



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

Case Reference : **LON/00BB/HSR/2015/0004**

Property : **138, Coleman Road, Beckton,
London, E16 3LZ**

Applicant : **London Borough of Newham**

Representative : **Ms M Srokowska**

Respondents : **Ms A S Bawuah-Quashie
Mr G Quashie**

Representative :

Type of Application : **Application for a Rent Repayment
Order – Section 96(5) and Section
97, Housing Act 2004**

Tribunal Members : **Mrs H Bowers, MRICS**

**Date and venue of
Consideration** : **24 February 2016, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **25 February 2016**

DECISION

1. The Tribunal makes a Rent Repayment Order of £2,034.81 against Ms Bawuah-Quashie and Mr Quashie for the reasons set out below.
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REASONS

Background

1. An application was received from the London Borough of Newham, the Local Housing Authority (LHA) in respect of 138, Coleman Road, Beckton, London, E16 3LZ (the subject property) under section 96(5) of the Housing Act 2004 (the Act). The Applicant seeks a Rent Repayment Order (RRO) from Agnes Sybil Bawuah-Quashie and Gerald Quashie, the Respondent landlords.
2. Directions dated 14 December 2015 were issued by a Tribunal. The Directions indicated how the parties should prepare for the matter and provided that each of the parties should send and exchange their own bundles. The Directions indicated that the matter would be determined on the basis of the papers submitted by the parties in the week commencing 22 February 2016.
3. The amount of Housing Benefit that the Applicant seeks to recover from the Respondents is £2,034.81 for the period 4 July 2013 to 8 October 2013. Notices of Intended Proceedings dated 3 July 2014 were sent to the two Respondents. These notices set the calculation of the payment of the sum claimed.

The Law - Housing Act 2004

4. The Act provides for mandatory licensing of a House in Multiple Occupation (HMO) with three or more storeys and five or more occupiers living in two or more separate households. In order to enforce this, the Act provides criminal and civil remedies for non-compliance. A RRO is the civil remedy and can be imposed by the First-tier Tribunal (Residential Property) (the Tribunal) on a landlord who, without reasonable excuse manages or lets property which ought to be licensed as a (HMO) under part 2 (or part 3) of the Act and is not so licensed.
5. The relevant provisions of the Act are set out in the Appendix to this decision.

Representations

Applicant's Case:

6. The papers from the Applicant included a witness statement from Magdalena Srokowska, an Environmental Health Officer with the LHA. This statement explained that on 21 June 2012 the LHA had designated most of the borough as both selective and additional licensing areas. The designation came into force on 1 January 2013 and will cease to have effect on 31 December 2017. Included in the exhibits with Ms Srokowska's witness statement were a number of documents illustrating the steps taken by the LHA to advertise the introduction of the selective and additional licensing areas.
7. Letters were sent to the Respondents in September and December 2012 (Mr Quashie) and two letters in December 2012 (Ms Bawuah-Quashie) advising them of the introduction of the borough-wide licensing of all privately rented properties; the need to apply for a licence by 31 January 2013; offering an early application fee of £150 and the consequences of failing to apply for a licence.

8. A Land Registry search was undertaken on 14 March 2013 that identified Ms Bawuah-Quashie and Mr Quashie as the freeholder owners of the subject property. On the same date a council tax search identified that the property was occupied by someone other than the Respondents.

9. On 14 March 2013, warning letters were sent to the Respondents as to the consequence of failing to apply for a licence. As no application for a licence was received, an inspection of the property was carried out on 2 April 2013. The inspection revealed that the property was a three-bedroom house occupied by a family. Following this further warning letters were sent out to the Respondents on 15 April 2013.

10. As no licence application was made, Notice of Intended Prosecution letters, dated 12 June 2013 were sent to the Respondents. On 13 June 2013, Ms Bawuah-Quashie sent an email to the Applicant to state that "*no tenancy agreement has been issued to any occupant of this property since 2008. I still have my belongings in the property and due to a change in my family circumstances, I'm moving back into the property permanently next month*". Also exhibited in the Applicant's bundle is a copy of a letter dated 10 June 2013 from Ms Bawuah-Quashi to Ms Sey Yeboah, at the subject property. This letter was entitled 'Notice of Eviction' and gives Ms Sey Yeboah, two months notice to vacate the premises from 12 June 2013 to 11 August 2013.

11. There is an application by Ms Bawuah-Quashie for a Private Rented Property Licence dated 9 October 2013. The LHA issued a licence on 21 November 2013. It is claimed that Housing Benefit was paid to the Respondents between 4 July 2013 and 8 October 2013. On 3 July 2014 the LHA served Notices of Intended Proceedings on the Respondents.

12. From a Memorandum of an Entry entered in the Register of the East London Magistrates' Court, under case Number 1302531438 on 26 February 2015, Ms Bawuah-Quashi pleaded guilty to a charge under the Housing Act 2004. The charge was that between 1 January to 15 July 2013, being a person who had control of or was managing 136, Colman Road, which was required to be licensed and was not so licensed. She was fined £375 and ordered to pay a victim surcharge of £37.50 and costs of £500.

13. Included in the Applicant's bundle is a witness statement from Patrick Gallagher, who is employed by the Applicant as a Senior Council Tax and Benefits Officer. Mr Gallagher explains that he has access to the Applicant's records and was able to identify that Miss Mina Sey Yeboah had been in receipt of Housing Benefit from the Applicant in respect of the subject property from 7 January 2008. On 11 January 2008 the Applicant received a copy of a tenancy agreement from Ms Sey Yeboah. This tenancy agreement stated that the rent was £1,200 per month from 7 January 2008.

14. A schedule is attached to Mr Gallagher's witness statement that shows from 4 July 2013 to 8 October 2013 total payments of £2,034.81 were paid as Housing Benefit, directly to Ms Sey Yeboah by bank transfer to her bank account.

15. A witness statement for Ms Mina Sey Yeboah, dated 3 July 2013 was included in the Applicant's bundle. This statement details Ms Sey Yeboah's occupation at 138 Coleman Road. She had been in occupation for approximately 6 years and it was her main residence. It is a three-bedroom house and she occupied it with her three daughters. She had a tenancy agreement from when she originally occupied the premises. She confirmed that the landlord does not live at the property and that she is not related to the landlord, Ms Bawuah-Quashie. The rent is £1,200 per month and this is paid by Ms Sey Yeboah, directly into the landlord's bank account. Every two

weeks Ms Sey Yeboah receives approximately £300 as Housing Benefit from the LHA. Ms Sey Yeboah did not pay a deposit at the commencement of her tenancy and was responsible for all the bills including council tax. She confirmed that she has been served with a notice to quit on 10 June 2013, but confirms that she is not in any rent arrears.

Respondents' Case:

16. The statement of case from Ms Bawuah-Quashie and Mr Quashie states that no Housing Benefit was paid directly to the Respondents as the landlord of the subject property. Further the only tenancy that was granted to Ms Sey Yeboah was from 12 January 2008 to 11 January 2009 and this was a time when there was no selective licensing. The Respondents question how did the Applicant pay the tenant any Housing Benefit after 11 January 2009, when the tenant had no tenancy agreement from the landlord? The Respondents explained that they had informed the tenant that they were not going to renew her tenancy as she had been a difficult tenant and had requested her to move out at the end of the contract period. At the end of the tenancy agreement, it is stated that the tenant had problems paying her rent and as far as the Respondents were aware, Ms Sey Yeboah was working. It is stated that the Ms Sey Yeboah had stated that she would move out when she found alternative accommodation and that she absconded with non-payment of rent in excess of £2,000.00. In summary the Respondents suggest that the Applicant should pursue the tenant for the refund

17. Included in the Respondents' bundle was a copy of a tenancy agreement for the subject property between Mrs Bawuah-Quashie and Ms Sey Yeboah dated 12 January 2008. The tenancy is for a term of twelve months from 12 January 2008 at a monthly rent of £1,200. Also included is paperwork relating to the intention to grant and the grant of a licence for the subject property.

Tribunal's Decision and Reasons

18. The Tribunal are required to consider a number of factors, which are detailed in the following section.

19. There appears to be no dispute that the subject property falls within the London Borough of Newham, which has designated most of the borough as subject to selective licensing. The Applicant relied on the statement of Magdalena Srokowska, which set out the background to the council's decision and provided evidence of the steps taken to notify landlords in the area of the need to apply for a licence.

20. The Respondents dispute that the property was occupied by Ms Mina Sey Yeboah as a tenant at the relevant time. However, whilst the contractual term of the Assured Shorthold Tenancy terminated on 11 January 2009, her occupation continued as an assured periodic shorthold tenant. A Notice to Quit was served on Ms Sey Yeboah on 10 June 2013. However, under section 21 of the Housing Act 1988, a tenancy comes to an end when a court has made an order for possession. There is no evidence that such an order was made, and no evidence that Ms Sey Yeboah was not

in occupation of the subject property at the relevant time. Therefore, it is necessary to consider the remaining aspects in order to determine this case.

Were the Respondents convicted of an offence (Failure to licence)?

21. Yes. The Applicant has provided a copy of the memorandum of an entry entered in the register of the East London Magistrates' Court, which confirms that on 26 February 2016, Ms Bawuah-Quashi pleaded guilty of the offence of failing to have a licence under Part 3 of the Act. She was fined £375 and ordered to pay a victim surcharge of £37.50 and costs of £500. Although Mr Quashie has not been convicted of an offence, under section 96(5) the Tribunal may make a RRO if it is satisfied as to matters set out in section 96(6). Amongst other issues, considered below, section 96(6) requires the Tribunal to be satisfied that at any time within the period of 12 months ending with the date of the Notice of Intended Proceedings, the appropriate person has committed an offence under section 95(1) in relation to the subject house, whether or not he has been charged or convicted. Although there is no evidence of a charge or conviction against Mr Quashie, there is evidence that he has committed an offence under section 95(1). He is a person having control of or managing a house, which is required to be licensed under Part 3 of the Act, but it is not so licenced. Accordingly, the Tribunal is satisfied that section 96(6)(a) applies.

Are the Respondents the person having control of or managing a property, which is required to be licensed?

22. Section 263 of the Act defines the person having control of the property as the person who receives the rent. A person managing the property is defined as the person who, being the owner or lessee receives payments from the occupiers. There appears to be no dispute that the Respondents were the owner of the property throughout, as the Applicant's bundle contains office copy entries relating to the property. The Proprietorship Register provides the name of the proprietor as Ms Bawuah-Quashie and Mr Quashie.

23. The Applicant's bundle contains a statement from the tenant that she receives a contribution from Housing Benefit towards the rent and then she pays the total rent directly into the bank account of Ms Bawuah-Quashie. The Respondents claim that as the Housing Benefit was not paid directly to them, then the Applicant should not seek to recover the money from them. However, section 97(2)(b) of the Act states that if the Tribunal is satisfied that "*the Housing Benefit was paid (whether or not to the appropriate person)*" and other factors are satisfied, then the Tribunal must make a RRO against the appropriate person.

Are the Respondents the appropriate person?

24. Section 96(10) of the Act defines the appropriate person as the person who at the time of the payment was entitled to receive on his own account periodical payments in connection with occupation of the property. For the reasons set out in paragraphs 22 and 23 above, the Tribunal determines that the Respondents meet the definition of an appropriate person for the period in question.

Has the Applicant complied with the requirements set out in Section 96(6),(7) and (9) of the Act?

25. Section 96(6) of the Act requires the Tribunal to be satisfied firstly, that at any time within 12 months ending with the date of the Notice of Intended Proceedings the appropriate person has committed an offence (failure to licence); that Housing Benefit has been paid and that the requirements under section 96(7) have been complied with. The statement of Ms Srokowska provides the following evidence.

26. In the circumstances the Tribunal is satisfied that the offence of failing to have a licence continued throughout the relevant period of 4 July 2013 to 8 October 2013. There is evidence that Ms Bawuah-Quashie made an application for a licence on 9 October 2013.

27. The second requirement of section 96(6) is that Housing Benefit has been paid during any period, which it appears to the Tribunal that an offence was being committed. The Applicant has provided evidence of the payment of Housing Benefit throughout the relevant period, by way of statements of Mr Patrick Gallagher of the London Borough of Newham's Housing Benefit Service. The Respondents have not challenged this evidence. The Tribunal also has evidence from the tenant that she received Housing Benefit. In the circumstances the Tribunal is satisfied that the requirements in section 96(6) are met.

28. Section 96(7) relates to the Notice of Intended Proceedings and contains requirements for that notice, including giving a period of not less than 28 days for representations. The Applicant's bundle contained a copy of the notices dated 3 July 2014. These were served on the Respondents at an address in Chelmsford, Essex. The Respondents do not dispute service of the notice. The notices met the other requirements of the section and included a schedule detailing the benefit payments which the council sought to recover. In the circumstances the Tribunal is also satisfied that section 96(7) has been complied with.

29. Finally, section 96(9) requires the LHA to give a copy of the Notice of Intended Proceedings to the Housing Benefit section and keep them informed of any matters relating to the proceedings. The Tribunal has referred to the statement of Mr Patrick Gallagher from Newham's Housing Benefit Service above and therefore in the circumstances the Tribunal is satisfied that the Applicant has also met this section.

The payment, amount and period of housing benefit

30. As stated above, there is no dispute that Housing Benefit was paid during the relevant period during which an offence was committed under Part 3. The amount and period is attached to the Notice of Intended Proceedings. The period claimed runs from 4 July to 8 October 2013, at variable amounts per week. The total amount paid over this period is £2,034.81 and is within the 12 month period allowed under section 97(8) of the Act.

Are there any exceptional circumstances?

31. Section 97 (4) states that a RRO may not require the payment of any amount which the Tribunal is satisfied that, by reason of exceptional circumstances, it would be unreasonable for that person to be required to pay. The Tribunal has no evidence before it of exceptional circumstances.

Decision

23. The Tribunal is satisfied that the Applicant is entitled to a RRO in respect of Ms Bawauh-Quashie and Mr Quashie for the amount claimed of £2,034.81.

Chairman: H C Bowers

Date: 25 February 2016

ANNEX - 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.

Annex: Housing Act 2004

Section 96. Other consequences of operating unlicensed houses: rent repayment orders

(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 residential property 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 housing 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.

(8) If the application is made by an occupier of the whole or part of the house, the Tribunal must be satisfied as to the following matters—

(a) that the appropriate person has been convicted of an offence under section 95(1) in relation to the house, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of the whole or any part or parts of the house,

(b) that the occupier paid, to a person having control of or managing the house, periodical payments in respect of occupation of the whole or part 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, and

(c) that the application is made within the period of 12 months beginning with—

(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

- “the appropriate person”, in relation to any payment of housing benefit or periodical payment payable in connection with 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;
- “housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
- “occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence (and “occupation” has a corresponding meaning);
- “periodical payments” means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) or any corresponding provision replacing that regulation.

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment

Section 97 Further provisions about rent repayment orders

(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 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;

(b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the house, or (as the case may be) the part of it occupied by him, during the period in question.

(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); or

(b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 96(5);

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

(9) Any amount payable to a local housing authority under a rent repayment order—

(a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and

(b) is, until recovered by them, a legal charge on the house which is a local land charge.

(10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

(11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(12) If the authority subsequently grant a licence under Part 2 or this Part in respect of the house to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—

(a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and

(b) to do so in such instalments as are specified in the licence.

(13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the house, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

(15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 96, and in particular—

(a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);

(b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.

(16) Section 96(10) and (11) apply for the purposes of this section as they apply for the purposes of section 96.