



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

Case Reference : **LON/00AH/HMT/2017/0003**

Property : **34 Neville Road, Croydon CR0 2DS**

Applicant : **Guy Robert Thomas Hollander (1)
Roderick John Weston (2)
(As Trustees in Bankruptcy of Keith
John Berry)**

Representative : **Reynolds Porter Chamberlain LLP**

Respondent : **London Borough of Croydon**

Representative : **Mr N Gracie-Langrick
Selective Licensing and Housing
Manager, LBC**

Type of Application : **Section 86(7) Housing Act 2004 –
appeal against refusal to grant a
temporary exemption notice**

Tribunal Member : **Judge John Hewitt**

**Date and venue of
determination** : **10 Alfred Place, London WC1E 7LR
9 August 2017**

Date of Decision : **14 August 2017**

DECISION

The issue and the decision of the tribunal

1. The issue before the tribunal is whether it has jurisdiction to determine an appeal made by the applicant against the refusal of the respondent (the council) to grant a temporary exemption notice (TEN) dated 5 May 2017.
2. The decision of the tribunal is that it does not have the required jurisdiction, and accordingly the proceedings commenced by the applicants are struck out pursuant to rule 9(2) The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013 (the rules).

The reasons for this decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Factual background

3. The council is a local housing authority (LHA) for the purposes of the Housing Act 2004 (HA 2004).
4. The applicants are the trustees in bankruptcy of Keith John Berry who is registered at Land Registry as the proprietor of the freehold interest in 34 Neville Road, Croydon (the property). Evidently a Ms A Essien is or was in occupation of the property pursuant to the terms of an assured shorthold tenancy within the meaning of the Housing Act 1988 (HA 1988).
5. On or about 22 March 2016 the applicants served on Ms Essien a notice requiring possession of the property. The notice was given pursuant to s21(1)(b) HA 1988 [73].
6. Also on or about 22 March 2016 the applicants served on Ms Essien a further notice requiring possession of the property. That notice was given pursuant to s21(4)(a) HA 1988 [74].
7. On 13 January 2017, the applicants served on Ms Essien a further notice requiring possession. That notice, dated 10 January 2017 was given pursuant to s21(4)(a) HA 1988 [51].
8. On a date unknown in 2016 the applicants issued proceedings against Ms Essien in the County Court at Croydon (Claim No. Co1CR771) seeking an order for possession of the property and other relief.

By an application notice dated 19 June 2017, the applicants made an application for permission to amend their claim form and particulars of claim for possession [63].

A copy of the draft amended Particulars of claim for possession is at [68]. The draft records that the claim was heard by Deputy District Judge Martynski on 10 August 2016 and adjourned because at the time

of service of the first s21 notice the property fell within the council's 'private rented property licensing area' and the property was neither licensed nor exempt from the licensing regime with the consequence that the court was precluded from granting an order for possession.

Notifications for TENs

9. On 6 December 2016, the applicants sought a TEN [32] from the council. The application form said it was made pursuant to s86 HA 2004. In response, a TEN was granted. It (wrongly) stated it was granted pursuant to s62(2) HA 2004. It was granted "*for the period of 3 months beginning with the date of this notice*" [36]. The notice is not obviously dated. Below the signature of a senior environmental health officer there is the expression: "*Dated: 06 December 2016 to 05 February 2017*". It may be that the application form was dated 6 December 2016, delivered to the council that day, processed and considered that day and the TEN issued on that day. Or, it may be that the application was duly processed over time and the TEN when prepared was, in effect, backdated to 6 December 2016. In submissions dated 24 July 2017 the council states this TEN was issued on 9 December 2016.
10. Evidently, on or about 6 February 2017 a further notification was made to the council for a TEN. A copy of that notification has not been provided by the parties. A further TEN is at [54]. Again, it was stated to be granted pursuant to s62(2) HA 2004, again for the period of three months. At the foot of the TEN is the expression: "*Dated 06 February 2017 to 05 May 2017*". In submissions dated 24 July 2017 the council states this TEN was issued on 2 February 2017. It was sent out by email on that day [10].
11. Evidently, a 'request' or 'notification' was then made by the applicants' solicitors to the council on 21 April 2017. I have not seen that request or notification but, following chasers from the solicitors, the council, in response to it, issued a "*Notice of refusal to grant a temporary exemption from requiring a Part 3 selective licence*". It is dated 5 May 2017 and appears to have been issued pursuant to s86 HA 2004. A copy is at [12]. The reason given for the refusal is: "*You have received the maximum temporary exemption stipulated in the housing act [sic]*". It goes on to assert in paragraph 3: "*You have the right of appeal against this decision to the Residential Property Tribunal (First Tier Tribunal) [sic] within 28 days from the date of this notice (please see Notes)*". The Notes state, in effect, that any appeal must be made within 28 days of the date of the notice.

The appeal and the procedure

12. The tribunal received an application dated 2 June 2017 [14]. The relief sought was the tribunal should exercise its discretion to:
 - 12.1 Grant a further extension to the TEN, in order that the property remains exempt from the licensing scheme until such time as the

tenant (Ms Essien) has vacated the property; or, in the alternative:

- 12.2 Grant a permanent exemption from the private rented property licensing regime.
13. Directions were given on 7 June 2017. The applicants were to file and serve their statement of case and documents by 5 July 2017. The council was to file and serve its statement of case and documents by 26 July 2017. Both parties were to return listing questionnaires by 30 June 2017.
14. An issue has arisen as to the jurisdiction of the tribunal. The parties are agreed this should be determined on the papers and written submissions.
15. By letter dated 24 July 2017 the council submit that the legislation provides that a LHA may issue only two TEN's and that it has no duty or discretion to consider a third application. It relies upon s86(5) HA 2004. Thus, its refusal notice dated 5 May 2017 was issued in error due to mistake and is invalid and of no effect. Thus, there is no right of appeal from that (invalid) notice and the tribunal does not have jurisdiction to entertain the appeal.
16. By way of response dated 2 August 2017, the applicants' solicitors state that, if the council is correct and the council misinformed them, they accept the tribunal does not have jurisdiction to deal with the application. They further submit that in any event the property was not licensable as at 5 May 2017 and thus it fell outside the council's private rented property licence regime. In support of that submission the applicants rely upon the s21(1) and 21(4) HA 1988 notices served on Ms Essien requiring her to vacate the property no later than 31 March 2017. They say the effect of those notices was to bring the tenancy to an end after 2 months, namely on 13 March 2017. Reliance was placed on the provisions of s79 HA 2004. They say that as from 13 March 2017 the property ceased to be occupied under any tenancy and thus the property did not require a licence or a TEN from that date.

In conclusion, they say the application before the tribunal "... *should be concluded...*" for two reasons. The first is that the council was mistaken in informing them that the applicants were entitled to appeal the refusal notice of 5 May 2017. The second was that the property ceased to be licensable on 13 March 2017.

Discussion and reasons

17. The material provisions of HA 2004 are set out in the Schedule to this decision.
18. TENs may be issued by a LHA in two different sets of circumstances. The first is by virtue of s62 HA 2004 which concerns the licensing of HMOs. The second it by virtue of s86 HA 2004 which arises where an

LHA has designated an area to be subject to selective licensing within Part 3 of the Act.

19. As I understand it the subject property is not and has not been an HMO. The original application for a TEN was clearly said to be made pursuant to s86 HA 2004. The first two TENs issued by the council were said to be issued pursuant to s62(2). That is an obvious error which can properly be cured by construction. I therefore find that two valid TENs were issued by the council.
20. A third application was made. The subject notice of refusal correctly refers to s86 HA 2004. Both parties are agreed that s86(5) empowers a LHA to issue a 'second' TEN if it considers that there are exceptional circumstances but the subsection goes on to say: "...*(but no further notice may be served by virtue of this subsection)*." I find that the expression 'notice' as used in that subsection is a reference to a TEN, as opposed to a reference to a 'notification' by a person having control of or managing a house required to be licensed. The act refers to applications by persons for a TEN as being 'notifications' and not notices and the only reference in s86 to a 'notice' is a reference to a TEN.
21. It seems clear that a LHA may only issue two TENs under s86. It follows, in my judgment that a person having control or managing a property may only make two notifications for a TEN. A third notification is not provided for in the Act and thus has no standing. It is a nullity and of no effect. A LHA does not have a duty or a discretion to consider a third notification. In s86(5) reference to receipt by a LHA of a notification for a TEN must refer to a valid or proper notification. Upon receipt of such a valid notification the LHA is required either to serve a TEN or, if it decides not to serve a TEN, it must serve a notice on the person concerned informing him of its decision not to do so, the reasons for it, the right of appeal and the time period within which such an appeal may be made. There is no duty or obligation to serve such a notice or respond in the case of a notification which is not a valid or proper notification. The section plainly provides that a LHA only has two responses it can make to a notification; that is either to issue a TEN or to issue a notice of refusal, which notice must include reference to a right of appeal. Neither response is appropriate to a third notification. Accordingly, in my judgment a LHA does not have the duty or power to respond to a third or subsequent notification for the issue of a TEN.
22. In the subject case both parties agree that the subject notice of refusal was made in response to a third notification. That notification was not a valid notification and thus the purported refusal of it was not a valid refusal within the meaning of s86(5).
23. S86(7) provides that a person may appeal a decision refusing a TEN to this tribunal. To do so there must be a valid notice refusing a TEN. In this case there is no valid notice refusing a valid notification. Here there is no valid notification. Thus, what purports to be a notice of refusal is

not a valid notice of refusal. In the absence of a valid notice of refusal this tribunal has no jurisdiction. This is because by s86(9) on the hearing of an appeal the tribunal may confirm or reverse the decision of the LHA. If there is no valid decision there is nothing for the tribunal to confirm or reverse.

24. Rule 9(2) provides that a tribunal must strike out the whole or part of the proceedings if it does not have jurisdiction in relation to them. In this case I am satisfied that the tribunal does not have jurisdiction to determine the appeal and therefore I am obliged to strike out the proceedings.

Judge John Hewitt
14 August 2017

The Schedule Housing Act 2004

79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
- (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see [section 85\(1\)](#)).
- (2) This Part applies to a house if—
- (a) it is in an area that is for the time being designated under [section 80](#) as subject to selective licensing, and
 - (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).
- (3) A tenancy or licence is an exempt tenancy or licence if —
- (a) it is granted by a non-profit registered provider of social housing,
 - (b) it is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of [Part 2](#) of the [Housing and Regeneration Act 2008](#)), or
 - (c) it is granted by a body which is registered as a social landlord under [Part 1](#) of the [Housing Act 1996 \(c. 52\)](#).
- (4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence—
- (a) if it falls within any description of tenancy or licence specified in the order; or
 - (b) in any other circumstances so specified.
- (5) Every local housing authority have the following general duties—
- (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part; and
 - (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

86 Temporary exemption from licensing requirement

(1) This section applies where a person having control of or managing a Part 3 house which is required to be licensed under this Part (see section 85(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

(2) The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.

(3) If a temporary exemption notice is served under this section, the house is (in accordance with section 85(1)) not required to be licensed under this Part during the period for which the notice is in force.

(4) A temporary exemption notice under this section is in force—

(a) for the period of 3 months beginning with the date on which it is served, or

(b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.

(5) If the authority—

(a) receive a further notification under subsection (1), and

(b) consider that there are exceptional circumstances that justify the service of a second temporary exemption notice in respect of the house that would take effect from the end of the period of 3 months applying to the first notice,

the authority may serve a second such notice on the person having control of or managing the house (but no further notice may be served by virtue of this subsection).

(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of—

(a) the decision,

(b) the reasons for it and the date on which it was made,

(c) the right to appeal against the decision under subsection (7), and

(d) the period within which an appeal may be made under that subsection.

(7) The person concerned may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.

(8) Such an appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(9) The tribunal—

(a) may confirm or reverse the decision of the authority, and

(b) if it reverses the decision, must direct the authority to issue a temporary exemption notice with effect from such date as the tribunal directs.

98 Other consequences of operating unlicensed houses: restriction on terminating tenancies

(1) No section 21 notice may be given in relation to a shorthold tenancy of the whole or part of an unlicensed house so long as it remains such a house.

(2) In this section—

a “*section 21 notice*” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);
a “*shorthold tenancy*” means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of that Act;
“*unlicensed house*” has the same meaning as in section 96 of this Act.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason 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 the time limit.
4. 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.