

The Residential Property Tribunal

Ref: 1011292/Carlton Terrace

Tribunal

Mr S Povey
Mr M Abraham

Chairman

Mr S Povey

In the matter of an application under Section 73 of the Housing Act 2004

Name of property: 20 Carlton Terrace, Swansea SA1 6AB

**Applicants: Martin Vorster
Phillip Cheater**

Respondent: Dean Ricketts

Summary of the Tribunal's Decision

Rent repayment orders are made in favour of each Claimant against the Respondent. The Respondent must pay £476.46 to each Claimant within 28 days of the date of this decision.

Background

1. The Respondent, Dean Ricketts, is the owner and landlord of 20 Carlton Terrace, Swansea SA1 6AB ('the property'). The Claimants, Martin Vorster and Phillip Cheater, were tenants of the property for various periods during 2011.
2. On 23rd February 2012, the Respondent was convicted at Swansea Magistrates Court for failing to licence the property.
3. On 5th April 2012, the Tribunal received the Claimants applications for Rent Repayment Orders.
4. On 1st May 2012, the Tribunal issued case management directions.
5. The property was inspected by the Tribunal on 25th July 2012. The Respondent attended the inspection but the Claimants chose not to. The hearing of the applications took place after the inspection, which the Claimants and the Respondent attended. In reaching our decision, the Tribunal has had regard to the evidence provided in advance by the parties and the oral submissions made to us at the hearing.

The Law

6. The definition of a house in multiple occupation ('HMO') is contained within s.254 of the Housing Act 2004. The standard test is set out in s.254(2) and in summary is satisfied where a building contains one or more units of living accommodation which are not self-contained, they are occupied by persons who do not form a single household, at least two or more of those households share a toilet, bathroom or cooking facilities and rent is payable by at least one person occupying the property.
7. Section 55 of the Housing Act 2004 and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 provides that HMOs that are of at least three storeys and occupied by at least five people must be licensed with the local

housing authority. Section 56 of the Housing Act 2004 empowers local housing authorities to designate areas in their district as subject to additional licensing schemes, over and above the statutory licensing regime.

8. Section 72(1) of the Housing Act 2004 states:

A person commits an offence if he is a person having control or managing an HMO which is required to be licensed under this Part...but is not so licensed.
9. By virtue of section 73 of the Housing Act 2004, the Tribunal may, upon application by any of the occupiers of a HMO, make a Rent Repayment Order if satisfied that:
 - 9.1. The occupiers have paid rent without the assistance of housing benefit in connection with their tenancies of the property;
 - 9.2. For the purposes of these applications, the landlord has been convicted of an offence under s.72(1) Housing Act 2004;
 - 9.3. The rent paid was during any period which it appears to the Tribunal the landlord was committing the offence set out in s.72(1); and
 - 9.4. The application for the Order was made within 12 months of the date of the landlord's conviction.
10. A Rent Repayment Order is an order of the Tribunal requiring, in this case, the landlord to pay to the applicants such amount in respect of rent payments made in accordance with Paragraph 9.3, above as it considers reasonable in the circumstances (ss.73(5) and 74 Housing Act 2004).
11. In determining what is a reasonable amount, s.74(6) of the Housing Act 2004 requires the Tribunal to take in particular the following into account:
 - 11.1. The total amount paid during the period that the s.72(1) offence was being committed;
 - 11.2. How much of the rent paid included housing benefit and how much was actually received by the landlord;

11.3. Any conviction under s.72(1) of the Housing Act 2004;

11.4. The conduct and financial circumstances of the landlord; and

11.5. The conduct of the applicants.

Findings of Fact

12. Based upon the evidence we have seen and heard, the Tribunal made the following findings of fact.

13. For the purposes of the Housing Act 2004, the property was at the relevant times a HMO.

14. From January 2009, Swansea City Council introduced an additional licensing scheme in the Uplands and Castle wards. This scheme required all HMOs of at least two storeys and occupied by at least three people to be licensed. The property was situated within the geographical scope of this additional scheme.

15. From 1st August 2011, Mr Vorster occupied the property and paid £280 per month to the Respondent. The amount paid was inclusive of all bills, council tax, TV licence, broadband and satellite television. The rental element accounted for £180 per month (or £45 per week).

16. From 1st September 2011, Mr Cheater moved in to the property, on essentially the same terms as Mr Vorster.

17. Mr Vorster occupied the property on his own for August 2011. From 1st September 2011, Mr Cheater and another tenant moved in, bring the total number of occupiers to three. Further tenants moved in between October and December 2011 but the total never exceeded five.

18. Both of the Claimants paid their rent without any assistance by way of housing benefit.

19. From 1st September 2011, the property fell to be licensed under the additional licensing scheme.

20. In October 2011, the Claimants paid a reduced amount of £210, which included a week rent free in compensation for problems that occurred with the water supply.

21. There were problems with repairs to the property. There were gas leaks on two occasions, which resulted in the gas supply being shut off and the Claimants without heating and hot water for a number of days. The Respondent relied upon one contractor to carry out gas servicing and maintenance and when the first leak occurred, he was not immediately available.
22. In addition, there was inadequate number of smoke detectors in the property and the fire brigade installed fire alarms and safety equipment following concerns raised by the Claimants.
23. Swansea City Council attended and inspected the property at some time during November 2011. The Claimants telephoned the Respondent at the time of the inspection and informed him of the inspection. The Respondent, by his own evidence, stated that he informed the Claimants that he was in the process of applying for a licence. However, he had initially told the Tribunal that he was not aware of the requirements to hold a licence or the pending prosecution against him until January 2012. We have concluded that the Respondent was aware of the need to licence the property in November 2011 at the latest.
24. The Respondent did not in fact submit his licence application to the local housing authority until 20th January 2012.
25. The Respondent pleaded guilty to the charge of letting the premises without a licence at Swansea Magistrates Court on 23rd February 2012.
26. Given the problems with the condition of the property and the failure to hold a licence, the Claimants left the property in December 2011. Their departure was with the Respondent's consent and agreement, as the tenancy agreements were for a fixed term until June 2012. They paid their rent up to the end of December 2011.
27. The Respondent owns three properties in the Swansea area. Two are rented out and he has a financial interest in the third. His main source of income comes from his employment as a unit manager for a national pub company. He also owns his own home in Redditch.

Conclusions – the Rent Repayment Orders

28. Applying the criteria for making a Rent Repayment Order set out in s.73 of the Housing Act 2004, we are satisfied that:

28.1. The Claimants paid rent for their occupation of the property, which equated to £45 per week each (or £6.43 each per day);

28.2. The Respondent was convicted of an offence under s.72(1) of the Housing Act 2004;

28.3. The period that payments were made and it appears to us that the s.72(1) offence was being committed is from 1st September to 31st December 2011; and

28.4. The Claimants made their application to the Tribunal within 12 months of the Respondent's conviction.

29. We are satisfied that it is appropriate for us to make Rent Repayment Orders against the Respondent in favour of both Claimants.

Conclusions – the amounts payable under the Orders

30. The period from 1st September to 31st December 2011 equates to 121 days. However, the Claimants have already benefited from a rent free week in October. As such, the amount paid in rent during the above period equates to £733.02 per Claimant (114 days multiplied by £6.43).

31. Having regard to the further factors referred to in s.74(6) of the Housing Act 2004, we are satisfied that the Claimants were left without heating and hot water during their tenancies, that the fire safety precautions were insufficient, that the Respondent was aware of his obligations to licence the property from at least November 2011 and the condition of the property was generally unsatisfactory.

32. The Respondent did allow the Claimants to break their fixed term tenancy early. However, had he not done so, he would have continued to be in breach of his legal obligations and to commit the offence for which he was convicted.

33. The Respondent had previously made allegations against the Claimants regarding how they had treated the property but did not pursue this before us at the hearing. The

Claimants, in contrast, reported all the problems they encountered diligently to the Respondent, paid their rent in full and on time and asked if they could be released from their tenancies, rather than just disappear.

34. The Condition of the property is, in our judgment, a significant factor, especially the problems with the gas appliances compounded by the inadequate fire safety provisions. When the various problems were reported to the Respondent, he failed to address them in a timely manner. When made aware of the need to licence the property, he failed to submit an application for a further two to three months.
35. Having regard to all these factors, we have concluded that it would be reasonable to order the Respondent to pay each Claimant a sum equivalent to 65% of the rent paid during the relevant period.
36. We therefore make Rent Repayment Orders against the Respondent in the sum of £476.46 in favour of each Claimant.



Stephen Povey
Chairman

5th October 2012