



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

Case Reference	:	LON/00BB/HMA/2015/0002
Property	:	15 Ripley Road, West Beckton, London E16 3EA
Applicant	:	London Borough of Newham
Respondent	:	Douglas Oppong
Type of Application	:	Application for a Rent Repayment Order
Tribunal Members	:	Judge Dickie Mr C Gowman BSc MCIEH
Date and venue of Hearing	:	11 June 2015, 10 Alfred Place, London WC1E 7LR
Date of Decision	:	10 August 2015

DECISION

Decision of the tribunal

The tribunal makes a Rent Repayment Order against the Respondent in the sum of £11,152.57.

Preliminary

I. The tribunal issued this decision in draft form on 4 July 2015, to be served on the Applicant at his last provided address (at 28 Leman Street, London E1 8ER) and the tribunal notified the parties it was postponing its final decision in the form of that draft until Monday 27 July 2015.

II. By an email received by the tribunal from the Respondent Mr Oppong on 28 July 2015 he enclosed a letter to the tribunal dated 22 July 2015 to which he said he had received no reply. However, this letter was not received by the tribunal and no proof of posting has been produced. Notably, the address given by Mr Oppong on this letter is 44 Norfolk Place, Chafford Hundred, Grays, Essex, RM16 6DE, which is the address to which the tribunal has sent all correspondence to the Respondent in this case.

III. Mr Oppong explained in this letter that he had just returned from 2 months abroad to discover that the hearing had taken place in his absence, having left the country in an emergency when his guardian suffered a heart attack. He was away from 12 May to the middle of July and produces evidence of his return flight. He asks for more time to make submissions before the tribunal makes its decision.

III. The tribunal has considered whether in the circumstances it should postpone issue of its decision and issue directions for further representations or for a further hearing. However, the tribunal takes into account the fact that written notification of this application was sent to Mr Oppong at his 44 Norfolk Place address on 13 March 2015, and that directions were issued to the parties in this application on 20 April 2015. Those directions required Mr Oppong to send his evidence to the tribunal and to the Applicant by 11 May 2015, which was prior to the date of his departure, and notified him of the date and time of the hearing. The tribunal is therefore satisfied that Mr Oppong did have notice of the hearing and had a fair opportunity to put his case or to seek a postponement of the hearing before he took place, which he failed to do.

IV. Tribunal resources must be used proportionately and it sees no reason, in spite of the late correspondence received from Mr Oppong, which requires it to seek further submissions and /or list a further hearing. Accordingly (but for a typographical error in paragraph 3 of the draft decision now corrected) the tribunal issues its final decision below in the form of the draft previously circulated to the parties.

The application

1. The Applicant local authority seeks a rent repayment order (RRO) pursuant to sections 96 and 97 of the Housing Act 2004 (“the Act”). The Respondent is the long leaseholder of the subject property at 15 Ripley Road, West Beckton, London E16 3EA (“the Property”), and has been since July 2005.
2. The Applicant was represented by Mr Robert Brown of counsel. The Respondent was not represented at the hearing and did not appear. He had not acknowledged the proceedings to the tribunal at all. On enquiry the tribunal was advised verbally at the hearing that the Respondent had contacted the Applicant by telephone after issue of the application.

Property in an area of selective licensing

3. The tribunal is satisfied that the Property was required to be licensed under Part 3 of the Act. Evidence was produced that from 1 January 2013 the Applicant designated the area of Newham, within which the Property is situated, as being an area for Selective and Additional Licensing. The designation applies to all privately rented properties within the area, subject to a number of statutory exceptions which are not applicable in the present case. Evidence was before the tribunal that the authority had fulfilled the notification requirements required by Section 83 of the Act upon making such a designation. The tribunal is satisfied that the Property was in an area of selective licensing.

Property occupied under a tenancy

4. On 19 April 2013 the Respondent granted to Mama Jaiteh an assured shorthold tenancy of the Property at a monthly rent of £950. A copy of the tenancy agreement was produced in evidence, the terms of which make the tenant responsible to pay for utilities, water charges and Council Tax.

5. The tenancy agreement is with the Respondent as grantor, and apparently signed by him as landlord. The agreement records that "Angel Property Management is a division of Angel Finance Group Ltd", and is also marked with the header of Angel Property Finance. The tribunal assumes that one or other of these named entities has acted as the landlord's property agent.
6. The Applicant produced evidence to the tribunal in the form of a Companies House record created on 4 April 2014 that the Respondent is the sole director of Angel Finance Group (UK) Ltd. The tribunal notes the similarity between these company names, and that Mr Oppong is recorded as a director of that company, with his address given as 80-86 Old Street, London, EC1V 9AZ (the same as the address for Angel Finance Group (UK) Ltd.).
7. However, the tribunal does not consider the existence or otherwise of an agent for this letting in one of these names as legally relevant to its consideration (other than as to the question of any payment for agency services).

Respondent convicted of an offence of failure to licence

8. The Applicant produced evidence of the Respondent having been convicted on 11 June 2014, in his absence, of an offence under s.95(1) of the Act, in that he failed to obtain a licence being a person who had control of or was managing the Property being residential accommodation which was required to be licensed under Part 3 of the Act, namely it was rented property and not so licensed. He was fined £1500, and ordered to pay a victim surcharge of £120 and costs of £760.
9. The Respondent is understood to own a number of investment properties. The Applicant produced evidence that the Respondent has previously been convicted of the same offence in respect of neighbouring property at 13 Ripley Road, after having entered a guilty plea on 26 September 2013. He was fined £50 and ordered to pay a victim surcharge of £50 and costs of £500.

Notice of Intended Proceedings

10. The tribunal was produced with satisfactory evidence of service by the Applicant on the Respondent of a notice of intended proceedings under section 96(7) of the Act. The tribunal finds that the contents of the Notice complied with the statutory requirements set out in that subsection. The date of that notice was 26 August 2014 and it was served by Magdalena Srokowska, Environmental Health Officer in Newham Council's Property Licensing Enforcement Team.
11. The notice was served on the Respondent at 44 Norfolk Place, Chafford Hundred, Grays, RM16 6DE, the address which was recorded for him on the certificate of conviction dated 11 June 2014. This was the address said by the Applicant to have been provided for the Respondent to its housing benefit department and to which the payment notifications were sent, and on a Notice Requiring Possession served on the tenant dated 24 June 2014. The Notice was also served on the Respondent at the address for him on the Companies House record for Angel Finance Group (UK) Limited (as well as on that company at that registered address).
12. No representations were received by the Respondent within the period ending 30 September 2014 specified in the notice (which was more than the minimum statutory requirement of 28 days).

No licence in existence

13. No evidence has been produced by the Respondent as to the existence of a licence, and the Applicant produced sufficient evidence in the form of a witness statement from Margarita Srokowska that there was no licence and no application had been received at any relevant time. However, she did confirm that an incomplete application for a licence had been made by the Respondent in respect of the Property. She said at the hearing that this had been in April 2015 and that further details had been requested from him and were awaited. The Applicant on 15 June filed a copy of a licence application which has been dated 18 September 2014 by the Respondent. The date of receipt by the local authority is not recorded. The Respondent's address is recorded on it as 28 Leman Street, London E1 8ER. This decision will be served also on the Respondent at that address.

Housing benefit paid for a period during which an offence was committed, the same or less than the rent

14. The next question for the consideration of the tribunal is whether housing benefit has been paid during the period of 12 months prior to the date of the Notice of Intended Proceedings. Mr P Gallagher, Senior Council Tax and Benefit Officer of the London Borough of Newham, produced evidence in the form of a schedule from the Applicant that housing benefit was paid between 27 August 2013 and 24 August 2014 to the tenant Mama Jaiteh for her occupation of the Property. The housing benefit paid to her for this period totalled £11,152.57 and this was the sum in respect of which the application for a RRO was made.
15. By virtue of Section 96(6)(b) the housing benefit in respect of which a RRO can be made is that which has been paid to any person. It is therefore not relevant that the Respondent did not receive it directly from the local authority.
16. A spreadsheet was attached to Mr Gallagher's witness statement showing all individual weekly payments of Housing Benefit which comprised the total final figure, and the tribunal accepts this evidence and that the total housing benefit of £11,152.57 was paid in respect of a period of no more than 12 months from the date of the notice and that an offence was being committed throughout this period. The amount paid to the Respondent in respect of periodical payments (in this case rent) has been the same or more than the housing benefit paid.

Conclusion

17. Accordingly, the tribunal is satisfied as to all of the matters in Section 97(2) of the Act, and that it therefore must make a RRO requiring the appropriate person to pay the Applicant an amount equal to the total housing benefit paid, subject to certain statutory exceptions. With regard to subsection 97(3), there is no evidence that the Respondent did not receive all of the housing benefit in question by way of rent, and it is clear that the housing benefit paid did not exceed the rent paid to him. With regard to subsection (4), no exceptional circumstances were brought to the tribunal's attention. There is no evidence of any expenditure by the Respondent for utilities, mortgage, etc. In spite of the name of an agency being recorded on the tenancy agreement, there is no evidence that the Respondent made payment for any agency services.
18. Accordingly, the tribunal makes an order under s.96(5) and s.97(2) in the sum claimed.

Name: F. Dickie

Date: 10 August 2015

- (b) who is a person managing or having control of the house (and does not fall within paragraph (a)), or
- (c) on whom any restriction or obligation is imposed by the licence in accordance with section 90(6).

Commencement

Pt 3 s. 93(1)-(8)(c): November 18, 2004 in relation to any power to make an order or regulations; April 6, 2006 in relation to England otherwise; June 16, 2006 in relation to Wales otherwise (2004 c. 34 Pt 7 s. 270(2)(b); SI 2006/1060 art. 2(1)(a); SI 2006/1535 art. 2(a))

Extent

Pt 3 s. 93(1)-(8)(c): England, Wales

Procedure and appeals

Law In Force

94 Procedural requirements and appeals against licence decisions

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

Commencement

Pt 3 s. 94: April 6, 2006 in relation to England; June 16, 2006 in relation to Wales (SI 2006/1060 art. 2(1)(a); SI 2006/1535 art. 2(a))

Extent

Pt 3 s. 94: England, Wales

Enforcement

Law In Force

95 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]¹.

(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 [the appropriate tribunal]²) 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).

Notes

¹ Words substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664 Sch.4(1) para.37(3) (March 12, 2015: substitution has effect subject to transitional provisions and savings specified in SI 2015/664 reg.5(1))


² Words substituted by Transfer of Tribunal Functions Order 2013/1036 Sch.1(1) para.157 (July 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/1036 art.6(3) and Sch.3)

Commencement

Pt 3 s. 95(1), (3)-(3)(b), (5), (7)-(9): July 6, 2006 June 16, 2006 in relation to Wales; July 6, 2006 in relation to England (SI 2006/1060 art. 2(2)(b); SI 2006/1535 art. 2(a))

Pt 3 s. 95(2)-(2)(b), (4)-(4)(b), (6): April 6, 2006 in relation to England; June 16, 2006 in relation to Wales (SI 2006/1060 art. 2(1)(c); SI 2006/1535 art. 2(a))

ExtentPt 3 s. 95(1)-(9): England, Wales

 Law In Force**96 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 [the appropriate tribunal]¹ 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 [relevant award or awards of universal credit or the]² 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—
- (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 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,

] ²

(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 the whole or any part or parts of the house.] ²

(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—

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

(ii) housing benefit paid in connection with occupation of the whole or any part or parts of the house.] ²

(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 [universal credit or]² 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—

(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;

] ²

(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]² housing benefit,

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

Notes

¹ Words substituted by Transfer of Tribunal Functions Order 2013/1036 Sch.1(1) para.158 (July 1, 2013; substitution has effect subject to transitional provisions and savings specified in SI 2013/1036 art.6(3) and Sch.3)

² Amended by Universal Credit (Consequential Provisions) (Childcare, Housing and Transport) (Wales) Regulations 2013/1788 Pt 1 reg.3(4) (July 17, 2013)

Commencement

Pt 3 s. 96(1)-(11)(b): July 6, 2006 June 16, 2006 in relation to Wales; July 6, 2006 in relation to England (SI 2006/1060 art. 2(2)(a); SI 2006/1535 art. 2(a))

Extent

Pt 3 s. 96(1)-(11)(b): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
Wales | England

Law In Force

Wales

97 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—
 - (i) one or more relevant awards of universal credit (as defined in section 96(6A)) were paid (whether or not to the appropriate person); or
 - (ii) 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,
]¹

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority [the amount mentioned in subsection (2A)]¹.

This is subject to subsections (3), (4) and (8).

[(2A) The amount referred to in subsection (2) is—

- (a) an amount equal to—
 - (i) where one relevant award of universal credit was paid as mentioned in subsection (2)(b)(i), the amount included in the calculation of that award 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, or the amount of the award if less; or
 - (ii) if more than one such award was paid as mentioned in subsection (2)(b)(i), the sum of the amounts included in the calculation of those awards as referred to in sub-paragraph (i), or the sum of the amounts of those awards if less, or
- (b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii),

(as the case may be).

] ¹

(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 [amount

mentioned in subsection (2A)]¹, 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 [relevant awards of universal credit or]¹ 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 [relevant awards of universal credit,]¹ housing benefit or periodical payments payable by occupiers;
- (b) [in relation to an application by an occupier, periodical payments payable by the occupier, less—
 - (i) where one or more relevant awards of universal credit were payable during the period in question, the amount mentioned in subsection (2A)(a) in respect of the award or awards that related to the occupation of the part of the HMO occupied by him during that period; or
 - (ii) any amount of housing benefit payable in respect of the occupation of the part of the HMO occupied by him during the period in question.]¹

(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 [universal credit or]¹ housing benefit recovered by them, and
- (b) is, until recovered by them, a legal charge on the house which is a local land charge.