



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

Case Reference : **LON/00BB/HSR/2015/0020**

Property : **45 Malvern Road, East Ham,
London E6 1LS**

Applicant : **London Borough of Newham**

Representative : **Mr Alexander Campbell (Counsel)**

Respondent : **Ms Yvonne Pepper**

Representative : **Mr William Chipperfield (Counsel)**

Type of Application : **Application by Local Authority for a
Rent Repayment Order under
Housing Act 2004**

Tribunal Members : **Judge Robert Latham
Mr Hugh Geddes RIBA**

**Date and venue of
Hearing** : **9 March 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **11 March 2016**

DECISION

We order Ms Pepper to repay to the London Borough of Newham the sum of £8,975.47 in respect of Housing Benefit paid in connection with the occupation of part or parts of the property at 45 Malvern Road, East Ham, London E6 1LS.

The Application

1. This is an application by the London Borough of Newham (“Newham”) for a rent repayment order pursuant to section 96(5) of the Housing Act 2004 (“the Act”). The application, which was issued on 21 December 2015, relates to 45 Malvern Road, East Ham, London E6 1LS (“the property”).
2. On 22 December, the Tribunal gave Directions. The Respondent was urged to seek independent legal advice. The Respondent was required to file a Bundle setting out her reasons for opposing the application and enclosing any evidence upon which she sought to rely by 1 February 2016. Such evidence should include a statement as to any exceptional circumstances that could justify a reduction in the amount of any rent repayment order. The parties were warned of the consequences of failing to comply with the Directions. The Respondent has failed to file any response to the application.
3. On 17 February, the Applicant filed their bundle of Documents in support of their application. The Applicant relies on:
 - (i) a statement by Ms Magdalena Srokowska, an Environmental Health Officer in their Private Housing and Environmental Health Team, dated 18 December 2015 (p.23); and
 - (ii) a statement by Mr Patrick Gallagher, a Senior Housing Benefit and Council Tax Benefit Officer, dated 9 December 2015 (at p.143). Mr Gallagher attaches a schedule setting out the housing benefit payable to Ms Niciene (p.199).
4. On 3 March 2016, Mr Colin Good wrote to the Tribunal requesting an adjournment. He complained that the Respondent had not received the relevant papers from the Tribunal. This application was opposed by the Applicant. On 4 March, a Procedural Judge refused the adjournment. She was satisfied that the correspondence that had been sent out by the Tribunal had not been returned and should have been delivered in the normal course of the post. She was also concerned at the late stage at which the application had been made.
5. The relevant legislation is set out in the Appendix to this decision. These are penal provisions (see *Parker v Waller* [2012] UKUT 301 (LC)). We require clear and cogent evidence as to the sum that the Applicant is seeking to recover. The Applicant must satisfy us that they have complied with all the legal steps necessary to establish their statutory entitlement to a rent repayment order.

The Hearing

6. The Applicant was represented by Mr Alexander Campbell (Counsel). He adduced evidence from Ms Srokowska and Mr Gallagher. The Respondent was represented by Mr William Chipperfield (Counsel) who was instructed under the direct access scheme.

7. The hearing was listed for 10.00. Chambers sent Mr Chipperfield to the Romford County Court. He arrived at the Tribunal at 11.15. Mr Chipperfield renewed the application for an adjournment. He stated that he had not had an adequate opportunity to take instructions from the Respondent. However, he was unable to indicate the nature of the Respondent's defence. He accepted that the Respondent had failed to engage at the relevant stages with the Applicant, then the Magistrates Court and now, the Tribunal. The Applicant had pleaded not guilty in the Magistrates Court, but then failed to appear at the trial. She had sought to appeal against the conviction, but her appeal was out of time. It is apparent that the Crown Court had considered that there was no merit to her appeal. Mr Chipperfield stated that the Respondent was elderly, infirm and of limited means. She had been beset by misfortune. He accepted that the Respondent had received the letters sent out by the Tribunal dated 22 December, which enclosed a copy of the application, and 23 December, which enclosed the Directions. He was unable to provide any explanation as to why the Respondent had failed to comply with the Directions, or seek legal advice as suggested in the Directions. The Tribunal was satisfied that the Respondent had had an adequate opportunity to prepare her case and had still been unable to identify a substantive defence to the application. We therefore refused the application.
8. Mr Chipperfield had indicated that he would withdraw, were we to refuse an adjournment. However, he acceded to our suggestion that he should remain and put the Applicant to proof. We are grateful to the assistance that he provided.

The Background

9. On 1 January 2013, the Applicant introduced a selective licensing scheme. On 5 September 2013, the Applicant wrote to the Respondent at the property and at 18 Tower Hill, Brentwood, CM14 4TA, an address held by the Applicant's council tax records. These letters informed the Respondent of the requirement to licence the property and the consequences of failure to licence it. No response was received and on 26 September a further letter was sent. On 31 October, an officer visited the property and spoke to the tenant, Ms Niciene.
10. On 17 January 2014, the Applicant, pursuant to section 95 of the Act, served a Notice of Intended Prosecution on the Respondent (p.105). The Notice gave the Respondent the opportunity to avoid a prosecution by accepting a caution and applying for a licence. On 20 February, the Respondent signed a caution (p.105) and applied for a licence (p.111). Unfortunately, the cheque bounced (see p.115).
11. On 10 December 2014, the Applicant served a further Notice of Intended Proceedings on the Respondent (p.121). The notice informed the Respondent of Newham's intention to apply for a rent repayment order. It set out the reasons for the intended application. It stated that the Respondent would seek to recover the sum of £8,975.47. It invited the Respondent to make written representations within 28 days. On 16 December, Ms Pepper returned a blank e-mail (p.137).

12. On 9 September 2015, the Respondent was convicted of an offence contrary to Section 95(1) of the Act in that, between 1 January 2013 and 17 January 2014, she was a person having control of managing the property, which was required to be licensed under Part 3 of the Act, but which was not so licensed (at p.139). She was fined £1,250, and ordered to pay a victims surcharge of £120 and costs of £2,848.76. She appealed, but this was out of time and the appeal was dismissed on 12 November 2015. Mr Chipperfield suggested that the complaint had been brought out of time in the Magistrates Court and referred to Section 127 of the Magistrates' Courts Act 1980. However, this Tribunal is not willing to go behind the conviction. The Applicant did not pay the sums due to the Magistrates Court and has incurred additional costs as a result of the intervention of the Court bailiff.
13. On 21 December 2015, the Applicant made this application for a rent repayment order (at p.17). In his statement (at p.143), Mr Gallagher states that the Applicant are seeking to recover the sum of £8,975.47 in respect of housing benefit paid in respect of the property between 11 December 2013 and 30 November 2014.

Our Decision

14. The Tribunal has before it Official Copy Entries which confirm that Ms Pepper was registered as owner of the freehold interest in the property on 23 April 1999 (p.83).
15. The Notice of intended Proceedings was served on 10 December 2014. Liability runs from "any time within the period of 12 months ending with the date of the notice of intended proceedings" (Section 96(6)).
16. The Applicant have provided a schedule showing full details of housing benefit payments made during the relevant period (at p.199). This related to the housing benefit paid between 11 December 2013 and 30 November 2014.
17. On the basis of this evidence, we are satisfied that the following have been established by clear and cogent evidence:
 - (i) The property was, during the period between 11 December 2013 and 30 November 2014, an unlicensed house within the meaning of section 95(1). We were told that it remains unlicensed.
 - (ii) During the period from 11 December 2013 and 30 November 2014, the Applicant paid housing benefits in the sum of £8,975.47.
 - (iii) The Respondent was at all times the appropriate person for the purpose of section 95.
 - (iv) The Respondent was convicted of an offence under section 95(1) in that she was, between 1 January 2013 and 17 January 2014, a person having control of or managing the property, which was

required to be licensed under Part 3 of the Act but which was not so licensed.

- (v) During the period between 1 January 2013 and 17 January 2014, the Respondent committed an offence under section 95(1) in that he was, during that period, a person having control of or managing the property, which was required to be licensed under Part 3 of the Act but which was not so licensed.
- (vi) The Applicant has complied with the requirements of section 96(7) in that it served a Notice of Intended Proceedings on the Respondent complying with the provisions of section 96(7)(a).
- (vii) There are no exceptional circumstances that would justify us reducing the sums sought (section 97(4)). Mr Campbell referred to paragraph 1-4182.183.3 of the Encyclopedia of Housing Law and Practice in support of his proposition that a tribunal should take a restrictive approach as to what may be considered to be exceptional. Impecuniosity on behalf of the landlord could not be considered exceptional. We are satisfied that the Respondent has had adequate opportunity to put forward particulars of any exceptional circumstances, supported by evidence. She has failed to do so.

18. Consequently we are satisfied that we are entitled, pursuant to section 97, to make a rent repayment order. Further, pursuant to section 97(2), we are obliged to make such an order.

Robert Latham
Tribunal Judge

11 March 2016

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.

Appendix - The Relevant Legislation

1. Part 3 of the Housing Act makes provision for the selective licensing of residential accommodation and the enforcement provisions are included in section 95 to 98.

2. If residential accommodation covered by the scheme is not licensed, section 96(5) permits either the local housing authority or an occupier to apply to the tribunal for a rent repayment order:

(5) If—

(a) an application in respect of a house is made to the appropriate 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 relevant award or awards of universal credit or 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)).

3. In this case the application was made by the local housing authority and consequently section 96(6) and (7) apply. These subsections read as follows:

(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—

(i) one or more relevant awards of universal credit have been paid (to any person); or

(ii) 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,

(c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) In subsection (6)(b)(i), “*relevant award of universal credit*” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (S.I. 2013/376) or any corresponding provision replacing that Schedule, in respect of periodical payments payable in connection with the occupation of the whole or any part or parts of the house.

(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.

4. Further provisions relating to rent repayment orders are contained in section 97. Section 97(2) provides that if a person has been convicted of an offence under 95(1) the tribunal must order the repayment of all the housing benefit paid during the commission of the offence. Thus Section 97 provides:

(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—

(i) one or more relevant awards of universal credit (as defined in section 96(6A)) were paid (whether or not to the appropriate person), or

(ii) 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 the amount mentioned in subsection (2A).

This is subject to subsections (3), (4) and (8).

(2A) The amount referred to in subsection (2) is—

(a) an amount equal to—

(i) where one relevant award of universal credit was paid as mentioned in subsection (2)(b)(i), the amount included in the calculation of that award under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (S.I. 2013/376) or any corresponding provision replacing that Schedule, or the amount of the award if less; or

(ii) if more than one such award was paid as mentioned in subsection (2)(b)(i), the sum of the amounts included in the calculation of those awards as referred to in subparagraph (i), or the sum of the amounts of those awards if less, or

(b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii), (as the case may be).

(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 amount mentioned in subsection (2A), 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.

....

(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.