FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/38UC/HMF/2018/0004**
Property	:	**43 Bullingdon Road, Oxford OX4 1QJ**
Applicant	:	**Miss Anne Katrine Harris and Mr Andrew Goodsell**
Representative	:	**In person accompanied by Mr William Christian Environmental Health Officer with Oxford City Council**
Respondent	:	**Mr Michael Anthony Ferguson**
Representative	:	**In person**
Type of application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mr A Kapur**
Venue and date of hearing	:	**The Combined Court Centre at Oxford on 2nd April 2019**
Date of decision	:	**3rd April 2019**

DECISION

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DECISION

The Tribunal determines that by reason of section 40(3) of the Housing and Planning Act 2016 and section 72(1) of the Housing Act 2004 an offence has been committed of failing to licence the property at 43 Bullingdon Road, Oxford, OX4 1QJ (the Property) and that a Rent Repayment Order in the sum of £1,400 should be paid by the Respondent to the Applicants within 28 days of the date of this decision.

BACKGROUND

1) The tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the applicant tenants for a rent repayment order (RRO) dated 23rd December 2018. An earlier application had been made in which an allegation of harassment was raised.

2) The application alleged that the Respondent, the owner of the Property, it seems with his estranged wife, had failed to obtain a licence for the Property, it being an HMO under the provisions of section 254(2) of the Housing Act 2004.

3) The period for which a RRO may be claimed is governed by s41(2) of the Act and further by reference to s44(2) the period that can be taken into account must not exceed 12 months during which the respondent was committing the offence. The law is set out below.

4) The applicants have been tenants of the respondent under the terms of an agreement dated 21st May 2018 for a period of just under three months, due to expire on 15th August 2018 at a monthly rental of £675. A copy of the agreement which was included within the papers before us. By the time of the application to the Tribunal the applicants had been away from the Property since 1st August 2018.

5) The applicants sought to reclaim the rent they had paid during the currency of the tenancy, being £2,025. In addition they sought a refund of the cleaning deposit in the sum of £168.75.

6) Prior to the hearing, held at the Oxford Combined Court Centre on 2nd April 2019, we had before us bundles prepared by both parties. For the applicants we were provided with copies of the application, the directions, a copy of the tenancy agreement, a short statement, a statement from Mr Christian and an email from the same person as well as some photographs and finally a copy of the register of title for the Property.

7) For Mr Ferguson we were provided with his statement to which were annexed some exhibits being copies of mobile phone messages passing between the parties, some photographs, which being photocopies were not very clear and some correspondence.

HEARING

8) The hearing was attended by the applicants and the respondent. Mr Christian also attended. The applicants told us that they had taken a short let of the room at the Property and were aware of its condition. They say that they were told by the respondent that the kitchen would be competed within two weeks. At the time of them taking the tenancy it appears that there were 7 people occupying the Property, including Mr Ferguson. There are five bedrooms, a kitchen and a bathroom. The Property is over three floors, with additional accommodation in the basement, which is separately rented.

9) It seems that in June 2018 problems arose with the drainage causing sewage to flow into the garden. As a result Miss Harris contacted the Council who attended on 12th June 2018. In his witness statement and confirmed at the hearing, Mr Christian told us that he had received a request from Miss Harris on 11th June 2018 and visited the next day. He met with four people occupying the Property, there appearing to be one further room in use at the time. He noted that there were a number of breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 which he set out in his statement. As a result of the inspection he was satisfied that the Property was an HMO under s254(2) of the Act. He confirmed with us that no licence existed at the time of the inspection and that no licence has subsequently been applied for by the respondent. He also confirmed in a subsequent email that the respondent was not the subject of a financial penalty nor had he been convicted of managing an unlicensed HMO or indeed any other offence.

10) Miss Harris told us that she considered there had been a breakdown in the relationship with the Respondent. Indeed on 10th July 2018 he wrote what is purported to be a letter requiring the applicants to vacate the Property at the end of July, before the contractual tenancy agreement was due to expire. She said that there had been an unpleasant exchange and that she and Mr Goodsell had decided to vacate early, on 1st August 2018. They said that they had left the room in good order and sought a refund of the cleaning deposit they had paid. Photographs to support where produced at the hearing.

11) In response the respondent told us that the room had not been cleaned and furniture had been moved. His statement sought to rebut issues concerning the condition of the Property including the planned completion of the kitchen and to explain certain matters. He complained that a bath mat, said to be stained with blood and faeces had been thrown away by the applicants and he sought recompense in the sum of £50.

12) What his statement did not do was address the allegation that the Property was an HMO nor give us any information as to his financial circumstances, other than to say at one point that he was able to live on the rent received from the basement and his earnings on a zero hours contract. He accepted, it seemed, that there were at the time of the Council's inspection, up to 6 other people occupying the Property, although one may have been a friend of a tenant. He accepted that the Property was over three storeys and that there were 5 bedrooms, including his own. He had not been in touch with the Council to determine his requirement to licence and instead appeared to have looked at www.legislation.gov.uk which caused him to believe that the Property did not need to be licensed.

FINDINGS

13) A consequence of managing an unlicensed HMO is that an RRO can be made. It seems clear to us that the Property constitutes an HMO under s254(2) of the Act. There are at least 4 units of accommodation which are not self contained, excluding the room occupied by the respondent. The living accommodation is occupied by persons who do not form a single household and is occupied as their only or main residence. The remaining provisions of s254(2) (d) to (e) are met. Thus in our finding the Property is an HMO which is required to be licensed. The fact that the respondent occupied a room does not change this position.

14) Accordingly on the face of it an offence under s40(3) of the Act has been committed. In support we have the statement from Mr Christian and the evidence given to us, both in writing and orally at the hearing by the applicants. We are satisfied, notwithstanding the evidence from the respondent, such as it was, that beyond reasonable doubt the respondent has been managing and controlling an unlicensed HMO contrary to s72(1) of the Housing Act 2004.

15) The next matter we need to consider is what financial penalty in the form of an RRO we should make. We bear in mind the provisions of s44 of the 2016 Act. It is accepted that the applicants have paid £2,025 in rent and a cleaning deposit. One months rent was subsumed by the respondent from the deposit of £675 paid at the start of the tenancy. Although the applicants seek to recover the totality of their rent we are not satisfied that beyond reasonable doubt an offence was being committed until the Council attended on 12th June 2018. It does not seem to us that there is any conduct by the parties which we should reflect in any award. The applicants were aware of the condition of the Property when they took the tenancy. Although initially an allegation of harassment had been raised it was not proceeded with, which we think is the correct course of action.

16) The respondent said that the rent included services and Council tax but was unable to give any details. If we consider that the offence began on

12th June 2018 and the tenancy expired on 15th August 2018, although the applicants left before, this is a 64 day period. The monthly rent gives a daily rate of £22.19. This gives a figure of £1420.16. There does not appear to be any argument that some services were included in the rental payments made. In the absence of any compelling evidence from the respondent, doing the best we can we propose to round the figure down to £1,400. This is the amount that the respondent should pay to the applicants by way of an RRO, such payment to be made within 28 days.

17) The question of the refund of the cleaning deposit and the allegation concerning the missing bath mat will need to be dealt with in the County Court as they are not within the jurisdiction of this Tribunal. All we would say is that the photographs produced by the applicants at the hearing appeared to show that the room was clean and tidy when they left, even if the furniture may not have been in the same place, which would not in our view be a reason for withholding the deposit.

Andrew Dutton

Name:

Tribunal Judge Dutton **Date:** 3rd April 2019

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

The Relevant Law Housing and Planning Act 2016

40Introduction 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		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	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).

41Application 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.

43Making 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).

44Amount 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

(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

47Enforcement of rent repayment orders

(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.