



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

Case Reference : **MAN/00FF/HMF/2019/0077
MAN/00FF/HMF/2019/0081
MAN/00FF/HMF/2019/0083**

Property : **128 Hull Road, York YO10 3LQ**

Applicants : **(1) Bethany Frangleton
(2) Alice Attenborough
(3) Yuxi Xie**

Representative : **N/A**

Respondent : **Antony James**

Representative : **N/A**

Type of Application : **Rent Repayment Order
Housing and Planning Act 2016 – s41**

Tribunal : **Judge J Holbrook
Regional Surveyor N Walsh**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **6 April 2020**

DECISION

DECISION

- A. **Antony James is ordered to repay rent to the applicant tenants. The amount of rent which must be repaid is shown in the following table.**

<u>Applicant's Name</u>	<u>Rent to be repaid</u>
Bethany Frangleton	£3,698.63
Alice Attenborough	£3,698.63
Yuxi Xie	£3,698.63

- B. **In addition, Mr James must reimburse Ms Frangleton £100 for the tribunal application fee she has incurred in these proceedings.**

REASONS

Background

1. Between 9 September and 22 October 2019, the Tribunal received three applications under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order. The names of the Applicants are shown in the above table.
2. All three Applicants seek repayment of rent which they have paid to the Respondent, Antony James of Bar Farm, High Hutton, York YO60 7HZ, in respect of their occupation of the Property, 128 Hull Road, York YO10 3LQ. The Tribunal must determine whether it has jurisdiction to make a rent repayment order in each case and, if so, the amount which Mr James must repay to each Applicant.
3. On 20 November 2019, the Tribunal issued Directions to the parties in respect of all three applications stating that the matter would be dealt with by way of a determination on the basis of the written submissions and documentary evidence, without the need for an oral hearing unless any party requested one. No party requested an oral hearing and therefore the Tribunal convened on the date of this decision to consider the applications on the basis of the written representations of the Applicants. No representations (or communications of any kind) were received from the Respondent, Mr James, who has apparently declined to engage with these proceedings in any way.
4. The Tribunal did not inspect the Property, but we understand it to comprise a three-storey house with five bedrooms, two bathrooms, and a shared kitchen and living room.

Law

5. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal on 20 November. The list includes the offence (under section 72(1) of the Housing Act 2004 (“the 2004 Act”)) of controlling or managing an unlicensed house in multiple occupation (“HMO”). The offence must have been committed by the landlord in relation to housing in England let by him.
6. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
7. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
8. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:
 - a) the rent paid in respect of the period in question, less
 - b) any relevant award of universal credit or housing benefit paid (to any person) in respect of rent under the tenancy during that period.
9. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the

Tribunal must take particular account of the following factors when exercising that discretion:

- 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 any of the specified offences.

Facts

10. The Applicants occupied the Property as joint tenants during the 2018-19 academic year. Together with two other students (who are not party to these proceedings) they had entered into an assured shorthold tenancy agreement with Mr James a term of one year from 3 July 2018. The rent payable under the tenancy was £1,875 per month, payable monthly in advance. The rent was exclusive of all bills and utility charges.
11. Each tenant assumed responsibility for paying one-fifth of the rent each month. During the course of the tenancy, each of the three Applicants therefore paid a total of £4,500 in rent to Mr James.
12. Throughout the period of the tenancy, the Property was an HMO for which a licence was required under Part 2 of the 2004 Act. It appears that the Property was initially licensed, but that the licence expired without being renewed during the tenancy. Evidence provided in the form of a letter from the Housing Standards department at York City Council indicates that, as from 5 September 2018, the Property was an unlicensed mandatory HMO and that no licence application was made to the council before the tenancy expired.
13. The letter from the council also indicates that, on 9 April 2019, Mr James was convicted at York Magistrates Court of the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO.

Jurisdiction to make a rent repayment order

14. It is clear that Mr James has committed one of the offences specified in section 40(3) of the 2016 Act. The period during which the offence was committed appears to have commenced on 5 September 2018 and continued until the tenancy expired in July 2019. We are therefore satisfied, beyond reasonable doubt, that the offence was committed throughout this period. Given that each of the Applicants applied for a rent repayment order within 12 months of the end of that period, the Tribunal does have jurisdiction to make such an order in each case.

Whether a rent repayment order should be made

15. We are satisfied that it is appropriate to make a rent repayment order on the ground that Mr James has committed an HMO licensing offence. In

coming to this decision, we are mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants.

Amount of the order

Maximum possible amount

16. The maximum amount for which a rent repayment order could be made in favour of each Applicant in the present circumstances is £3,698.63, being the amount of rent which each of them paid in respect of the period of 300 days during which the offence was being committed. There is nothing to indicate that any of the Applicants were in receipt of universal credit or housing benefit which would need to be deducted from that maximum amount.

Principles guiding the Tribunal's determination

17. It is important to note that the Tribunal is not *required* to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount. Rather, the Tribunal should take an overall view of the circumstances in determining what amount to order the landlord to repay (taking particular account of the factors listed in paragraph 9 above). The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration, but the circumstances in which the offence is committed are always likely to be material. A deliberate flouting of the requirement to obtain a licence would merit a larger amount than instances of inadvertence, and a landlord who is engaged professionally in letting is likely to be dealt with more harshly than a non-professional landlord.

Whether the landlord has any relevant convictions

18. As noted above, Mr James has been convicted of the offence of controlling or managing an unlicensed HMO. This is a serious housing offence.

The financial circumstances and conduct of the landlord

19. Mr James has not provided any information about his financial circumstances. However, we note from the copy of the tenancy agreement provided that Mr James let the Property under the trading name of Igloo Properties. We therefore infer that he is a professional landlord.

The conduct of the Applicant tenants

20. We are not aware of any evidence relating to the Applicants' conduct which would affect our decision in this case.

The Tribunal's determination

21. We consider it appropriate to make a rent repayment order for the maximum possible amount in each case. Mr James would appear to be a professional landlord who has disregarded the licensing requirements to which the landlord of an HMO is subject. He has received a criminal conviction in this regard. Moreover, by declining to participate in these proceedings, Mr James has shown no reason why rent repayment orders should not be made for the maximum amount.

Reimbursement of tribunal application fees

22. Ms Frangleton has incurred a tribunal application fee of £100 in connection with these proceedings (the other Applicants were granted fees remission). As Ms Frangleton has succeeded in obtaining a rent repayment order, it is appropriate for Mr James to reimburse her for that fee in addition to repaying rent.

Judge J Holbrook
6 April 2020