



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

Case Reference : **LON/00BB/HMA/2014/0011**

Property : **86A, Wellstead Road, London E6
6DD**

Applicant : **The Mayor and Burgesses of the
London Borough of Newham**

Representative : **Ms R Chan – Counsel
Mr A Quinn and Mr P Gallagher
employed by the Council**

Respondent : **Ruddyard Thorpe (also known as
Ruddyard: of the Thorpe family)**

Representative : **In person**

Type of Application : **Application for a Rent repayment
Order**

Tribunal Members : **Tribunal Judge Dutton
Ms S Coughlin**

**Date and venue of
hearing** : **6th May 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **13th May 2015**

DECISION

DECISION

The Tribunal determines that the Respondent shall repay to the Applicant the sum of £5,690.13, being the Housing Benefit paid to him in the period 11th June 2013 to 8th February 2014 (the Period) in respect of the letting of 86a Wellstead Road, London E6 6DD (the Property).

BACKGROUND

1. On 19th March 2013 the Respondent was convicted at the Thames Magistrates Court of an offence, amongst others, contrary to section 95(1) of the Housing Act 2004 (the Act) and was fined £1,000.
2. On 10th June 2014 the Respondent was sent a Notice of Intended Proceedings setting out the reasons for a Rent Repayment Order under s96(5) of the Act being sought and confirming that the sum owing was £5,901.42, being housing benefit paid on behalf of the Respondent's tenant Mr Jovaisis Virginijus. A schedule of the payments allegedly made was attached. This Notice had followed an initial warning letter dated 25th June 2013.
3. In support of the claim the Applicant Council (the Council) relied upon witness statements of Mr Anthony Quinn the Principle Environmental Health Officer with the Council and Mr Patrick Gallagher a senior Council Tax and Benefits Officer.
4. In a bundle supplied to us we were provided with copies of documents intended to show the steps taken by the Council to publicise the creation of the Licensing Area within the Borough. In addition copies of correspondence to and from the Respondent and with the letting agent of the Respondent were included.
5. A copy of the HM Land Register for the Property shows that Ruddyard Thorpe was the registered proprietor and had been since April 2007.

HEARING

6. The Council were represented by Ms Chan and relied upon the witness statements of Mr Anthony Quinn, Principle Environmental Health Officer for the Council dated 2nd October 2014 and 2nd December 2014 and Mr Patrick Gallagher dated 6th June 2014 and 4th December 2014. A skeleton argument had been prepared by Ms Chan but had not been seen by the Respondent until the day of the hearing. He objected to its inclusion and Ms Chan agreed not to press this point.
7. The Respondent attended but initially refused to be seated saying that the Tribunal had no jurisdiction over him as he only believed in Common Law and had no contractual relationship with the Council which would enable them to make the claim for a Rent Repayment Order (RRP) against him. He eventually agreed to participate but on the clear understanding that such involvement did not indicate an acceptance of our jurisdiction.
8. He was asked questions by us and told us that he did own the Property, that it had been occupied by tenants, but only from what he had been told by his agents, Homeview Residential UK Limited (Homeview). He said

that notwithstanding production of a tenancy agreement dated 28th November 2012, between himself as landlord, Homeview as his agent and Mr Jovaisas Virginijus, for a period of 12 months, he was not the contracting party, as he had not signed the tenancy agreement, and certainly had no contract with the Council. He said that Homeview arranged the letting, received the rent and then accounted to him with a sum. He was not clear as to how that sum was calculated but he had agreed to receive a certain amount each month. He confirmed that he believed the tenant, Mr Virginijus left in February 2014.

9. Throughout this question and answer session he maintained that he was not bound by Statute Law only Common Law because he had never consented to be so bound and that without his consent he was not liable under, in this case, the Housing Act 2004.
10. He told us that when he entered into the tenancy agreement in November 2012 he was not aware of the licensing provisions of the Council and was not advised of them by Homeview. If he had known he said he would not have entered into the tenancy agreement. However, it is clear from emails produced by the Council passing between the Respondent and Homeview, to which the Respondent objected, that by 28th January 2013 he was aware of the need to obtain a licence from the Council, but chose not to do so.
11. It was put to him by Ms Chan that he had received payments direct from the Council from 2nd December 2013, when Homeview had stopped acting for him, to 3rd February 2014 when the tenant left. The Respondent was concerned as to how the Council had obtained his bank details to make the payments and could not remember the funds coming from the Council as he 'got money from many sources'.
12. As to the conviction before Thames Magistrates Court he said he had not been aware of the summons although there was bountiful correspondence between the Respondent and the Council much to do with the correct form of address of the Respondent but in particular an email from Mr Quinn dated 4th August 2014 in which the Respondent is given the Magistrates Court details. No evidence was adduced by the Respondent that he had made any attempt to overturn the conviction.
13. The Council relied on the written statements of Mr Quinn and Mr Gallagher, which we had read in advance and although they were 'offered' for cross examination the Respondent seemed only interested in establishing whether the Council's actions against him were reasonable, whether he had a contract with the Council and whether he had consented to the Housing Act 2004, and if not, as was his case, whether he was bound by the terms of same.
14. Ms Chan confirmed that the Council was only seeking to recover the net amount of housing benefit paid, that is to say after deducting the sums retained by Homeview, this giving the amount of £5690.13 as being due, against an original sum of £5901.42.
15. In closing submissions Ms Chan said that the Respondent was convicted of a offence under s95(1) of the Act and that accordingly by virtue of s97(2) we must make an RRO requiring the appropriate person, in this case the Respondent, to pay to the Council an amount equal to the housing benefit paid.

16. The Council also sought costs. This was on the basis that the Respondent had acted unreasonably in defending the proceedings and that the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 applied. Ms Chan told us her brief fee was £350 plus VAT and that the hourly rates for Mr Quinn was £49.29 and for Mr Gallagher £31.94. A spread sheet was produced indicating that the total costs incurred by the Council was £924.86
17. The respondent was asked whether there were any exceptional circumstances which he would like the Tribunal to take into account when considering the repayment. He said that the council were trying to bankrupt him by applying for the rent repayment.

THE LAW

18. The relevant law is set out below

FINDINGS

19. Whilst the Respondent may, or may not have an argument with Homeview concerning the entering into of the 12 month agreement without him being advised of the licensing procedures of the Council there can be no doubt that by January 2103 he was fully aware of what was required. Further, we do not accept that he was not the contracting party to the tenancy agreement. The agreement clearly shows the Respondent as the Landlord. He decided not to apply for a licence on the ground that he is only liable in Common Law and that his consent was never sought or obtained in respect of Statute Law generally and in this case the Housing Act 2004, and as a result he was not liable to any of its penalties.
20. It is quite clear that a conviction was obtained by the Council in the Magistrates Court in March 2014 and no appeal lodged. A notice of Intended Proceedings dated 10th June 2014 was sent to the Respondent at the Property and to Homeview. The Notice complies with the Act and we are satisfied that it came to the attention of the Respondent. Instead of addressing the Notice the Respondent embarked on correspondence more concerned as to how the Council addressed him and reasserting his immunity from the obligations under the Act. How that quite squares with his willingness to receive payment of housing benefit as rent is unclear.
21. There is no merit in the Respondent's 'defence'. He is, of course bound by the Housing Act 2004. There is no challenge directly to the licensing provisions imposed by the Council. He has, through Homeview and directly himself received housing benefit in respect of the occupation of the Property for which he failed to obtain a licence. We are satisfied that the sums claimed by the Council are correct and they have, perhaps generously allowed the Respondent the sums that were retained by Homeview in the Period. We find that the sum of **£5,690.13** is due and owing in respect of the housing benefit paid during the Period.
22. As to exceptional circumstances the Respondent put no specifics to us. He told us he "worked up and down the Country" and owned other property. Accordingly there did not appear to be any exceptional circumstances for us to take into account.

23. As to the costs under rule 13 we have, with some hesitation it must be said, decided not to order any costs under rule 13 to be paid by the Respondent. The Council would have been required to produce the bulk of the documentation to have obtained a RRO in any event. The costs of the day are more problematic. Although the Respondent's defence was at best misplaced he faces a substantial repayment order. There were some elements, such as the failure, it is said by the Respondent, of Homeview in advising him of the licensing requirements before he entered into the tenancy agreement, which to a lay person may give grounds for disputing the Council's claim to a RRO. Our jurisdiction is generally cost free and the standard of unreasonableness is quite high, read in conjunction with the old wording of Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. Taking the matter in the round we make no order

Tribunal Judge
Andrew Dutton

13th May 2015

The Relevant Law

S95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) For the purposes of subsection (3) 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 (8) is met.
- (8) 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 a residential property 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.
- (9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

S96 Other consequences of operating unlicensed houses: rent repayment orders

- (1) For the purposes of this section a house is an "unlicensed house" 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 house under section 62(1) or 86(1) and that notification is still effective (as defined by section 95(7));
 - (b) that an application for a licence has been duly made in respect of the house under section 87 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 the whole or a part of an unlicensed house, 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 97.
- (5) If-
 - (a) an application in respect of a house is made to a residential property tribunal by the local housing authority or an occupier of the whole or part of the house, 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 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 97(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 95(1) in relation to the house (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 the whole or any part or parts of the house 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.
- (8) If the application is made by an occupier of the whole or part of the house, the tribunal must be satisfied as to the following matters-
 - (a) that the appropriate person has been convicted of an offence under section 95(1) in relation to the house, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of the whole or any part or parts of the house,
 - (b) that the occupier paid, to a person having control of or managing the house, periodical payments in respect of occupation of the whole or part of the house during any period during which it appears to the tribunal that such an offence was being committed in relation to the house, 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 housing benefit or periodical payment payable in connection with occupation of the whole or a part of a house, 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 (and "occupation" has a corresponding meaning);
 - "periodical payments" means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) 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 housing benefit, is to be regarded as an amount paid by the occupier in respect of that periodical payment.

S97 Further provisions about rent repayment orders

- (1) This section applies in relation to orders made by residential property tribunals under section 96(5).
- (2) Where, on an application by the local housing authority, the tribunal is satisfied-
 - (a) that a person has been convicted of an offence under section 95(1) in relation to the house, and
 - (b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of the whole or any part or parts of the house during any period during which it appears to the tribunal that such an offence was being committed in relation to the house,
 the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).
 This is subject to subsections (3), (4) and (8).

- (3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) ("the rent total") is less than the total amount of housing benefit paid as mentioned in that paragraph, the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.
- (4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.
- (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 96(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 house during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the house under section 95(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 95(1) in relation to the house;
 - (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) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;
 - (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 house, or (as the case may be) the part of it occupied by him, during the period in question.
- (8) A rent repayment order may not require the payment of an 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 96(6)(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 96(5);
 and the period to be taken into account under subsection (6)(a) above is restricted accordingly.
- (9) Any amount payable to a local housing authority under a rent repayment order-
 - (a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and
 - (b) is, until recovered by them, a legal charge on the house which is a local land charge.
- (10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.
- (11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.
- (12) If the authority subsequently grant a licence under Part 2 or this Part in respect of the house to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder-
 - (a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and
 - (b) to do so in such instalments as are specified in the licence.

- (13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the house, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.
- (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.
- (15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 96, and in particular-
 - (a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);
 - (b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations
- (16) Section 96(10) and (11) apply for the purposes of this section as they apply for the purposes of section 96.