



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

Case Reference : **MAN/OOCG/HMF/2020/0041**

Property : **77 Glencoe Road, Sheffield, S2 2SG**

Applicant : **Mr Ryan Lee Brookes**

Respondent : **Mr William McLean**

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

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

Date of Determination : **28th January 2021**

Date of Decision : **4 February 2021**

DECISION

Decision

1. Mr McLean is ordered to repay rent to Mr Farooq in the sum of £1425.

Background

1. On 24th April 2020 Mr Ryan Lee Brookes (“Mr Brookes”) applied to the First-tier Tribunal for a Rent Repayment Order (“RRO”) pursuant to Section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The application relates to 77 Glencoe Road, Sheffield (“the Property”).
3. The Respondent to the application is the Landlord William McLean (“Mr McLean”).
4. The Applicant was a tenant of the Property from 7th June 2020 to 30th November 2019.
5. On 19th November 2020 the Tribunal issued directions to the parties providing for the filing of statements, outlining how the Tribunal must approach the application and thereafter for the matter to be listed for a paper determination.
6. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.
7. The Tribunal has made previous determinations upon similar applications made by former tenants of the same Property and the same Respondent, these being **Edward Harford v William McLean MAN/00CG/HMF/2019/0062**, **Joe Hensey v William McLean MAN/00CG/HMF/2020** and **Mohammed Farooq v William McLean MAN/OOCCG/HMF/2020/0002**. This application details the same issues upon which determinations were made in those matters.

The Law

8. A RRO is an order that the Tribunal may make requiring a Landlord to repay rent paid by a tenant. In order for such an order to be made the Landlord must have committed one of the offences set out in Section 40(3) of the 2016 Act. Those offences were set out in the Tribunal’s directions referred to in paragraph 5 above.
9. In the earlier decisions, referred to in paragraph 7 above, the Tribunal determined Mr McLean was guilty of the offence of managing or being in control of an unlicensed HMO. Whilst Mr McLean had not been charged with any offence, he had been fined the sum of £5000 by Sheffield City Council (“the Council”).

Submissions

10. Mr Brookes sought repayment of rent in the sum of £1780, being the rent paid during the period of his tenancy, less an amount repaid for a key deposit. The monthly rent was £385. He confirmed he had signed a tenancy agreement on 26th May 2019, the tenancy commencing on 7th June 2019. He had moved into the Property on 9th June and vacated it on 30th November 2019.
11. Mr McLean submitted no RRO should be made earlier than 26th May 2019, this being the date of the tenancy agreement. Further, he asked the Tribunal to consider that he had spoken with the Council “*who stated that I should*

allow Ryan to move into the property, during the HMO work being undertaken”

Determination

12. In order for the Tribunal to make a RRO, it must first be satisfied, beyond reasonable doubt, Mr McLean has committed an offence as set out in section 40(3) of the 2016 Act. Mr McLean admitted he had committed the offence of managing or being in control of an unlicensed HMO.
13. The Tribunal is therefore satisfied, beyond reasonable doubt, that Mr McLean has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the period of Mr Brookes’ tenancy.
14. Mr Brookes made his application to the Tribunal on 24th April 2020. This is within 12 months of the end of the relevant period, namely within 12 months of the offence being committed. Here, an offence was committed from the outset of the tenancy on 7th June 2019 to the date a licence for the HMO was granted on 23rd October 2019. The Tribunal can therefore make a RRO as asked.
15. Mr McLean stated he had the approval of the Council to the letting of a room within the Property to Mr Brookes. No further evidence was provided to confirm this.
16. This Tribunal has had the conduct of all the proceedings relating to the Property and, in particular, the documents filed by the parties in **Edward Harford v William McLean**. In that case an e-mail, dated 17th June 2019, was produced from Jane Thomas of the Council to Mr Harford in which she confirmed the Property should be licensed. The Council had inspected the Property on 11th June 2019, following a complaint by Mr Harford.
17. The Tribunal notes that, from its own knowledge of the other applications, Mr Farooq left his room in the Property, that was then occupied by Mr Brookes, on 6th June 2019. Mr Brookes’ tenancy commenced on the 7th June 2019 and the Council did not visit the Property until 11th June 2019. The Tribunal has no other evidence before it to confirm the Council knew of the Property prior to these dates. It therefore appears unlikely it would have given an opinion upon any new tenancy prior to 7th June, as stated by Mr McLean.
18. Consequently, the Tribunal does not find this a reason to prevent it from making a RRO.

Rent Repayment Order

19. The amount claimed by Mr Brookes of £1780 represents rent for a period of his tenancy at the rate of £385 per month. The Tribunal must take into account any housing benefit or universal credit received during the same period, but there is no evidence any such payments have been made.
20. Section 44(4) of the 2016 Act provides that when making an order the Tribunal must take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence.
21. Mr McLean has not been convicted of a relevant offence.

22. The Tribunal notes from earlier decisions that a conditional HMO licence was granted on 23rd October 2019. Mr McLean was no longer committing the offence of controlling or managing an unlicensed property from that date. Accordingly, Mr Brookes is not entitled to the repayment of rent after that date and to the end of his tenancy on 30th November 2019.
23. The Tribunal calculates the amount payable under the RRO for the period from 7th June to 23rd October 2019 and is in the sum of £1746.00
24. In the decisions of **Harford and Hensey** the Tribunal accepted the evidence given by Mr McLean in respect of expenses paid by him and included within the rent. Mr McLean confirmed the rent included all bills and TV licence. In those matters this Tribunal found those expenses to be £849 per room/tenant per year. The Tribunal finds here those expenses should be deducted from any RRO since it would be inequitable for Mr Brookes to recover his living expenses, having had the benefit of those services during his tenancy. The relevant amount is £321.00.
25. The Tribunal had previously determined in **Harford and Hensey** whether Mr Maclean's conduct should affect the amount to be paid under the rent RRO and determined it would not. Mr McLean had not made any further or different submissions to the Tribunal. Accordingly, this Tribunal finds there is nothing in Mr McLean's conduct to affect its determination upon the amount to be repaid under the RRO.
26. The Tribunal therefore determines Mr McLean is to repay rent to Mr Brookes of £1425.00. This is the sum of £1746.00, less the amount allowed for bills of £321.00.

Tribunal Judge J Oliver
28 January 2021