



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

Case References : **LON/00BB/HSR/2015/0016**

Property : **20 Luton Road, E13 8HD**

Applicant : **London Borough of Newham**

Respondent : **Mr Michael James O'Meara**

Representatives : **Mr R Granby, Counsel for the Applicant**
Mr S Woolf, Counsel for the Respondent

Type of Application : **Application for Rent Repayment Order – s.95(6) Housing Act 2004**

Tribunal : **Mr M Martynski (Tribunal Judge)**
Mr M Cairns MCIEH

Date of Hearing : **18 March 2016**

DECISION

Decision summary

1. The tribunal makes a Rent Repayment Order in the sum of £3,517.17. The Respondent should pay that sum to the Applicant within 28 days of the date of this decision.

The Application

2. By an application dated 30 November 2015 the Applicant made an application for an order that the Respondent pay to it the sum of £4278.68 in respect of Housing Benefit paid to the occupants of 20 Luton Road ('the Property') during the period 22 April to 21 October 2014.

Background

3. The Respondent is the owner of the long leasehold interest in the Property.
4. On 1 January 2013, pursuant to section 80 Housing Act 2004 ('the Act'), the Applicant brought into force a borough wide selective licencing scheme by which any house let or occupied under a tenancy or licence would require a licence.
5. Prior to the licencing scheme coming into effect, the Applicant carried out a publicity campaign regarding the scheme in compliance with sections 59 & 83 of the Act.
6. By a tenancy agreements dated 15 October 2012 and 15 October 2013, the Respondent let the Property to Fabricio Da Silva at a rent of £850.00 per month.
7. The Applicant received an application for Housing Benefit from Mr Da Silva on 18 June 2013. That application named the adult occupants of the Property as Mr Da Silva and a Ms Karla Da Silva. Attached to that application was a tenancy agreement beginning on 15 October 2012 for the Property at a rent of £850 per month.
8. Mr Da Silva was paid Housing Benefit from 22 April 2014 to 21 October 2014 at varying rates. The total amount paid was £4,278.68. There was however evidence supplied by Mr O'Meara that the benefit had been paid into Ms Karla Da Silva's bank account.
9. On 3 April 2014 a letter was sent by the Applicant to the Respondent warning him of the requirement for the Property to be licensed. A further letter in similar terms was sent on 24 April.
10. On 1 October 2014 a visit to the Property was made by Mr Paul Oatt, an Environmental Heath Officer employed by the Applicant.
11. On 24 October 2014 the Respondent delivered to the Applicant an application for a licence for the Property and a signed caution. The caution contained an admission that the Respondent had committed an offence pursuant to section 95(1) of the Act in that he was the person having control of the Property (being a licensable house) on 1 October 2014 but did not have such a licence. As well as paying the licence fee of £500.00, the Respondent paid to the Applicant it's costs of £300 upon the signing of the caution.
12. On 5 February 2015 the Applicant issued a licence to the Respondent in respect of the Property. The licence was for a period of one year rather than the usual five years.

13. On 21 April 2015, the Applicant sent to the Respondent a Notice of Intended Proceedings saying that it intended to recover the sum of £4278.68 in respect of Housing Benefit paid for the period when the Property was unlicensed. The notice notified the Respondent of his right to make representations within 28 days of the date of the notice.

14. By letter dated 7 May 2015 the Respondent made representations to the Applicant. That letter included the following comments.

As your office was made aware Mr O'Meara has a deficiency in reading and writing therefore this letter is being written on his behalf. Mr O'Meara sister Michelle O'Meara previously dealt with Mr O'Meara's administrative affairs however she returned to Ireland three years ago. Mr O'Meara to the best of his ability tried to comply with the required new licensing protocols, he contacted your offices asking for help and guidance on numerous occasions to get the necessary assistance he required. As the license is applied for online he was unable to complete the registration. The online application procedure was complicated and he was unable to understand the information that was required of him. He was unaware of the new licensing laws and was frustrated to have received no help with regards to his deficiency. Please note going forwards that Mr O'Meara has appointed Property Hub Limited to act on his behalf in relation to this property to avoid any future misunderstandings.

15. Directions were given on the Applicant's application on 22 December 2015.

The hearing

16. The hearing of the Applicant's application took place on 18 March 2016. At that hearing we heard evidence from:-

- Ms M Srokowska (Environmental Health Officer)
- Mr P Gallagher (Council Tax and Housing Benefit Officer)
- Mr P Oatt (Environmental Health Officer)
- Mr J O'Meara (Respondent)
- Mr S Gupta (Property Agent for the Respondent)

We also read the witness statement of Mr K Leahy, a witness for the Respondent.

The Applicant's evidence

17. The Applicant's witnesses gave evidence as to the introduction of the licencing scheme, the statutory publicity campaign about that scheme, the contact with the Respondent and the amount of Housing Benefit paid during the period for which it was being reclaimed.

The Respondent's evidence

18. Prior to the hearing, and in spite of the signed caution, it was the Respondent's case that he had not been guilty of the offence of being a person in control of a licensable property at the relevant time inasmuch as he had a statutory defence; that defence being that he had a

reasonable excuse for failing to obtain the necessary license. That argument was not pursued after the evidence had been heard at the hearing on the 18 March.

19. In the Respondent's witness statement he speaks of his difficult upbringing in Ireland and the fact that he left school at the age of 14 after finding it's difficult to learn. Mr O'Meara emigrated to England 25 years ago and through hard work built up his construction company.
20. Mr O'Meara goes on to state that he does not live in the borough of Newham and that the publicity campaign organised by the local authority regarding the licensing scheme did not come to his attention. He received the warning letter dated 6 April 2014 but states that he did not understand letter. He telephoned the Local Authority but was directed to use their online application process. On 30 April 2014 he attempted to register his application online but struggled to activate an account. He contacted his tenants for assistance but the tenant was unable to help. On 26 May 2014 he asked Mr Gupta to help him in applying for the licence. The only help that Mr Gupta was able to give was to direct him back to the Local Authority.
21. Mr O'Meara states that he went to the relevant department at the Local Authority several times but they would not see him without an appointment and he was again referred to the online application process. He then had to spend some time in Ireland in July 2014 and in Belgium in September 2014.
22. On 1 October 2014 his tenant called him informing him that the Local Authority had inspected the Property. He again tried to apply for the licence online and was not able to activate the necessary account.
23. He then called the Local Authority again on the 2 & 6 October 2014 but was not given any help or advice.
24. On 22 October 2014 he went to the Local Authority and signed the caution although he says that he did not understand it. He says that he was told by Mr Oatt when he signed the caution that this would be an end to the matter.
25. In the end Mr O'Meara submitted his application for a licence in writing rather than online. He says that he did this on 24 October after refusing to leave the local authority office without someone agreeing to help him to fill out the application form.
26. Mr O'Meara stated that he was unaware that his tenant was claiming Housing Benefit. He further stated that he was actually making a loss on the Property as the rent did not cover the mortgage and other outgoings.
27. Having signed the caution he thought that this was an end to the matter. Mr O'Meara states that he was very surprised when, some

considerable time later, he learned that proceedings were going to be taken against him in respect of a Rent Repayment Order.

28. As to his oral evidence, Mr O'Meara said that the tenancy agreement submitted with the housing benefit claim was not the same agreement that he had signed with his tenant and the signature on that tenancy submitted with the claim was not his.
29. Mr O'Meara said that he owned a total of seven properties and that five of them were let out to tenants. None of the other properties were in the London Borough of Newham. He confirmed that in respect of those properties, the deposits were protected, he had gas safety certificates and that generally he had complied with his statutory obligations.
30. In respect of his company (of which he owned half the shares), Mr O'Meara confirmed with that the turnover of the company had increased from £1.8 to £7 million per annum.
31. Mr O'Meara supplied reports dealing with his difficulties. A report from a psychologist concluded that his verbal and general intellectual abilities were above average, but that he had severe dyslexic difficulties with evidence that he has some degree of attention deficit hyperactivity disorder and that he had difficulty with focusing and concentration. The report also mentions that Mr O'Meara's literary skills are all below average.
32. As for Mr O'Meara's witnesses; Mr Gupta confirmed that Mr O'Meara had contacted him on 26 May 2014 regarding the licensing issue and that he directed Mr O'Meara back to the Local Authority. Mr Leahy's witness statement states that he set up a company with Mr O'Meara and that he would handle the paperwork and administrative duties given Mr O'Meara's difficulties. He confirmed that in 2013 there was a difficult period when it was decided to bring in a new managing director to take over Mr O'Meara's role. Although Mr O'Meara has now been given the title of chief executive officer, his day-to-day involvement in the company has ceased.

The Respondent's submissions

33. Mr Woolf argued that there had been a housing benefit fraud. He pointed to the fact that the tenancy agreement supplied with the Housing Benefit application was not the same as Mr O'Meara had signed with his tenant Mr Da Silva and that it was not his signature on the tenancy agreement. He pointed to the fact that benefit has been paid into the account of Ms Da Silva. In those circumstances therefore, was it right that there should be recovery of Housing Benefit from the landlord?

34. As to Mr O'Meara's business interests, one has to separate the individual, with whom we are dealing with this application, and the business. They are not the same thing.
35. Mr O'Meara was making a loss on the property at the relevant time after subtracting the mortgage costs and Service Charges from the rent received.
36. The fact of the licensing scheme was only advertised in Newham - nowhere else.
37. When Mr O'Meara received the letter from the local authority putting him on notice of the fact of the licensing scheme, he did his best to then immediately apply for a licence. The Local Authority was less than helpful in assisting Mr O'Meara when he sought help in applying for the licence.
38. There was delay on the part of the Local Authority in that they did not come round to inspect the property until October 2014. Had they got round to it sooner, the amount being really claimed would be less. There was then the delay between Mr O'Meara signing the caution and the local authority informing him that, despite signing the caution and paying the Local Authority's costs of £300, he would be further pursued by way of a Rent Repayment Order.

Decision

39. Whilst we accept that the Respondent has faced considerable difficulties in his life and continues to have challenges with paperwork and computer processes, he has nevertheless, despite these problems and to his considerable credit, built up a business not only in construction but also in property ownership and letting.
40. It must be the case that the Respondent, in order to have made such a success of himself in business, has had to deal with numerous difficulties in terms of administration and official processes and he has no doubt, where he has been unable to deal with these himself, had the available resource or assistance. We are told that he has managed, in respect of all his other properties, to comply with his statutory obligations and, those obligations would involve form filling and computer processing.
41. We accept that the evidence shows that the Respondent attempted to register online for an account with Newham after receiving the letter from the Applicant regarding the requirement to licence. However, it appears to us that, whilst he made some effort, he could, and should have, gone further in seeking assistance from friends, family or business associates /agents to complete the process. There are, no doubt, many small landlords in the borough of Newham who may face difficulties in the licensing process, for example those whose first language may not be English. It is clear that the Respondent has a

significant business in the letting of property and as such, should have at his disposal the necessary resources to deal with that business.

42. We note and sympathise with the problems faced by landlords who do not live in the borough of Newham and who may have been unaware of the introduction of the licensing requirement on 1 January 2013. However, in this case, that particular problem is not an issue because the letter dated 3 April 2014 sent to Mr O'Meara, which he had received informed him that if he applied for the licence within 14 days, no further action would be taken against him. It was the failure to comply with this letter in time that has led to these proceedings.
43. Nothing turns on the issue of the 'fraudulent tenancy'. Even if the tenancy submitted with the Housing Benefit application was not genuine, the fact remains that there was in existence a tenancy between the persons named in that tenancy agreement at the same rent as quoted in the tenancy agreement. Regardless of whether the correct tenancy agreement was sent with the Housing Benefit application, the occupants of the Property were entitled to that benefit. The fact that the benefit was paid into the bank account of Ms Da Silver, it is neither here nor there, as an occupant of the property she was entitled to the benefit. The lack of knowledge on the part of the Respondent as to the fact that his tenants were in receipt of Housing Benefit is immaterial.
44. As a matter of general approach, we consider that in the normal run of events (and of course taking into account all other relevant circumstances) a tribunal should take account of how much a landlord is actually making by way of net profit from a property.
45. We do not consider that the fact that the Property was not making a profit in terms of rental income over the mortgage at the time is relevant. We say this because to take the mortgage into account would open up a complex consideration of 'profit' in relation to the Property, this would involve an investigation as to the capital gain in the Property value during this time. It seems to us that the correct approach for a mortgage cost in most cases is to treat those mortgage payments as the use to which the landlord puts his profit from the letting – i.e. by way of investment in the hope and expectation that property prices will continue their long-term rise. This approach can be contrasted with the landlord who may rent the property in question himself and then sub-let at a profit. In that case, the rent paid by the landlord clearly is a pure expense to him from which he receives no gain.
46. We do however consider that the Service Charges due on the Property can and should be taken into account as reducing the profit made on the letting. The Service Charge for the year covering the period in question was £1,523.03. We have taken a daily rate for that Service Charge and applied that to the period of re-claim. The adjusted expense of the Service Charge for the period of re-claim is therefore £761.51. In the circumstances of this case, we consider that the proper approach is to reduce the Rent Repayment Order by this sum.

47. In looking at the amount of the repayment order in general, we have taken into account that, from the evidence disclosed by the Respondent, he does not appear to be impecunious.
- 48.. As to the criticisms of the Local Authority's lack of assistance and delay we comment as follows; as we have said above, Mr O'Meara should have employed his own resources to cope with the licensing requirements for the Property; so far as delay is concerned, the Local Authority has to deal with a vast number of properties with an increasingly tight budget and cannot be expected to operate without some delay, that delay was in not any event, in our view, unreasonable.

A comment on the evidence and the Local Authority's conduct

49. We feel compelled to make a comment regarding some of the evidence in this case. The Local Authority included in its bundle, what appears to be an online news report regarding the alleged use of illegal workers by Mr O'Meara's company, Lorclon. Quite what the relevance or probative value of this material is, we are not sure. The inclusion of this material appears to have been solely for the purpose of discrediting Mr O'Meara. A Local Authority should not be acting in this way, it has a duty as a public authority to be, so far as it is possible, even handed. Mr O'Meara was quite rightly upset at the inclusion of this material and we share his concern.
50. As a result of Mr O'Meara's late licensing of his property, when the licence was granted to him, the license was for a period of just one year whereas and, as far as we understand it, the normal period would be five years. There is no suggestion that Mr O'Meara is a bad landlord or that there are any concerns regarding the Property or the tenants. Given that Mr O'Meara has had to pay the Respondent's costs when signing the caution, that he has received a caution and that he now has to repay Housing Benefit, we can see no reason other than, what may be seen as, an arbitrary vindictive approach, for only granting the licence for one year.

Mark Martynski, Tribunal Judge
23 March 2016