



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

Case Reference : **LON/00BB/HSR/2015/0007**

Property : **First floor flat, 124 Whyteville Road, London E7 9LT**

Applicant : **The Mayor and Burgesses of the London Borough of Newham**

Representative : **Mr S Madge-Wyld – Counsel
Ms M Srokowska and Mr P Gallagher employed by the Council**

Respondent : **Mrs Misbah Kauser**

Representative : **No attendance**

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

Tribunal Members : **Tribunal Judge Dutton
Mr C P Gowman MCIEH MCMi BSc**

Date and venue of hearing : **12th February 2016 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **16th February 2016**

DECISION

DECISION

The Tribunal determines that the Respondent shall repay to the Applicant the sum of £8,586.91, being the Housing Benefit paid to her in the period 19th November 2013 to 16th November 2014 (the Period) in respect of the letting of the first floor flat at 124 Whyteville Road, London E7 9LT (the Property).

BACKGROUND

1. On 11th September 2014 the Respondent was convicted at the Thames Magistrates Court of an offence contrary to section 95(1) of the Housing Act 2004 (the Act) and was fined £500.
2. On 18th November 2014 the Respondent was sent a Notice of Intended Proceedings (the Notice) setting out the reasons for a Rent Repayment Order (RRO) under s96(5) of the Act being sought and confirming that the sum owing was £8,586.91, being housing benefit paid on behalf of the Respondent's tenant Sandra Patricia Correa Ocampo. A schedule of the payments allegedly made was attached. The Notice had followed a number of letters sent to various addresses warning the Respondent of the penalties for failing to obtain a licence for the Property.
3. In support of the claim the Applicant Council (the Council) relied upon witness statements of Miss Magdalena Srokowska, an Environmental Health Officer with the Council and Mr Patrick Gallagher a senior Council Tax and Benefits Officer.
4. In a bundle supplied to us we were provided with copies of documents intended to show the steps taken by the Council to publicise the creation of the Licensing Area within the Borough. In addition copies of correspondence to the Respondent were included.
5. A copy of the HM Land Register for the Property shows that Mrs Kauser has been the registered proprietor since February 2006.
6. An application to postpone the hearing was made by the Respondent's son on 10th February 2016 citing her current absence abroad and ill health. However, such application was refused by the Tribunal on the same day on the grounds that no medical evidence had been produced to support the application and that the Respondent has been aware of the proceedings since 18th November 2015.

HEARING

7. The Council were represented by Mr Madge-Wyld who had produced a helpful skeleton argument and relied upon the witness statements of Miss Srokowska dated 3rd March 2015 and Mr Patrick Gallagher dated 11th November 2014 to support the Council's case.
8. There is some confusion between the dates shown on the Notice, which refers to the period 19th November 2013 to 16th November 2014 and the period for which recovery is sought, being 12th November 2013 and 2nd November 2014, as set out in the witness statements before us. This anomaly was explained as errors in the witness statements, which were corrected. The period for which the claim is made for repayment of the Housing Benefit is indeed as set out in the Notice, being the Period.

9. Mr Madge-Wyld submitted that the Respondent had been convicted of an offence under s95(1) of the Act and that accordingly by virtue of s97(2) we must make an RRO requiring the appropriate person, in this case the Respondent, to pay to the Council an amount equal to the housing benefit paid.
10. No submissions had been lodged by the Respondent and there was no application for us to consider “exceptional circumstances”.

THE LAW

11. The relevant law is set out below

FINDINGS

12. It is quite clear that a conviction was obtained by the Council in the Magistrates Court in September 2014 and no appeal lodged. The Notice dated 18th November 2014 was sent to the Respondent at the Property. The Notice complies with the Act and we are satisfied that it came to the attention of the Respondent. The corrected witness statements confirm that housing benefit was paid during the dates set out in The Notice and as there is a conviction s97(2) applies and we must make an RRO.
13. The Respondent has not engaged with the Tribunal. No statement has been lodged and there is no suggestion before us that there are exceptional circumstances we should consider under the provisions of s97(4).
14. In those circumstances we find that the Council has proved its case and that the Respondent must repay the housing benefit paid for the period in the sum of **£8,586.91**.

Andrew Dutton
Tribunal Judge

16th February 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

The Relevant Law

S95 Offences in relation to licensing of houses under this Part

- (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.
- (2) A person commits an offence if-
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (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 (see subsection (7)).
- (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), or
 - (b) for failing to comply with the condition, as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) For the purposes of subsection (3) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either-
 - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.
- (8) The conditions are-
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of a residential property tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

S96 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.

S97 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.