



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

<b>Case Reference</b>	<b>:</b>	<b>LON/00BB/HMA/2017/0002</b>
<b>Property</b>	<b>:</b>	<b>Flat 6A Max House, 1 Canning Road, London E15 3NW</b>
<b>Applicant</b>	<b>:</b>	<b>London Borough of Newham</b>
<b>Representative</b>	<b>:</b>	<b>Mr R Granby, Counsel</b>
<b>Respondent</b>	<b>:</b>	<b>Luxcool Limited</b>
<b>Representative</b>	<b>:</b>	<b>Ms F Hussain, daughter of director of Respondent company</b>
<b>Also present</b>	<b>:</b>	<b>Ms D Davis (Applicant's Property Licensing Enforcement Team) and Ms V Joseph (Housing Benefits)</b>
<b>Type of Application</b>	<b>:</b>	<b>Application for Rent Repayment Order under section 96(5) of the Housing Act 2004</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Judge P Korn Mr H Geddes</b>
<b>Date and venue of Hearing</b>	<b>:</b>	<b>13<sup>th</sup> July 2017 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	<b>:</b>	<b>13<sup>th</sup> July 2017</b>

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**DECISION**

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## **Decision of the tribunal**

The tribunal orders the Respondent to repay to the Applicant the sum of £3,942.84.

## **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 represented by Ms F Hussain, the daughter of one of the directors of the Respondent company, who confirmed at the hearing that she had the Respondent’s authority to address the tribunal.

## **The background**

4. On 21<sup>st</sup> June 2012 the Applicant approved a decision to designate most of the borough (including the Property) as a selective and an additional licensing area, and thereafter it embarked on a media campaign to draw the designation to the attention of landlords.
5. On 10<sup>th</sup> September 2015 the Applicant, believing that the Property was being operated as a privately rented property without the requisite licence, sent a warning letter to Nasim Hussain, the owner of the Property and a director of the Respondent company. A further warning letter was sent to Nasim Hussain on 1<sup>st</sup> October 2015.
6. On 4<sup>th</sup> February 2016 the Property was inspected by two of the Applicant’s employees, one of whom was Ms Davis, who has provided a witness statement. A Ms Kristina Butkute was present at the Property together with her two children. Ms Davis took a photocopy of her tenancy agreement, a copy of which is in the hearing bundle. The tenancy agreement shows Ms Butuke as having been paying a rent of £1,300 per month to the Respondent.
7. On 23<sup>rd</sup> June 2016 Ms Davis received a telephone call from a man stating that he was Nasim Hussain and informing her that he had applied for a temporary exemption from licensing the Property, and Ms Davis states in her witness statement that she is satisfied that an application was made on 2<sup>nd</sup> June 2016.

8. On 5<sup>th</sup> August 2016 the Applicant served a notice of intended proceedings on the Respondent stating that the Applicant intended to apply for a rent repayment order.
9. On 17<sup>th</sup> January 2017 the Respondent was found guilty in the Magistrates' Court of 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 was not so licensed.
10. The Applicant seeks to recover from the Respondent the sum of £3,942.84 which it states represents the amount of housing benefit paid for the period 7<sup>th</sup> December 2015 to 1<sup>st</sup> June 2016.

### **The Applicant's further submissions**

11. In his written witness statement, Mr Patrick Gallagher of the Applicant's Housing Benefit Service states that on 4<sup>th</sup> December 2015 Newham Benefit Service received an application for housing benefit from Mr Alvarez Puzas in respect of the Property and that the claim was processed and housing benefit payments began on 7<sup>th</sup> December 2015. Newham Benefit Service also received a copy of the tenancy agreement for the Property in favour of Ms Kristina Butkute, Mr Puzas's partner.
12. The total amount of housing benefit paid between 7<sup>th</sup> December 2015 and 1<sup>st</sup> June 2016 was £3,942.84. Housing benefit records show the payments being made into Mr Puzas's account.
13. At the hearing Mr Granby briefly took the tribunal through a chronology of events. In his submission, subject to the provisions of sub-sections 97(4) and 97(8) of the 2004 Act the Applicant was entitled to a mandatory rent repayment order because sub-section 97(2) applied, as 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.
14. As regards sub-section 97(8), the claim did not fall outside the period of 12 months referred to in that sub-section, namely the period of 12 months ending with the date of the notice of intended proceedings. The notice was dated 5<sup>th</sup> August 2016 and the claim is for a period commencing on 7<sup>th</sup> December 2015, and therefore the claim is wholly within that 12 month period.
15. As regards sub-section 97(4), Mr Granby 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".

16. 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). The concept of “exceptional circumstances” was to be distinguished from the concept of what was “reasonable in the circumstances”, the latter being the test to be used where sub-section 97(2) did not apply. In Mr Granby’s submission, the word “exceptional” had to be construed literally, and there were no exceptional circumstances here.

### **The Respondent’s case**

17. Ms F Hussain argued at the hearing, on behalf of the Respondent, that there was no evidence that housing benefit had been paid to Mr Puzas. As regards the issue of exceptional circumstances, she said that the Respondent company had limited funds and that this amounted to exceptional circumstances.

### **The tribunal’s analysis**

18. The tribunal notes both parties’ oral evidence and written submissions. It has also considered the copy documents provided.
19. On the basis of the Applicant’s evidence, most of 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.
20. 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.
21. 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 evidence indicates that a temporary exemption from licensing the Property was applied for on 2<sup>nd</sup> June 2016 and therefore the date on which the offence ceased to be committed was 2<sup>nd</sup> June 2016.
22. 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 5<sup>th</sup> August 2016 and therefore the earliest date from which the tribunal could order repayment (subject to any other considerations) is 6<sup>th</sup> August 2015.

23. Therefore, subject to any other considerations, the period in respect of which it would be possible to make a rent repayment order includes the entire period in respect of which an order is sought. We accept, based on the evidence provided, that the amount of housing benefit paid in respect of that period was £3,942.84.
24. We are satisfied on the basis of the evidence that the requirements of section 96(7) have been complied with.
25. As noted by Mr Granby, 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). Ms Hussain has sought to argue that there is no evidence that the housing benefit was paid to Mr Puzas, but this is incorrect. The evidence is Mr Gallagher's witness statement, and the Respondent has produced no evidence to rebut this.
26. As regards sub-section 97(3), we accept on the basis of the evidence that the total of the amounts received by the Respondent was not less than the total amount of housing benefit paid.
27. Sub-section 97(8) has already been dealt with above.
28. As regards sub-section 97(4), the Respondent has argued that exceptional circumstances do exist in this case. However, the Respondent's argument is simply that the Respondent has limited funds. Whilst no specific legal authority has been brought to our attention on this point, we are satisfied that having limited resources does not constitute exceptional circumstances. It is worth noting 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. In any event, the Respondent has produced no actual evidence as to its limited resources.
29. 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**

30. No cost applications were made.

**Name:** Judge P. Korn

**Date:** 13<sup>th</sup> July 2017

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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 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.
- .....
- (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.