



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

**Case Reference** : **LON/00BB/HMA/2015/0014**

**Property** : **2 New Barn Street, London E13 8JA**

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

**Respondent** : **Ms Luthfa Kazol**

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

**Tribunal Members** : **Judge Dickie  
Mr H Geddes, RIBA**

**Date and venue of Hearing** : **25 February 2016, 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **29 February 2016**

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**DECISION**

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**Decision of the tribunal**

The tribunal makes a Rent Repayment Order against the Respondent in the sum of £13,800.10.

**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 2 New Barn Street, London E13 8JA (“the Property”), and has been since March 2005.

2. The Applicant was represented by Mr Granby of counsel. The Respondent attended the hearing in person, having submitted a written witness statement. The tribunal considered this and the documents in the Applicant's hearing bundle in reaching its decision.

*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 31 July 2013 the Respondent granted to a Mr Qudratullah Akbari an assured shorthold tenancy of the Property at a monthly rent of £1200 from 1 August 2013 for a term of six months. The tenancy was signed by a Sam Miah (agent) on the Respondent's behalf. A copy of the tenancy agreement was produced in evidence.
5. On 4 August 2014 the Applicant received notification from Mr Qudratullah that his rent had increased to £1450 per month. He produced a copy of a tenancy agreement to the Respondent, signed for the landlord but which did not name the tenant and was not signed by the tenant, granting a further six month tenancy from 1 April 2014 at that rent.

*Respondent convicted of an offence of failure to licence*

6. The Applicant produced evidence sufficient to satisfy the tribunal that the Respondent had been convicted on 24 April 2015 (upon her plea of guilty) of an offence under s.95(1) of the Act, in that she 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. The tribunal observes a typographical error in the certificate of conviction citing the wrong subsection of s.95, but an offence under s.95(1) is clearly described. She was given a conditional discharge for a period of two years and ordered to pay a victim surcharge of £15.

*Notice of Intended Proceedings*

7. The tribunal was provided 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 28 October 2014 and it was served by Anthony Quinn, Environmental Health Officer in Newham Council's Property Licensing Enforcement Team, by first class post.
8. The notice was served on the Respondent at 15 Meath Road, Stratford, London E15 3DS, as well as care of Kena Career Ltd, 275 High Street, Stratford London E15 2TF, the address which was recorded for her on the certificate of conviction dated 23 April 2015 and which she confirmed was her residential address.

*No licence in existence*

9. No evidence has been produced by the Respondent as to the existence of a licence, and it is not in dispute that no such licence had been granted or applied for until 3 December 2014. An application for a licence was received by the Applicant on that day and a licence was granted on 5 March 2015.

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

10. The next question for the consideration of the tribunal is whether Housing Benefit was 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 29 October 2013 to 19 October 2014 for the tenant Mr Qudratullah Akbari for his occupation of the Property. The Housing Benefit paid for this period totalled £13,800.10 and this was the sum in respect of which the application for a RRO was made. It was not in dispute that all payments had been made direct to the tenant, except one payment to the Respondent on 29 October 2013, being the first payment in respect of a claim made on 24 September 2013 and paid from 30 September 2013.
11. 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.
12. 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 £13,800.10 was paid in respect of a

period of no more than 12 months before 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.

### *Exceptional Circumstances*

13. The Respondent confirmed that she owns three properties – the subject property, her home at 15 Meath Road and another property situated in Newham which she also rents out. She works part time. She said she earns £700-800 per month on commission in addition to the income she receives from her properties. She did not challenge the Applicant's estimate that she owned equity in these properties valued at over £230,000 in total.
14. The Respondent explained that after the sudden death of her sister in 2011 she had gone for a short visit to Bangladesh to deal with the trauma. She still felt depressed on her return and went back to Bangladesh in about September 2012 where she remained for a year.
15. She said that she instructed a managing agent to manage her two properties, though she subsequently discovered in July or August 2013 that he had not been paying the rent over to her and had not applied for a licence for the Property as she has requested him to do. She returned to the UK in September 2013 and said that in October 2013 her solicitors had written to the Applicant to request a reduction in the fee for the licence or for time to pay. She could not produce a copy of that correspondence, which Mr Quinn said was not on the Property Licensing Team records, but she said a response received from the Council's legal department by email had refused the request. After the hearing, the Applicant found and produced to the tribunal a copy of such a letter from the Respondent's solicitors dated 29 October 2013.
16. Essentially, the Respondent put forward financial pressures that were upon her as explanation for having failed to apply for the licence. Her former tenant having caused damage to the property, she said she had to borrow from a friend and from her brother to pay £6,900 for refurbishment works before the property could be let in September 2013 as well as to pay mortgage arrears (since possession proceedings had been brought against her in respect of all of her properties). She could not therefore miss another mortgage payment, and did not want to sell one of her properties to release cash.
17. The Respondent said that if she had to pay the full amount of the RRO sought she would be in debt again, which puts more pressure on her leading to depression. She said that after a difficult period she was coming to a point at which she could relax. She acknowledged under cross examination that she had been taking a chance that she might be fined for not having a licence. No medical evidence was produced.

18. The tribunal has no difficulty in concluding that there are no exceptional circumstances which would make it unreasonable for a rent repayment order to be made in respect of any of the sum sought. It is clear that throughout the relevant period, which was a year, the Respondent was fully aware of the requirement to obtain a licence, and knew no application had been made. She chose not to make that application though she is an investor landlord. Whilst the Respondent claimed to have had financial pressures, she did not provide documentary evidence in support and her oral evidence was opaque. Even if it were the case that she was under financial pressure, this cannot provide a reasonable excuse for having failed knowingly to comply with the law particularly over such a substantial period and given her apparent resources and income.

*Conclusion*

19. 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 her. With regard to subsection (4), there are no exceptional circumstances.
20. Accordingly, the tribunal must make an order under s.96(5) and s.97(2) in the sum claimed.

**Name:** F. Dickie

**Date:** 29 February 2016