



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

Case Reference : **MAN/00CH/HSI/2017/0002**

Property : **14 Saltwell Place
Gateshead
Tyne and Wear
NE8 4QY**

Applicant : **Gateshead Council**

Respondent : **Mr Schlomo Edry**

Type of Application : **Housing Act 2004 – section 96(5)**

Tribunal Members : **Judge J Holbrook
Deputy Regional Valuer N Walsh**

Date and venue of Hearing : **Determined without a hearing**

Date of decision : **29 March 2018**

DECISION

Mr Edry is ordered to repay Gateshead Council the sum of £4,038.84 representing housing benefit paid in respect of the Property.

Mr Edry must also reimburse the Council for the tribunal application fee in the sum of £100.

REASONS

Background

1. On 2 November 2017, Gateshead Council applied to the Tribunal for an order under section 96(5) of the Housing Act 2004 (“the 2004 Act”) for a rent repayment order. The Council seeks repayment of housing benefit which it has paid in respect of 14 Saltwell Place, Gateshead, Tyne and Wear NE8 4QY (“the Property”) from the Respondent, Mr Schlomo Edry of 137 Berwick Road, Bensham, Gateshead.
2. On 3 January 2018, the Tribunal issued Directions to the parties stating that the matter would be dealt with by way of a determination on the basis of the written evidence without the need for an oral hearing unless either party requested one. Neither party requested an oral hearing and therefore the Tribunal convened to consider the application on the basis of the written representations received from the Council. Mr Edry did not submit any representations in response to the application. Nor did he engage with the Tribunal in any other way during these proceedings
3. The Tribunal did not inspect the Property.

Facts

4. The Property is located within an area which was designated for selective licensing purposes under Part 3 of the 2004 Act with effect from 18 May 2012 until 17 May 2017. A selective licence granted in respect of the Property was revoked by the Council following the sale of the Property by the licence-holder to Mr Edry in March 2016. The Property then remained unlicensed until the selective licensing designation expired in May 2017.
5. On 3 July 2017, at South Northumbria Magistrates’ Court, Mr Edry was convicted of an offence, under section 95(1) of the 2004 Act, of managing a house (namely the Property) which was required to be licensed under part 3 of the 2004 Act but which was not so licensed. The court record indicates that the offence was committed between 4 April 2016 and 15 February 2017.
6. On 17 August 2017, the Council served Mr Edry with a notice of intended proceedings informing him that it was proposing to apply for

an order for the repayment of £4,585.93 paid in housing benefit in respect of the Property for periods between 11 July 2016 and 17 May 2017.

7. The notice of intended proceedings invited Mr Edry to make representations to the Council regarding the notice within 28 days. Mr Edry did make such representations, which the Council then considered and subsequently responded to in writing. Nevertheless, the Council confirmed to Mr Edry its intention to apply for a rent repayment order. As already mentioned, the Council applied for that order on 2 November 2017.

Law

8. The relevant law is contained in sections 96 and 97 of the 2004 Act. Although the statutory regime for rent repayment orders was substantially modified by the Housing and Planning Act 2016 with effect from 6 April 2017, the present application is subject to the pre-existing law because the commission of the offence in question started before that date but has now ended.
9. Section 96(5) of the 2004 Act confers power on the Tribunal to make an order (a rent repayment order) requiring the appropriate person to pay to the local housing authority such amount in respect of the housing benefit paid as mentioned in subsection (6)(b) as is specified in the order.
10. Before it makes such an order, the Tribunal must be satisfied as to the matters mentioned in section 96(6). These are:
 - (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 ... 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, and*
 - (c) *that the requirements of subsection (7) have been complied with in relation to the application.*
11. The requirements in section 96(7) concern the information which must be contained in the notice of intended proceedings and the duty to consider any representations made by the appropriate person in response to the notice.
12. For these purposes, “the appropriate person” means the person who at the time of the relevant housing benefit payment was entitled to receive

on his own account periodical payments payable in connection with the occupation of the house or part of it.

13. The provisions in section 96 of the 2004 Act are supplemented by those in section 97. In particular, section 97(2) provides: –

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 ... housing benefit was paid (whether or not to the appropriate 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 in relation to the house,*

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority [an amount equal to the total amount of housing benefit paid as is mentioned in paragraph (b)].

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

14. Those subsections make the following provision:

(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 total amount of housing benefit paid as is mentioned in that paragraph, 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) ...*

15. As set out above, the period referred to in section 96(6)(a) is the period of 12 months ending with the date of the notice of intended proceedings.

Discussion and conclusions

Does the Tribunal have power to make a rent repayment order?

16. Having inspected a copy of the court record, we are satisfied, both that Mr Edry has been convicted of an offence under section 95(1) of the 2004 Act in respect of the Property, and that the offence was being committed throughout the period mentioned in that record. In addition, we note the Council's evidence that the Property continued to be let without a selective licence after the end of that period. Mr Edry has not disputed this fact, and we are satisfied that the commission of the offence continued until the selective licensing designation expired on 17 May 2017.
17. In the absence of any evidence to the contrary, we are also satisfied that Mr Edry is "the appropriate person" for the purposes of sections 96 and 97 of the 2004 Act.
18. In addition, we are satisfied that the housing benefit referred to in the notice of intended proceedings has been paid by the Council in respect of periodical payments payable in connection with the occupation of the Property.
19. We are further satisfied that the notice of intended proceedings complied with the requirements of section 96(7) of the 2004 Act and we are thus satisfied as to all the matters listed in section 96(6). It follows that the Tribunal has the power to make a rent repayment order in this case.

Should the Tribunal make a rent repayment order?

20. We have considered whether it is appropriate to make a rent repayment order in the present circumstances and we have concluded that it is. The consequences of committing the offence in question are prescribed by the 2004 Act to include an obligation to repay rent or housing benefit and the Tribunal should be reluctant to refuse a valid application for a rent repayment order. It will be a rare case where the Tribunal exercises its discretion not to make an order and, in our view, this is not one of those cases.

What should be the terms of the order?

21. The Tribunal must determine this question having regard to the requirements of section 97 of the 2004 Act.
22. The Tribunal may only order the repayment of housing benefit which was paid in respect of periods which were within 12 months of the date of the notice of intended proceedings and during which the offence was being committed. In the present case, that means that a rent repayment order may relate to housing benefit paid in respect of the period which commenced on 18 August 2016 and ended on 17 May 2017. However, it is apparent that the Council's application also seeks repayment of

housing period paid in respect of earlier periods (from 11 July 2016) and this is impermissible.

23. It is therefore necessary to adjust the sum claimed by the Council. In particular, the claim for £517.50 in respect of the period from 11 July to 15 August 2016 must be disallowed. The claim for £103.56 in respect of the period from 16 August to 22 August 2016 must be reduced (on a pro-rata basis) by £29.59 to reflect the fact that the first two days of that period fell before 18 August 2016. The maximum amount which Mr Edry can be required to repay is thus £4,038.84.
24. Having decided that a rent repayment order should be made, it follows that the order must require Mr Edry to pay this amount in full unless the Tribunal is satisfied that either (a) the total rent received by him was less than the amount of housing benefit paid by the Council (and there is nothing to suggest that this is so); or (b) it would be unreasonable to require repayment by reason of any exceptional circumstances.
25. Although Mr Edry has made no representations to the Tribunal during these proceedings, we have been provided with a copy of the written representations he made to the Council in response to the notice of intended proceedings. In those representations, Mr Edry had asserted that his failure to apply for a selective licence for the Property was attributable to his limited understanding of English and to failings on the part of his appointed managing agent. Mr Edry also referred to pressures upon him arising from his caring responsibilities for his disabled wife and son, and to the fact that he would already struggle to pay the fine and costs imposed by the court (which amounted to £1,585.50). We have considered whether these matters – in particular, Mr Edry’s caring responsibilities and financial situation – amount to ‘exceptional circumstances’ for present purposes. However, in the absence of any detailed information explaining those circumstances more fully, we have concluded that there is insufficient evidence before us to justify such a finding.
26. Accordingly, we conclude that a rent repayment order should be made for the sum of £4,038.84.

Costs

27. We note that the Council notified Mr Edry (in the notice of intended proceedings) that it would also seek to recover from him the fee it would have to pay upon applying to the Tribunal for a rent repayment order. We consider it appropriate to exercise our discretion to order Mr Edry to reimburse the Council for that fee in the sum of £100.

Judge J Holbrook
29 March 2018