



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

**Case Reference** : **LON/00BB/HMA/2015/0003**

**Property** : **57 Fowler Road, London E7 0AU**

**Applicant** : **London Borough of Newham**

**Respondent** : **Afia Ajubi Anokye**

**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**

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**DECISION**

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**Decisions of the tribunal**

The tribunal makes a Rent Repayment Order against the Respondent in the sum of £10,491.11.

**The application**

1. The applicant seeks a rent repayment order pursuant to sections 96 and 97 of the Housing Act 2004.
2. The Respondent is the long leaseholder of the property at 57 Fowler Road, London E7 0AU (“the Property”), and has been since 12 November 2007. On 22 November 2007 the Respondent granted Mrs Butt an assured shorthold tenancy of the Property at a weekly rent of £250. A copy of the tenancy agreement was produced in evidence, the terms of which make the tenant responsible to pay utilities, water charges and Council Tax.

3. On 1 January 2013 the Applicant designated the area of Newham, within which the property is situated, as being an area of selective licensing.

#### *The Notice of Intended Proceedings*

4. On 19 May 2014 the Applicant served the Respondent with a notice of intended proceedings under section 96(7), the contents of which the tribunal finds complied with the statutory requirements therein set out. The notice was served by Linda Brown on the Respondent by hand at the Property and at 75 Grosvenor Road, Forest Gate, London E7 8HZ. This was the address provided for the Respondent to Housing Benefit and to which the her payment notifications were sent. It is also the address given for the Respondent on the Notice Requiring Possession served on the tenant dated 24 June 2014. The tribunal is satisfied that the notice of intended proceedings has been properly served on the Respondent.
5. No representations were received by the Respondent within the period ending 20 June 2014 specified in the notice (which was more than the minimum statutory requirement of 28 days). The Applicant treated the Notice Seeking Possession served on the tenant and received 30 June 2014 as representations in relation to the Notice, even though out of time, and having considered them issued a letter dated 17 July 2014 notifying the Respondent that its decision to seek a Rent Repayment Order was unchanged.

#### *Offence under s.95(1)*

6. The local authority confirmed (contrary to an assertion in the witness statement of Linda Brown dated 18 July 2014) that there had been no prosecution brought against the Respondent for an offence under s.95(1) of the Act. The hearing bundle contained evidence that the only prosecutions brought by the local authority had been in respect of offences under Part 1 of the Act. The tribunal must therefore be satisfied that the Respondent, with the period of 12 months prior to the date of the notice of intended proceedings, committed an offence under s.95(1), in that “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”.
7. The tribunal is satisfied that the Respondent is “the appropriate person” pursuant to the definition in section 96(1) in relation to the housing benefit payments in that she was entitled to receive those payments on her own account as the landlord.
8. Furthermore, the tribunal is satisfied that the Property is required to be licensed under this part. 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 licensing. The designation applies to any house which is let or occupied under a tenancy or licence within the area prescribed, subject to a number of statutory exceptions which are not applicable in the present case.

9. 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 Linda Brown, Private Sector Housing Officer, that there was no licence and no application had been received at any time. There was no evidence to establish any the statutory defence in subsections 95(3) and (4). Accordingly, the tribunal is satisfied that the Respondent has committed an offence under s.95(1) within the period of 12 months prior to the date of the notice of intended proceedings.

*Has Housing Benefit been paid during a period in which an offence has been committed?*

10. The next question for the consideration of the tribunal, therefore, is whether housing benefit been paid during that same period. 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 Respondent's records of the payment of Housing Benefit that Housing Benefit was paid between 23 May 2013 and 18 May 2014 for the tenant Ms Shabina Butt. The housing benefit paid for this period totalled £11,871.11 and this was the sum in respect of which the application for a RRO was made.
11. Mr Gallagher clarified in evidence at the hearing that he had latterly conducted a check against the Housing Benefit record and identified, as set out in his supplementary witness statement dated 10 June 2015, that owing to information from the tenant on 13 November 2014 that she had been abroad since 6 April 2014, Housing Benefit was terminated with effect from 6 April 2014 and an overpayment of housing benefit was created, recovery of which would be sought from the tenant. Accordingly, explained Mr Gallagher, the housing benefit paid from 23 May 2013 to 5 April 2014 totalled £10,491.11, and that a RRO was sought in respect of this figure. A spreadsheet was attached to his supplementary 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 £10,491.11 was paid in respect of a period of no more than 12 months from the date of the notice.
12. Accordingly, the tribunal is satisfied as to all of the matters in Section 96(6) of the Act, and has jurisdiction to make a RRO, and determines that it is appropriate to make such an order. However, there is no

presumption as to full recovery of the amount of Housing Benefit paid. The tribunal must consider all the circumstances of the case.

*Is the sum of £10,491.11 reasonable in all the circumstances*

13. The tribunal has referred to decisions of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC) and *Fallon v Wilson* [2014] UKUT 0300 (LC). Pursuant to the tribunal's directions, the Respondent had until 11 May 2015 to file any evidence in response to the application. The Respondent has, however, failed to file any evidence at all. The tribunal would have taken into consideration proven expenditure to identify the landlord's profit from renting, such as insurance, mortgage, agency fees etc. However, the tribunal does not consider it appropriate in the absence of any evidence that such expenses are being paid, or as to their amount that it should engage in conjecture on the matter. Furthermore, the tribunal has no information as to the Respondent's financial circumstances, her reasons for not applying for a licence, or any other mitigation.
14. The tribunal observes that the Respondent furthermore failed to engage with the local authority in respect of action taken under Part 1 of the Act concerning housing conditions. As a result, the local authority prosecuted her, obtained a conviction, and carried out works in default.
15. In *Fallon* the Upper Tribunal considered public policy (in the case of applications by tenants for a RRO) to be a relevant consideration. This not being a case in which there has been a conviction for an offence under s.95(1), Section 97(5) of the Act requires the tribunal to consider what is a reasonable amount in the circumstances. In the absence of evidence from the tenant, and having regard to the public policy that a landlord should not receive any of the proceeds of housing benefit when she has failed to obtain a licence, the tribunal finds it is reasonable in the circumstances that the amount in respect of which the RRO should be made is the full amount of Housing Benefit paid.

**Name:** F. Dickie

**Date:** 3 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).

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**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

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*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.

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**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

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*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 ]<sup>1</sup>.

(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 ]<sup>2</sup>) 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).

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#### Notes

<sup>1</sup> 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))

<sup>2</sup> 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)(e); SI 2006/1535 art. 2(a))

**Extent**

Pt 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 ]<sup>1</sup> 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 ]<sup>2</sup> 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,

] <sup>2</sup>

(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.] <sup>2</sup>

(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.] <sup>2</sup>

(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 ]<sup>2</sup> 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;

]<sup>2</sup>

(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 ]<sup>2</sup> housing benefit,

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

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#### Notes

<sup>1</sup> 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)

<sup>2</sup> 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

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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,

] <sup>1</sup>

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

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).

] <sup>1</sup>

(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)]<sup>1</sup>, 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 ]<sup>1</sup> 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, ]<sup>1</sup> 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.]<sup>1</sup>

(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 ]<sup>1</sup> housing benefit recovered by them, and
- (b) is, until recovered by them, a legal charge on the house which is a local land charge.