



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

Case Reference : **LON/00BB/HSR/2016/0001**

Property : **7 Meadowsweet Close, West Beckton,
London E16 3UD**

Applicant : **London Borough of Newham**

Respondent : **Kerry Sheraline Mullins (AKA Thompson)**

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

Tribunal Members : **Judge Dickie
Mrs L Hart**

Date of Decision : **18 March 2016**

DECISION

Decision of the tribunal

The tribunal makes a Rent Repayment Order against the Respondent in the sum of £9,918.14.

The application

1. The Applicant local authority seeks a rent repayment order (RRO) pursuant to sections 96 and 97 of the Housing Act 2004 (“the Act”). The Land Registry entry shows that the Respondent is the freeholder of the subject property at 7 Meadowsweet Close, London E16 3UD (“the Property”), and has been since May 2007.
2. The tribunal issued directions on the application on 1 February 2016. Neither party having requested an oral hearing, the tribunal has proceeded to determine the matter on the papers. The Applicant's bundle of evidence has been filed with the tribunal and served on the Respondent in accordance with the directions. The Respondent has not responded to the application at all. The Applicant produced a witness statement from two of its employees - Desmond Adrien, Environmental Health Officer and Patrick Gallagher, Senior Council Tax and Benefit Officer.

Property in an area of selective licensing

3. The tribunal is satisfied that the Property was required to be licensed under Part 3 of the Act. Evidence was produced that from 1 January 2013 the Applicant designated the area of Newham, within which the Property is situated, as being an area for Selective and Additional Licensing. The designation applies to all privately rented properties within the area, subject to a number of statutory exceptions which are not applicable in the present case. Evidence was before the tribunal that the Applicant local authority had fulfilled the notification requirements required by Section 83 of the Act upon making such a designation. The tribunal is satisfied that the Property was in an area of selective licensing.

Property occupied under a tenancy

4. On 23 September 2013 the Respondent granted to Miss Priya Ali an assured shorthold tenancy of the Property for a term of 12 months at a monthly rent of £1,200. A copy of the tenancy agreement, submitted to the Applicant in relation to a Housing Benefit claim by the tenant, was produced in evidence. The address for the Respondent on that agreement is 5 Linosa Court, 79-81 Pevensey Road, Eastbourne, BN22 8AD. The Respondent granted a fresh tenancy, also produced by the Applicant in evidence, on 9 December 2014 for a term of 12 months from 22 September 2014. The address for the Respondent on that agreement is 423 Longbridge Road, Barking IG11 9DG.

Respondent convicted of an offence of failure to licence

5. The Applicant produced a copy of the register of the Thames Magistrates Court to demonstrate that the Respondent had been convicted in her absence on 28 May 2015 of an offence under s.95(1) of the Act, in that she failed to obtain a licence being a person who had control of or was managing the Property being residential accommodation which was required to be licensed under Part 3 of the Act, namely it was rented property and not so licensed. She was fined £600, and ordered to pay a victim surcharge of £60 and costs of £324.

Notice of Intended Proceedings

6. The tribunal was produced with satisfactory evidence of service by the Applicant on the Respondent of a Notice of Intended Proceedings under section 96(7) of the Act. The tribunal finds that the contents of the Notice complied with the statutory requirements set out in that subsection. The date of that Notice was 8 June 2015 and the copies produced in evidence bore a certificate of service by first class post that day signed by Mr Adrien. The tribunal is satisfied on the evidence that the notice was duly served on the Respondent at:
 - (i) 5 Linosa Court, 79-81 Pevensey Road, Eastbourne, BN22 8AD (the address for the landlord on the tenancy agreement and the certificate of conviction)
 - (ii) 423 Longbridge Road, Barking, Essex, IG11 9DQ (the address for the Respondent on the renewed tenancy agreement dated 9 December 2014),
 - (iii) 7 Meadowsweet Close, West Beckton, London E16 3UD (the Property)
7. The Property was at the time of the original tenancy managed by Spencer James, managing agent, but there was no managing agent recorded on the renewed tenancy.(and Mrs Ali's witness statement said that from September 2014 she began to pay rent direct to the Respondent and not to the former managing agent). The tribunal accepts that by the date of issue of the Notice of Intended Proceedings there was no longer a managing agent for the property.

8. No representations were received by the Respondent within the period ending 9 July 2015 specified in the Notice (which was more than the minimum statutory requirement of 28 days).

No licence in existence

9. No evidence has been produced by the Respondent as to the existence of a licence, and the Applicant produced sufficient evidence in the form of the witness statement from Mr Adrien that there was no licence and no application had been received at any relevant time. The tribunal was lately informed by the Applicant by email that the Respondent had made an application for a licence on 8 March 2016 and that the address specified for the Respondent on that application was 423 Longbridge Road, Barking, Essex, IG11 9DQ. These proceedings have been correctly served on her by the tribunal at that address (and on the two other addresses listed in paragraph 6 above).

Housing benefit paid for a period during which an offence was committed, the same or less than the rent

10. The next question for the consideration of the tribunal is whether Housing Benefit been paid during the period of 12 months prior to the date of the Notice of Intended Proceedings. Mr Gallagher produced evidence that Housing Benefit was paid by the Applicant to the tenant from 23 September 2013 in respect of the application by Mrs Ali made on 18 October 2013. The rental liability having initially been shown to be £1,200 per month, on 10 December 2014 the Applicant received the revised tenancy agreement from Mrs Ali showing her rent had decreased to £1,100 per month. There had been no subsequent changes to Housing Benefit.
11. With reference to the application for a RRO, the tribunal is satisfied on the evidence that Housing Benefit was paid between 9 June 2014 and 31 May 2015 for the tenant Mrs Ali in the total sum of £9,918.14 for her occupation of the Property. The Notice of Intended Proceedings had used a figure for Housing Benefit of £9,924.56, but this was subsequently slightly reduced, as explained in Mr Gallagher's witness statement, owing to a change in Mrs Ali's circumstances. By virtue of Section 96(6)(b) the Housing Benefit in respect of which a RRO can be made is that which has been paid to any person.
12. A schedule of all weekly payments was attached to Mr Gallagher's witness statement , and the tribunal accepts this evidence and that the total Housing Benefit of £9,918.14 was paid in respect of a period of no more than 12 months from the date of the Notice and the tribunal accepts that an offence was being committed throughout this period.
13. The amount paid to the Respondent in respect of periodical payments (in this case rent) has been the same or more than the Housing Benefit paid. The tribunal reaches this conclusion based on a letter on the Housing Benefit file from the Respondent dated 14 January 2015 confirming that Ms Ali was not in any rent arrears, and copies of Ms Ali's bank statements showing payments to KS Mullins on 24 February 2015 in the sum of £2,200 and on 25 September 2015 in the sum of £1,100.

Conclusion

14. Accordingly, the tribunal is satisfied as to all of the matters in Section 97(2) of the Act, and that it therefore must make a RRO requiring the appropriate person to pay the Applicant an amount equal to the total Housing Benefit paid, subject to certain statutory exceptions. With regard to subsection 97(3), there is no evidence that the Respondent did not receive all of the Housing Benefit in question by way of rent, and

it is clear that the rent was not less than the Housing Benefit paid to the Respondent. With regard to subsection (4), whilst there are indirect reports of recent health problems suffered by the Respondent, there is no evidence on which the tribunal could conclude that there are exceptional circumstances such that it would be unreasonable for her to be required to pay any amount.

15. Accordingly, the tribunal must and does make an order under s.96(5) and s.97(2) in the sum claimed.

Name: F. Dickie

Date: 18 March 2016