



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

**Case Reference** : **LON/00AB/HMA/2015/0013**

**Property** : **113 Collins House, Whiting Avenue,  
Barking IG11 8JT**

**Applicant** : **London Borough of Barking and  
Dagenham**

**Representative** : **Ms Edna Griffith (Compliance  
Officer)**

**Respondent** : **Mr Emmanuel Omotayo Akilla**

**Representative** : **In person**

**Type of Application** : **For a Rent Repayment Order –  
Section 96(5) of the Housing Act  
2004**

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Neil Martindale FRICS (Valuer  
Member)**

**Date and venue of  
Hearing** : **25 November 2015  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **31 December 2015**

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**DECISION**

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## **Decision of the tribunal**

**The tribunal orders the Respondent to pay to the Applicant the sum of £5,010.69 in relation to housing benefit ('HB') paid in connection with the occupation of 113 Collins House, Whiting Avenue, Barking IG11 8JT ('the Property') during the period 01 September 2014 to 13 July 2015.**

## **The application**

1. By an application dated 19 August 2015, the Applicant sought a Rent Repayment Order ('RRO') under section 96(5) of the Housing Act 2004 ('the 2004 Act'). The application relates to HB paid for the Property during the period 01 September 2014 to 13 July 2014. The total sum claimed was £5,754.78.
2. Directions were issued on 04 September 2015. The Respondent failed to file and serve a bundle of documents in accordance with paragraphs 7 and 8 of the directions and did not give any reasons for opposing the application. The Applicant filed and served its bundle of documents in accordance with paragraphs 9 and 10 of the directions.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. The application was heard on 26 November 2015. The Applicant was represented by Ms Griffiths, who is employed as a compliance officer. The Respondent appeared in person.
5. The only documents before the tribunal were those contained in the Applicant's bundle, which included copies of the application, directions, a statement of case, a certificate of conviction, witness statements and various other relevant documents.

## **The background**

6. The Respondent is one of the joint registered proprietors of the Property, which is a two-bedroom maisonette that is held on a long lease. The other joint registered proprietor is Ariola Akilla.
7. The Applicant designated an area of its district as subject to selective licensing on 01 September 2014, pursuant to section 80 of the 2004 Act. The designation applies to all privately rented property that is not

a licensable house in multiple occupation ('HMO'), and is occupied under a tenancy or licence or is subject to any statutory exemption.

8. The Property is sublet to Miss Musu Sanyang. The most recent tenancy agreement was dated 01 January 2011 and was for a fixed term expiring on 30 June 2011.
9. Neither party requested an inspection of the Property. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

### **The issues**

10. The directions identified that the issues to be considered would include:
  - a) Was the Property in an area of selective licensing?
  - b) Was the property occupied under a tenancy?
  - c) Was the Respondent convicted of an offence (failure to licence)?
  - d) Has the Respondent applied for a licence? If so, when?
  - e) Had HB been paid when an offence was committed? If so, how much, for what period and to whom?
  - f) Are there any exceptional circumstances so that it would be unreasonable for the tribunal to order the Respondent to repay all or some of the HB?

The tribunal identified the following additional issue to be determined:

- g) Had the notice of intended proceedings been served correctly?
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the determination set out below.

### **Findings**

#### **Was the Property in an area of selective licensing?**

12. The hearing bundle included copies of the designation under section 80 of the 2004 Act and the statutory notice published by the Applicant. The Property falls within the designated area for selective licensing and is not a licensable HMO. This was not challenged by the Respondent.

13. The tribunal is satisfied that the Property has been in an area of selective licensing since 01 September 2014 and that a licence has been required since that date.

**Was the property occupied under a tenancy?**

14. The Applicant's bundle contained a short statement from Ms Sanyang, dated 23 July 2015, in which she stated that she moved into the Property in April 2008 and occupied it with her two children, under a "rolling tenancy". There are no other tenants. Ms Sanyang also stated that she pays her rent to the Respondent in cash. This is partly paid by HB of approximately £450 per calendar month.
15. The bundle also included a copy of the tenancy agreement dated 01 June 2011, which named the Respondent as the landlord and Ms Sanyang as the tenant. The agreement does not refer to Ariola Akilla. The address given for the Respondent, under section 48 of the Landlord and Tenant Act 1987, was 5-7 Wells Terrace, London N4 3JU. The rent was stated to be £832 per calendar month. At the hearing, the Respondent stated that the current rent was £736 per calendar month and that the rent is up to date. He also stated that the original tenant, when he first sublet the Property, was Ms Sanyang's partner.
16. The tribunal is satisfied that the Property is currently occupied by Ms Sanyang under a tenancy. Since the expiry of the fixed term on 30 June 2011, she has occupied the Property as a statutory periodic tenant.

**Was the Respondent convicted of an offence (failure to licence)?**

17. The Applicant's bundle contained a memorandum of conviction from North East London Magistrates Court, establishing that the Respondent was convicted of an offence under section 95(1) of the 2004 Act on 10 July 2015. He was fined £1,000 and ordered to pay a victim surcharge of £100 and costs of £445.
18. At the hearing, the Respondent stated that he did not receive notification of the hearing in the Magistrates Court on 10 July 2015. The memorandum stated that the case was "*Proved in Absence*".
19. The Magistrates Court proceedings were served at 5-7 Wells Terrace, London N4 3JU, being the address given for the Respondent in the tenancy agreement. At the hearing, the Respondent stated that he had never lived at this address. He had drafted the tenancy agreement, using another agreement as a template. It may be that he had incorrectly used the address given in the template.
20. The memorandum establishes that Respondent was convicted of an offence under section 95(1) on 10 July 2015. The fact that he was

convicted in his absence, or the reasons for that absence, are immaterial. The conviction stands and has not been set aside.

**Has the Respondent applied for a licence? If so, when?**

21. At the hearing, the Respondent confirmed that he has not applied for a licence for the Property. He explained that he was not in a position to pay the licence fee of £500. Ms Griffiths informed the tribunal that she had met with the Respondent on 17 August 2015, when he acknowledged that the Property was unlicensed. He had also stated that he would apply for a licence when he was financially able to do so. At the meeting, Ms Griffiths suggested that the Respondent apply for a temporary exemption notice to give him additional time to raise the funds but no such application has been made.

**Had HB been paid when an offence was committed? If so, how much, for what period and to whom?**

22. A summary of HB payments made to Ms Sanyang for the period 01 September 2014 to 13 July 2015 was attached to the notice of intended proceedings dated 16 July 2015. Copies of the summary and notice were included in the Applicant's bundle. The summary showed that HB of £119.26 was paid for the week ended 08 September 2014. Thereafter, benefit was paid at £238.52 every two weeks until 23 March 2015. For the next 14 weeks the payments fluctuated, with the highest payment being £240.11 for the two weeks ended 06 April 2015 and the lowest being £212.38 for the two weeks ended 04 May 2015. The final two payments listed in the summary were very different (£171.54 for the week from 29 June to 10 July 2015 and £572.55 for period 20 April to 13 July 2015).
23. The Applicant's bundle also included a detailed schedule, listing the HB payments to Ms Sanyang. The schedule showed that all payments were made by BACS. It reconciled with the summary, save that it omitted the final two payments. Ms Griffiths was unable to explain this omission, as she not deal with HB payments.
24. The Respondent was unable to comment on the HB payments made to Ms Sanyang. He had only just discovered that she was receiving HB.
25. The tribunal is satisfied that Ms Sanyang received HB for her occupation of the Property throughout the period 01 September 2014 to 13 July 2015. Further the tribunal is satisfied that she used the HB to partly fund her rent payments to the Respondent. It follows that the HB was ultimately paid to the Respondent. The tribunal is also satisfied that the Respondent is "*the appropriate person*" for the purposes of section 96(1) of the 2004 Act.

26. The tribunal accepts the HB payments listed in the Applicant's summary, for the period up to 29 June 2015. However it does not accept the final two payments, as these do not appear in the detailed schedule and there was no explanation for their omission. It follows that the tribunal is satisfied that HB payments totalling £5,010.69 were paid to Ms Sanyang and then onto the Respondent, during the period 01 September 2014 to 13 July 2015. This figure represents the total sum claimed in the summary (£5,754.78) less the final two payments (£171.54 and £572.55).

**Are there any exceptional circumstances so that it would be unreasonable for the tribunal to order the Respondent to repay all or some of the HB?**

27. At the hearing, the Respondent suggested there were exceptional circumstances. He was previously diagnosed with clinical depression and also suffered a blood clot on his right leg. These health problems have now subsided.
28. The Respondent lost his job in 2011 and is currently unemployed. His health issues have prevented him from working until recently. He has no income or savings, does not receive any state benefits and is financially supported by family and friends. His lack of funds means that he cannot afford the £500 licence fee and has no means of satisfying any RRO.
29. The Respondent is currently staying with a friend at 50 Thackeray Avenue, Tilbury, Essex RM18 8HU. He wants to move back into the Property but Ms Sanyang refuses to move out. He cannot afford to consult solicitors, regarding the appropriate action to recover possession.
30. At the hearing, the Respondent stated that his mortgage repayments are more than the rent he receives from Ms Sanyang. As a result he has fallen into arrears. The Respondent showed a recent mortgage statement to Ms Griffiths and the tribunal. This indicates that the current balance outstanding is approximately £62,000. However it did not clearly show the level of the mortgage repayments.
31. Ms Griffiths explained that the Applicant has sympathy for the Respondent but has been very patient. She and her colleagues have spelt out the need for a licence on several occasions. Over 12 months have elapsed since licensing was introduced and there has been no application for a license or even a temporary exemption notice. The Applicant's position is that there are no exceptional circumstances that would affect the making of an RRO. If an RRO is made, it will not require payment as a lump sum. Rather it would look to agree affordable instalments.

32. Section 97(4) of the 2004 Act provides that an RRO “*..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*”.
33. The tribunal accepts that the Respondent has suffered health problems in the past and is currently in financial difficulties. It has considerable sympathy for his predicament. However it is not satisfied that his financial difficulties amount to “*exceptional circumstances*” that render it unreasonable for the Respondent to repay the HB. Although he has no income at present, his financial circumstances may improve now that his health has improved. Further there should be substantial equity in the Property, given that the balance due on the mortgage is relatively modest. It may be that any RRO can be secured against the Property.

### **Had the notice of intended proceedings been served correctly?**

34. Section 96(7) of the 2004 Act requires a local authority to serve a notice of intended proceedings on the appropriate person prior to applying for an RRO. There are various requirements for the notice, including an invitation to make representations “*..within a period specified in the notice of not less than 28 days*” (s96(7)(a)(iv)).
35. A copy of the notice was included in the Applicant’s bundle. This was addressed to the Respondent at 5-7 Wells Terrace and was dated 16 July 2015. Paragraph 3 of the notice reads:

*“You may make written representations to the London Borough of Barking & Dagenham no later than 14<sup>th</sup> August 2015 that is no less than 28 days from the date of service of this notice of its intention to apply for a Rent Repayment Order. The written representations should be sent to the Council. The Council will consider and respond to any representations received before any application is made to the Residential Property Tribunal.”*

36. At the hearing, the tribunal queried how the notice was served. It pointed out that if service was by first class post then the deemed date of service was 18 July 2015 (two days after posting), which was less than 28 days before the deadline for written representations. Ms Griffiths stated that the notice was delivered to 5-7 Wells Terrace, by hand, on 16 July 2015 and a copy was also sent to this address by first class post. The Respondent confirmed that he had received the notice but was unable to say when it was delivered. Following delivery, he contacted the Applicant and fixed up the meeting with Ms Griffiths that took place on 17 August 2014. The Respondent also stated that he did not challenge the procedure followed by the Applicant.

37. The tribunal accepts that the notice was hand delivered to 5-7 Wells Terrace on 16 July 2015. This was more than 28 days before the deadline for written representations. The tribunal also accepts that the Applicant was entitled to serve at 5-7 Wells Terrace, as this was the address given for service of notices in the most recent tenancy agreement. The Applicant was entitled to rely on this information, even if it had been included in the agreement in error.
38. The tribunal is satisfied that the notice of intended proceedings was served correctly.

### **The tribunal's decision**

39. Based on the findings set out above, the tribunal is satisfied that an RRO should be made. Having regard to paragraph 26 of this decision, the appropriate amount of the RRO is £5,010.69 (five thousand and ten pounds and sixty nine pence).

### **The next steps**

40. At the hearing, Ms Griffiths stated that the Applicant would look to agree instalment payments for any RRO. The tribunal suggests that the Respondent now contacts Ms Griffiths, with a view to agreeing an affordable payment plan. The Respondent may also wish to contact Citizens Advice or other voluntary advice organisations, to seek advice on his financial circumstances and the appropriate method of recovering possession of the Property.

**Name:** Tribunal Judge Donegan **Date:** 31 December 2015



## **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix of relevant legislation**

### **Housing Act 2004 (as amended)**

#### **Section 80**

- (1) A local housing authority may designate either -
- (a) the area of their district, or
  - (b) an area in their district,
- as subject to selective licensing, if the requirements of subsections (2) and (9) are met.
- .....

#### **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.
- .....
- (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 ...
- (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) ...

#### **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 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 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.

.....

(10) In this section –

“the appropriate person” in relation to any payment of 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 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 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;

.....

(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.