



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

Case reference : **MAN/00EJ/HSE/2019/0006**

Property : **26 James Street, Easington
Colliery, Co Durham, SR8 3LZ**

Applicant : **Ms Andrea Bains**

Representative : **Ms Susan Cousins, Private Sector
Housing Team, Durham County
Council**

Respondent : **Mr M. Hunter**

Representative : **Castledene Property Management**

Type of application : **Rent Repayment Order - Section 40
Housing and Planning Act 2016**

Tribunal members : **Judge Lancelot Robson
Mr I D Jefferson TD BA BSc FRICS**

Date of Determination : **10 December 2019**

Date of Decision : **10 January 2020**

DECISION

Decision of the Tribunal

1. The Tribunal refused the application
2. The Tribunal made the other detailed decisions noted below.

The Application

3. By an application dated 23rd April 2019 the Applicant tenant applied to the Tribunal under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”). The Tribunal gave Directions on 16th May 2019 requiring both parties to prepare their respective cases and stating that a paper determination would be made unless either party requested a hearing. The Applicant sent in her case bundle in compliance with the Directions. The Respondent did not take any part in the proceedings.

The Law

4. Sections 40-46 of the 2016 Act contain the provisions in respect of RROs. In summary, Section 40 provides that the Tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence - in this instance the offence set out in Section 95(1) of the Housing Act 2004, the control or management of an unlicensed house. Section 41(2) stipulates that a tenant may apply for an RRO only if the offence relates to if the offence relates to housing which at the time of the offence was let to the tenant, and the offence was committed in the period of 12 months ending with the day on which the application was made.

5. Section 43 states that the tribunal may make an RRO if satisfied beyond reasonable doubt that a landlord has committed the offence. The amount of the order is set out in section 44 as a period not exceeding 12 months during which the landlord was committing the offence, (e.g. where the order is made under Section 95(1) of the Housing Act 2004). The amount of an order in favour of a tenant is the rent paid in the period (less the amount of any Universal Credit paid in respect of the rent relating to the property) subject to any exceptional circumstances which the tribunal considers would make it unreasonable for the landlord to pay that amount (set out in Section 44(4)).

Applicant’s Case

6. It should be noted at this point that the Applicant had agreed in writing that the Council should act as her representative, as she found it difficult to understand the Directions. Ms Susan Cousins, and Ms Joanne Thompson, members of the Durham County Council Housing Management Team both made written statements (in connection with the related case MAN/00EJ/HSE/2019 in respect of the Council’s claim for repayment of the Universal Credit element of the rent paid to the Respondent) attaching the documents required by the Directions dated 16th May 2019, with the exception

of a detailed calculation of the amount of rent paid during the period of the offence excluding any Universal Credit.

In the absence of any challenge to the Applicant's evidence, the Tribunal found the following facts:

a) Selective Landlord Licensing was introduced to the Wembley area of Easington Colliery (including the subject property) on 7th July 2014.

b) The Respondent bought the property on or about 24th March 2017. On 13th April 2017 the Respondent's letting agent contacted the Applicant with a view to advertising the property on the Applicant's "Durham Key Options" website. On 28th April 2017 the Respondent contacted the Applicant's office requesting details of the licensing process. An application form was sent to him.

c) The Applicant sent reminders to the Respondent requesting return of the completed form and evidence on numerous dates between 20th July 2017 and 22nd January 2018. The Respondent telephoned the Applicant's office on 23rd January 2018, stating he had not received the application form. On 24th January, Ms Thompson called the Respondent. It appeared that he had confused being accredited with the Applicant and having a Licence. This was clarified and he promised to send some information that day. On 24th January 2018, the Applicant emailed to advise the Respondent what documents were still required to complete his application. On 29th January 2018 certain documents were sent by email, with a promise that the application form would be sent by recorded delivery. After a further reminder a licence application arrived on 13th February 2018, which was incomplete. The Applicant sent another letter on 14th February advising what further information was required. The property was finally licensed on 28th March 2018.

d) The property had been let on an assured shorthold tenancy to the Applicant on 27th July 2017 at a rent of £395 per month, payable monthly in advance.

e) The Respondent pleaded guilty to having control of or managing 26 James Street, Easington Colliery, Co Durham, between 27th July 2017 and 28th March 2018, which was required to be licensed, but was not so licensed, contrary to Section 95 (1) and (5) of the Housing Act 2004. He was sentenced to a fine of £138, to pay a victim surcharge of £30, and to pay costs of £400.

f) A notice of intended proceedings to apply for a rent repayment order (RRO) was sent by the Council to the Respondent on 23rd January 2019, (which appeared to be in order). The notice gave the Respondent a period of 28 days ending on 20th February 2019 to make written representations against the notice. No such representations were received.

Respondent's Case

7. The Respondent made no submissions but in related proceedings his managing agents sent a copy of the tenant's rent account for the relevant period.

Determination

8. The Tribunal considered all the evidence and submissions. As noted above, on 6th June 2018 the Respondent pleaded guilty to a breach of Section 95(1) and (6) of the Housing Act 2004; that in the period between 27th July 2017 and 28th March 2018 he had control of or managed a house (i.e the subject property) which was required to be licensed under Part 3 of the Housing Act 2004 but was not so licensed. He was convicted. The Tribunal therefore found that beyond reasonable doubt the Respondent had been guilty of the offence.

9. However, the Applicant only applied to this Tribunal on 23rd April 2019, which is more than 12 months after the last day of the period in which the offence was committed (28th March 2018). Section 41(2)(b) of the 2016 Act is very specific that a tenant may only apply for an order within 12 months of the date of the offence. There appears to be no discretion left to the Tribunal as to whether it should excuse the delay. Further, no schedule of rental payments by the Applicant was submitted, thus there was inadequate evidence upon which to make an order. Regrettably, the Tribunal must refuse the application.

Tribunal Judge: Lancelot Robson Dated 10th December 2019
