

**Y TRIBIWNLYS EIDDO PRESWYL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**Reference:** RPT/0008/05/24

**In the matter of:** an Application under Section 73(5) Housing Act 2004 for a Rent Repayment Order in respect of 13 Alexander Street, Cardiff, CF24 4NT

**APPLICANTS**

- (1) Belen Segovia Tur
- (2) Frances Ramos
- (3) Harriet Alice Bentley
- (4) Alisha Vanita Damodar

**RESPONDENT**

- (1) Aston Hall Properties Ltd
- (2) Mr James Bright

**DECISION**

**Background.**

1. The Tribunal has received an application from the Applicants as occupiers of 13 Alexander Street, Cardiff, CF24 4NT ("the Property") under Section 73(5) of the Housing Act 2004 ("the Act") for a Rent Repayment Order.
2. The Applicants have applied for a Rent Repayment Order on the basis that they have paid rent to the Respondent during periods when the Respondent was committing an offence under section 72(1) of the Act namely that the Respondent had control or management of an unlicensed House in Multiple Occupation ("HMO") and for failing to have a HMO licence ("licence").
3. The issues for the tribunal to consider include:
  - (a) Was the Respondent convicted of an offence (failure to licence)?
  - (b) Is the Respondent the person having control of or managing an HMO which is required to be licensed?
  - (c) Is the Respondent the appropriate person?
  - (d) Has the application been made within 12 months beginning with the date of conviction or Rent Repayment Order?
  - (e) Has rent/periodical payments been paid when an offence in relation to the HMO was committed? How much and when?
  - (f) If a Rent Repayment Order is made, what amount would be reasonable in the circumstances?

**The Law**

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

**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

## 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 –

(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 –

(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.

## Determination

5. The Tribunal considered each of the relevant issues in turn:

(a) Was the Respondent convicted of an offence (failure to licence)?

5.1 A Notice of Conviction under s.72 of the Housing Act 2004 and s.4 Housing (Wales) Act 2014 dated the 25/4/24 in relation to the Respondent and the Property was submitted in evidence on the basis that an application to licence the Property under Part 2 of the Housing Act 2004 and register the Property with Rent Smart Wales under the Housing (Wales) Act 2014 had not been made.

(b) Is the Respondent the person having control of or managing an HMO which is required to be licensed?

5.2 The relevant occupation contract for the Property issued on the 8<sup>th</sup> June 2023 and granted to the Applicants is made by Aston Hall Properties Ltd, one of the Respondents. Aston Hall Properties Ltd therefore have control of the property as they are entitled to receive the rack rent with actual rent payments being made to their agent, Pinnacle Property (Cardiff) Ltd, as named on and provided for in the occupation contract. Mr James Bright is a Director of Aston Hall Properties Ltd and as such does not have control or management of the HMO for the purposes of section 263 of the Act. Section 263 defines for the purpose of the Act that a "person having control" is the person who receives (directly or as an agency or trustee) the market rents from the tenants for a given premises or is otherwise entitled to receive the rents if the premises were let (i.e. an owner) "Person Managing" is someone who receives the rents directly from the occupier (but "rent" includes ground rent), so such a person could be a managing agent but not a Director of the company.

(c) Is the Respondent the appropriate person?

5.3 The appropriate person for the purposes of section 73 and section 74 of the Housing Act 2004 is defined as the person who, at the time of the payment, was entitled to receive on their own account periodical payments payable in connection with the occupation of a part of a House in Multiple Occupation: Section 73(5) of the Act. Rakusen v Jepsen [2023] UKSC 9 confirms that a Rent Repayment Order may only be made against the immediate Landlord.

This means that the appropriate person is the person who was entitled to receive rent or other payments related to the occupation of the Property and includes one of the Respondents, Aston Hall Properties Ltd but not a Director of the company.

(d) Has the application been made within 12 months beginning with the date of conviction or Rent Repayment Order?

5.4 The date of conviction and hearing was the 25/04/24 and the application for the Rent Repayment Order was made on the 7/05/24.

(e) Has rent/periodical payments been paid when an offence in relation to the HMO was committed? How much and when?

5.5 The occupation contract was issued on the 8/06/23. The occupation dates for the fixed term contract are from 01 July 2023 to 30 June 2024 with rent payable as follows:

Start of Tenancy (01/07/2023) 30/04/2024 Payment of £1800.00 per calendar month  
01/05/2024 15/05/2024 Single payment of £900.00  
16/05/2024 End of Tenancy (30/06/2024) Single payment of £2700.00

(f) If a Rent Repayment Order is made, what amount would be reasonable in the circumstances?

5.6 The Tribunal considers that it is reasonable for a Rent Repayment Order to be made. It was observed in London Borough of Newham v John Francis Harris [2017] UKUT 264 (LC) that:

“.....it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order”.

5.7 The very clear purpose of the legislation is that the imposition of a Rent Repayment Order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

5.8 Having exercised its discretion to make a Rent Repayment Order, the next decision is how much should the Tribunal order? In Acheampong v Roman [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order

- (a) ascertain the whole of the rent for the relevant period;
- (b) subtract any element that represents payment for utilities;
- (c) consider the seriousness of the offence, both compared to other types of offences in respect of which a rent repayment order may be made and compared to other examples of the same type of offence. What proportion of the rent is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
- (d) consider whether any deductions from, or addition to, that figure should be made”.

5.9 Accordingly, when considering what would be reasonable the Tribunal must take into account several factors including:

- the total amount of relevant payments made in connection with the occupation of the House in Multiple Occupation (HMO) during any period when an offence was being committed by the appropriate person.
- the extent to which those payments consisted of, or derived from, housing benefit and whether they were actually received by the appropriate person.

- the conduct and financial circumstances of the appropriate person
- the conduct of the occupier.
- any exceptional circumstances that might make it unreasonable for the person to be required to repay the amount.

5.10 The Tribunal notes that the Respondent did not appear at the magistrates court on the date of the hearing and conviction under s.72 of the Housing Act 2004 and s.4 Housing (Wales) Act 2014. Furthermore, the Respondent did not comply with the Directions Order dated 1st July 2024 and issued by the Tribunal. There is no evidence before the Tribunal that the Respondent has acted in a genuine way and in good faith but, for understandable or technical reasons, has not complied with licensing requirements and is in breach without reasonable excuse for failing to comply. The Tribunal assumes from the circumstances that the Respondent is a professional landlord. A search of the Company Register in relation to Aston Hall Properties Ltd suggests that this is the case.

5.11 There is no evidence before the Tribunal that the Applicants have behaved in an unreasonable manner. The Tribunal further notes that the Applicants have complied with the Directions Order dated 1st July 2024. There is no evidence before the Tribunal that the Property is not fit for habitation or is in disrepair. An inspection of the Property has not been carried out by the Tribunal.

5.12 Bank statements were received by the Tribunal for each of the applicants for the period June 2023 to May 2024.

A Rent Received monthly statement by the letting agency for Harriet Alice Bentley shows total payments of £8,359.60 (page 42 of the Evidence Bundle)

A Rent Received monthly statement by the letting agency for Alisha Vanita Damadar shows total payments of £5,400 (page 76 of the Evidence Bundle)

A Rent Received monthly statement by the letting agency for Belen Segovia Tur shows total payments of £5,400 (page 112 of the Evidence Bundle)

A Rent Received monthly statement by the letting agency for Frances Ramos shows total payments of £5,625 (page 149 of the Evidence Bundle)

On page 194 of the evidence bundle a Table has been submitted by the Applicants showing the months the offence was allegedly taking place and payments made:

Months when it is alleged the offence was taking place in which the tenants were residing at the property	Names of tenants	Evidence of payments
July 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Harriet Alice Bentley paid £1,384.60 (on behalf of all the tenants) directly to the letting agency Pinnacle Property as seen in page 16. This was a full month of rent minus the £415.40 holding deposit that was paid at the beginning to secure the house off the market.
August 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 17, 46, 81, 114.
September 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 17, 49, 83, 117.
October 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 18, 51, 85, 123.
November 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 20, 56, 88, 127.
December 2023	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as

		seen in pages 23, 60, 91, 127.
January 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 27, 62, 97, 133.
February 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen

	Damodar	in pages 32, 65, 100, 136.
March 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 35, 69, 103, 141.
April 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £450.00 directly to the letting agency Pinnacle Property as seen in pages 40, 73, 107, 144.
May 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Each tenant paid £225.00 directly to the letting agency Pinnacle Property as seen in pages 41, 76, 110, 147.
June 2024	Belen Segovia Tur, Harriet Alice Bentley, Frances Ramos, Alisha Vanita Damodar	Harriet Alice Bentley paid £2,700.00 directly to the letting agency Pinnacle Property in June 2023 as seen in page 14. This covers the rent period of 16/05/2024 until 30/06/2024.



5.13 On the evidence submitted to the Tribunal, the rent payments made by each of the tenants, either directly or indirectly, during the relevant period amounts to £5,400 each, Accordingly the Tribunal accepts the total amount of relevant rent payments made in connection with the occupation of the HMO during the period when an offence was being committed by the Respondent is the sum of £21,600.

	<b>Belen Segovia Tur,</b>	<b>Harriet Alice Bentley</b>	<b>Frances Ramos</b>	<b>Alisha Vanita Damodar</b>	<b>TOTALS</b>	
Jul-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Aug-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Sep-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Oct-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Nov-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Dec-23	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Jan-24	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Feb-24	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Mar-24	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
Apr-24	£450.00	£450.00	£450.00	£450.00	<b>£1,800.00</b>	
May- 24	£225.00	£225.00	£225.00	£225.00	<b>£900.00</b>	01/05/2024 to 15/05/2024
Jun-24	£675.00	£675.00	£675.00	£675.00	<b>£2,700.00</b>	16/05/2024 to 30/06/2024
	<b>£5,400.00</b>	<b>£5,400.00</b>	<b>£5,400.00</b>	<b>£5,400.00</b>	<b>£21,600.00</b>	

5.14 The Tribunal also notes that in the notice of conviction dated the 25/4/24 the Respondents have been ordered to pay the Applicants a victim surcharge of £616 each.

5.15 Having considered all the circumstances noted above and the very clear purpose of the relevant legislation that the imposition of a Rent Repayment Order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation, the Tribunal orders Aston Hall Properties Ltd to make a rent repayment of £5,400 to each of the four tenants being a total of £21,600.00.

Dated 31<sup>st</sup> day of October 2024

Michael Draper (Judge)  
Hefin Lewis  
Juliet Playfair