



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

Case reference : **MAN/36UG/HSE/2020/0001**

Property : **182 Victoria Road,
Scarborough YO11 1SX**

Applicant : **Mr John Hood**

Respondent : **Scarborough Borough Council**

Type of Application : **Application for a rent repayment
order by a Local Housing Authority
under Section 41 of the Housing and
Planning Act 2016**

Tribunal Members : **Judge J.M. Going
P. E. Mountain**

Date of Deliberations : **11th September 2020**

Date of Decision : **16th September 2020**

DECISION

The Decision and Order

Mr Hood is ordered to repay Housing Benefit of £3293.33 to the Council.

Background

1. By an Application (“the Application”) dated 7th February 2020 the Applicant (“the Council”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order against the Respondent (“Mr Hood”) as the landlord of the property.
2. The Tribunal on 28th February 2020 issued Directions to the parties stating that the matter would be dealt with on the basis of the written submissions and documentary evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing.
3. The documentation provided by the Council included a Witness Statement by its Residential Regulation Manager, and copies of an email from the Council solicitor confirming the details of Mr Hood’s conviction, the letter notifying Mr Hood of the Council’s intention to apply for a rent repayment order, and a schedule of Housing Benefit payments.
4. Mr Hood responded to the Directions belatedly with his own statement, and a copy of the spreadsheet setting out the rental payments due and paid in respect of the property between 8th April 2018 and 27th April 2020.
5. The Tribunal convened on 11th September 2020 to consider the Application.
6. It did not inspect the property, but understands that it is a mid terraced property that has been in tenanted residential occupation.

Facts

7. None of the following matters have been disputed, except where specifically referred to.
8. On 5th November 2018 various parts of the central ward in Scarborough including Victoria Road was designated by the Council for selective licensing under section 80 of the Housing Act 2004 (“the 2004 Act”) which designation came into force on 1st June 2019 for a period of five years.

9. On 19th December 2019 at the Scarborough Magistrates Court, Mr Hood pleaded and was found guilty of the offence, under Section 95 (1) of the 2004 Act of having control or management of a house which was required to be licensed under part 3 of the 2004 Act but which was not so licensed (“the offence”). Mr Hood was fined £692 and ordered to pay costs of £490, and a surcharge to fund victim services of £69.
10. The Council issued a Notice of intended proceedings dated 24th December 2019 informing Mr Hood that it was proposing to make the Application.
11. The Council has applied to recover the sum of £3318.64 paid to Mr Hood in respect of Housing Benefit payments for the period from 1st June 2019 to 16th December 2019.

Submissions by the Council

12. Stephen Reynolds, as a Residential Regulation Manager of the Council, provided a witness statement dated 3rd March 2020.
13. Mr Reynolds stated that, after being made aware in March 2019 that Mr Hood was the owner of the property, a number of letters and emails were sent encouraging him to make an application to license the property, but no application was received, and nor did Mr Hood respond to 2 subsequent invitations to attend an interview under caution.
14. The Council checked Mr Hood’s ownership of the property at the Land Registry and was aware that it was tenanted because of having “an active housing benefit and Council tax relief claimant”.
15. The Council made the decision to prosecute Mr Hood for not having the appropriate licence for the property and he was subsequently convicted.
16. An email from Jonathan Davey, the Council’s solicitor present at the court hearing, to (inter alia) Mr Reynolds stated that the basis for Mr Hood’s initial not guilty plea, which was later changed was that “I can’t fill out the forms because I don’t have the gas safety certificates, the tenants won’t let me in and I am planning to sell the properties but I could not sell them because there are people (in) them, I cannot serve an NTQ and .. Anthony said that he will licence it once it has been inspected, as I didn’t have a licence they won’t let me sell them”.
17. The Tribunal understands the reference to “Anthony” to be to Antony Wood an Environmental Health Officer with the Council.
18. The Council provided confirmation from its Finance Department of Housing Benefit being paid in respect of the property at a rate of £227.34 per fortnight from 3rd June 2019 to 16th December 2019.

Submissions by Mr Hood

19. Mr Hood stated that, having been made aware that the introduction of the selective licensing regime would affect four of his properties, “I decided to sell the properties that wanted licensing. I gave each tenant two months notice at the beginning of May...then informed Mr Anthony Wood by email that I would be selling all four properties... Mr Wood informed me that I could not evict the tenants residing in these properties because I owned licensed properties with no licence... The only thing I did wrong was I did not apply for a temporary exemption from licensing because I was selling them (I did not know that one existed)... The gas certificates ran out in May... I applied several times to 182 Victoria Road to try and get a gas plumber in and then had to threaten legal action before they let the plumber in... It was beyond belief when I was told I was to be prosecuted for not having a licence, this was not what was said by Mr Wood. When I appeared at the court I pleaded not guilty as I was trying to sell it in the first place. Mr Davey ... took me aside and said I had no defence because I do not have the temporary exemption from licensing or a licence for the properties, I was guilty, so I pleaded guilty because I did not have these forms... Where Mr Davey writes to Mr Wood... the basis of my not guilty plea is complete rubbish. Concerning 182 Victoria Road rent payments I enclose a copy of the rent that I have received from her which shows a large amount of arrears. I did not get the tenants rent as it was paid directly to the tenant, so in many cases here I am paying twice. I have been asked to give the Council their rent money back which I have not been paid in the first place...”
20. The spreadsheet exhibited by Mr Hood refers to rent for the property being paid in arrears. The rent charged at £563.33 for consecutive four week periods is shown as having been paid on time between 8th April 2018 and 8th April 2019. The spreadsheet then shows arrears accumulating with a gap in payments until 26th August 2019. Payments resume with a payment of £200 on 26th August 2019, followed by payments of £250 on 23rd September, a further £200 on 21st October, £1040 on 6th January 2020, a further £560.33 on 17th February 2020, and a payment of £1040 on 6th April 2020.

The Law

21. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.
22. The list, repeated in the Directions, includes the offence under Section 95(1) of the 2004 Act of controlling or managing a house which was required to be licensed under part 3 of the 2004 Act but which is not so licensed.

23. Where the offence was committed on or after 6th April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.
24. Section 42 confirms that before applying for a rent repayment order a local Housing Authority must give the landlord a Notice of intended proceedings which must (a) inform the landlord that the Authority is proposing to apply for a rent repayment order and explain why, (b) state the amount that the Authority seeks to recover, and (c) invite the landlord to make representations within the period specified in the Notice of not less than 28 days (“the Notice period”) and the Authority must consider any representations made during the Notice period. The Authority must wait until the Notice period has ended before applying for a rent repayment order and a Notice of intended proceedings may not be given more than 12 months after the day on which the landlord committed the offence to which it relates.
25. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).
26. When the Tribunal decides to make a rent repayment order in favour of a local Housing Authority, it must go on to determine the amount of that order in accordance with Section 45. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed house the amount must relate to Universal Credit (which Section 51 confirms includes Housing Benefit) paid in respect of a period not exceeding 12 months during which the landlord was committing the offence. Section 45(3) confirms that the amount that the landlord may be required to repay... must not exceed the amount of Universal Credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.
27. Section 46 confirms that the amount of an order made in favour of a local Housing Authority, where the landlord has been convicted of the offence, “is to be the maximum that the Tribunal has power to order in accordance with Section... 45” but with it provided in subsection (5) that “nothing in this Section requires the payment of any amount that, by reason of exceptional circumstances, the Tribunal considers it would be unreasonable to require the landlord to pay”.

The Tribunal’s Reasons and Conclusions

28. The Tribunal began with a general review of the papers in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal’s procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

29. Neither of the parties requested an oral hearing, and having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. The issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.
30. The documentation is persuasive in that it is clear and obvious evidence of its contents. Except where referred to, it has not been challenged and the Tribunal finds no reason to doubt the detail contained.
31. The first issue for the Tribunal to address is whether it is satisfied, beyond reasonable doubt, that Mr Hood has committed an offence mentioned in Section 40(3) of the 2016 Act.
32. The Tribunal is satisfied, beyond reasonable doubt, from the evidence provided by the Council, and Mr Hood's own admissions, both that Mr Hood committed, and has been convicted of the offence referred to in row 6 of section 40(3) of the 2016 Act i.e. control or management an unlicensed house, and that Mr Hood continued to let the property without the necessary licence between at least 1st June 2019 and the date of the conviction on 19th December 2019.
33. The Tribunal is also satisfied that the Council complied with all the necessary procedural requirements relating to the Notice of intended proceedings and the making of the Application.
34. Because the Council gave the Notice of intended proceedings to Mr Hood within 12 months of the commission of the offence, the Tribunal is clear that it has jurisdiction to make an order.
35. Mr Hood has clearly profited from the Council's payment of Housing Benefit, albeit the Tribunal accepts, from Mr Hood's evidence, that the tenant's rental payments have not since April 2019 been paid on the due dates and that arrears have accumulated.
36. The Tribunal (particularly having regard to the objectives behind the statutory provisions i.e. to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed house, and to help prevent a landlord from profiting from renting properties illegally) is satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.
37. As the Upper Tribunal confirmed in the case of *London Borough of Newham v Harris* 2017 UKUT 0264 LC "it will be a very rare case where the Tribunal does decide to exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of so doing include the obligation to repay rent or housing benefit the Tribunal should be reluctant to refuse to make an order".

38. Having readily decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent which had to be repaid.
39. As a consequence of Section 46 of the 2016 Act the Tribunal must order the maximum amount potentially repayable unless it is satisfied that, by reason of exceptional circumstances, it would be unreasonable to require repayment of some or all of the relevant sum. These statutory provisions (in contrast to those which apply where there has been no conviction) confirm that it is only in exceptional circumstances that the Tribunal can order anything other than the full amount paid by the Local Authority and received by the landlord in respect of the relevant 12 month period. Parliament has clearly decreed as a matter of public policy that Housing Benefit should be repaid where a landlord has failed to gain the necessary licence.
40. The Tribunal has carefully considered all of the evidence, and has concluded that the circumstances of the case do not amount to an instance of exceptional circumstances which would allow it to make an order of anything other than the maximum amount.
41. Sections 45(2) of the 2016 Act limits the amounts of Housing Benefit to be repaid to a period not exceeding 12 months during which the landlord was committing the offence.
42. The Tribunal is satisfied, on the evidence before it, that Mr Hood was committing the offence throughout the period from 1st June 2019, when the Selective Licence Scheme came into effect, to the date of his conviction in the Magistrates Court on 19th December 2019.
43. The Tribunal is also satisfied that all of the Housing Benefit referred to in the Notice of intended proceedings (i.e. £3318.64) was paid by the Council in respect of that period.
44. However, Mr Hood's evidence, which is accepted by the Tribunal is that the Housing Benefit was paid by the Council directly to the tenant, and he clearly feels it unjust that "I have been asked to give the Council their rent money back which I have not been paid in the first place".
45. Section 45(3) of the 2016 Act states that "the amount... must not exceed the amount... that the landlord received (directly or indirectly) in respect of rent... for that period."
46. The words "(... or indirectly)" make it clear that a landlord may be required to repay Housing Benefit initially paid to a tenant, but which is later passed on to and received by the landlord as part of the rent. Section 45(3) does not set a time limit as to when any indirect payment is received by the landlord, but it does limit the amount to be repaid to that which is actually received.

47. Mr Hood's spreadsheet of rental payments show that payments, due in respect of the period from 1st June 2019 to 19th December 2019 totalling £3293.33 were received as rent, albeit late and after the due dates.
48. Because, for the reasons set out above, the Tribunal is mandated by section 46 to make a rent repayment order of the maximum amount it has power to order, the Tribunal has determined that Mr Hood must repay all of that £3293.33.
49. The reason that the Tribunal decided that not all of the £3318.64 paid by the Council as Housing Benefit to the tenant should be repaid was because it did not have any evidence that the final £25.31 had been subsequently paid as rent and received by Mr Hood.

J Going
Tribunal Judge
16th September 2020