

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
Housing (Wales) Act 2014 - Rent Repayment Order

Premises: 1 Albion Road, Baglan, Port Talbot, SA12 8BY (“the premises”)

RPT ref: RPT/0001/04/18

Hearing: 19th September 2018

Order : **The Respondent shall pay a Rent Repayment Order assessed at £3983.44.**

Applicants: **Rent Smart Wales**

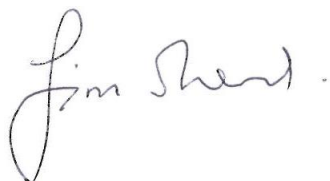
Respondents: **Lee Jones**

Tribunal: Mr JE Shepherd – Legal Chairman
Mr P Lucas FRICS

ORDER

1. The Respondent shall pay a Rent Repayment Order assessed at £3983.44.

Dated this 10th day of October 2018

A handwritten signature in black ink, appearing to read "Jim Sherr". The signature is written in a cursive style with a large initial "J" and a trailing flourish.

Lawyer Chairman

Introduction

1. The Applicant is the licensing authority for Wales. The Respondent is the freeholder owner and landlord of premises at 1 Albion Road, Baglan, Port Talbot, SA12 8BY ("the premises"). The Applicant applied to the tribunal on 11th April 2018 for a Rent Repayment Order pursuant to s.32 of the Housing (Wales) Act 2014. The sum sought originally was £5597.771. In their written submissions the Applicants revised this sum downwards to £3983.44, this being the housing benefit received by the Respondent for the period 15/2/17 - 20/12/17 namely the period when the offence was committed, up to the date that the Respondent submitted a license.

The hearing

2. The application was heard by the Tribunal on 19th September 2018 at the Waterfront Community Church in Swansea. The Applicants were represented by Angharad Thomas and Stuart Moon. The Respondent represented himself but was ably assisted by his mother and partner, Kirstie.

3. Prior to the hearing the Applicants submitted a statement of case. The Respondent did not submit a statement of case and therefore did not comply with the order dated 31st May 2018. The Applicants very fairly took no issue over this and the Respondent presented his case orally at the hearing. The Respondent did send an undated letter to the Tribunal from his "Literacy Representative" which turned out to be Kirstie, his partner. The letter raised issues as to the Respondent's ability to read and write. It was said that he had a formal diagnosis of a severe form of dyslexia and had dysphasia from a previous head injury. There were no medical documents attached to the letter despite reference being made to an "Appendix A". In the event at the hearing the Respondent produced a letter dated 13th May 1991 from an Educational Psychologist, Brian Tew confirming that it was highly likely that the Respondent suffered from Dyslexia. The letter from Kirstie had raised criticism of the Applicants for failing to make reasonable adjustments in light of this disability. These criticisms were repeated at the hearing.

4. As a preliminary point the Tribunal considers that these criticisms are unfounded. First the medical evidence was out of date. It may be the case that Mr Jones is indeed still dyslexic but the current effect of that condition was not established by any recent evidence. Secondly the Tribunal accepts the Applicants' evidence that they only found out about the purported disability at the end of his hearing in the Magistrates Court when his mother told the magistrate about the condition. The Respondent had not sought to defend the criminal charge on the basis that he was dyslexic. Indeed he had pleaded guilty. Thirdly it is clear from the evidence we heard that the Applicants are acutely aware of the need to make reasonable adjustments in relation to people with disabilities. They have a number of practical procedures in place which were explained to the Tribunal. These procedures were not instigated in the Respondent's case simply because the Applicants were not aware of his disability at the relevant time and even when they were aware of this the Respondent opted to apply for his landlord license and do the course on line which suggested he was able to function sufficiently well albeit it turns out with the assistance of Kirstie.

5. In relation to the substantive issue, namely the application for a Rent Repayment order the Respondent accepted that he had received the housing benefit alleged he also accepted that at the time that he received this benefit he did not have a landlord license.

Finally it was a matter of record that he had been convicted of an offence under section 7(5) of the Housing (Wales) Act 2014 on 19th January 2018 at Cardiff Magistrates Court for failing to have a license at a time when he was carrying out property management activities. He only applied for such a license after his conviction. In light of all of these matters the powers of the Tribunal were limited. This is because of the operation of Section 33 of the Housing (Wales) Act 2014.

6. Section 32 gives the Tribunal power to make a Rent Repayment Order. It states the following:

32.— Rent repayment orders

(1) A residential property tribunal may, in accordance with this section and section 33 make an order (a “rent repayment order”) in relation to a dwelling on an application made to it by—

- (a) the licensing authority for the area in which the dwelling is located,
- (b) the local housing authority for the area in which the dwelling is located, or
- (c) a tenant of the dwelling.

(2) But a local housing authority may not make an application under subsection (1) without the consent of the licensing authority mentioned in paragraph (a) of that subsection (unless it is the licensing authority); and consent for that purpose may be given generally or in respect of a particular application.

(3) A “rent repayment order” is an order made in relation to a dwelling which requires the appropriate person (see subsection (9)) to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (5)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (7)(b), as is specified in the order.

(4) The tribunal may make a rent repayment order only if it is satisfied—

- (a) where the applicant is the licensing authority or a local housing authority (as the case may be), of the matters mentioned in subsection (5);
- (b) where the applicant is a tenant, of the matters mentioned in subsection (7).

(5) The tribunal must be satisfied—

(a) that at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (6) an offence under section 7(5) or 13(3) has been committed in relation to the dwelling (whether or not a person has been charged or convicted for the offence);

(b) that—

- (i) one or more relevant awards of universal credit have been paid (to any person), or
 - (ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with a domestic tenancy of the dwelling,
- during any period during which it appears to the tribunal that such an offence was being committed, and

(c) the requirements of subsection (6) have been complied with in relation to the application.

(6) Those requirements are—

(a) that the authority making the application must have given the appropriate person a notice (a “notice of intended proceedings”)—

- (i) informing the person that the authority is proposing to make an application for a rent repayment order,
- (ii) setting out the reasons why it proposes to do so,

- (iii) stating the amount that it will seek to recover under that subsection and how that amount is calculated, and
 - (iv) inviting the person to make representations to the authority within a period of not less than 28 days specified in the notice;
 - (b) that period must have expired, and
 - (c) that the authority must have considered any representations made to it within that period by the appropriate person.
- (7) The tribunal must be satisfied that—
- (a) a person has been convicted of an offence under section 7(5) or 13(3) in relation to the dwelling, or that a rent repayment order has required a person to make a payment in respect of—
 - (i) one or more relevant awards of universal credit, or
 - (ii) housing benefit paid in connection with a tenancy of the dwelling;
 - (b) the tenant paid to the appropriate person (whether directly or otherwise) periodical payments in respect of the tenancy of the dwelling during any period during which it appears to the tribunal that such an offence was being committed in relation to the dwelling, and
 - (c) the application is made within the period of 12 months beginning with—
 - (i) the date of the conviction or order, or
 - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.
- (8) In this section—
- (a) references to an offence under section 7(5) do not include an offence committed in consequence of a contravention of subsection (3) of that section, and
 - (b) references to an offence committed under section 13(3) do not include an offence committed in consequence of a contravention of subsection (1) of that section.
- (9) In this section—
- “appropriate person” (“person priodol”), in relation to any payment of universal credit or housing benefit or periodical payment in connection with a domestic tenancy of a dwelling, means the person who at the time of the payment was entitled to receive, on that person's own account, periodical payments in connection with the tenancy;
- “housing benefit” (“budd-dal tai”) means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992;
- “relevant award of universal credit” (“dyfarniad perthnasol o gredyd cynhwysol”) means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (SI 2013/376) or any corresponding provision replacing that Schedule, in respect of periodical payments in connection with a domestic tenancy of the dwelling;
- “tenant” (“tenant”), in relation to any periodical payment, means a person who was a tenant at the time of the payment (and “tenancy” has a corresponding meaning).
- (10) For the purposes of this section an amount which—
- (a) is not actually paid by a tenant but is used to discharge the whole or part of the tenant's liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
 - (b) is not an amount of universal credit or housing benefit,
- is to be regarded as an amount paid by the tenant in respect of that periodical payment

7. All of the necessary criteria for the making of a Rent Repayment Order were met in the present case. Within the previous 12 months the Respondent had committed an offence pursuant to s.7(5) of the Act. Housing benefit had been paid to the Respondent for tenants living at the premises at the time that the offence was committed. A notice of intended proceedings had been served by the Applicants on 9th February 2018 and the Applicants had considered the representations in response which were made by the Respondent's niece on 16th February 2018.

8. Section 32 of the Act is further qualified by section 33 which states the following:

33.— Rent repayment orders: further provision

(1) Where, on an application by the licensing authority or a local housing authority (as the case may be) for a rent repayment order, the tribunal is satisfied—

(a) that a person has been convicted of an offence under section 7(5) or 13(3) in relation to the dwelling to which the application relates, and

(b) that—

(i) one or more relevant awards of universal credit were paid (whether or not to the appropriate person), or

(ii) housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with a domestic tenancy of the dwelling during any period during which it appears to the tribunal that such an offence was being committed in relation to the dwelling in question,

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority which made the application the amount mentioned in subsection (2); but this is subject to subsections (3), (4) and (8).

(2) The amount is—

(a) an amount equal to—

(i) where one relevant award of universal credit was paid as mentioned in subsection (1)(b)(i), the amount included in the calculation of that award under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (SI 2013/376) or any corresponding provision replacing that Schedule, or the amount of the award if less, or

(ii) if more than one such award was paid as mentioned in subsection (1)(b)(i), the sum of the amounts included in the calculation of those awards as referred to in subparagraph (i), or the sum of the amounts of those awards if less, or

(b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (1)(b)(ii) (as the case may be).

(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 (1) (“the rent total”) is less than the amount mentioned in subsection (2), the amount required to be paid by virtue of a rent repayment order made in accordance with subsection (1) is limited to the rent total.

(4) A rent repayment order made in accordance with subsection (1) 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 (1) does not apply, the amount required to be paid by virtue of a rent repayment order is to be such amount as the tribunal considers reasonable in the circumstances; but this is subject to subsections (6) to (8).
- (6) In such a case, the tribunal must take into account the following matters—
- (a) the total amount of relevant payments paid in connection with a tenancy of the dwelling during any period during which it appears to the tribunal that an offence was being committed in relation to the dwelling under section 7(5) or 13(3);
 - (b) the extent to which that total amount—
 - (i) consisted of, or derived from, payments of relevant awards of universal credit or 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 7(5) or 13(3);
 - (d) the conduct and financial circumstances of the appropriate person; and
 - (e) where the application is made by a tenant, the conduct of the tenant.
- (7) In subsection (6) “relevant payments” means—
- (a) in relation to an application by the licensing authority or a local housing authority (as the case may be), payments of relevant awards of universal credit, housing benefit or periodical payments payable by tenants;
 - (b) in relation to an application by a tenant, periodical payments payable by the tenant, less—
 - (i) where one or more relevant awards of universal credit were payable during the period in question, the amount mentioned in subsection (2)(a) in respect of the award or awards that related to the tenancy during that period, or
 - (ii) any amount of housing benefit payable in respect of the tenancy of the dwelling during the period in question.
- (8) A rent repayment order may not require the payment of any amount which—
- (a) where the application is made by the licensing authority or a local housing authority (as the case may be), is in respect of any time falling outside the period of 12 months ending with the date of the notice of intended proceedings given under section 32(6), or
 - (b) where the application is made by a tenant, is in respect of any time falling outside the period of 12 months ending with the date of the tenant's application under section 32(1);
- and the period to be taken into account under subsection (6)(a) is restricted accordingly.
- (9) Any amount payable by virtue of a rent repayment order is recoverable as a debt due to the licensing authority, local housing authority or tenant (as the case may be) from the appropriate person.
- (10) And an amount payable to the licensing authority or a local housing authority by virtue of such an order does not, when recovered by it, constitute an amount of universal credit or housing benefit (as the case may be) recovered by the authority.
- (11) Subsections (8), (9) and (10) of section 32 apply for the purposes of this section as they apply for the purposes of section 32.

9. Subsection (1) compels the Tribunal to make a Rent Repayment Order because of the Respondent's conviction. The amount of the Rent Repayment Order is dictated by sub (2) (b) namely the amount equal to the total amount of housing benefit paid when an offence was being committed. Under subsection (4) the Tribunal is given discretion to limit the Rent

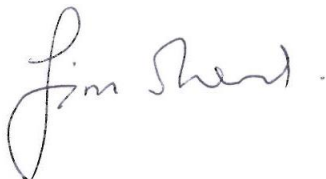
Repayment Order to such amount as is reasonable but this depends on their being exceptional circumstances.

10. In the present case the Respondent gave evidence that he owned another property in the same street as the premises that he also rented out. He owned a third property that he lived in, again on the same street. All three properties were mortgaged and he was only breaking even by letting the two properties out. The three bedroom properties in the area average in value between £110000 - £125000.

11. The Respondent candidly told the Tribunal that he had suffered a bad year. His long term relationship with a previous partner had ended and he had suffered depression as a result of this and the previous death of his father. It was clear that the Respondent had sought to apply for a license once he had been convicted and has now obtained one. Moreover it is clear that the Respondent's ability to manage his financial affairs without the devoted assistance of his niece and Kirstie has been hampered.

12. Despite all of these factors the Tribunal is not satisfied that there were exceptional circumstances in the present case. The Respondent is an experienced landlord. He has managed property for 17 years. He ought to have ensured that he had a license. He didn't and he was convicted. The Tribunal will award the sum sought by the Applicant, namely £3983.44. The tribunal could have awarded £4717.92 pursuant to s.33(8)(a) of the Act but the Applicant seeks a reduced sum for the reasons given in paragraph 1 above and it seems fair to award this sum alone.

Dated this 10th day of October 2018

A handwritten signature in blue ink, appearing to read 'Jim Sherr'.

CHAIRMAN