



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/HMA/2013/0001**

Property : **254 Grange Road E13 OHG**

Applicant : **L.B. Newham**

Representative : **N/A**

Respondent : **Mr Fearon**

Representative : **N/A**

Type of Application : **Application by Local Authority for a
Rent Repayment Order under
Housing Act 2004**

Tribunal Members : **Dr Helen Carr
Mr Dallas Banfield FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **14th August 2013**

RENT REPAYMENT ORDER

1. We order Mr Fearon to repay to the London Borough of Newham the sum of £6781.38 in respect of Housing Benefit paid in connection with the occupation of part or parts of the Property.

BACKGROUND

2. This was an application by Newham for a rent repayment order pursuant to s.73 (5) of the Housing Act 2004 (“the Housing Act”). References in this decision to sections are references to sections of the Housing Act.
3. The property which is three storeys high was inspected by Newham on 11th March and 15th June 2011. It was found to have 7 persons living as four households sharing kitchen and bathing facilities.. It was therefore required to be licensed under section 61 of the Housing Act 2004. Council records showed that no licence had been sought or granted.
4. On 4th November 2011 Mr Fearon was successfully prosecuted in Stratford Magistrates Court for failing to licence the property under s.72 of the Act. The court re-heard the case on 11th April 2012 following an application for a rehearing by Mr Fearon. The court confirmed the conviction.
5. On 20th June 2012 Newham, further to s.73 of the Act, served a notice of intended proceedings upon Mr Fearon. The notice informed Mr Fearon of Newham’s intention to apply for a rent repayment order. It informed Mr Fearon that Newham sought to recover £6931.38 said to be the total amount of housing benefit paid in respect of the Property during the period from 19th June 2011 to 22nd April 2013. . A summary of housing benefit payments showing how this amount was calculated was annexed to the notice. The notice concluded by inviting Mr Fearon to make any representations by 20th July 2012.
6. Mr Fearon responded to the notice by letter on 16th July 2012. The letter enclosed extensive documentation. On 6th August 2012 Newham responded to the representations.
7. Mr Fearon’s representations were lengthy. However they did not deny that Mr Fearon’s property was an unlicensed HMO during the relevant period.
8. On 20th December 2012 Newham made an application for a rent repayment order.

9. Directions were given by the tribunal on 16th April 2013 when it was determined that the matter was suitable for a paper hearing. Further directions were issued on 8th July 2013.

THE STATUTORY FRAMEWORK

10. Part 2 of the Housing Act makes provision for the licensing of HMOs and enforcement provisions are included in section 72 to 75.

11. The definition of an HMO is to be found in section 254 and the Property met “*the standard test*” set out in section 254(2). Part 2 only applies to HMOs that satisfy the further conditions set out in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions)(England) Order 2006, paragraph 3 (2) of which reads as follows:-

- (2) The conditions referred to in paragraph (1) are that—*
(a) the HMO or any part of it comprises three storeys or more;
(b) it is occupied by five or more persons; and
(c) it is occupied by persons living in two or more single households.

12. Section 61 requires every HMO, to which part 2 applies, to be licensed whilst section 72 provides that a person having control of or managing an HMO, which is required to be licensed, commits an offence if it is not so licensed.

13. If an HMO is not licensed section 73(5) permits either the local housing authority or an occupier to apply to the tribunal for a rent repayment order. In this case the application was made by the local housing authority and consequently section 73(6) and (7) apply. They read as follows:

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

- (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.*

14. Further provisions relating to rent repayment orders are contained in section 74. Section 74(2) provides that if a person has been convicted of an offence under 72(1) the tribunal must order the repayment of all the housing benefit paid during the commission of the offence. However where, as in this case, there has been no conviction the tribunal has a discretion as to the amount to be repaid. The relevant provisions are contained in section 74(5) and (6) and reads as follows:-

(5) In a case where subsection (2) does not apply, 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.

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;*
 - (e) not relevant to this decision.*

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

- (a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;*

(b) not relevant to this decision

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

(a)(where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or

(b) not relevant to this decision

And the period to be taken into account under subsection (6)(a) is restricted accordingly.

REASONS FOR OUR DECISION

15. The Tribunal had before it

- a. Official copies of the entries on the registers of the freehold title to the Property, which indicated that it had been owned by Mr Fearon since 2004.
- b. The notice of intended proceedings served under section 73 of the Act dated 20th June 2012, Mr Fearon's representations in connection with the notice of intended proceedings and Newham's response.
- c. A table showing in respect of the period from 19th June 2011 to 22nd April 2012 the housing benefit paid in connection with the occupation of each claimant within the property.
- d. A memorandum of an entry entered in the register of the East London Magistrates' Court LJA: 2574 showing that Mr Fearon was convicted of failing to licence a property as an HMO on or about 25th August 2011.

16. On the basis of this evidence we found the following relevant facts, beyond reasonable doubt:-

- a. The Property was during the period from 19th June 2011 to 22nd April 2012 an unlicensed HMO within the meaning of section 73(1).
- b. During the period from 19th June 2011 to 22nd April 2012 Newham paid total Housing Benefits of £6931.38 in connection with the occupation of part or parts of the Property.

- c. Mr Fearon was at all times the appropriate person within the meaning and for the purpose of section 73.
 - d. Mr Fearon was convicted of an offence under section 72(1) of the Housing Act in that he was, on or around 25th August 2011, a person having control of or managing the Property, which was required to be licensed as an HMO under Part 2 of the Housing Act but which was not so licensed.
 - e. During the period from 19th June 2011 to 22nd April 2012 it appears to the Tribunal that Mr Fearon committed an offence under section 72(1) of the Housing Act in that he was, during that period, a person having control of or managing the Property, which was required to be licensed as an HMO under Part 2 of the Housing Act but which was not so licensed.
 - f. Newham has complied with the requirements of section 73(7) in that it served a notice of intended proceedings on Mr Fearon complying with the provisions of section 73(7)(a) and responded to Mr Fearon's representations made in response to that notice
17. Consequently we were satisfied that we were entitled, pursuant to section 73(5), to make a rent repayment order.
18. Whilst Newham has claimed monies from 19th June 2011, the Tribunal assumes that this date is a clerical error as it is only entitled to benefit from 21st June 2011 being 12 months prior to the date of the notice of intended proceedings. The Tribunal therefore determines to reduce the amount of the rent repayment order from the £6931.38 claimed by £150. This is the amount of housing benefit paid direct to Mr Fearon by Newham for the one claimant whose claim fell prior to 21st June 2011.

Chairman Dr Helen Carr

14th August 2013