



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

**Case Reference** : **LON/00BB/HSR/2015/0002**

**Property** : **66 Rosedale Road, London E7 8AT**

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

**Respondent** : **Mr I Fapohunda**

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

**Tribunal Members** : **Judge P Korn (Chairman)  
Mr M Taylor FRICS**

**Date and venue of  
Determination** : **30<sup>th</sup> April 2015 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **30<sup>th</sup> April 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 £3,053.30, this being the amount paid in respect of housing benefit for the period 16<sup>th</sup> July 2013 to 28<sup>th</sup> October 2013.

## **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.

## **No hearing**

3. Neither party requested a hearing, and the Tribunal is satisfied that the matter can properly be dealt with on the papers without an oral hearing.

## **The Applicant’s case**

4. The Applicant’s written submissions include a witness statement from Ms M Srokowska of the Applicant’s Property Licensing Enforcement Team. She states that on 21<sup>st</sup> June 2012 the Respondent approved a decision to designate most of the borough as both selective and additional licensing areas and then embarked on a media campaign to advertise the new designation. Details of the advertising campaign have been provided. It is implied – albeit not explicitly stated – that the Property falls within the designated selective licensing area.
5. On the basis that the Applicant believed the Respondent to be operating the Property as a privately rented property in a selective licensing area without having obtained the requisite licence, the Applicant sent a warning letter to the Respondent on 26<sup>th</sup> April 2013, informing him about his responsibility to license the Property. It received no response. The Private Sector Health Officer then carried out an inspection of the Property on 30<sup>th</sup> May 2013 and concluded that the Property was indeed licensable. On 4<sup>th</sup> June 2013 the Applicant wrote to the Respondent offering him an opportunity to accept a simple caution for the alleged offence.
6. There followed some communication between the Applicant and the Respondent, which culminated in the Respondent applying for a licence but not signing a caution in respect of the offence already allegedly

committed. On 20<sup>th</sup> March 2014 the Respondent was found guilty of failing to license the Property by a Magistrates' Court.

7. On 15<sup>th</sup> July 2014 a Notice of Intended Proceedings was served on the Respondent, stating that the Applicant intended to apply for a Rent Repayment Order. Schedule 1 to the Notice contained two errors in that it stated a repayment start date of 16<sup>th</sup> June 2013 (not 16<sup>th</sup> July) and a repayment end date of 31<sup>st</sup> October 2013 (not 28<sup>th</sup> October).
8. The Applicant seeks to recover from the Respondent the sum of £3,159.82 which it states represents the amount of housing benefit paid for the period 16<sup>th</sup> July to 28<sup>th</sup> October 2013, this being – in its submission – the period during which the Property was unlicensed and in respect of which it was possible to claim rent repayment.
9. In his written witness statement, Mr P Gallagher of the Applicant's Housing Benefit Service states that a Ms Tahmina Sazy has been in receipt of housing benefit whilst living at the Property since 27<sup>th</sup> October 2010 and that Newham Benefit Service have seen a copy of her tenancy agreement. The tenancy agreement showed her rental liability to be £1,075 per calendar month from 27<sup>th</sup> October 2010. Housing benefit was paid between 16<sup>th</sup> July and 28<sup>th</sup> October 2013 for Ms Sazy totalling £3,159.62 as per a spreadsheet provided by Mr Gallagher. A Council Tax search carried out on 26<sup>th</sup> April 2013 also showed Ms Sazy as the occupier.
10. As regards the ownership of the Property, a Land Registry search carried out on 26<sup>th</sup> April 2013 revealed the Respondent to be the registered freehold owner of the Property.

### **The Respondent's case**

11. The Tribunal has received no written submissions from the Respondent. He has therefore not communicated his case to the Tribunal.

### **The Tribunal's analysis**

12. The Tribunal notes the written submissions from the Applicant and has considered the copy documents provided.
13. On the basis of the Applicant's evidence, which has not been contested by the Respondent, we are satisfied that the Property is in a selective licensing area, that it is occupied under a tenancy or licence in circumstances which satisfy the provisions of section 79(2)(b) of the 2004 Act and that it required a licence during the whole of the period in respect of which the Applicant is claiming rent repayment, namely 16<sup>th</sup> July to 28<sup>th</sup> October 2013 inclusive. We are also satisfied that the

Applicant took sufficient steps to advertise the area in which the Property is situated as a selective area.

14. Under section 97(8)(a) of the 2004 Act 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 intended proceedings is dated 15<sup>th</sup> July 2014 and therefore the earliest date from which the tribunal could order repayment (subject to any other considerations) is 16<sup>th</sup> July 2013.
15. Under 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 such an offence was being committed. The licence was applied for on 29<sup>th</sup> October 2013 and therefore under section 95(1) and section 95(3) the date on which the offence ceased to be committed was 29<sup>th</sup> October 2013.
16. Therefore, subject to any other considerations, the period in respect of which it would in principle be possible to make a rent repayment order is 16<sup>th</sup> July 2013 to 28<sup>th</sup> October 2013, as submitted by the Applicant.
17. We are also satisfied on the basis of the evidence that the Respondent, being “a person having control of or managing a house which is required to be licensed” under section 95(1) of the 2004 Act, committed an offence by failing to license (or procure the licensing of) the Property. The Respondent has not made any written or oral submissions to us as to whether he has any defence under section 95, but in any event he has been convicted of the offence in a magistrates’ court.
18. Subject to the question as to whether the Respondent was “the appropriate person” as defined in section 96(10), we are also satisfied that the conditions contained in section 96(6) have been met and that the requirements of section 96(7) have been complied with, and we have not received any submissions arguing otherwise.
19. Specifically as regards the Notice of Intended Proceedings, as noted above it contains two date errors in Schedule 1. However, the effect of the errors is simply that the Applicant was mistakenly claiming too much money and it now accepts that its claim should be for a lower amount. It has set out its recalculation and the Respondent has had plenty of opportunity to comment on the recalculation. The Respondent has not commented, nor has he argued that he was confused by the errors. In our view, therefore, the errors have not in practice prejudiced the Respondent and are not material enough to have invalidated the Notice.

20. Section 97(2) specifies the circumstances in which the Tribunal must make a rent repayment order, namely – subject to the provisions of subsections (3), (4) and (8) where “*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*”. On the basis of the evidence provided we are satisfied that the Respondent has been convicted of an offence under section 95(1) and that housing benefit was paid during the relevant period. Therefore, we must make a rent repayment order subject only to the provisions of section 97(3), section 97(4) and section 97(8). We would note, in passing, that it follows that section 97(6) has no application in this case.
21. Under section 97(3) the amount repayable cannot exceed the amount of rent received by the Respondent in respect of the relevant period. The Applicant has provided details of the amount of rent paid and the amount of housing benefit paid in respect of this period and we have no reason to doubt its evidence on this point in the absence of any evidence to the contrary.
22. Under section 97(4) a rent repayment order may not require the payment of any amount which we are satisfied it would be unreasonable for the Respondent to be required to pay by reason of any exceptional circumstances. We have received no evidence on this point from the Respondent and have no basis for concluding that it would be unreasonable for the Respondent to be required to pay by reason of any exceptional circumstances.
23. Under 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 notice of intended proceedings. The claim is in respect of the period 16<sup>th</sup> July 2013 to 28<sup>th</sup> October 2013 which falls wholly within that 12 month period.
24. Under section 96(5), on an application to a tribunal by the local housing authority where the tribunal is satisfied as to the relevant matters the tribunal may make a rent repayment order requiring “the appropriate person” to pay to the local housing authority an amount in respect of housing benefit calculated in accordance with the relevant legislation. Under section 96(7)(a), a tribunal may only make a rent repayment order for the repayment of housing benefit if satisfied that the local housing authority has served a notice of proceedings on the “appropriate person”. Section 96(10) states that in section 96 generally “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.

25. Therefore, in order to make a rent repayment order, one matter on which we need to be satisfied is that the Respondent was the “appropriate person” as defined in section 96(10), namely that at the time of the payment of housing benefit he was entitled to receive that housing benefit “on his own account”. On the basis of the evidence provided, we are satisfied on this point. The evidence indicates that the Respondent is the owner of the Property, and in the absence of any evidence as to the existence of any intermediate landlords it would seem that the Respondent was at the relevant time entitled to receive that housing benefit on his own account. Therefore, the Respondent was the appropriate person and therefore the person on whom the notice of proceedings needed to be served for these purposes.
26. Having established that a rent repayment order must be made in respect of the period 16<sup>th</sup> July 2013 to 28<sup>th</sup> October 2013, the one remaining issue is the amount payable. The Applicant has calculated it at £3,159.82, as per Mr Gallagher’s calculations as set out in Exhibit PG/3 to his witness statement. In the final row of his calculations he states the amount payable in respect of 28<sup>th</sup> October 2013 to be £139.10. However, the Applicant’s own evidence indicates that the weekly rate on this date was £229.48. This seems to be the case from a straightforward reading of Schedule 1 to the Notice of Intended Proceedings and from PG/3 itself, there being no evidence that there was a sudden sharp increase on 28<sup>th</sup> October 2013. Furthermore, Schedule 1 to the Notice of Intended Proceedings states a lower figure for the 4 days from 28<sup>th</sup> to 31<sup>st</sup> October than PG/3 states for the 1 day of 28<sup>th</sup> October. Therefore, on the balance of probabilities we consider that the correct figure for 28<sup>th</sup> October is £32.78, this being one-seventh of the weekly rate of £229.48, and not £139.10. Consequently, the figure of £3,159.82 needs to be reduced by the difference between £139.10 and £32.78, leading to a reduced total of £3,053.30.

### **The Tribunal’s decision**

27. The application for a rent repayment order is granted, albeit that the amount is reduced to £3,053.30 for the reason given above.

### **Cost applications**

28. No cost applications were made.

**Name:** Judge P. Korn

**Date:** 30<sup>th</sup> April 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.
- .....
- (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 a 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.