

Y TRIBIWNYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0018/10/21

In the matter of 44 Augusta Street, Adamstown, Cardiff, CF24 OEP

And in the matter of an application under section 73(5) Housing Act 2004

Applicants: Mr. Thomas John Harris
Mr. Kristian Fan
Mr. Adam Beynon

Respondent: Mr. Jeremy Staniforth

Tribunal: Mr. A. Grant (legal chairperson)
Mr. K. Watkins (Surveyor member)
Mrs. J. Playfair (lay member)

Date of Determination: 9th March 2022

Decision

The Respondent must pay to Mr. Thomas John Harris the sum of £3,642.64. The Respondent must pay to Mr. Kristian Fan the sum of £3,572.64 The application of Mr. Beynon is dismissed.

Reasons

Background

1. This is an application by Mr Thomas John Harris (“the First Applicant”), Mr. Kristian Fan (“the Second Applicant”) and Mr. Adam Beynon (“the Third Applicant”) seeking a Rent Repayment Order pursuant to section 73 (5) of the Housing Act 2004 (“the Act”).
2. All of the Applicants are (or were at the relevant times) occupiers of a property known as and situate at 44 Augusta Street, Adamstown, Cardiff, CF24 OEP (“the Property”). The Landlord, and person having management and control of the Property, at all relevant times was Mr. Jeremy Staniforth (“the Respondent”).
3. The First Applicant submitted his application to the tribunal on the 22nd October 2021. The Second and Third Applicants were subsequently added to the proceedings on the 31st December 2021.

4. The tribunal issued directions on the 15th December 2021, which were subsequently amended on the 31st December 2021.
5. In accordance with the directions, the First and Second Applicants and the Respondent served evidence in the form of witness statements. The Third Applicant has not submitted any evidence to the tribunal at all.
6. The matter has been determined by the tribunal on the papers and without a hearing.

The Evidence

The First Applicant

7. The evidence submitted by the First Applicant confirms that he had been a tenant at the Property since the 18th March 2019. The rent on the agreement was £430 per calendar month inclusive of utilities. In that regard, he has supplied a copy of his tenancy agreement. The original term was for a period of 6 months but thereafter he has remained in occupation under the terms of a statutory periodic tenancy.
8. Although the agreed rent was initially a sum of £430 per calendar month, it has in fact varied over the period as other occupiers have left the Property. It appears that at one point he was sharing the room with someone called Caitlyn Lilley although the evidence shows that she appears to have left the Property by July 2020.
9. In the 12th Month period prior to the date of his application (being the 23.10.2020 to the 22.10.2021) ("the Relevant Period") the evidence shows that he paid the sum of £4,690.00 in rent. This was made up of payments of £385 per month from October 2020 until August 2021 and then £420 for the months of September 2021 and October 2021.

The Second Applicant

10. The evidence supplied by the Second Applicant, in the form of his tenancy agreement, shows that he also moved into the Property on the 18th March 2019. The agreed rent was £385 per calendar month and the initial term was for a period of 6 months. As with the First Applicant, he has subsequently remained at the Property beyond the expiration of the initial term.
11. In the 12 - month period prior to the date of his application (being the 23rd October 2020 to the 22nd October 2021) ("the Relevant Period") he submits that he had paid the sum of £4,620.00 in rent. However, the documentary evidence submitted to the tribunal only shows payments totalling £3,080.00.

The Third Applicant

12. The Third Applicant has not submitted any evidence at all.

The Respondent

13. The Respondent has submitted a witness statement dated the 2nd February 2022.

14. In his evidence the Respondent accepts that he was convicted on the 30th September 2021 at Cardiff Magistrates Court of operating a licensable property without a licence pursuant to section 72 of the Act. He states that no fine was imposed but he had to pay costs of £350 and a victim surcharge of £83.00.

15. He stresses that the offence was a technical offence as the prosecution was brought against him (for this particular offence) as the Property had been deemed as a three - storey property (and thus licensable) in consequence of a small attic room situated on the third floor of the property which had only been used for storage and had never been let for occupation.

16. He indicated in evidence that the room had previously been boarded up and could not be accessed. However, repairs to the roof had been required and in order to affect the repairs, the access had to be opened up. Thereafter, a mixture of difficult personal circumstances combined with the difficulties caused by the Covid Pandemic resulted in the opening remaining in place for longer than anticipated and in the interim the room was used for storage by the tenants in breach of the terms of their agreements.

17. He submitted that at all times he had co - operated with the local authority and the room had been sealed by the 1st March 2021.

18. He submitted that any rent repayment order should be restricted to the period during which the offence was committed. He indicated that the offence should be considered to have ceased on the 1st March 2021 when the room was sealed and the property could no longer be classed as a three storey building.

19. In addition, he submitted that the rent also included a sum in respect of utilities. He assessed the costs for utilities per tenant to be £52.53 per month.

20. In those circumstances, He submitted that any award as regards the First Applicant should be limited to £1,495.98 and that any award for the Second Applicant should not exceed £747.99. He submitted that there should be no award made as regards the Third Applicant.

21. In terms of his own financial position, he stated that he had a mortgage on the Property which he had to pay but provided no other financial details of his income and outgoings.

Deliberations

22. It is clear from the evidence submitted that the Respondent has been convicted of operating a House in Multiple Occupation without a licence in circumstances where a licence should have been obtained. The Respondent has acknowledged that conviction in his evidence. Indeed, he pleaded guilty to the offence.
23. As regards the details of the conviction, there is an inconsistency in the evidence as regards one aspect. The Respondent states that he did not receive a fine. However, amongst the papers is an e mail from Michelle Harries, Legal Support officer for the Vale of Glamorgan Council dated the 30th September 2021, stating that a fine of £834 had been imposed by the Magistrates. Whether this related to the issue of failing to have a licence or the other breaches of the Management of Houses in Multiple Occupation (Wales) Regulations 2006 for which the Respondent was also convicted, is unclear on the documents.
24. In any event, it would appear from the evidence of the Respondent that the offence was committed for a period of at least 2 years as the evidence indicates that the Attic room was accessible from at least January 2019 until the room was sealed again on the 1st March 2021.
25. The Tribunal accept the evidence of the Applicants that in the Relevant period prior to the application, the First Applicant paid the sum of £4,690 in rent. The Tribunal also find, on the balance of probabilities, that the Second Applicant paid the sum of £4,620.00, albeit that not all of that sum is documented.
26. Also, it is noted that the Applications have been made within 12 months of the date of conviction.
27. Accordingly, the requirements of section 73 (8) of the Act have been satisfied.
28. In those circumstances, section 74 (5) of the Act requires that the tribunal must consider if it is reasonable to make a Rent Repayment Order and if so, what sum would be a reasonable amount to award.
29. The tribunal determine that in the circumstances it is reasonable to make a Rent Repayment Order. The Respondent has been convicted of a number of offences which had been ongoing for a considerable period of time. The property was unlicensed. However, the Property initially came to the attention of the local authority in consequence of a complaint of disrepair by the tenants. It appears that the disrepair was outstanding for some considerable time. During that period, the Respondent had been receiving rent from the tenants.

30. The tribunal has considered the Respondents submissions but is not satisfied that they amount to a satisfactory defence. Whilst the tribunal note the personal difficulties encountered by the Respondent during the relevant period, the fact remains that the Respondent was the landlord of a house in multiple occupation which he was operating as a business and for which he was in receipt of rental payments. That brings with it an obligation to ensure that he complies with the relevant legislation. There were issues of both a failure to licence and disrepair.
31. The tribunal therefore feel that the starting point when considering what sum would be a reasonable sum to award are the amounts paid by the Applicants in the 12 - month period prior to the date of the application. For the First Applicant that is £4,690.00. For the Second Applicant that is £4,620.00.
32. However, regard must be had to the fact that the rent paid included a sum for utilities. In that regards the tribunal accept the Respondent's evidence that the sum for utilities was £52.53 per tenant per month. Therefore, if one deducts this sum from the rent paid by the First Applicant in the relevant period it leaves a sum of £4,059.64. As regards the Second Applicant, if the same exercise is carried out it leaves a sum of £3,989.64.
33. In addition to this the tribunal find as a matter of fact that the Respondent did pay a fine of £834.00. The tribunal consider that it is reasonable to deduct that sum from the award to be made. By sharing the deduction equally between the First and Second Applicants that reduces the award to the First Applicant to £3,642.64 and the award to the Second Applicant to £3,572.64.
34. Whilst it is noted that the Respondent has a mortgage on the Property, there is no other evidence of the Respondent's financial position in the papers. Given the available evidence the tribunal does not find anything by way of exceptional circumstances which would impact upon the above award.
35. Similarly, the tribunal did not see any evidence of conduct by the tenants which would justify interfering with the level of the award.
36. There has been no evidence submitted by the Third Applicant. In those circumstances, the tribunal dismiss the claim of the Third Applicant.
37. Accordingly, the tribunal determine that the Respondent must repay to the First Applicant the sum of £3,642.64 and must repay to the Second Applicant the sum of £3,572.64.

Dated this 13th day of April 2022.

A. Grant
Legal Chairman