



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

Case Reference : **LON/00BB/HMA/2015/0005**

Property : **216 Shrewsbury Road, London E7
8QJ**

Applicant : **London Borough of Newham**

Representative : **Mr J Sandham, Counsel**

Respondent : **Ms N Imitiaz**

Representative : **Mr K Chudhry, friend**

Also present : **Mr P Gallagher (Applicant's
Housing Benefit Service) and Ms M
Srokowska (Applicant's Property
Licensing Enforcement Team)**

Type of Application : **Application for Rent Repayment
Order under section 96(5) of the
Housing Act 2004**

Tribunal Members : **Judge P Korn
Mr S Mason FRICS, FCI Arb**

**Date and venue of
Hearing** : **9th September 2015 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **28th September 2015**

DECISION

Decision of the tribunal

The tribunal orders the Respondent to repay to the Applicant the sum of £11,453.75.

The application

1. The Applicant has applied to the tribunal, pursuant to paragraph 96(5) of the Housing Act 2004 (“**the 2004 Act**”), for a rent repayment order against the Respondent.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Counsel. The Respondent was present at the hearing and was represented by a friend.

The background

4. The Applicant, believing the Respondent to be operating the Property as a privately rented property without having obtained the requisite licence, sent a warning letter to the Respondent on 26th September 2013.
5. On 20th December 2013 the Property was visited by one of the Applicant’s private sector housing officers, who was told by the tenant, Ms Nawaz, that she was living at the Property with her family and was in receipt of housing benefit. The officer concerned took a photocopy of her tenancy agreement.
6. On 20th January 2014 the Applicant served a notice of intended prosecution on the Respondent. The notice specified a 14 day period for accepting a ‘simple caution’ admitting the offence of failing to licence the Property under section 95 of the 2004 Act, applying for a licence and paying the licence fee. By the expiry of the 14 day period the Respondent had not applied for a licence nor accepted a caution.
7. The Respondent later applied for a licence, the application being dated 8th July 2014. On 10th July 2014 the Respondent pleaded guilty in the Magistrates’ Court to the offence of being a person having control of or managing a house which is required to be licensed under the relevant part of the 2004 Act but which is not so licensed.

8. On 23rd July 2014 the Applicant served a notice of intended proceedings on the Respondent stating that the Applicant intended to apply for a rent repayment order.
9. The Applicant seeks to recover from the Respondent the sum of £11,453.75 which it states represents the amount of housing benefit paid for the period 24th July 2013 to 7th July 2014.

The Applicant's case

10. In written submissions, the Applicant states that on 21st June 2012 it approved a decision to designate most of its borough as selective and additional licensing areas and that, following this decision, it embarked on a media campaign to notify the public of this. The hearing bundle includes copies of relevant advertisements and notices, as well as details of information published on the Applicant's website.
11. The Applicant's evidence, on the basis of the copy maps in the hearing bundle showing the selective and additional licensing designation boundaries, is that the Property is within the boundaries of the newly designated selective/additional licensing areas.
12. In his written witness statement, Mr Gallagher states that on 5th October 2008 Newham Benefit Service received an application for housing benefit from the occupier of the Property, Ms Nawaz, and that the claim was processed and Ms Nawaz started to receive housing benefit payments on 27th January 2008 (presumably retrospectively). Her housing benefit award was based on a rental liability understood to be £1,100.00 per month with effect from 27th January 2008, the Applicant having been provided with a copy of her tenancy agreement.
13. The total amount of housing benefit paid between 24th July 2013 and 7th July 2014 was £11,453.75. Housing benefit records show the payments being made into Ms Nawaz's account.
14. As regards the ownership of the Property, copy office copy entries in the hearing bundle show the Respondent as the freehold owner as at 18th September 2013. The copy tenancy agreement in the hearing bundle is between the Respondent and Ms Nawaz.
15. At the hearing Mr Sandham took the tribunal through a chronology of events. In his submission, subject to the provisions of sub-sections 97(3), 97(4) and 97(8) of the 2004 Act the Applicant was entitled to a mandatory rent repayment order because the Respondent had been convicted of the offence of failing to license the Property and housing benefit had been paid in connection with the occupation of the Property for the period of the claim.

16. As regards sub-section 97(3), Mr Sandham said that total of the amounts received by the Respondent was not less than the total amount of housing benefit paid.
17. As regards sub-section 97(8), the claim did not fall outside the relevant period of 12 months, namely the period of 12 months ending with the date of the notice of intended proceedings. The notice was dated 23rd July 2014 and the claim is for a period commencing on 24th July 2013, and therefore the claim is wholly within that 12 month period.
18. As regards sub-section 97(4), Mr Sandham noted that this provides that a rent repayment order made in accordance with sub-section 97(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”.
19. In his submission, there was no evidence of exceptional circumstances in this case to warrant a reduction of the amount to be paid under sub-section 97(4). Mr Sandham referred the tribunal to a statement in the Encyclopedia of Housing Law and Practice (Volume 2) that whilst “exceptional circumstances” are not defined it is likely that the tribunal will take a restrictive approach to what may be considered exceptional. The Encyclopedia also notes the Court of Appeal decision in *North Bridge Housing Association Ltd v Matthews (2004) EWCA Civ 1736* which related to the different context of the power of a court to adjourn possession proceedings to allow the tenants more time to pay the rent arrears. That power could only be exercised in “exceptional circumstances”, and the example of an exceptional circumstance given by the Court of Appeal in that case was a situation in which the tenant is on his way to court carrying all of the arrears of rent in cash with a view to paying these off in full but is then robbed on his way to court. In Mr Sandham’s submission, this showed how narrowly the defence of exceptional circumstances should be construed.
20. In any event, in Mr Sandham’s submission, there was no proof of exceptional financial hardship or other relevant factors before the tribunal. The Respondent was now claiming at the hearing (see below) that her financial circumstances were difficult but there was no independent proof of this. On the contrary, Mr Sandham noted that as at 18th September 2013 the Property was mortgage-free and therefore she had the benefit of the whole of the equity in the Property.
21. In addition, the Respondent had done nothing to help herself. She had failed to respond to both the warning letter and the notice of intended prosecution. She had also failed to comply with the tribunal’s directions in that she had neither filed a statement of case nor filed a reply to the Applicant’s written submissions.

The Respondent's case

22. In response to the Applicant's written and oral submissions, Mr Chudhry for the Respondent said that not all of the relevant letters from the Applicant had reached the Respondent, but nevertheless the Respondent accepted that she had received letters and notices warning her that the Property was unlicensed and needed to be licensed. It was also accepted that there had been a lack of response on her part to the Applicant and that she had failed to submit a written case as required by the tribunal's directions.
23. Mr Chudhry said that the Respondent had been suffering from depression and other problems, and she did not know much about the relevant legislation and was unaware that housing benefit was being claimed. He also said that at the hearing at the Magistrates' Court the Respondent had understood the judge (presumably meaning the Chair of the Magistrates) to have told her that there would be no further action, and she had therefore not anticipated that there would be an application for a rent repayment order.
24. Mr Chudhry said that it was not practical for the Respondent to repay the £11,453.75 sought by the Applicant, and it would cause her much stress to have to do so. In addition, she was not a professional landlady and had already paid a fine in the Magistrates' Court. She had, he said, just made an innocent mistake. As regards the Applicant's submission that the Property was mortgage-free, Mr Chudhry referred the tribunal to the Respondent's application for a licence in which she stated that the Property was subject to a mortgage in favour of Mortgage Works.
25. None of the Applicant's evidence was being challenged by the Respondent, save for its conclusions as to whether exceptional circumstances existed to justify dispensing with the requirement for the Respondent to make a repayment or reducing the amount payable.

The tribunal's analysis

26. The tribunal notes both parties' oral evidence and the Applicant's written submissions. It has also considered the copy documents provided.
27. On the basis of the Applicant's evidence, which has not been contested by the Respondent, we are satisfied that the Property required a licence during the whole of the period in respect of which the Applicant is claiming rent repayment, namely 24th July 2013 to 7th July 2014. We are also satisfied that the Applicant took sufficient steps to advertise the area in which the Property is situated as a selective and additional area.

28. We are also satisfied on the basis of the evidence – in particular the conviction in the Magistrates’ Court – that the Respondent committed an offence under section 95(1) of the 2004 Act by failing to license (or procure the licensing of) the Property.
29. Under sub-section 96(6)(b) of the 2004 Act, to the extent that a rent repayment order can be made at all it is confined to the period during which it appears to the tribunal that an offence was being committed under section 95(1). The licence was applied for on 8th July 2014 and therefore the date on which the offence ceased to be committed was 8th July 2014.
30. Under paragraph (a) of sub-section 97(8), a rent repayment order may not require the payment of an amount which is in respect of any time falling outside the period of 12 months ending with the date of the notice of intended proceedings. The notice of proceedings is dated 23rd July 2014 and therefore the earliest date from which the tribunal could order repayment (subject to any other considerations) is 24th July 2013.
31. Therefore, subject to any other considerations, the period in respect of which it would be possible to make a rent repayment order is 24th July 2013 to 7th July 2014, as submitted by the Applicant. It is also accepted that the amount of housing benefit paid in respect of this period was £11,453.75.
32. We are satisfied that the Respondent was “the appropriate person” as defined in section 96(10), as the evidence indicates that she was the owner of the Property and Ms Nawaz’s landlady and was therefore the person who at the time of the payment was entitled to receive on her own account periodical payments payable in connection with Ms Nawaz’s occupation.
33. We are also satisfied on the basis of the evidence that the requirements of section 96(7) have been complied with.
34. As noted by Mr Sandham, the Respondent has been convicted of the offence of failing to license the Property, and housing benefit has been paid in connection with the occupation of the Property for the period of the claim. Therefore, under sub-section 97(2) the tribunal must make a rent repayment order subject only to the provisions of sub-sections 97(3), 97(4) and 97(8).
35. As regards sub-section 97(3), we accept on the basis of the evidence that total of the amounts received by the Respondent was not less than the total amount of housing benefit paid.
36. Sub-section 97(8) has already been dealt with above.

37. As regards sub-section 97(4), the Respondent has argued that the tribunal either should not order any sums to be repaid or should at least reduce the amount repayable on the basis that – by reason of exceptional circumstances – it would be unreasonable for her to be required to pay. However, first of all, as regards the Respondent’s own conduct, she was given ample opportunity to apply for a licence but failed to do until several months after the Applicant served a notice of intended prosecution on her specifying a 14 day period for accepting a ‘simple caution’ and applying for a licence and paying the licence fee. She then later failed to comply with the tribunal’s clear directions. Whilst it is possible that the Respondent was ill at various points, she has failed to provide a medical certificate or other evidence of this, and in any event the tribunal has no credible basis for concluding that she was simply unable to respond to the Applicant or to the tribunal at all relevant times.
38. As regards the Respondent’s alleged ignorance of the legislation, this might serve as an explanation for her initial failure to license the Property, but it does not explain her failure to respond to clearly worded warning letters and notices from the Applicant, or indeed to clear directions from the tribunal.
39. Mr Chudhry has stated or implied that the Respondent’s financial circumstances are very difficult, but the Respondent has provided no objective evidence to support this contention. As regards the existence or otherwise of a mortgage, the fact that a mortgage is referred to in the licence application is not itself objective evidence of its existence, and we note that there was no mortgage registered against the Property as recently as September 2013. Therefore it is at least possible that the Property is mortgage-free (and therefore that the Respondent has the benefit of all the equity in the Property) or that – if there now is a mortgage – that mortgage was taken out at a later stage in order to help to finance some other project. In any event, the mere existence of a mortgage is not evidence of limited means.
40. Even if it were proven that the Respondent’s means are limited, this would not in our view be sufficient by itself to demonstrate the existence of exceptional circumstances. It should be noted that whilst Parliament chose to refer to the “financial circumstances of the appropriate person” in sub-section 97(6), which is not relevant here, it chose not to do so in sub-section 97(4). For this reason, coupled with the plain meaning of the words, the phrase “exceptional circumstances” in our view denotes a more extreme situation than mere limited financial means, serious though that is for a person in that position.
41. The phrase “exceptional circumstances,” is not defined in the legislation. Mr Sandham has referred us to the case of *North Bridge Housing Association Ltd v Matthews*. It is not a rent repayment case and therefore its relevance is accordingly limited. However, it is a

Court of Appeal decision and no other cases have been cited, and it does at least confirm the obvious point that an “exceptional” circumstance is one which is very unusual. In our view, the phrase is not defined because it has to be left to individual judges’ discretion to recognise exceptional circumstances when they see them.

42. For the reasons referred to in paragraphs 37 to 41 above and in exercise of our discretion, we do not accept that the circumstances of this case are exceptional, nor do we accept that the Respondent has offered sufficient evidence to demonstrate that it would be particularly unfair to require her to repay the sums sought by the Applicant.
43. Accordingly we are satisfied that a rent repayment order should be made and that there are no circumstances which warrant our reducing the amount which would otherwise be payable.

Cost applications

44. No cost applications were made.

Name: Judge P. Korn

Date: 28th September 2015

Appendix of relevant legislation

Housing Act 2004 (as amended)

Section 95

- (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.

.....

Section 96

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

.....

(10) In this section –

“the appropriate person” in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with the 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

.....

Section 97

(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 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 in relation to the house,

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

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

(2A) The amount referred to in subsection (2) is (a) ..., 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).

- (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 of mentioned in subsection (2A), 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 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, housing benefit or periodical payments payable by occupiers;

.....

(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);

.....

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