

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL (WALES)**  
**LEASEHOLD VALUATION TRIBUNAL (WALES)**

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In the matter of an Application the Housing Act 2004 for a Rent Repayment Order

**Reference:** RPT/0017/01/17

**Property:** 1 – 2 Cyrch-y-Gwas Road, Treforest, Pontypridd, CF37 1SH

**Applicant:** Miss Lucy Lund  
Miss Emma Bishop  
Miss Polly Norton

**Respondent:** Mr Jeremy Alwyn Davies

**Committee:** Chairman Jack Rostron  
Surveyor Roger Baynham  
Lay Member Juliet Playfair

**Appearances for Applicants:** The applicants in person & Mr Alan Lund

**Appearances for Respondent:** None

**Observers:** Judith Bishop  
Lorraine Norton

**ORDER**

**The Respondent, Mr Jeremy Alwyn Davies, shall repay to the Applicants, Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton the sum of £98.65p [rounded to nearest pence] each in respect of rent paid regarding occupation of 1-2 Cyrch-y-Gwas Road, Treforest, Pontypridd, CF37 1SH. The payments to be made within 21 days of the date of this order.**

## REASONS FOR MAKING THE ORDER

### INTRODUCTION

1. On 16<sup>th</sup> November 2016, the Respondent was convicted at Merthyr Magistrates' Court, of the offence, under section 72(1) of the Housing Act 2004, ("the 2004 Act"), of having control of or managing a house in multiple occupation ("HMO") which was required to be licensed under Part 2 of the 2004 Act but was not so licensed. That property was 1-2 Cyrch-y-Gwas Road, Treforest, Pontypridd, CF37 1SH ("the Property") of which Mr Jeremy Alwyn Davies was the landlord. He was fined £200 and ordered to pay £300 costs and a victim surcharge of £30.
2. By a tenancy agreement dated 5<sup>th</sup> December 2014, the Property had been let by Mr Jeremy Alwyn Davies to Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton on an assured shorthold tenancy for a period of 12 months. The rent was expressed to be £330.00 for the first month and then £660 per calendar month for the remainder payable in advance on the first working day of each month. The tenancy commenced on 1<sup>st</sup> July 2015 and finished 30<sup>th</sup> June 2016.
3. Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton made an Application to the Tribunal for a rent repayment order under section 73(5) of the 2004 Act. The Respondent to the Application is Mr Jeremy Alwyn Davies. The Application was received on 29<sup>th</sup> December 2016.
4. On 25<sup>th</sup> January 2017, the Tribunal issued Directions to the parties stating that the matter would be dealt with by way of a determination on the basis of written evidence and an oral hearing. An inspection and hearing was arranged for 18<sup>th</sup> April 2017.

### THE LAW

5. The relevant law is contained in sections 73 and 74 of the 2004 Act which provide as follows:

#### **73 Other 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.

.....

- (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 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

**74 Further provisions about rent repayment orders**

- (1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).

.....

- (5) In a case where subsection (2) does not apply [nb: subsection (2) applies to an application by the local housing authority], the amount required to be repaid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

- (6) In such a case the tribunal must, in particular, take into account the following matters –
- (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);
  - (b) the extent to which that total amount –
    - (i) consisted of, or derived from, payments of housing benefit, and
    - (ii) was actually received by the appropriate person;
  - (c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;
  - (d) the conduct and financial circumstances of the appropriate person; and
  - (e) where the application is made by an occupier, the conduct of the occupier.

(7) in subsection (6) “relevant payments” means –

- (a).....
- (b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.

(8) A rent repayment order may not require payment of any amount which –

- (a).....; or
- (b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5), and the period to be taken into account under subsection 6(a) above is restricted accordingly.

.....

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

## **INSPECTION**

6. The Property was inspected at 09.30am and found to lie to the south of the town of Pontypridd and in particular is located within easy walking distance of the University of Glamorgan and as such the area is largely occupied by students. There are local shops in the area and all other amenities are available in the centre of Pontypridd which is approximately 1 mile distant.
7. The property, which was constructed circa 1890, originally comprised 2 flat fronted (i.e. without a forecourt) bungalows with attic rooms on a narrow road. It was subsequently converted to create a single dwelling. The building was

constructed on a sloping site and there are garages under the property at a lower level which do not form part of the tenancy. There is no rear garden.

8. The exterior walls are of stone and brick which have been rendered and the roof has a composite slate covering. The windows and front door are double glazed upvc units and the Property has the benefit of gas central heating and some laminate flooring.
9. The accommodation on the ground floor comprises an entrance hall, living room, kitchen, 3 other rooms that are used as double bedrooms and a bathroom. The Tribunal were informed that this is in the process of being refurbished but at the relevant dates consists of a bath and shower over, wash hand basin and w/c.
10. Leading from the entrance hall there is a stair case providing access to the first floor which consists of 2 attic rooms. The Tribunal were advised by the Applicants that they could only utilise these rooms for storage as the staircase leading to the first floor is particularly steep and certainly does not comply with Building Regulations.

## **EVIDENCE**

11. Written submissions were made by the Respondent and Applicants. The Applicants provided evidence of rental payments in terms of a schedule and bank statements. A letter from Mr Bleddyn Evans, Environmental Health Officer, Public Health and Protection, Rhondda Cynon Taf states that Mr Jeremy Alwyn Davies pleaded guilty at Merthyr Magistrates Court on 16<sup>th</sup> November 2016 to operating the property as a licensable HMO without a valid licence.
12. The Applicants in their submission received by the Tribunal on 7<sup>th</sup> February 2017 and reiterated at the hearing state they paid rent totalling £2,420 each for the period of the tenancy. In August 2015, they requested certain improvements to be carried out before they moved in, which included *inter alia*; remediation of dampness. None of the requested remedies were carried out. They were advised by the managing agent Pinnacle to contact the local authority environmental health department who inspected the Property and informed them that the landlord Mr Jeremy Alwyn Davies did not have a licence for the Property. At this point the Applicants were asked to move out, but because of their circumstances, which included; exam stress and finding alternative accommodation in a worst state than their current property, they decided to remain until the end of the tenancy. On 15<sup>th</sup> February 2016 maintenance work was carried out to remediate the dampness. On the 16<sup>th</sup> February 2016, they requested the following documents from the managing agent Pinnacle; "Tenancy agreement, Gas safety, Electrical to date, Certificate for the bonds, Fire certificate, Energy performance certificate, Deposit agreement and where it is registered, and any other associated documents". They were provided with the tenancy agreement, TDS deposit information and an energy performance certificate. They also stated that a new tenant was in occupation for part of June 2016 after they had vacated the Property,

13. In response, Mr Jeremy Alwyn Davies the Respondent states he has no reason to dispute the payments made by the applicants. The main thrust of his written statement in response is that he is not an experienced landlord and trusted the managing agents Pinnacle to manage the Property in a professional manner. He states that he only became aware of the need for a licence when the local authority became involved. The Respondent says that the Applicants were made aware of the licensing situation and advised that they should find alternative accommodation from January 2016. However, the Applicants decided to stay in the Property. The Respondent felt that as the Applicants considered alternative accommodation they had viewed was worse than their existing property, it is disingenuous of them to make an application for a rent repayment order. He emphasises that he believes he has been let down by his agents.

## **THE TRIBUNAL'S DETERMINATION**

14. The Tribunal finds that it has jurisdiction to hear the present Application.

(1) the subject property was at least during part of the period of Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton's occupation an unlicensed HMO within the meaning of section 73(1)(2) of the 2004 Act. The Tribunal notes that an HMO is not treated as unlicensed for this purpose if a landlord has made an application under section 63 and that application is still effective. We note that Mr Jeremy Alwyn Davies did not make such an application.

(2) The Tribunal is satisfied as to the matters set out in section 73(8)(a) to (c); Mr Jeremy Alwyn Davies was convicted of a section 72(1) offence; Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton paid an occupational rent for a period during which it appears to the Tribunal that the offence was being committed; and the application was made within 12 months of the date of conviction. It follows that the Tribunal has jurisdiction to make an order under section 73(5).

15. The Tribunal has decided to exercise its discretion to make such an order. Section 74(5) states that in the case of an application made by an occupier of a part of an unlicensed HMO the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the Tribunal considers reasonable in the circumstances. However, section 74(5) also says that this is subject to section 74(6) to (8). Section 74(6) says that the Tribunal must, in particular, take into account a number of specified matters set out in s.74(6)(a) to (e).

16. The relevant period is 29<sup>th</sup> December 2015 to 30<sup>th</sup> June 2016. A total of 184 days.

17. (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

18. This has to be read in conjunction with section 74(8) which provides that:

(8) A rent repayment order may not require payment of any amount which –  
.....(b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5), and the period to be taken into account under subsection 6(a) above is restricted accordingly.

19. Paragraph (b) of s.74(6) relates to housing benefit and is not relevant in the present case.

20. S.74(6)(c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;

As noted above, on 16<sup>th</sup> November 2016, the respondent landlord was convicted at Merthyr Magistrates’ Court, of the offence, under section 72(1) of the 2004 Act of having control of or managing a house in multiple occupation which was required to be licensed under Part 2 of the Act but was not so licensed and was fined £200 and ordered to pay £300 costs and a £30 victim surcharge.

21. S.74(6)(d) the conduct and financial circumstances of the appropriate person;

The Tribunal notes the Respondent was not a professional landlord and relied on the managing agents Pinnacle to manage the property as an HMO. We also note that the local housing authority did not find any hazards under part 1 of the Housing Act 2004. It is also noted that the landlord did carry out remedial work on the Property regarding dampness. The Respondent has stated that he was expecting a new child in the early part of 2017. He does not give any compelling evidence regarding financial hardship save for his statement...” I anticipate my issues with this property will run for many years to come and my initial long term plan for a secure future will turn into a long-term form of financial ruin”. The Tribunal also notes that the Applicants request a costs order for £900.

22. S.74(6)(e) where the application is made by an occupier, the conduct of the occupier;

The Tribunal also noted the Applicants did not leave the Property when it became known that the landlord was not in possession of the necessary licence. They also state that they did look at other properties but found them in a worse state than their current one. The Tribunal noted that the Property was occupied by a new tenant in June. This being for the last week of that month.

## **CONCLUSION AND DECISION**

23. The question for the Tribunal therefore is how much of the rent should be specified as payable by way of the rent repayment order, being such an amount as the Tribunal considers reasonable in all the circumstances, having specifically had regard to the matters mentioned in section 74(6). In view of the lack of any enforcement action by the local housing authority under part 1 of the Housing Act

2004 it is a finding that the Property was not unfit for human habitation. Similarly, the Applicants accept that the Property was superior to the alternatives they viewed when the lack of a licence became known. The Tribunal therefore draws the conclusion that the Applicants have not suffered any significant prejudice in terms of their housing needs during the tenancy agreement.

24. However, it is clear that at all material times the Respondent had failed to acquire a licence albeit relying on the professionalism of his managing agents. It is also noted that the Property was 'double let' in June 2016. The licensing scheme has been put in place by Parliament in the public interest. In these circumstances the Tribunal has decided that Mr Jeremy Alwyn Davies should be ordered to repay to Miss Lucy Lund, Miss Emma Bishop and Miss Polly Norton the sum of £50 each as recompense for living in an unlicensed HMO. In view of the 'double letting' in June, the Tribunal decided Mr Jeremy Alwyn Davies should also pay to the Applicants a week's rent being £145.96p [rounded to nearest pence]. This is calculated by dividing the years rent of £7590 by 52 weeks. The Tribunal considers that to order the repayment of any greater sum would afford the Applicants an unwarranted windfall, bearing in mind their occupation of the Property which they found superior to the alternatives they viewed. For the purposes of clarification and avoidance of doubt Mr Jeremy Alwyn Davies is ordered to pay a total of £295.96 as rent repayment order. This is awarded to the three Applicants as individuals by dividing the total by three producing £98.65 [rounded to nearest pence].

25. With regard to the Applicants request for an order for costs the Tribunal felt that as Mr Jeremy Alwyn Davies had not acted unreasonably they would made no order as to costs.

Dated this 4<sup>th</sup> day of May 2017



Mr. Jack Rostron  
Chairman



## THE LAW & APPEAL TO THE UPPER TRIBUNAL

1. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 38 of the Residential Property Tribunal Procedures and Fees (Wales) Rags, 2012 explains the appeals procedure.
3. Part 3 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15) as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

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