



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

Case Reference : **CHI/00HA/HMF/2021/0011**

Property : **9 Audley Avenue, Bath BA1 3BL**

Applicants : **Velichka Rangelova Tichkova
James George Harry Seviour**

Representative :

Respondent : **Ian Davies**

Representative : **Mr Philip Williams, Counsel**

Type of Application : **Application for a rent repayment
order by tenants**

Tribunal Members : **Judge E Morrison
Ms Carolyn Barton MRICS
Mr Trevor Sennett FCIEH**

**Date and venue of
Hearing** : **27 July 2021 by video**

Date of decision : **29 July 2021**

DECISION

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The application

1. By an application dated 12 April 2021 the Applicant tenants applied for a rent repayment order (“RRO”) against the Respondent landlord on the ground that the Respondent had committed an offence under section 72 of the Housing Act 2004 (control or management of an unlicensed HMO).

The law and jurisdiction

2. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 (“the Act”), reproduced in full in the Appendix to this Decision.
3. Section 41 permits a tenant to apply to the First-tier Tribunal for a RRO against a person who has committed a specified offence, including the offence mentioned at paragraph 1 above, if the offence relates to housing rented by the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made.
4. Under section 43, the Tribunal may only make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed a specified offence.
5. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 relates to the amount of a RRO. Where an offence under section 72 of the Housing Act 2004 has been committed, the amount must relate to a period, not exceeding 12 months, during which the landlord was committing an offence. It must not exceed the amount of rent paid less any universal credit paid in respect of the rent. In determining the amount of a RRO the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant (b) the financial circumstances of the landlord.

Procedural matters, evidence and representation

6. There were initially three applicant tenants. Following the issue of Directions by the Tribunal on 17 May 2021, the third applicant Nicholas Scheckter withdrew his claim.
7. The Directions provided for the Respondent to serve a statement of case, permitted the Applicants to reply, and listed the matter for an oral hearing.
8. The Respondent also submitted a further response to the Applicants’ Reply, the admission of which was not objected to by the Applicants.
9. At the hearing the remaining Applicants appeared in person. The Respondent attended and was represented by Mr Philip Williams, a

barrister. The parties gave oral evidence and the Tribunal heard submissions.

Commission of an offence

10. The first question for the Tribunal considering an application for a RRO is whether it is satisfied that a relevant offence has been committed by the Respondent. In this case, the Respondent readily admits that an offence under section 72 of the Housing Act 2004 was committed by him between 1 January 2019 and 18 August 2020. The contravention came about as a result of the introduction by Bath and North East Somerset Council (“the Council”), on 1 January 2019, of an Additional Licensing Scheme under Part 2 of the Housing Act 2004 which applied to the City of Bath. Under the Scheme, a rented property occupied by three or four people from two or more households, who share amenities, must have a HMO licence. 9 Audley Avenue, having four rooms separately rented out, with a shared kitchen and bathroom, fell within the scope of the Scheme. The contravention ceased when the Respondent applied for a licence, which was subsequently granted on 4 December 2020.
11. Accordingly the Tribunal is satisfied beyond a reasonable doubt that a relevant offence was committed.
12. The Respondent’s case was therefore limited to the issue of the amount for which any RRO should be made, his position being that it should be for a minimum amount and the Applicants’ position being that RROs should be made for the maximum amount of 12 months’ rent.

Rent paid by the Applicants

13. Ms Tichkova occupied under an assured shorthold tenancy agreement which commenced on 18 July 2017 and required her to pay £420.00 per month rent for occupation of the first floor double bedroom. She claims the sum of £5040.00 being the total of 12 months rent, and has produced bank statements evidencing monthly payments from July 2017 – March 2021. She left the property in April 2021.
14. Mr Seviour started to occupy under an assured shorthold tenancy agreement which commenced on 1 December 2018 and required him to pay £435.00 per month rent for occupation of the ground floor double bedroom. He is still living at the property. He claims the sum of £5220.00 being the total of 12 months rent, and has produced bank statements evidencing monthly payments from January 2019 – March 2021.
15. Although the very short form of tenancy agreement used by the Respondent was silent on the point, all parties agreed that the rent paid was inclusive of bills. The Respondent paid all bills except for an internet service, which was arranged and paid for the tenants.

The Respondent's case

16. The Respondent's reasons for saying that any RRO should be for a minimum amount were set out in his written statement of case and submissions, and supplemented by his oral evidence. These reasons can be summarised as follows:
- As soon as he discovered that a licence was required, the Respondent contacted the Council and made an application without delay. The lack of a licence was a genuine mistake.
 - The Council told him that they had previously written to him regarding the need for a licence, but this letter had been sent to 9 Audley Avenue (the address for service recorded at the Land Registry) and he had not received it. The tenants had not passed it on to him. He has proceeded with the work required at the property as a condition of granting the licence and has remained in close and cooperative contact with the Council about this. Most of the work at 9 Audley Avenue has been done.
 - In 2009 he participated in a Council accreditation scheme for landlords until it was dissolved in 2013/14, at which point he was told he did not need a HMO licence.
 - He has two other houses in Bath which were in the same situation as regards lack of a HMO licence, and has also had to do work on them at the same time as 9 Audley Avenue. He has had to reorganise time spent on the family farm business in order to do this.
 - He has paid a financial penalty of £500.00 to the Council.
 - He thought he had a good relationship with the tenants, and produced copies of text messages exchanged with Ms Tichkova over the period of her occupation which showed that he responded to any issues raised, e.g. repairs required. He said he never had any complaints from tenants about anything.
 - He was not a member of any organisation providing advice or information to landlords before August 2019, but has now joined the NRLA.
 - A letter from his accountants explains that he paid a total of £6376.06 in expenses and bills relating to 9 Audley Avenue in the period 19 August 2019 – 18 August 2020.
 - Covid has detrimentally affected the family farm business which is 25 miles from Bath, where he lives in a "mobile home" with his wife and children. The farm accounts for the year to April 2020 show net profit of just £5734.00. He has not received any Covid-related monies from the state. He described the family as "pretty well on the breadline".
 - He owns three houses and a flat in Bath, which are all rented out. The houses have been owned for at least 15 years and each produce rental income of around £1600.00 per month, before payment of expenses. The flat is rented out at £625.00 per month. He said that because the mortgages on the properties are interest- only he allocates all but £1000.00 per month of the rental income to a savings pot which will help to repay the mortgage capital. He did not produce any tax returns or other evidence of his assets or income.

The Applicants' submissions

Ms Tichkova

17. Ms Tichkova said that as the rent paid included bills, a RRO should be made for the full amount i.e. 12 months rent. She said that although the Respondent dealt with issues she raised, she did not feel it was for her to keep bringing matters to his attention, and that he, as the landlord, should have been taking the lead. He visited about once every two months, or more often if he was attending to something. Letters for him were left on a shelf by the front door.
18. She said that the poor condition of the house, and of the garden (for which no-one had responsibility) was borne out by the Schedule of Work required by the Council as a condition of granting the licence. Although much of this Schedule is concerned with fire safety, Ms Tichkova accepted that she had not been concerned about this while living in the house; there was a smoke alarm and a fire extinguisher.
19. The Applicants have been good tenants, and had to put up with a great deal of disruption in early 2021 when work was carried out to meet the Council's requirements. The Applicants were working from home due to the Covid lockdown but at times the noise and dust made this unbearable. The Respondent gave each tenant £100.00 compensation.
20. She was making the application for a RRO because the Council had told her she had a legal right to do so, and not for spiteful reasons.

Mr Seviour

21. Mr Seviour agreed with Ms Tichkova. He said he had thought the house was licensed, and was unaware of issue regarding fire safety. His rent was one-third of his wages. For a long time he didn't meet the Respondent; contact was via Ms Tichkova. He was happy living at the property.

Discussion and determination

22. An offence having been admitted, the Tribunal must decide whether to exercise its discretion to make a RRO. It is important for the Respondent to appreciate that the purpose of a RRO is not to compensate tenants, but to penalise and deter landlords who break the law. There being no counter-balancing factors in this case, such as serious misconduct or damage caused by the tenants, the Tribunal sees no reason why an RRO should not be made against the Respondent in this case in respect of each Applicant. The RROs will relate to rent paid in the 12 month period of 19 August 2019 – 18 August 2020.
23. In *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) the Upper Tribunal suggested that the starting point should be an order for the

rent paid during the relevant period (up to 12 months when the offence was being committed). There was no reason why a RRO should be limited to the landlord's profit but it would be unfair for a tenant paying a rent that included utilities to get a higher RRO than a tenant whose rent did not include utilities. Furthermore, any financial penalty already paid to the housing authority as a result of the same offence should not be deducted, because the statutory provisions showed Parliament's intention that landlords should be liable both (i) to pay a court fine or civil penalty and (ii) to pay a RRO.

24. Applying these principles, the Tribunal makes no deduction in respect of the modest £500.00 penalty already paid to the Council, but does make a deduction in respect of Council tax, gas/electricity, TV licence and water rates paid by the Respondent in the relevant period. These totalled £3895.07, and as there were four tenants, the amount per tenant is £973.76. Had the rent not included bills, these are all expenses of a type for which the tenants, as occupiers, would have been responsible. No deduction is made in respect of sums spent by the Respondent on mortgage interest, ground rent, buildings insurance or letting agent fees, which are all outgoings to maintain the Respondent's own interest in the property and have nothing to do with the tenants' occupation. Nor will any deduction be made for the gas safety check, which is a legal obligation of the landlord.
25. *Vadamalayan* leaves open the possibility of other deductions, and indeed section 44 requires the Tribunal to take into account in particular the conduct of the landlord and the tenant, and the financial circumstances of the landlord.
26. Dealing first with financial circumstances, the Respondent owns three houses, a flat, and (with his wife) a small farm and camp site. He has gross rental income (from the properties) of at least £60,000.00 per annum. If he chooses to allocate a substantial part of this income to a savings pot to pay off the mortgages on the houses, that is his choice, presumably because he wishes to retain them as investment properties and to retain the income from them. However, he clearly has other options. The Tribunal is not persuaded that there should be any reduction on account what the Tribunal has been told about the Respondent's financial situation.
27. Turning to conduct, there is no evidence of any (mis)conduct by the Applicants which could possibly justify a reduction in the amount of the RRO.
28. As regards the Respondent, on the positive side the Tribunal accepts that his failure to obtain a licence was inadvertent rather than intentional, and that once aware he acted swiftly to put matters right, and has now joined a landlord association which will hopefully ensure he remains apprised of his obligations in the future. However, on the other hand, he has, despite being an established professional landlord in that he derives a substantial income from four rental properties, hitherto managed 9 Audley Avenue in a reactive rather than proactive manner, seemingly relying on the tenants to tell him if anything

required attention. He chose not to use professional managers, but failed to ensure he kept himself apprised of his legal responsibilities and obligations. This resulted in a prolonged period of over 19 months, during which the property was unlicensed, and the occupiers did not have the benefit of the fire safety and other measures that the Council have since required to be implemented for their safety and amenity. Even now, the works have not been completed.

29. Taking all the circumstances into account, the Tribunal concludes that a further reduction 10% should be made to reflect the inadvertent nature of the commission of the offence.

Calculation of the RROs

30. **Ms Tichkova** claims 12 months rent which is £5040. From this the Tribunal deducts £973.76 in respect of utilities, leaving £4066.24, from which a further 10% is deducted, resulting in a **RRO of £3659.62**.
31. **Mr Seviour** claims 12 months rent which is £5220.00. From this the Tribunal deducts £973.76 in respect of utilities, leaving £4246.24, from which a further 10% is deducted, resulting in a **RRO of £3821.62**.
32. These sums are to be paid by 26 August 2021.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

Sections 40 – 46 Housing and 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.

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

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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.

(3) 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.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and

(c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) 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.

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);

(b) [section 45](#) (where the application is made by a local housing authority);

(c) [section 46](#) (in certain cases where the landlord has been convicted etc).

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>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	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.

45 Amount of order: local housing authorities

(1) Where the First-tier Tribunal decides to make a rent repayment order under [section 43](#) in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord,
- (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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under [section 43](#) and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with [section 44 or 45](#) (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

- (a) is made against a landlord who has been convicted of the offence, or
- (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in [row 1, 2, 3, 4 or 7 of the table in section 40\(3\)](#), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “*no prospect of appeal*”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

