<i>section 21</i>	<i>breach of banning order</i>

41. Application for rent repayment order

(1) A tenant ... 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.*

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 mentioned in the table.*

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
<i>an offence mentioned in row 1 or 2 of the table in section 40(3)</i>	<i>the period of 12 months ending with the date of the offence</i>
<i>an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.