



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

Case reference : **LON/00BB/HSR/2015/0012**

Property : **8 Eric Close, Forest Gate, London
E7 0AY**

Applicant : **London Borough of Newham**

Respondent : **Ms E Kowa**

Type of application : **Application from Local Housing
Authority for Rent Repayment
Order (Housing Benefit)**

Tribunal : **Judge Carr
Mr Hugh Geddes RIBA**

Date of decision : **24th February 2016**

DECISION

Decision of the Tribunal

- (1) The Tribunal makes a rent repayment order of £9384.43 against Ms Emma Kowa for the reasons set out below.

The application

1. The Applicant seeks a rent repayment order under section 96(5) of the Housing Act 2004 (“the Act”). The amount of housing benefit that the Council sought to recover from Ms Kowa was £9,384.43. This was stated to have been paid over a period (28/11/2013 to 16/11/14) commencing 12 months less one day before the date of the Notice of Intended Proceedings dated 27 November 2014.
2. Directions were issued on 14th December 2015 with the matter to be determined on the basis of written representations unless either party requested a hearing. No hearing was requested and therefore this decision is made on the basis of the written representations received from the Applicant. No representations were received from the Respondent.

Background

3. Part 3 of the Act gives local housing authorities power to designate an area as subject to selective licensing, meaning that all tenanted properties must be licensed, subject to certain exceptions none of which are relevant here. In the event that a tenanted property is unlicensed, the authority may prosecute the person having control or management of the property in the Magistrates’ Court and may also seek recovery of housing benefit by a Rent Repayment Order from this Tribunal.
4. There is no dispute that this 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.
5. There is also no dispute that the property was occupied by a tenant, Ms Esther Madu Kwatamdia, at the relevant time and therefore required a licence.

The Law

6. The main statutory provisions are attached to this decision as an Appendix. The issues for the Tribunal to consider are:

- (a) Was the Respondent convicted of an offence (failure to licence)?
- (b) Is the Respondent the person having control of or managing a property which requires to be licensed?
- (c) Is the Respondent the appropriate person?
- (d) Has the Applicant complied with the requirements set out in section 96 (6), (7) and (9) of the Act?
- (e) Had housing benefit been paid when an offence was committed? How much and when is the correct period?
- (f) Are there any exceptional circumstances so that it would be unreasonable for the Tribunal to order the respondent to repay all or some of the housing benefit?

Was the Respondent convicted of an offence (Failure to licence)?

- 7. 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 5th November 2014 the Respondent was found guilty in their absence of the offence of failing to have a licence under Part 3 of the Act. The Respondent was fined £620 and ordered to pay a victim surcharge of £62 and legal costs of £838.

Is the Respondent the person having control of or managing a property which is required to be licensed?

- 8. 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 is no dispute that the respondent was 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 Emma Kowa.
- 9. 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 Kowa.

Is the Respondent the appropriate person?

- 10. 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 8 and 9 above, the Tribunal determines that the respondent meets 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?

- 11. 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 under section 96(7), the appropriate person has

committed an offence (failure to licence). The statement of Ms Srokowska provides the following evidence.

- 12 On 13th November 2014 Ms Kowa told a member of the Council's licensing scheme that she was unaware of the licencing system as she had been abroad, and that she was trying to licence the property but she was unable to. However on 23rd June 2015 Ms Srokowska found that Ms Kowa had not tried to apply for a property licence because she had not logged into the Council's website and created an account. According to Ms Srokowska, 'the Council's CRM system shows she made no attempt to licence her property'.
- 13 In the circumstances the Tribunal is satisfied that the offence of failing to have a licence continued throughout the relevant period of 28th November 2013 to 16th November 2014.
- 14 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.
- 15 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 who has been seconded to the Council's property licencing enforcement scheme. This evidence has not been challenged by the Respondent.
- 16 The Tribunal also has evidence from the tenant that she received Housing Benefit.
- 17 In the circumstances the Tribunal is satisfied that the requirements in section 96(6) are met.
- 18 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 notice dated 27th November 2014. This was served on the respondent at the property address on that date. On the same date it was also served on 2 Meadow Walk Dagenham RM9 5PS.
- 19 The Respondent does not dispute service of the notice. No representations have been received from her. The notice 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.
20. Finally, section 96(9) requires the local authority 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 this section has also been met by the applicant.

The payment, amount and period of housing benefit

21. 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 28th November 2013 to 16th November 2014, at variable amounts per week. The total amount paid over this period is £9384.43 and is within the 12 month period allowed under section 97(8) of the Act.

Are there any exceptional circumstances?

22. Section 97 (4) states that a rent repayment order 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 before it no evidence of exceptional circumstances.

Decision

23. The Tribunal is satisfied that the applicant is entitled to a rent repayment order for the amount claimed of £9384.43

Name: Judge Carr

Date: 24th February 2016

Annex: Housing Act 2004

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

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.