



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

Case Reference : **LON/00AE/HMF/2022/0076**

Property : **35B Okehampton Road London
NW10 3EE**

Applicant : **(1) Mr G Simon
(2) Ms A Varadi**

Representative : **Mr C Neilson, of Justice for
Tenants**

Respondent : **Ms A Cochrane and Mr B Webb**

Representative : **Mr Webb representing himself and
Ms Cochrane**

Type of Application : **Application for a rent repayment
order by a tenant**

Tribunal Members : **Tribunal Judge Prof R Percival
Ms L Crane MCIEH
Mr L Packer**

**Date and venue of
Hearing** : **11 October 2022
10 Alfred Place**

Date of Decision : **18 October 2022**

DECISION

The application

1. The Tribunal received an application dated 29 March 2022 under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for Rent Repayment Orders (“RROs”) under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 3 May 2022.

The hearing

Introductory

2. Mr Neilson of Justice for Tenants represented the Applicants. Mr Webb represented himself and Ms Cochrane.
3. The property is a two bedrooled self-contained flat in an Edwardian terraced house.

The alleged criminal offence

4. The Applicants allege that the Respondents were guilty of having control of, or managing, an unlicensed house contrary to Housing Act 2004 (“the 2004 Act”), section 95(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.
5. It was not contested that the property was situated within a selective licensing area as designated by London Borough of Brent (“the council”). The relevant scheme came into force on 1 June 2018, and will elapse on 30 April 2023. The property is in the specified area. The selective licensing scheme included all rented properties, with only irrelevant exceptions.
6. The Respondents own a leasehold interest in the property, and their names appear as the landlords on the assured shorthold tenancy governing the Applicants’ occupation. It was not contested that they were the correct Respondents.
7. The Applicants’ were tenants from 1 September 2020 to 31 March 2021. The claim for an RRO covered that period.
8. The Applicants’ case is that the Respondents held a licence between 7 January 2019 and 31 December 2019, but not after that date, and they had not applied for a licence so as to come within the defence in section 95(3)(b).
9. The Applicant’s statement of case reproduced brief correspondence from officers at the Council, to the effect that the Respondents had applied for a licence on 31 May 2018, and that Council records showed

that there was a licence in respect of the property from 7 January 2019 to 31 December 2019, but that there was no licence, and no application for a licence, thereafter.

10. It appeared from the Respondents' case statement that they had a potential case for a reasonable excuse in the terms of the defence in section 95(4) of the 2004 Act, and we proceeded to consider that issue.
11. The Respondents' case was that they had applied for a five year licence on 31 May 2018, and had paid the fee for a five year licence. They believed that they held a five year licence until approached by Justice for Tenants in the context of the current proceedings.
12. Expanding somewhat on the Respondents' written case in cross-examination, Mr Webb said that he had heard nothing from the Council for some time after having made the application. As a result, in late 2018 he telephoned the relevant department at the Council to ask if all was in order. The officer dealing with the call told him that unless he heard from the Council to the contrary, everything was satisfactory. He was not contacted by the Council again. Some time later still, he again called the Council and was told that he had a licence. He also checked the Council's on-line registry, which recorded the Respondents as having a licence.
13. The Respondents were subsequently told by the Council that the licence had lapsed after a year because the original application had not been accompanied by an uploaded gas safety certificate, an omission not subsequently made good.
14. The Respondents provided evidence of two gas safety certificates. One is dated 3 July 2017, so had about a month to run when the original licence application was made. The second was dated 23 March 2020, and so covered (bar a few days) the period of the tenancy. The property had not been tenanted during the period between the two gas safety certificates.
15. Mr Neilson put a screen shot of the relevant page of the Council's website to Mr Webb, which included a scan of a gas safety certificate among the documents necessary for a licence to be issued. Mr Webb agreed that he should have uploaded a scan of the gas safety certificate, but was unable to explain why he had not. However, he said that, as a result of his telephone conversation with the Council officer, he was relying on the Council to inform him if there were any problems. Had they done so, he would have dealt with the issue of the certificate.
16. Mr Neilson also put it to Mr Webb that the Council was obliged to serve a notice of their reasons for granting a licence together with a draft of the main terms of the licence for consultation before granting a licence

under schedule 5, paragraphs 1 to 4 to the 2004 Act. Mr Webb said that he had received no such notices or other documents, hence his telephone calls to the Council. Mr Webb also said that at no time did he receive a copy of the licence, either by email or post, until he was provided with a one year licence retrospectively as stated above.

17. Mr Neilson further put it to Mr Webb that it was only by receiving a copy of a licence that he could know what the conditions were, and that failing to adhere to the conditions was also a criminal offence. Mr Webb said that this was not a consideration that troubled him, as it was, he said, clear from the Council's website what the conditions imposed on licences were.
18. Mr Webb's evidence was that he assumed that the entire licensing process was dealt with on line, without the need for individual licences to be provided to those licenced. He drew a parallel with the system now in place in relation to television licences.
19. At the close of the evidence, the Tribunal asked Ms Crane to indicate to the parties her professional knowledge and relevant personal experience of general local authority licensing practice, as that may be relevant to the Tribunal's decision making. She explained how local authorities generally approached the service of intention to grant a licence and the consultation period. She also indicated that it was common for a licence to be conditionally issued without all the documents being initially provided, the condition being that the documents were supplied within a period, usually three months.
20. Mr Neilson's submissions were posited on the basis that Mr Webb was initially given a licence for one year, not five years. We indicated to Mr Neilson that we thought that improbable, it being more likely that he applied for and would have been granted a five year licence, but that the initial grant would have been conditional on satisfying the condition to upload a gas safety certificate, and, in the absence of that condition being satisfied, was retrospectively limited to a year. Mr Neilson thereafter persisted with his initial submission, but adopted this as an alternative. In our view, the difference between the two is not material in any event on the facts of this case.
21. Mr Neilson argued, first, that we should accept that the Council did in fact comply with its statutory obligations to serve a notice. Secondly, even if Mr Webb did not receive the notice, and, subsequently, a copy of the licence, he should have made further enquiries to ensure that he was not committing the criminal offence of failing to adhere to the conditions in his licence.
22. Mr Webb's submissions rehearsed his case, as explained above.

23. As to the facts, we accept Mr Webb's case. We started from the proposition that the realistic position was that either the Council had failed to serve the notice etc, and Mr Webb's evidence was true; or that Mr Webb was lying to us.
24. First, we note that there was no direct documentary evidence as to whether or not the Council had served the notice, draft licence and final licence on the Respondents; nor was there any evidence of this in the correspondence between Justice for Tenants and the Council that the Applicants had provided to us. Mr Neilson argued that in the ordinary course of events, the Council would have discharged their statutory obligations, and that we should therefore accept that that is what had happened, following the (undisputed) application in May 2018.
25. On the other side, we found Mr Webb to be a persuasive, careful, undogmatic and honest witness. As is the Tribunal's normal practice, we heard evidence and submissions on whether the criminal offence had been committed, but then went on to hear evidence and submissions on the hypothetical basis that we found the offence committed on the other matters that would then become relevant, including the conduct of the parties. This meant we had the advantage of hearing substantially more evidence from Mr Webb. We concluded that Mr Webb was a well disposed landlord who (as he expressly said) was personally in favour of the licensing system and would have taken whatever steps were necessary to secure a licence, had he been aware of them. As to his honesty and caution, he was prepared to accept some degree of fault over matters such as delays in repairs when he considered it appropriate, for instance, and frequently carefully qualified his answers to questions. He was often prepared to agree with points put by Mr Neilson, or Mr Simon (who gave evidence later for the Applicants).
26. We agree with Mr Neilson that there is a general presumption that a local authority will adhere to its statutory obligations. However, we are all aware that, in the ordinary course of things, local authorities, like any other actor, sometimes miss things or make mistakes. This might be particularly the case when gearing up for a new and possibly substantial commitment, such as that implied by the Council's newly extended selective licensing scheme. So the presumption is not irrebuttable. Faced with the alternatives of a slip up by the Council, or wholesaling lying by Mr Webb, we consider it rebutted in this case.
27. In the first place, as we have indicated, we found Mr Webb an entirely credible witness.
28. Secondly, it is not disputed that he had made a paid for an application, he had a gas certificate (albeit one with a short time to run) at the time of the application, and procured another at the point at which he

planned to restart letting the property. It is true that there was a gap between the two, but we believe that had it been pointed out to him, he would have secured a further certificate to secure the licence, or to have re-applied on securing the certificate in advance of actually letting the property. It is inherently unlikely, we consider, that Mr Webb would have deliberately sought to avoid securing a gas safety certificate at the risk of losing his licence, when it was necessary to cover an actual letting.

29. The second question for us is whether, if Mr Webb's account is true (as we believe it to be), that amounts to a reasonable excuse.
30. We consider on balance that it does. It is true that he should have uploaded a gas safety certificate with the application, but we note that the Council's practice (and local authority practice generally) is to continue the licensing process on a conditional basis, absent such a condition being initially satisfied. As stated, we accept Mr Webb's account of the events that followed. He made the application in good time. When he heard nothing, he took what we consider to be an appropriate step in contacting the Council. He was told that silence meant all was well. In our view, he was entitled to rely on that assurance by an officer of the Council. He subsequently made further checks, and found that he had been granted a licence, which appeared in the on-line registry maintained by the Council. In the face of silence from the Council (which the Council had expressly stated meant that it was satisfied), he was entitled to assume that the licence was the five year licence that he had applied for and paid for, and that it was absolute in nature.
31. We do not consider that Mr Neilson's point in respect of enquiry as to the conditions changes this conclusion, in the face of Mr Webb's honest (as we have found) belief that the conditions were adequately set out on the Council's website. That the Council had, in the telephone call, shouldered the responsibility of alerting Mr Webb to anything unsatisfactory extends to the contents of the conditions.
32. Accordingly, we find that the criminal offence in section 95 of the 2004 Act was not committed by the Respondent.
33. In the light of this finding, we do not order reimbursement of the application or hearing fees.

Rights of appeal

34. 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 London regional office.

35. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
36. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
37. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 18 October 2022

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (1) A tenant or a local housing authority 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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings 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 a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

- (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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
 - (a) the rent 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.