

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

In the Matter of: RPT/0013/11/22

In the matter of an Application under Section 73(5) Housing Act 2004 for a Rent Repayment Order in relation to 5, The Poplars, Deeside, Flintshire, CH5 3QD.

APPLICANT: Mr Gareth Rhys Parry

RESPONDENT: Mr Richard Collins

Hearing: The matter was determined by way of a remote hearing via Ms Teams on the 25th July 2023.

Tribunal: Judge Trefor Lloyd – Legal Chair
David Evans FRICS – Expert surveyor member.
Dr Angie Ash – Lay Member

Appearances:

Neither the Applicant or Respondent appeared at the remote hearing via Ms Teams hearing and the matter was determined by the Tribunal on the papers.

DECISION

Background.

1. At the time of the application dated the 4th of November 2022 the Applicant was a tenant of a flat within the property known as 5 The Poplars, Deeside, Flintshire, CH5 3QD (“the Property”) by way of an assured shorthold tenancy agreement dated the 23rd of July 2021.
2. The Applicant seeks a rent repayment order (“RRO”) under section 73(5) of the Housing Act 2004 (“The Act”) against the Respondent the freehold owner of the property for rent paid during the period 24th of November 2021 to the 22nd of October 2022 in the sum of £6,600.
3. Directions were made to prepare this matter for hearing including the submission of witness statements and relevant evidence. Whilst the Applicant complied with the directions and submitted a hearing bundle, there has not been any communication at all with the Tribunal from the Respondent or anyone on his behalf. A final hearing was

- (i) The Applicants by 4:00 PM on the 24th of May 2023 to provide a document detailing the total sum of rents he sought to be repaid being, pursuant to the Housing Act Wales 2014 limited to 12 months from the date of application to this tribunal and;
 - (ii) The respondent to provide a response to the Applicant's submissions by 4.00 pm on the 21st of June 2023 with the matter being listed for final hearing virtually via Microsoft Teams at 10:00 AM on the 25th of July 2023 and;
 - (iii) The matter be listed for a final hearing to take place virtually via MS Teams at 10.00am on the 25th July 2023.
4. Judge Lester was the Legal Chairman in relation to the 10th of May 2023 initial (vacated) hearing but due to personal circumstances was unable to conduct the hearing on the 25th of July 2023 and as a result Judge Lloyd conducted the hearing.
5. As aforesaid neither party attended the remote hearing and the matter was determined upon the documentation filed and served by the Applicant by way of an 84 page bundle comprising of:
 - (i) The application form;
 - (ii) An e-mail from Mr Aidan Kelly environmental health officer for Flintshire County Council confirming the prosecution of the Respondent and the financial penalty imposed;
 - (iii) Copy Assured Shorthold tenancy dated the 23rd of July 2021;
 - (iv) A spreadsheet detailing occupiers of the property at the time the alleged offence was committed;
 - (v) bank statements detailing the Applicants rental payment per month in the sum of £550 during the relevant period.
 - (vi) A witness statement from Mr Aidan Kelly in letter format detailing the offences committed and the financial penalties imposed.
 - (vii) A number of copies of text messages between the Applicant and the Respondent;
 - (viii) Copy correspondence between the Flintshire County Council and the Respondent in relation to a failure to correctly apply for a House in Multiple Occupation ("HMO") licence;
 - (ix) A witness statement from the Applicant together with photographs detailing the condition of the property;
 - (x) A copy of an Improvement Notice issued by Flintshire County Council and a Prohibition Notice relating to the ground floor rear right bedroom of the property;
 - (xi) Copies of diverse correspondence relating to management of the property.
6. The Respondent is the freehold owner and landlord of the property. The property comprises of a number of individual rooms/flats that were let by way of assured shorthold tenancy agreements.

7. The most recent HMO licence expired on the 1st of June 2021 and the Respondent for whatever reason failed to apply for a renewal licence. As a consequence, Flintshire County Council being the relevant authority prosecuted the Respondent. The Respondent was found guilty at Mold Magistrates Court on the on the 18th of October 2022 of managing or having control of a house in multiple occupation without a licence.
8. In addition, the Respondent was convicted of failing to comply with an improvement notice. The details of the convictions can be found at pages 24 and 25 of the hearing bundle.
9. In summary the Respondent was convicted of 8 offences and fined in total £12,000 pounds. Six of those offences related HMO management regulations and having control of a house in multiple occupation without a mandatory HMO licence.
10. The Applicant within his statement confirms the above and also indicated that he was issued with a notice to quit on the 11th of November 2022. The witness statements from Flintshire County Council officers also confirmed the background to the matter including the fact that the respondent and his associates were managing the property without a HMO licence or Rent Smart Wales licence.

The law.

11. Section 74 of the Act empowers the tribunal to make a Rent Repayment Order. It states:

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b)an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

(6)A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8)For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b)if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9)The conditions are—

(a)that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b)that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10)In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

73Other consequences of operating unlicensed HMOs: rent repayment orders

(1)For the purposes of this section an HMO is an “unlicensed HMO” if—

(a)it is required to be licensed under this Part but is not so licensed, and

(b)neither of the conditions in subsection (2) is satisfied.

(2)The conditions are—

(a)that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));

(b)that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).

(3)No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—

(a)any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or

(b)any other provision of such a tenancy or licence.

(4)But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74 (in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England).

(5)If—

(a)an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of a part of the HMO in Wales, and

(b)the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6)If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—

(a)that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

(b)that—

(i)one or more relevant awards of universal credit have been paid (to any person); or

(ii)housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO ,

during any period during which it appears to the tribunal that such an offence was being committed,

(c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) In subsection (6)(b)(i), “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) ([S.I. 2013/376](#)) or any corresponding provision replacing that Schedule, in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO.

(7) Those requirements are as follows—

(a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

(8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of

(i) one or more relevant awards of universal credit, or

(ii) housing benefit paid in connection with occupation of a part or parts of the HMO ,

(b) that the occupier paid, to a person having control of or managing the HMO , periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO , and

(c) that the application is made within the period of 12 months beginning with—(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

- “the appropriate person”, in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
- “housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
- “occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);
- “periodical payments” means—
 - (a) payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) ([S.I. 2013/376](#)) or any corresponding provision replacing that paragraph; and
 - (b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

11. At the hearing the Tribunal considered in detail the content of the trial bundle supplied by the Applicant which included confirmation of the conviction of the Respondent.

12. In accordance with section 73(8) of the Act the Tribunal has to be satisfied that:

- (i) The Respondent has been convicted of an offence under section 72(1) of the Act in other words that he was a person having control of or managing a HMO which is required to be licenced and there was no licence in place and;

- (ii) The Applicant paid the Respondent periodical payments in respect of his occupation of part of the HMO during which it appears to the Tribunal that such an offence was being committed in relation to the HMO and;
- (iii) That the application is made within 12 months beginning with the date of the conviction.

Decision.

- 13. We accept the unchallenged evidence of the Applicant corroborated by the Mr. Kelly on behalf of Flintshire County Council.
- 14. As a consequence, we find as a fact that:
 - (i) The Respondent was convicted of being in control of HMO without a licence. In this regard although we have not seen a memorandum of conviction we accept the evidence presented by Mr. Kelly as to the outcome of the hearing at the Mold Magistrates Court.
 - (ii) The relevant period for any Rent Repayment order in this case is the period from the 24th of November 2021 to the 22nd of October 2022.
 - (ii) The applicant has, as corroborated by copies of his bank statements, made regular rental payments of £550 per month which in total amount to £6,600 during the relevant period.

The tribunal therefore makes a rent repayment order against the Respondent in the sum of £6,600 being the amount of rent received by the Respondent in respect of 5 The Poplars, Deeside, Flintshire, CH5 3QD for the 12 month period 24th November 2021 to the 22nd October 2022.

DATED this 31st day of July 2023

Tribunal Judge Trefor Lloyd