

HM COURTS & TRIBUNALS SERVICE

RESIDENTIAL PROPERTY TRIBUNAL

Property: 40 Derwent Street Chopwell NE17HX

Applicant: Gateshead Council

Respondent: Mr Mark Corble Robson

Case Number: MAN/00CH/HSR/2012/0001
MAN/00CH/HSR/2012/0002

Date of Application: 22nd March 2012

Type of Application: Rent repayment order pursuant to section 96(5) of the Housing Act 2004

Tribunal: Nasrin Ali
Duncan Pritchard

Date of Determination: 10th August 2012

**DETERMINATION WITHOUT A HEARING IN ACCORDANCE WITH
REGULATION 18 OF RESIDENTIAL PROPERTY TRIBUNAL PROCEDURE
(ENGLAND) REGULATIONS 2006**

DECISION

The Application

1. The Applicant is seeking a rent repayment order in the sum of £5219.77 against the Respondent. The sum of £5219.77 represented housing benefit paid partly to the tenants and partly direct as rent to the Respondent whilst he was operating the property as an unlicensed house located within a designated Selective Licensing Area. The property was occupied as a single household privately rented at the commencement of the scheme. 1
2. The Respondent was convicted of operating without a landlord licence under Part 3 of the Housing Act 2004 on 27th September 2011
3. Rachel Crosby, Environmental Officer, presented the case for the Applicant, which included a statement of grounds for the Rent Repayment order application, a copy of the current tenancy agreement and copies of various correspondence (letter and by email) between the Applicant and Respondent. There was a witness statement from Andy Rook the Principal Benefits Officer
4. Housing Allowance payments were received by the Respondent for two tenants; from 14th March 2011 to 17th July 2011 for Mr Ian Burn, an amount of £1645.62 and from 11th July 2011 to 11th March 2012 for Ms Donna Robinson, an amount of £3574.15 These were the payments stated in the two Notice of Intended Proceedings dated 22nd March 2012 issued in relation to the two tenants
5. On 28th May 2012 the Tribunal directed that the application be dealt with on written representations unless a party requested an oral hearing by 18th June 2012. No such request was made. The Applicant complied with the directions regarding the submission of written representations. No written representations were received from the Respondent
6. The Tribunal convened on 10th August 2012 to determine the Application.

The Legal Requirements

7. The Tribunal must be satisfied of the matters set out in sections 95, 96 and 97 of the Housing Act 2004 before it can consider the Application.

s.95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed

s.96 Other consequences of operating unlicensed houses: rent repayment orders

- (1) For the purposes of this section a house is an "unlicensed house" if –

(a) it is required to be licensed under this Part but is not licensed, and

(b) if neither of the conditions in subsection (2) is satisfied

(2) The conditions are –

(a) that a notification has been duly given in respect of the house under section 62(1) or 86(1) and that notification is still effective (as defined by section 95(7))

(b) that an application for a licence has been duly made in respect of the house under section 87 and that application is still effective (as so defined)

(3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of –

(a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of the whole or any part of an unlicensed house, or

(b) any other provision of such a tenancy or licence.

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 97.

(5) If –

(a) an application in respect of a house is made to a residential property tribunal by the local housing authority and

(b) the tribunal is satisfied as to the matters mentioned in subsection (6) or 8

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b),..... as is specified in the order (see section 97(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters –

(a) that at any time within the period of 12 months ending with the date of 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.

(7) Those requirements are as follows –

(a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”) –

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how the amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

.....
(10) In this section –

“the appropriate person”, in relation to any payment of housing benefit or periodical payment payable in connection with occupation of the whole or part of a house, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation.

S.97 Further provision about rent repayment orders

(1) This section applies in relation to rent repayment orders made by residential property tribunals under section 96(5).

(2) Where, on an application by the local housing authority, the tribunal is satisfied –

(a) that a person has committed 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 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 mentioned in paragraph (b).

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

(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 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) 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.

(5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 96(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8)

(6) In such a case the tribunal must, in particular, take into account the following matters –

(a) the total amount of relevant payments paid in connection with occupation of the house during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the house under section 95(1);

(b) the extent to which that total amount –

(i) consisted of or derived from, payments of housing benefit, and

(ii) was actually received by the appropriate person;

(c) whether the appropriate person has at any time been convicted of an offence under section 95(1) in relation to the house;

(d) the conduct and financial circumstances of the appropriate person; and

(e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) "relevant payments" means –

(a) in relation to an application by a local housing authority payments of housing benefit or periodical payments payable by occupiers;

(8) A rent repayment order may not require payment of any 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)

And the period to be taken into account under subsection 6(a) above is restricted accordingly.

8. The Tribunal makes the following findings of fact in relation to the legal requirements:

(1) The Respondent was and is the owner of the property 40 Derwent Street Chopwell NE17 7HX registered at the Land Registry Title number TY126274

(2) The tenant occupying the property from 10th July 2009 to 11th July 2010 was Mr Ian Burns and currently the property is occupied by Ms Donna Robinson from 11th July 2011. From 14 March 2011 until 11 March 2012 the Applicant paid housing benefit in respect of the occupation of the property. The Respondent received the housing benefit direct for Ms Donna Robinson from 19th October 2011 until 11th March 2012

(3) The Property's locality was designated as a Selective Licensing area in January 2010. Prior to this there was a large amount of publicity regarding the scheme with a public consultation, public notices were issued in local newspapers and a letter drop was carried out to all the properties within the designated area. From 27th May 2010 to 17th August 2010 the Applicant contacted the Respondent by letter and post numerous times regarding the licence application and the consequences of non-compliance. The Respondent sent an email on the 17th August 2010 stating that he was not aware of licensing scheme and requested an application pack. The application pack was forwarded by email but no further communication was received from the Landlord

(4) The Applicant instigated prosecution proceedings against the Respondent for an offence contrary to section 95(1) of the Housing Act 2004. The Respondent was operating the property as an unlicensed house located within a designated Selective Licensing Area. The property was occupied as a single household privately rented at the commencement of the scheme in January 2010 and as the appropriate person committed an offence of having control or

managing a house without a licence during the period 14th March 2011 to 11th March 2012.

(5) The Respondent was convicted of operating without a landlord licence under Part 3 of the Housing Act 2004 on 27th September 2011. The case was heard in his absence. The Respondent was ordered to pay a fine of £1000, costs of £200 and a victim surcharge of £15.

(6) On 22nd March 2012 the Applicant served on the Respondent a Notice of Intended Proceedings before the Tribunal to recover the sum of £5219.77 in housing benefit in the form of a rent repayment order. The Notice gave the reasons for seeking the order and invited the Respondent's representations within a period of 28 days from the date of the Notice.

(7) On 16th April 2012 the Applicant received the Respondent's representations stating that he intended to appeal against the proceedings. These representations were received on the 24th April 2012 which is outside the 28 days. The Respondent considered that he had already been penalised in respect of Mr Burns as he had left the property with 3 months of rent arrears. He also stated that the housing benefit had been paid direct to the tenant. With respect to Ms Robinson he stated was working with her to become a model tenant and had carried out improvements to the property. He stated that in all he had made 3 applications for a licence and was working with the Council to ensure that the property was maintained to the required standards.

(8) On 1st May 2012 the Applicant filed an application for a rent repayment order relating to the two tenancies with the Tribunal. The grounds for the Application mentioned the Respondent's representations of 16th April 2012.

9. The Tribunal is satisfied on the above findings that the legal requirements for making a rent repayment order have been met. The Respondent has committed an offence under section 95(1) of the 2004 within 12 months of the Notice of Intended Proceedings dated 22nd March 2012. The Respondent received housing benefit in connection with the occupation of the property during the period the offence was committed. The Applicant complied with the legal requirements regarding the Notice of Intended Proceedings. On balance the Tribunal is satisfied that the Applicant considered the Respondent's representations in accordance with section 96(6)(c). The Applicant specifically responded to the representations by letter dated 30th April 2012. Also the Respondent has raised no point with the procedural requirements.

Consideration

10. The Tribunal's starting point is set out in section 95(1) of the 2004 Act which provides that

"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 HMO, and

(b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO,

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 mentioned in paragraph (b).

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

11. Since the Respondent was convicted of an offence contrary to section 95(1) of the 2004 Act the Tribunal must make a rent repayment order requiring the Respondent to pay to the Applicant an amount equal to the total of housing benefit paid in connection with occupation of the property.

12. This mandatory requirement on the Tribunal is, however, subject to the provisions in subsections (3), (4) and (8) which do not apply to the circumstances of this Application. The Applicant's claim also includes housing benefit paid in relation to a time falling outside the period of 12 months ending with the service of the Notice of Intended Proceedings

Decision

13. The Tribunal holds that

- (1) The legal requirements for making a rent repayment order have been met
- (2) The order should not exceed the amount applicable from 23.03.11 to 22.03.12

		£
Ian Burns	23.03.11 to 17.07.11	1532.32
	costs	320.00
Donna Robinson	11.07.11 to 11.03.12	3574.15
	costs	320.00
		<u>5746.47</u>

- (3) There are no exceptional circumstances that make it unreasonable to require the Respondent to pay the amount claimed by the Applicant.

14. The Tribunal decides that a rent repayment order should be made requiring the Respondent to pay the sum of £5746.47 to the Applicant.

Nasrin Ali
Chairman of Residential Property Tribunal
10 August 2012

