



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

Case Reference : **MAN/00EX/HMG/2019/0003**

Property : **61 RICHMOND TERRACE, DARWEN, BB3 0HE**

Applicant : **MUKHTAR AHMAD**

Respondent : **CRAIG SUMNER and CHARLOTTE SUMNER**

Type of Application : **Rent Repayment Order**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Determination : **31 May 2019**

Date of Decision : **14 June 2019**

DECISION

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No rent repayment order is made.

REASONS

BACKGROUND

1. In May 2017 the Darwen selective licensing scheme was instituted by Blackburn with Darwen Borough Council. The Applicant did not apply for a licence.
2. On 28 December 2017 the Applicant, through his letting agents Connollys & Harvey Ltd of Bolton, let his property 61 Richmond Terrace Darwen (“the Property”) to the Respondent Mr Craig Sumner.
3. The Respondents vacated the Property on 10 December 2018.

THE LAW

4. Section 41 of the Housing and Planning Act 2016 (“the Act”) enables a tenant to apply to this Tribunal for an order for repayment of rent by a landlord who has committed an offence listed at section 40 of the Act, including failure to obtain a licence contrary to section 95(1) of the Housing Act 2004.
5. Section 95(4) of the Housing Act 2004 states:

“In proceedings against a person for an offence under subsection (1)... it is a defence that he had a reasonable excuse –

(a) For having control of or managing the house in the circumstances mentioned in subsection (1).....”

If the Applicant had a reasonable excuse, he had a defence to an allegation under section 95(1) that he was not licensed to control or manage the Property, and no offence was committed.

6. Section 43(1) of the Act states:

“The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).”

In this instance, there has been no prosecution or conviction.

DECISION

7. The Tribunal has seen an email from the Housing Solutions department of Blackburn with Darwen Borough Council (“the Council”), dated 28 February 2019 and addressed to the Applicant, which reads:

“.....I confirm that Blackburn with Darwen Borough Council has no issue or cannot take any action against you with regards to the complaint made by your previous tenant Mrs Sumner.

.....as you live in London you were not aware of the scheme. Your agents are based in Bolton, and they were also not aware of the scheme as they are from a different Borough and they work differently to Blackburn with Darwen Borough Council.

.....you worked well with the council for them to be able to grant you a licence.

Therefore, as you now already have a licence for the above property, no action can be taken against you.”

8. The Tribunal is obliged to consider the view of the Council that the Applicant had a reasonable excuse for failing to obtain a licence until he or his agents were served with notice to do so, because he was unaware of the existence of the scheme. It may be the case that the Applicant should have made himself aware of regulations applying to the area where he owned tenanted property, but the evidence suggests that the Applicant either had or may have had a reasonable excuse not to obtain a licence.
9. The Tribunal therefore concludes that it is not possible to say that they are “satisfied beyond reasonable doubt” that an offence has been committed. It follows that a Rent Repayment Order is not to be made.

Signed: Judge A. Davies

Dated: 14 June 2019