



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

Case Reference : **MAN/00CJ/HMG/2023/0001**

Property : **210 Ellesmere Road, Newcastle Upon Tyne NE4 8TQ**

Applicants : **Mr Vasile Danila
Mrs Mariana Danila**

Respondent : **Ruhena Khanom**

Type of Application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal : **Tribunal Judge W L Brown,
I Jefferson.**

Date of Hearing : **23 January 2024**

Date of Determination : **20 February 2024**

DECISION

The claim for a rent repayment order is dismissed.

REASONS

The Application

1. By application dated 20 December 2022 (the Application), Mr and Mrs Danila sought a Rent Repayment Order (RRO) pursuant to section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) in relation to their occupation of the Property.
2. Directions were issued on 15 March 2023 pursuant to which the Applicants and the Respondents made written submissions. It was not disputed that the Application was brought within the statutory timeframe to do so.
3. After initially considering the documents in October 2023, owing to disputed facts which could not be reconciled from the papers a hearing of this matter took place on 23 January 2024 at Newcastle upon Tyne County Court. The Tribunal considered it unnecessary in view of the matters in issue to conduct an inspection of the Property.
4. The Applicants did not attend. The Respondent did not attend, but her sister and brother-in-law, Mrs Thamina Khanom and Mr Sorwar Hamad, attended and made representations on her behalf, in the capacity of agents for Ms Ruhena Khanom (“Respondent’s Agents”); they had lived in the flat downstairs from the Applicants.
5. The Tribunal understood from the Application, and confirmed at the hearing by Mrs Thamina Khanom, that the Property is a 3 bedroom first floor Tyneside flat.

The Law

6. The relevant statutory provisions relating to Rent Repayment Orders are contained in sections 40, 41, 43 and 44 of the Housing and Planning Act 2016 (the “2016 Act”), extracts from which are set out in the Annex to this decision.
7. Section 40 of the 2016 Act identifies the relevant offences, including an offence under Section 95(1) of the Housing Act 2004 (the “2004 Act”) (control or management of unlicensed premises). Subsection 95(4) provides that in proceedings against a person for such an offence it is a defence that he had a reasonable excuse for having control or managing the house without the relevant licence.
8. Section 43 provides that the Tribunal may make a rent repayment order only if satisfied, beyond reasonable doubt, that a landlord has committed a relevant offence (whether or not the landlord has been convicted).

9. Section 44(4) lists considerations which the tribunal must 'in particular' take into account in determining the amount of any repayment - conduct of the landlord and tenant, financial circumstances of the landlord and whether the landlord has been convicted of an offence to which that chapter of the 2016 Act applied. The use of the words 'in particular' suggests that these are not the only considerations the tribunal is to take into account.

10. Relevant for these proceedings is "selective licensing" and a local authority may designate under Section 80 of the 2004 Act an area as requiring an appropriate licence, for the reasons set out in that provision. There are procedural requirements upon a local authority – including regarding pre-implementation consultation with those likely to be affected by the designation (section 80(9)) - and for the designation to be effective. Section 83 of the 2004 Act sets out obligations on the local authority to publish in a prescribed manner notice of the designation

Evidence and relevant findings

11. The basis for the Application was that the Applicants had rented the Property as residential accommodation during three consecutive tenancies, the agreements for which are dated 16 July 2021, 1 February 2022 and 30 October 2022. The Applicants produced an email dated 13 October 2022 from Mr T McFall, Senior Technical Officer at Newcastle City Council (NCC), advising that the grounds for the Application "*....would be that you are residing in an unlicensed property.*" The Respondent's evidence was that the Applicants vacated the Property and terminated their tenancy at the end of May 2023.

12. The Applicants provided copy bank statements showing cash withdrawals of various amounts. They stated that rent was always paid in cash. At the hearing it was confirmed by the Respondent's Agents that they had collected the rent in cash and kept a record of those receipts. On certain occasions the Applicants had withheld portions of rent, ostensibly to recover for the costs of work they had undertaken to the Property, without Respondent's consent.

13. In a statement dated 11 September 2023, signed and containing a statement of truth, the Respondent set out "*In July 2022 I discovered that my property was in an area that had been selected for licensing by Newcastle City Council, I received a telephone call from Newcastle City Council informing me of this. I believe that Newcastle City Council may have been writing to me at 210 Ellesmere Road but the tenants were not passing on any mail addressed to me.*" She recorded that the relevant licence was granted on 30 March 2023, effective from 14 September 2022. She also stated "*I accept that I did not have the licence from the date the tenancy began....*" A copy of the licence was exhibited to her statement.

14. It was not in dispute that the selective licence at issue fell within that contemplated by section 80 of the 2004 Act, or that the failure to have the licence potentially was an offence under Section 95(1) of the 2004 Act.

15. The Tribunal found from the evidence in the Ruhena Khanom's statement and from the oral evidence of those attending the hearing, that neither the Respondent nor the Agents had any awareness of the need for a licence regarding the Property.

16. The Tribunal had no evidence before it regarding the process by which NCC may have designated within section 80 of the 2004 Act the area in which the Property is situated, nor regarding any notification exercise undertaken in accordance with section 83. However, it is a fundamental point raised by the Respondent that she was ignorant of the need to have the relevant licence and that the local authority did not make the obligation known to her other than at some time later than the obligation taking effect, only at the time when a potential breach of the licensing requirement was identified. In her statement she set out “*I ask the Tribunal to take into account that I acted promptly as soon as I discovered the requirement to obtain a licence. This was not something that was published or that I noticed any publicity about in the Newcastle area.*” Therefore, the defence to the offence, under section 95(1) of the 2004 Act, of reasonable excuse was put before the Tribunal. If such a defence arose it must apply for the whole of the period during which it is alleged the offence has been committed. The Applicants had no representations to make on this point.

17. It has previously been the position that ignorance of a legal obligation generally was found not to be a reasonable excuse to an offence (*Aytan v Mo ore and others* [2021] UKUT 27 (LC)).

However, the Tribunal had regard to *Marigold & Ors V Wells* [2023] UKUT 33 (LC) a decision of Martin Rodger KC, Deputy Chamber President in which commencing at paragraph 45 the court recorded:

45. *When it gave permission to appeal the FTT suggested that guidance from this Tribunal on what amounted to a reasonable excuse for the purpose of section 72(5) would be welcome because it was an important issue in a relatively new jurisdiction.*

46. *The question whether a person has a reasonable excuse for conduct which would otherwise amount to a criminal or regulatory offence arises in many different contexts and, thankfully, there is no shortage of guidance on how a court or tribunal should approach it.*

47. *A useful example is the decision of the Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC), which was drawn to my attention by Mr Neilsen. That was a taxpayer’s appeal against daily penalties for late filing of her self-assessment tax return. She said she had a reasonable excuse because she genuinely believed that she had filed her return online but had inadvertently omitted to complete the final stage of submission; when her mistake was pointed out to her she submitted a new return but this time for the wrong year. The FTT held that she had had a reasonable excuse for her initial failure to file but that this had come to an end when HMRC informed her that she had not completed the process. The taxpayer’s case on appeal was that a genuine and honestly held belief that she had done what was required should afford a reasonable excuse, whether or not it was objectively reasonable for her to have held such a belief. The Tribunal held that, to be reasonable, an excuse must be objectively reasonable and that it was not enough that it be based on a genuinely or honestly held belief. At paragraph 71, it emphasised, however, that in deciding whether an excuse was objectively reasonable it was necessary to have regard to all relevant circumstances, including those of the individual taxpayer. As it explained, “because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times.” Having then found that the FTT had not erred in principle in*

making its assessment, the Tribunal declined to interfere with it and dismissed the appeal.

48. *The Tribunal in Perrin concluded its decision with some helpful guidance to the FTT, much of which is equally applicable in the sphere of property management and licensing. At paragraph 81 it said this:*

“81. When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(I have omitted a fourth step because it is referable to a specific provision of the Finance Act 2009 and has no equivalent in the 2004 Act).

49. *The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:*

“82. One situation that can sometimes cause difficulties is when the taxpayer’s asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that “ignorance of the law is no excuse”, and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long.”

18. The Tribunal interpreted this guidance on the reasonable excuse defence to mean that it should ask if it was objectively reasonable for the landlord to have been ignorant of the licensing requirements at the time and whether it was objectively reasonable for the landlord to be continue to be ignorant under the particular circumstances of the case.

19. The Tribunal found it credible that the Respondent was ignorant of the licensing requirement. Her evidence was that she operated no other residential lettings, had been convicted of any housing-related offence, or had for any other relevant reason been in contact with NCC . We believed that she was unaware of the obligation until first informed of it by a telephone call on behalf of NCC around July 2022, and that any prior correspondence for her addressed to the Property had not been passed on. She then acted promptly to apply for the licence and it was granted unconditionally and backdated.

20. The test under section 43 of the 2016 Act requires the Tribunal to be satisfied beyond reasonable doubt that the Respondent had committed the relevant offence. While having regard to a general obligation upon a landlord to be alert to their legal obligations, on a balance of probabilities we found that it was credible and objectively reasonable for the Respondent to have been ignorant of the licensing requirement at the commencement of and continuing to be ignorant throughout, the period for which the rent repayment order was sought. The Tribunal determined that a reasonable excuse defence was made out and in consequence it was not satisfied beyond reasonable doubt that the Respondent had committed the relevant section 95(1) 2004 Act offence, relied upon by the Applicants.

Decision

21. The claim for a rent repayment order therefore is dismissed.

W L Brown
Tribunal Judge

Annex

Housing and Planning Act 2016

Section 40

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or (b).....

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

The table described in s40(3) includes at row 6 an offence contrary to s95(1) of the Housing Act 2004 “control or management of unlicensed house.

Section 41

(1) A tenant.....may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if-

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.

(3) The amount that the landlord may be required to pay in respect of a period must not exceed-

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) in determining the amount the tribunal must, in particular, take into account-

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.