



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

Case Reference : **LON/00BB/HSR/2016/0009**

Property : **19 Wanlip Road, London E13 8QR**

Applicant : **London Borough of Newham**

Representative : **Ms A Richardson of Counsel**

Respondent : **Mr Kwasi Bonsu**

Representative : **In person**

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

Tribunal Members : **Judge N Hawkes
Mr L G Packer**

Date and venue of Hearing : **8th July 2016, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **13th July 2016**

DECISION

Decision of the Tribunal

The Tribunal makes a Rent Repayment Order against the respondent in the sum of £4,573.09.

The application

1. By application dated 5th April 2016, the applicant seeks a rent repayment order (“RRO”) under section 96(5) of the Housing Act 2004 (“the 2004 Act”).
2. Directions were issued on 18th April 2016 leading up to a final hearing.

The hearing

3. The applicant was represented by Ms A Richardson of Counsel at the hearing and the respondent appeared in person.
4. Both parties handed in additional documents immediately before the start of the hearing. Neither party objected to the late service of any of the documents and the Tribunal extends time pursuant to Rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the service of these documents.
5. The Tribunal heard oral evidence from Magdalena Srokowska and Patrick Gallagher on behalf the applicant, and from the respondent in person.

The evidence and submissions

6. The parties were in agreement that the statutory prerequisites for the making of a RRO are satisfied and that the only outstanding issue is the determination of the amount which it would be reasonable in the circumstances for the respondent to pay.
7. The following facts are not in dispute. The respondent is the freehold owner of the property known as and situate at 19 Wanlip Road, London E13 8QR (“the property”).
8. By a written agreement dated 15th November 2012, the respondent let the property to a Ms Nancy Williams pursuant to an assured shorthold tenancy agreement at a rent of £1,125.02 per calendar month. There has been no rent increase to date.
9. Ms Williams applied for housing benefit at the property on 12th November 2012 and there has been a live housing benefit claim in

existence since 15th November 2012. In December 2012, the respondent applied for the housing benefit to be paid directly to him.

10. With effect from 1st January 2013, the area in which the property is situated has been designated an area subject to selective licencing.
11. On 6th January 2014, the applicant became aware that the property was being let without a licence.
12. The applicant sent the respondent warning letters dated 16th January 2014 and 6th February 2014 inviting him to apply for a licence. These letters were followed by a notice of intended prosecution dated 28th October 2014.
13. No application for a licence was received and, on 10th November 2014, the respondent accepted a caution admitting that he had committed an offence under section 95(1) of the 2004 Act. The respondent applied for a licence on the same day and he was granted a licence on 6th February 2015.
14. The respondent has paid the applicant the sum of £300 in respect of legal costs and he has also paid the licence fee of £500. However, the Tribunal notes that the licence fee of £500 would have been payable by any landlord who applied for a licence at the same time as the respondent.
15. The applicant served the respondent with a notice of intended proceedings on 13th May 2015.
16. In addition to the matters set out above, the applicant relies upon evidence that, on 24th July 2014, the respondent was informed during the course of a telephone conversation that he would need to apply for a licence. The respondent gave evidence that he could not recall this conversation. He stated, "I am not saying that this definitively did not happen, I cannot recall it."
17. The respondent's position is that he knew that a licence was required but that he had thought, in error, that he had already paid the licence fee because he had paid a fee of £155 to join the applicant's Landlord Accreditation Scheme ("the Bond Scheme") in 2012. The correspondence provided to the Tribunal by the respondent includes a letter dated 7th November 2012 confirming receipt of the sum of £155 in respect of the membership fee for the Bond Scheme and another letter dated 16th November 2012 confirming that his application has been approved.
18. The respondent gave evidence that, following receipt of the warning letters, he spoke to a number of different people by telephone but that

no one could give him “a conclusive answer”. The applicant’s warning letters provide a website address (www.newham.gov.uk/property/licensing) but the respondent appeared uncertain whether he had looked on-line for further information.

19. The respondent accepted in cross-examination that he owns the property mortgage free. He stated that, in order to fund the purchase, he took out loans from family and friends but he gave no details of the sums borrowed or of the repayment terms and no documentation was provide in support of this assertion. The respondent gave evidence, which the Tribunal accepts, that 19 Wanlip Road is his only property.
20. The respondent also stated that he had spent significant sums in carrying out repairs to the property in order to remedy damage caused by tenants but he did not specify in any detail the nature of the work which was carried out or the sums which he was invoiced. He did not provide copies of any documents in support.
21. The respondent accepted that he has mathematics degree and that he has previously worked as a banker. He explained that he has not worked since he was seriously injured in a road traffic accident in 2008 but he accepted that he has an on-going personal injury claim which includes a claim for damages in respect of his loss of earnings.
22. The respondent accepted that the applicant has asked him to provide documentary evidence in support of his case but stated that he found this request intrusive. The Tribunal pointed to the fact that the Directions dated 15th April 2015 include provision for the respondent to provide “evidence of financial hardship”. The respondent indicated that he had been in the process retraining with a view to returning to work when he received the Directions and that he had not had sufficient time to collate any evidence in support of his contentions.
23. The parties agreed that the sum of £24 per month which the respondent said that he had paid in respect of water bills relating to the property should be deducted from the sum payable by the respondent. The respondent confirmed that the tenant pays the other utility bills.
24. In closing submissions, the applicant invited the Tribunal to have regard to the total period of time during which the offence was being committed. The applicant pointed to the lack of documentary evidence in support of the respondent’s contentions.
25. The applicant argued that the respondent could not realistically have thought that a payment which he made in 2012 in respect of the Bond Scheme was a payment in respect of licencing requirements which did not come into force until 2013.

26. The applicant argued that, in all the circumstances of this case, a RRO should be made representing in the region of 70-80% of the relevant housing benefit payment.
27. The respondent was, understandably, reluctant to put forward a proposed figure because he is unfamiliar with legal proceedings of this type.

The Tribunal's decision

28. The applicant relies upon subsections 96(6) and 96(7) of the 2004 Act which provide 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.

(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.

29. The Tribunal accepts the applicant's evidence and finds that the requirements of the 2004 Act are satisfied and that it has jurisdiction to make a RRO in respect of housing benefit paid to the respondent during the period 14th May 2014 to 9th November 2014. The relevant evidence was considered in detail during the course of the hearing and was not disputed by the respondent.
30. The Tribunal accepts the applicant's evidence that the total sum of £6,652.99 was paid to the respondent in respect of the property during the relevant period and notes that this figure was not disputed.
31. In considering the issue of reasonableness, the Tribunal has had regard to *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*. Both of these authorities were referred to during the course of the hearing.
32. As stated above, the parties agreed that the sum of £24 per month which the respondent said that he paid in respect of water bills relating to the property should be deducted from the sum payable. Accordingly, the Tribunal deducts the sum of £120 in respect of water bills paid by the respondent during the relevant period (approximately 5 months). This leaves a balance of £6,532.99.
33. The Tribunal is not satisfied on the balance of probabilities that the respondent has any relevant outgoings relating to the property other than the water bills. His oral evidence was not specific and, as stated above, he has not provided any documentary evidence in support of his contentions notwithstanding the invitation to do so at Paragraph 8(d) of the Tribunal's Directions.
34. Further, the Tribunal finds that, given his education and experience, the respondent should have understood from the documents with which he was provided by the applicant that a mandatory property licence under the 2004 Act is a different matter from his voluntary participation in the applicant's Bond Scheme, particularly from the warning letter dated 16th January 2014, which includes the statement "The London Borough of Newham has introduced the compulsory

licensing of all private rented accommodation in the borough from 1 January 2013.

35. It was apparent from the manner in which he gave evidence that the respondent is intelligent and articulate. The Tribunal considers that the respondent should have understood that the payment of £155 which he made in 2012 in order to join a voluntary local authority scheme could not have been a payment in respect for a licence pursuant to a compulsory licensing scheme which did not come into force until 2013.
36. The Tribunal is, however, satisfied that the respondent is not a professional landlord or property manager.
37. Having taken into account these findings and having had regard to all of the evidence and submissions referred to above, the Tribunal determines that it is reasonable, in all the circumstances, for a RRO to be made in the sum of £4,573.09. This sum represents 70% of the balance of £6,532.99 which remains after the deduction of the sum of £120 representing the water bills paid by the respondent.

Judge Hawkes

13th July 2016