



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

**Case Reference** : **LON/00AC/HSD/2019/0001**

**Property** : **167 Russell Lane, London N20 0AU**

**Applicant** : **London Borough of Barnet**

**Representative** : **Ms Moore**

**Respondent** : **Ms Fariba Khosravikharashad**

**Representative** : **In person**

**Type of Application** : **Rent repayment order**

**Tribunal Members** : **Judge Tagliavini  
Miss M Krisko FRICS**

**Date and venue of hearing (paper)** : **10 Alfred Place, London WC1E 7LR  
18 February 2020**

**Date of Decision** : **2 March 2020**

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**DECISION**

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## **THE TRIBUNAL'S SUMMARY DECISION**

- I. The tribunal determines that the respondent is to repay to the applicant the sum of £5,244.87 in respect of Housing Benefit paid for the period 1 December 2018 to 28 May 2019.**
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### **The application**

1. This is an application made by the applicant Local Housing Authority for a Rent Repayment Order under the provisions of the Housing and Planning Act 2016 (“the 2016 Act”).

### **The premises**

2. The subject premises are a modern three storey middle of terrace house with five occupied units. One of the units comprised a self-contained kitchen/living room with a separate bedroom and bathroom. The other units variously shared a kitchen, bathroom and w.c. The subject premises were occupied by 5 persons in 5 households of which the respondent was the landlord who required a licence under both the mandatory and additional licensing schemes. Housing Benefit was paid to or for the benefit of, the tenant Mr. H Bashi who occupied the self-contained unit under a tenancy agreement dated 16 March 2018 made between himself and the respondent as landlord.

### **Background**

3. The subject premises was required to be licensed under Part 2 of the Housing Act 2004. On 26 September 2019 the respondent landlord pleaded guilty at the North West London Magistrates Court and was convicted of 3 charges in relation to offences section 72(1) and (6) of the Housing Act 2004 (“the 2004 Act”) for failing to licence the subject property; failure to comply with Regulations 3 and 4 of the Management of Houses in Multiple Occupation (England) Regulation 2006 contrary to section 234 of the 2004 Act.
4. In a Notice of Intention to apply for a Rent Repayment Order dated 23 August 2019, the applicant notified the respondent of its intention to seek repayment of £5,244.87 representing the Housing Benefit paid directly to her for the occupation of her tenant Mr. Bashi for the period 1/12/18 to 28/5/19.

## **The hearing**

5. At the hearing of the application the respondent attended in person and sought an adjournment as she wished to speak to her solicitor. The applicant opposed the application for an adjournment.
6. In considering the application for an adjournment, the tribunal had regard to the tribunal's directions dated 26 November 2019 giving notification of the hearing date and the overriding objective set out in rule 3 of The Tribunal Procedure (First-tier) (Property Chamber) Rules 2013. In the absence of any specific reason as to why the respondent wished to speak to her solicitor and there being no other good reason why an adjournment was either necessary or required, the tribunal refused the respondent's application for an adjournment.

## **The applicant's case**

7. In support of its claim for a rent repayment order the applicant relied upon the oral evidence of Mr. Kevin Gray, Principal Heath Officer who spoke to his witness statement dated 9 January 2020. The tribunal also heard the oral evidence of Ms Lucy Connor an Intelligence Officer in the applicant's Corporate Anti-Fraud Team who spoke to her witness statement dated 9 January 2020.
8. The tribunal was also provided with a witness statement of Ms Belinda Livesey a Group Manager in the applicant's Private Sector Housing Team dated 9 January 2020 and who had signed the Notice of Intention dated 23 August 2019. Ms Livesey told the tribunal that the applicant was now seeking a rent repayment order in the sum of £10,694.84 for the period 28/5/18 to 28/5/19 being a 12 months period during which the offence(s) were being committed and during which, Housing Benefit was being paid directly to the tenant Mr. Bashi until 1/12/18 and thereafter, paid directly to the respondent.
9. The applicant informed the tribunal that the respondent had other properties which were licensed in accordance with relevant licensing scheme in her name. The applicant also recognised that during the period for which the rent repayment order was now sought, the respondent would have had some outgoings which she would be expected to make. However, the applicant submitted that the tribunal should make a rent repayment order for the 12 months period sought in accordance with provisions of ss. 45 and 46 the 2016 Act as no exceptional circumstances applied that would permit the tribunal a discretion to reduce the amount sought.

## **The respondent's case**

10. The respondent did not provide to the tribunal any documents or witness statement on which she relied and as directed by the tribunal.
11. The respondent gave oral evidence but provided no documentation for the tribunal to consider. The respondent stated that she had been fined £19,000 in the Magistrates Court, which amount is the subject of an appeal.<sup>1</sup> The respondent told the tribunal that she was self-employed and ran a computer/telephone repair and sales shops, one of which had closed down and had recently started driving a taxi again. The respondent also told the tribunal she owns and occupies a property at 46 Balman House, which is a three bedroom flat and for which she pays £800 plus bills per month.
12. The respondent told the tribunal that she had entered into a tenancy agreement for the whole of the property at 167 Russell Lane from the freeholder Mr. Mathias with Aitkin and Spencer acting as agents, at a rent of £2000 per month and which she had paid up to date before being evicted on 25/5/19.<sup>2</sup> The respondent told the tribunal she had been given verbal permission to sublet the subject premises.
13. On questioning by the applicant's representative, the respondent stated that the number of tenants in the subject property was quite fluid and one room was always empty. The respondent stated that her landlord/agent knew she was going to "share" the premises with another girl and that she had rented out her flat at 46 Balham House for a three months period in 2019 at a rent of £1,200 per month. The respondent accepted she was a licence holder of 67 Draycott Ave, Harrow HA3 0DD, a four bedroom house and was living at 347 Kenton Road, Harrow HA3 0XS of which she is the manager and also renting offices while her non-dependent daughter was living at 46 Balman House.

## **The tribunal's decision and reasons**

14. The tribunal finds that the respondent has been convicted of an offence under s.72(1) of the 2004 Act. Therefore, in considering the amount of the rent repayment order, the tribunal has regard to section 45 and 46 of the 2016 Act. The tribunal finds that it is required to make an order for the maximum amount sought by the applicant unless any exceptional circumstances apply.

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<sup>1</sup> The Memorandum of Entry entered in the Register of the North West London Magistrates' Court records that the respondent was fined £16,000; a victim surcharge of £170.00 and costs of £3,732.26.

15. The tribunal is satisfied that Housing Benefit has been made in respect of the occupancy of the respondent's tenant Mr. H Bashi, for the period 16/03/18 to 26/06/2019 in a total sum of £13,813.50. However, the tribunal finds that the applicant in its Notice of Intention to apply for a Rent Repayment Order in the sum of £5,244.87 for the period 1/12/18 to 28/5/19. The tribunal finds that at all material times the respondent has been led to believe that the sum sought from the respondent is £5,244.87 and not the larger sum of £13,813.50 which has been claimed for the first time at the hearing of this application. Notwithstanding the tribunal's acceptance of the applicant's evidence in respect of the totality of the Housing Benefit paid to Mr. Bashi and the provisions of section 46 of the 2016 Act, the tribunal finds that the maximum rent repayment order it is permitted to make is that claimed in the Notice of Intention and without any deduction i.e. £5,244.87.
16. Further or alternatively, the tribunal finds that the failure by the applicant to notify the respondent of the larger sum now claimed of £13,813.50 it now seeks to recover, either in the Notice of Intention or otherwise amounts to an exceptional circumstances by which the tribunal can make a rent repayment order for the sum claimed in the applicant's original Notice of Intention.
17. In conclusion, the tribunal determines that it is appropriate to make a rent repayment order in the sum of £5,244.87 in respect of Housing Benefit paid for the period 1 December 018 to 28 May 2019.

Name: Judge Tagliavini

Date: 2 March 2020

### **Rights of Appeal**

By rule 36(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they might have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time , such application must include a request for an extension of time and the reasons for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within these time limits.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. Give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).