



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

Case Reference : **MAN/30UK/HMF/2020/0013,0014,0020,
0021,0064,0070**

Property : **1 St Luke's Place Preston PR1 5DE**

Applicant : **Emma Marder, Jordan Annakie,
Ciaran Norris, Laura Parker, Matthew Evans,
Abigail Partridge**

Respondent : **Trophy Homes Limited**

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

Tribunal Members : **Mr John Murray LLB
Mr Ian James MRICS**

Date of Decision : **6 August 2021**

REASONS FOR DECISION

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ORDER

1. Rent Repayment Orders are made against the Respondent pursuant to s41(1) Housing and Planning Act 2016 in favour of the Applicants as follows:

- (a) Emma Marder £2816
- (b) Jordan Annakie £1408
- (c) Ciaran Norris £1416
- (d) Laura Parker £1848
- (e) Matthew Evans £1872.88
- (f) Abigail Partridge £1408

INTRODUCTION

2. The Applicants made six applications of various dates to the Tribunal to make Rent Repayment Orders in their favour against the Applicant pursuant to s41(1) Housing and Planning Act 2016.
3. The Tribunal made directions on 1 October 2020 that
 - (a) The Applicants each send a copy of a bundle of specified information by 22 October 2020 to the Tribunal and the Respondent.
 - (b) The Respondent was to send a copy of a bundle of specified information within 21 days of receipt of the Applicant's bundle to the Tribunal and the Respondent.
4. The Applicants all submitted their bundles in October 2020 by email and post.
5. The Respondent supplied his appendices by email after a reminder by the Tribunal on the 9 March 2021, although he maintained it had been sent earlier.
6. The matter was considered suitable for a determination on the papers.
7. The matter was subsequently listed for a Full Video Hearing with the consent of the parties.
8. The hearing was attended by the Applicants Ms. Emma Marder, Mr. Ciaran Norris, Mr. Matthew Evans, and Ms. Abigail Partridge. Mr. Sean Broadhurst appeared for the Respondent.

LEGISLATION

9. The Tribunal has power to make a Rent Repayment order by virtue of Chapter 4 Housing and Planning Act 2016 the relevant sections of which read:

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	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2),(3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	Housing Act 2004	section 32(1)	failure to comply with prohibition notice etc
5	Housing Act 2004	section 72(1)	control or management of unlicensed HMO
6	Housing Act 2004	section 95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	section 21	breach of banning order

S41 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);

(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.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
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
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(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.

SUBMISSIONS FOR THE APPLICANT

- 7. The Applicants all filed statements in support of their applications setting out the facts of the matter, which is that they were unaware they were living in an unlicensed HMO until the 9th January when a fire broke out and the matter came to the attention of the authorities.
- 8. The tenancy agreements were in the name of Trophy Homes Limited, as agent, for letting a dwelling house on an Assured Shorthold tenancy. They had been automatically generated by an online programme. The rents included utilities (water, gas, where applicable, and electricity, subject to the energy allowance as detailed in the Tenants Guide)
- 9. The Applicants each provided evidence by way of bank statements of the rent they had paid.
- 10. In her statement, Ms. Partridge explained that she had paid £1408 to London and Zurich Ltd for a terms rent for September to January 2020. Despite sending emails text messages and making phone calls, she could not get access for over six months; some of her belongings were missing, and the Respondent did not respond to further texts and phone calls.

11. Ms. Partridge produced a link to a newspaper report showing that Trophy Homes Limited had been convicted after operating without an HMO Licence on multiple properties in Liverpool, and fined up to £50,000.
12. She told the Tribunal that the building was a converted church, and the ground floor which consisted of one bedroom flats had its own access. There was a staircase at the front to the first floor, and a further staircase was a fire exit, but it had been locked, at all times. She said that there was about 13 or 14 bedrooms upstairs. All occupants had individual bedrooms, along with a communal kitchen, living room and maybe six bathrooms. It was generally in good order when they moved in it having been newly renovated.
13. Ms. Partridge told the Tribunal that she had stayed in Preston in December 2019 and had not returned home over Christmas period. There was a burglary, and things were stolen including a set of house keys and she had asked the Respondent to change the locks. Nothing was done about this, and there was no response to the situation. It was later found out that the burglar had full access and he was staying in the attic of the building, and using the showers. It was seen on Facebook by the Applicant that he was found in the building with a hammer.
14. Ms. Marder had paid £1408 on 23.9.19 £1408 paid to London and Zurich Ltd which had been taken as a direct debit. She had paid a further amount of £1408 on 7.1.20 again to London and Zurich Ltd. She confirmed that she believed the tenancy was with the Respondent, Trophy Homes.
15. She told the Tribunal that she found it very difficult to hear Mr. Broadhurst of the Respondent being so "unaccountable" for the fire. She had been on the top floor on the night of the fire. The fire alarms did not work When she turned on her light her room was filled by smoke. The Fire Service told her that had it been ten – fifteen minutes later she would have died.
16. The fire escape door to the stairs was locked, there were no fire blankets, no signage, and no fire safety procedures. Fire doors had a large gap underneath them, and smoke went through the building. When the tenants were decanted to alternative property by the Respondents, the property was disgusting, and also did not have an HMO licence. She had to pick up her belongings, which she was led to believe she would be able to do quickly, but she could not recover them for six months, making life very difficult for her, being without her nurses uniform etc. She said that the whole process had been incredibly stressful and she felt that she had been treated very inhumanely.
17. Mr. Annakie was not present at the hearing, but his bank statements produced showed that he had paid £1408 to Trophy Homes on 15.10.19

18. Ciaran Norris told the Tribunal that he had paid £1416 on 19.9.19 to Trophy Homes. He confirmed what Ms. Marder had said, there was no fire safety, no assembly points, and he had no idea of what to do in an emergency. The fire exit stairs were locked the entire time, until after the fire so there was only one means of escape, the front stairs. The alternative accommodation was no good; there was no contact with Trophy Homes, and that was the same for everyone else. He said that more fire safety signs were put up a short period after the fire.
19. He told the Tribunal that he had returned home to Northern Ireland for Christmas; there had been burglaries at the property. Nothing was stolen from him, but others had things stolen. People had emailed the Respondent to ask for the locks to be changed as keys had been stolen and a homeless man was living in the attic space. This did not happen. He said he opted not to pay the second termly payment. The second property he was allocated by the Respondent was not safe to live in; it had mice and rat traps, and water pooling on the floor, and was another unlicensed HMO. He said that people elected to make their own arrangements; a few stayed with friends and on sofas.
20. Ms. Parker was not at the hearing, but her evidence showed that she had paid a total of £1848 in five payments over as many months, to London and Zurich and Trophy Homes.
21. Mr. Evans told the Tribunal that he had paid £1872.88 by four separate payments, of £468.22; all payments were taken out by Trophy Homes Student Lettings. He had received invoice, and would get an email from Trophy Homes, saying he was about to have a payment taken out by Trophy Homes Student Lettings Ltd.
22. Mr. Broadhurst challenged whether Mr. Evans lived in an HMO, as the ground floor (where he lived) was divided into self-contained apartments which would not meet the definition of HMO. He said that he was still in dispute with the local authority about this.
23. Mr. Evans told the Tribunal that Flat 1 had a separate entrance, but could access the first floor by two separate staircase. The fire alarm system was connected throughout the building, and consequently occupants of both floors were dependent upon the alarm system working. There was a lack of fire management – the Respondent could not blame tenants for removing signs, fire blankets that were never there, or for failure to have a fire management system. The Respondent was generally evasive and hostile. Mr. Evans said that he had made over 30 phone calls and several emails to try and get his belongings back. He was transferred to vastly inferior accommodation and expected to pay the same rent. He had been told he could everything out; he tried to contact them on several occasions but it was impossible to get in touch with them. It caused him a great deal of stress; there had been no apology, and no communication.

24. A statement was filed by all the Applicants from Mr. Leslie Crosbie, Housing Standards Team leader at Preston City Council. Mr. Crosbie confirmed that he had received a call from the Lancashire Fire and Rescue Service on the 9th January 2020 to attend a post fire incident investigation as a serious fire had taken place in the early hours of the morning. Mr. Crosbie checked ownership and established that St .Lukes (Preston) Ltd had owned the property since 13th March 2018. Mr. Sean Broadhurst was listed as sole director and Company Secretary of this company. Mr. Crosbie recognised the director as a person who operated elsewhere in Preston under the name of Trophy Homes Limited.
25. The inspection ascertained that the fire had broken out in a self-contained flat on the ground floor. It had taken hold unannounced to the rest of the building, as the fire alarm was inactive, and in parts, inappropriate. There had been a substantial quantity of smoke and heat that he escaped the flat and significantly penetrated the flat above.
26. The inspection confirmed that the property, a converted Grade II listed church had been put to use as student accommodation, comprising a 14 bedroom house in Multiple Occupation (HMO) and 10 small self-contained flats within the ground floor. The internal layout and use of rooms differed significantly from the last recorded plans held by the Council from when the building had been a residential addiction treatment centre (which had closed in 2016).
27. Further enquiries led Mr. Crosbie to form the opinion that the type of property and occupation levels meant the building was of a type that ought to be licensed under the Housing Act 2004 Part 2 (Mandatory HMO Licensing). None of the occupants were related. No application had been made; no licence was in force.
28. Further enquiries with Building Control colleagues revealed that the alterations to the property would have required building control notification, and no applications had been recently received; there had been no significant planning applications since 1994 and there were no applications in progress to cover such issues as Change of Use.
29. A determination was made to immediately end use of the Property under the terms of a Prohibition Notice under a Fire Safety Order, by LDFRA, supported by the Council. There were a number of safety issues with conversation; a lack of appropriate compartmentation between units; a lack of working fire alarm/appropriate fire alarm; a lack of fire safety management.
30. Up to the date of his statement, Mr. Crosbie confirmed that the building remained empty, and the Prohibition Notice in force. No HMO licence application had been received for the building.

31. Some of the residents were placed in alternative accommodation owned by the Respondent, which also had no licence. Applications were not made for those properties until 20th March 2020, and they were still incomplete.

SUBMISSIONS FOR THE RESPONDENT

32. The Respondent was unable to say why his bundle had not been forwarded to the Tribunal until March, when it had been due several months earlier. He made the following submissions:

33. The Respondent admitted that the offences had been committed as applications for the licences had not been made.

34. The Respondent said that the business had grown rapidly after "the group" (he did not define what he meant by "the group") had converted several properties in Liverpool and Preston. Personal family issues had resulted in the directors taking less of a "hands on role" on the relevant parts of the business, and consequently an administrator and an office manager had been appointed, the former employed specifically to deal with HMO licensing applications. The applications were not however made. During the period he asserted that the correct safety certification for the building was in place, and provided to the Local Authority. Both members of staff had their employment terminated and the Directors had sought to rebuild the administration process.

35. The building was owned by St. Lukes Preston Limited. Office copy entries showed St. Lukes Preston Limited being registered as Proprietor on the 22nd March 2018. Mr. Broadhurst said that the tenancy agreements had been incorrectly put into the name of Trophy Homes Limited; he said that a letter from an accountant stated that Trophy Homes Limited was a construction company, whose only turnover was derived from contracting and construction. It received no rent. The application had been made against the wrong company. The letter from the accountant he referred to was not in the bundle and was not provided to the Tribunal at the hearing.

36. In summary the Respondent suggested that the offence as an administrative error, and the property was properly maintained and serviced.

37. The Respondent's bundle contained a job advert/description on headed notepaper "Trophy Homes Student Lettings", being for a part-time property administrator role. The predominant task was to co-ordinate the "Housing of Multiple Occupancy" (sic) and Landlord licensing for qualifying properties. The document stated "Trophy Homes is a leading North West Based Property

Developer and contractor. We currently manage our own properties with a small but elite in house team".

38. The Respondent supplied a floor plan (p37 Bundle) that he said demonstrated that not all the properties met the definition of HMO as they were self-contained flats. He maintained that one of the applications (Mr. Evans) should not be granted a Rent Repayment Order as it was not part of an HMO.
39. He confirmed that following the incident, the company "St Lukes (Preston) Ltd." had been closed, and he was unsure about its future. The property had not reopened since the Fire Service closed it down. Companies House records showed a notice in the Gazette suggesting it was about to be struck off.
40. Mr. Broadhurst stated that he remained in dispute with the authorities, as he felt there was no reason to obtain a change of use, or for Building Regulations consent when they had simply renovated an existing building originally converted by the Council ; they did not change the layout or configurations. He said that the Respondent had carried out a full survey in terms of current regulations full.
41. He said that he had a Fire Risk Assessment which went "over and above and beyond". The properties had individual smoke alarms which could be disabled by tenants, and this was what had happened when the fire started and the alarm did not work. Mr Broadhurst said that the Respondent would carry out checks weekly and monthly, but tenants had disabled panel themselves; they had disabled the whole system. There had been problems with misuse of illegal substances and smoking in the building. Tenants had put socks over smoke alarms to disable them, and ultimately disabled the whole system.
42. On further questioning, by the Tribunal Mr. Broadhurst said that he ""fully agreed" that Trophy Homes Limited appeared to be Landlord
43. When the Tribunal questioned him about finances, he said that he had had a tough year, 60/70% of people were not paying, and things were difficult; he did not say that he could be unable to pay the Rent Repayment Order.
44. The Tribunal questioned him about water, electricity, and utilities; he had no evidence as to how much these costs were, or even that they had been paid; he said that they would be 25-30% of the rent amount.
45. When questioned about who received the rent, he said that the account was not Trophy Homes; he said it was "a different director" who he named "Robert". It was only on being pressed by the Tribunal that he gave Robert's surname - Broadhurst – and confirmed that Robert Broadhurst was in fact his father, a Director of Trophy Homes.

DETERMINATION

46. The Tribunal must be satisfied beyond reasonable doubt that the Respondent has committed one of the offences as set out in s40(3); that the housing, subject matter of the offence, was at that time let to the Applicants, and that the offence was committed by the Respondent in the period of twelve months ending with the date the application was made.
47. In the first instance the Tribunal had to determine whether the Respondent was in fact the Landlord.
48. The Respondent stated that Trophy Homes Limited were merely the developer, not the landlord; he did not make this assertion to the Tribunal until March of this year. He stated that the Landlord was the St Luke's (Preston) Limited, an "SPV" company which he said was set up allegedly to own and let the properties. The company was about to be struck off the register, and although Mr. Broadhurst was not clear on the point, given it had been empty for eighteen months it is no doubt in financial difficulty.
49. There was no evidence to suggest that St Luke's (Preston) Limited, had operated as landlord or agent. The tenancy agreement was in the name Trophy Homes Limited at their registered address. Trophy Homes Limited appointed staff to manage the properties and manage the HMO applications according to the job specification. None of the tenants had ever heard of St. Luke's (Preston) Limited. The Tribunal did not accept Mr. Broadhurst's evidence that this was simply an "administration error". All operations for the letting of the property were conducted by the Respondent.
50. The letter from the accountant Mr. Broadhurst referred to was not produced, although it is unlikely this would make a difference to the Tribunal's findings. Rent had been collected by a number of organisations on the evidence; Trophy Homes Limited, London and Zurich (for which Mr. Broadhurst had no explanation), and finally he said that the rents were being paid to his father, a Director of the Respondent company – but not St. Luke's (Preston) Limited.
51. No rent was seen to be paid to St Luke's (Preston) Limited, and in the absence of any other evidence the Tribunal found that the Respondent was the Landlord. Given that all companies are under the effective control of Mr. Broadhurst he was free to make whatever arrangements he chose with himself and the Tribunal must determine the arrangements that existed at the outset of the tenancies, and not an arrangement Mr. Broadhurst has tried to subsequently put in place.

52. Mr. Broadhurst admitted the offences, save that at the hearing he maintained Mr. Evans was not residing in an HMO as he was in a self-contained ground floor flat in the building which would not require its own registration
53. The Tribunal did not have the benefit of an inspection of the Property, and consequently were reliant upon the submissions of the parties including the written statement of Mr. Crosbie, a Council Team leader experienced with the Housing Act requirements. At paragraph 14 of his statement, he stated that having inspected the property and occupation levels and discussed the matter with the HMO manager, he formed the view that the building (not part of the building) was of a type that ought to be licenced under the Housing Act 2004 Part 2.
54. The Tribunal noted that the ground floor was not separated physically from the top floor. The self-contained units were within the building and shared a fire alarm system that indeed apparently due to an act of vandalism/interference was turned off for the whole building by an occupant of the self-contained flats. Consequently the flats were in a building that formed part of an unlicensed HMO.
55. The Tribunal is consequently satisfied beyond reasonable doubt that the Respondent has committed an offence under s72(1) Housing Act 2004 as set out in s40(3); being in control or management of an unlicensed HMO that was let to the Applicants, and that the offence was committed by the Respondent in the period of twelve months ending with the date the application was made.
56. The Tribunal considered the conduct of the Respondent, and found it wanting in a number of respects. Mr. Broadhurst did not appear to take seriously the need for HMO licensing. He was aware it was needed, and had apparently employed someone to obtain it; but this property had been occupied for several months and no licence was ever obtained. He did not appear to show a great deal of contrition for the fire which could have had extremely serious consequences as Ms. Marder had been told by the Fire and Rescue Service. He blamed others for the malfunctioning of the alarm system, and failure to apply for the licence, when these were his responsibility to manage and arrange compliance.
57. The management of the building both before and after the fire, and the management of the HMO application, were poor. What "gets managed gets done"; in this case, nothing got done, as the situation had not been managed.
58. When the Applicants had been made homeless through no fault of their own, the Respondent simply transferred them from one unlicensed HMO to another, and expected them to pay the same rent for a property said to be in a very poor, infested condition. The Respondent failed to assist them even with recovering

their own belongings, and failed to answer correspondence, adding to their stress.

59. The Tribunal was told that the Respondent company had grown quickly and that there were pressures on Mr Broadhurst who had young family. However the Respondent is a long standing family business, and must have been well aware of the responsibilities of running HMOs. Running HMOs is a high risk business, which can give high returns, but it comes with high responsibilities. The law exists to deter landlords from evading those responsibilities and profiting from doing so. It is noted that the property remains without a licence, and empty to this date. If it were as compliant as Mr. Broadhurst suggested, the Tribunal would have expected to see it operating with a licence.
60. The Tribunal was concerned that Mr. Broadhurst was looking to sidestep responsibility/payment of the Rent Repayment Orders by suggesting a separate company that may or may not be on the verge of insolvency should be the Landlord, when on the facts it had never been considered the Landlord previously by any of the parties.
61. The Tribunal noted that no evidence was provided of any relevant financial circumstances of the Respondent.
62. Mr Broadhurst admitted that the Respondent was convicted of the same offence for a property in Liverpool in February 2020 for which they received a substantial fine.
63. The Tribunal considered the conduct of the tenants and found there was no conduct on their part to take into account.
64. There was no evidence before the Tribunal of any utility bills having been paid on the Property and consequently the Tribunal determined that the Applicants should all be repaid the rent they had paid in full and without deduction.
65. Accordingly Rent Repayment Orders are made against the Respondent in favour of the Applicants as follows:
 - (a) Emma Marder £2816
 - (b) Jordan Annakie £1408
 - (c) Ciaran Norris £1416
 - (d) Laura Parker £1848
 - (e) Matthew Evans £1872.88
 - (f) Abigail Partridge £1408

J N Murray
Tribunal Judge
6 August 2021