



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

Case Reference : **BIR/OOCN/HMK/2018/0007 and
BIR/OOCN/HMK/2019/0001 - 0007**

Property : **293 Heeley Road, Birmingham, B29 6EL**

Applicants : **Amber Hancock (1)
Anastazja Orlowicz (2)
Isabel Mabbut (3)
Sophie Herbert (4)
Kelsie Cole (5)
Hannah Ball (6)
Lucy Hopgood (7)
Daisy Humphries (8)**

Respondent : **Chris Barstow**

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

Members of Tribunal : **Judge D Jackson
Mr R Chumley-Roberts MCIEH, CEnvH and JP**

Date of Decision : **21 May 2019**

DECISION

Background

1. On 5th December 2016 the 1st -4th and 7th and 8th Applicants entered into an Assured Shorthold Tenancy Agreement with the Respondent whereby the Property was let for 52 weeks from 1st July 2017 to 30th June 2018 at a rent of £26,520 per 52 weeks payable by 12 monthly instalments of £2210.
2. On 23rd April 2018 the 1st -4th Applicants and the 5th and 6th Applicants entered into a further Assured Shorthold Tenancy Agreement with the Respondent whereby the Property was let for 52 weeks from 1st July 2018 to 30th June 2019 at a rent of £26,520 per 52 weeks payable by 12 monthly instalments of £2210.
3. Put simply the 1st -4th Applicants have lived at the Property continuously since 1st July 2017. The 7th and 8th Applicants lived there from 1st July 2017 to 30th June 2018 and the 5th and 6th Applicants have lived there since 1st July 2018.
4. On 28th December 2018 the Applicants applied to the Tribunal for a Rent Repayment Order under the Housing and Planning Act 2016. They allege that the Respondent has committed an offence under section 72(1) of the Housing Act 2004 being a person having control or managing an HMO which is required to be licenced but is not so licenced.
5. The Respondent has not been convicted or received a Financial Penalty in respect of that offence.
6. The 1st -4th Applicants seek an Order in the sum of £4419.96 each and the 5th -8th Applicants seek an Order in the sum of £2209.98 each. All Applicants have produced copy bank statements proving payment of rent claimed.
7. On 24th January 2019 the Tribunal issued Directions.
8. Neither party has requested an oral hearing. The Tribunal finds that it can determine this application without a hearing. In reaching its decision the Tribunal has considered Statement of Facts and Exhibits prepared by the Applicants and a Reply by way of letter received by the Tribunal on 1st April 2019 from the Respondent.

Inspection

9. The Tribunal inspected the Property on the morning of 8th May 2019.
10. The Property is a three-storey (including attic floor), 6 bedroom, terraced house was build pre-1914 and is of brick construction with synthetic slate roof covering. It has been significantly extended. Walls have been dry lined, there is a third storey dormer and a single storey rear extension. The Property has the benefit of double glazing and central heating. There are smoke detectors in the bedrooms and common parts, heat detector in the kitchen and emergency lighting throughout.
11. On the ground floor there was bedroom 1, kitchen/lounge and a shower/w.c. and further separate shower room. There is access from the Kitchen to the rear garden.
12. On the first floor there are bedrooms 2-4.
13. The second (attic) floor has bedrooms 5-6 and a w.c.
14. The First Applicant who was present at the inspection expressed concern in relation to escape from the second (attic) floor in the event of fire. This is a matter on which the Local Authority will need to be satisfied before granting an HMO Licence. The Tribunal has not seen a copy of the fire plan. The walls appear to have half an hour fire protection and the stairway would appear to be a protected means of escape. It would appear that in the event of fire preventing use of the stairway then the only means of escape would be by way of stay put/ upward escape by means of the fire brigade through the windows.

15. The Tribunal would advise the Tenants and Landlord to take advice on any Fire Plan for the Property.
16. No other concerns were expressed by the occupiers on inspection.

Deliberation

17. The Respondent has been refreshingly candid in his Reply: “I accept that substantially what the tenants say is correct”. He applied for an HMO Licence on 15th January 2019 which he accepts is “very late in the day”. No decision on that application has yet been made by the Local Authority. A Birmingham City Council, Private Rented Services, HMO Prosecution Officer attended at the Property on 12th December 2018 to take witness statements from the occupiers in relation to their investigation. The Respondent was interviewed by the Local Authority in January 2019 and awaits a decision on prosecution.
18. The Respondent offers his sincere apologies. He has complied with his obligations in all other respects. The tenants appeared happy with the Property and the Respondent relies on the fact that four of the Applicants renewed their tenancy on expiry.
19. The Respondent accepts that some compensation would be appropriate it would be disproportionate to have all their rent refunded “they have after all had the benefit of the use and occupation of the property in that time”.
20. Based on the admissions made by the Respondent the Tribunal is satisfied beyond reasonable doubt, as required by section 43(1) of the 2016 Act, that the Respondent has committed an offence under section 72(1) Housing Act 2004 – control or management of unlicensed HMO.
21. In determining the amount of order under section 44 of the 2016 Act the amount must relate to rent paid by the Applicants in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. The amount that the Respondent may be required to repay must not exceed the rent paid in respect of that period. We are satisfied that the amounts sought by the Applicants as set out in their application do not exceed those amounts and in the case of the 5th -8th Applicants are less than the amounts they were entitled to claim.
22. Section 44(4) of the 2016 Act provides that 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.
23. There is no conduct of the Applicants to take into account and it is not suggested that the Respondent has any previous convictions.
24. The Respondent has not provided us with any details of his financial circumstances. However, we know that he receives a rental income of £26,520 from this Property. The Applicants have produced a copy of a website from Knowle Lettings who advertise themselves as “quality independent student accommodation”. The webpage produced to us suggests that Knowle Properties has a number of properties. The Respondent is in partnership with Andrea Barstow and John Barstow who are presumably family members. We find that the Respondent has sufficient financial resources to meet the amounts claimed by the Applicants.

25. In relation to conduct of the Respondent the Applicants rely on Exhibit A to their Statement which is Knowle Lettings “Standard Features” which refers “for your safety” to HMO Licences. At Exhibit C is an email from Andrea Barstow of 2nd December 2016 indicating that “Chris will show you the HMO Licence”. The Knowle Lettings Property Handbook at Exhibit D indicates at page 10 under paragraph 7. Accreditation, Licensing that “our 5 bedroom houses have HMO licences (these are displayed in our houses)”. Inventory at Exhibit E refers to “An HMO Licence is displayed in the hall”. We find that each and every one of those claims is untrue.
26. The Respondent indicates that he is a Member of the Midland Landlord Accreditation Scheme. Knowle Lettings are also members of the National Landlords Association. We find that the Respondent is a professional landlord.
27. We treat the decision of the Upper Tribunal in **Parker v Waller** [2012] UKUT 301 (LC) with some caution as it is a case under the provisions of the 2004 Act. Nevertheless, it sets out some useful guidance which is still applicable at paragraph 26:
- There is no presumption that the RRO should be for the total amount received
 - The Tribunal should have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.
 - The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgement a material consideration or, if it is material, one to which any significant weight should be attached.
 - Payments made as part of rent for utility services count as part of the periodical payments in respect of which an RRO may be made.
 - A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A Landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.
28. The Property was unlicensed from 1st July 2017 until an application was made by the Respondent in January 2019. We note that an application was only made once investigations had been commenced by the HMO Prosecutions Officer. The Property was therefore unlicensed for 18 months. We find that is a very serious aggravating factor when considering the conduct of the Respondent.
29. The guidance of the Upper Tribunal suggests that we should not attach significant weight to the Respondents submissions concerning benefit of occupation set out at paragraph 19 above.
30. Utility payments are all paid for separately by the Applicants (see paragraph 2 of Applicants’ Statement of Facts)
31. This was not a deliberate flouting but very close to it. The Respondent was well aware of his obligations but as he concedes “just buried my head in the sand”. He failed to live up to his duties as a landlord and the proud boasts made by Knowle Lettings. The conduct of the Respondent merits a substantial order against him.
32. The Respondent is engaged professionally in letting. He is a Member of the Midland Landlord Accreditation Scheme. We therefore find that his conduct in control or management of an unlicensed HMO for a period of 18 months terminating only once investigations were underway to be an extremely serious and blatant disregard of his duties as a landlord.
33. We therefore make a Rent Repayment Order for 75% of the sums claimed by the Applicants.

Decision

34. The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act in favour of the Applicants in the total sum of £19889.82 payable as follows:

- Amber Hancock (1) - £3314.97
- Anastazja Orlowicz (2) - £3314.97
- Isabel Mabbut (3) - £3314.97
- Sophie Herbert (4) - £3314.97
- Kelsie Cole (5) - £1657.49
- Hannah Ball (6) - £1657.49
- Lucy Hopgood (7) - £1657.49
- Daisy Humphries (8) - £1657.49

D Jackson

Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.