

The Residential Property Tribunal for Wales

Ref: RPT/0009/04/12/Chaddesley Terrace

Tribunal

Mr S Povey
Mrs R Thomas

Chairman

Mr S Povey

In the matter of an application for a Rent Repayment Order under Section 73
of the Housing Act 2004

Name of property: 12 Chaddesley Terrace, Swansea

Applicants: Ms Kay Evans

Respondent: Mr Mark Harris

Decision

A Rent Repayment Order is made in favour of the Claimant against the Respondent.

The Respondent must pay the Claimant the sum of £520.16.

Background

1. The Respondent is the owner and landlord of 12 Chaddesley Terrace, Swansea, ("the property"). The Claimant was a tenant of the property from 14th April 2007 to 14th February 2013.
2. On 1st November 2012, the Respondent was convicted at Swansea Magistrates Court for failing to licence the property.
3. On 21st January 2013, the Tribunal received the Claimant's applications for a Rent Repayment Order.
4. On or around 12th February 2013, the Tribunal issued case management directions.
5. The hearing of the application took place on 7th June 2013, which the Claimant and the Respondent attended. At the end of the hearing, the Tribunal ordered the Claimant to obtain and provide details of the housing benefit she had been awarded for the period from 22nd January 2012 to 21st January 2013.
6. In reaching our decision, the Tribunal has had regard to the evidence provided in advance by the parties, the oral submissions made to us at the hearing and the further evidence provided by the parties.

The Law

7. The definition of a house in multiple occupation ('HMO') is contained within s.254 of the Housing Act 2004. It includes a converted block of flats to which s.257 of the Act applies. In summary, s.257 applies to a building which has been converted into and consists of

self-contained flats, the building work did not comply and continues not to comply with the appropriate building standards and less than two-thirds of the flats are owner occupied.

8. Section 55 of the Housing Act 2004 and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 provides that HMOs that are of at least three storeys and occupied by at least five people must be licensed with the local housing authority. It is not suggested that the property fell within this definition. Section 56 of the Housing Act 2004 empowers local housing authorities to designate areas in their district as subject to additional licensing schemes, over and above the statutory licensing regime.
9. The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007 ('the HMO management regulations') places obligations upon those managing HMOs.
10. Section 72(1) of the Housing Act 2004 states:

A person commits an offence if he is a person having control or managing an HMO which is required to be licensed under this Part...but is not so licensed.
11. It is a defence to any proceedings under s.72(1) if an application for a licence has been made but not yet determined (s.72(4) Housing Act 2004).
12. By virtue of section 73 of the Housing Act 2004, the Tribunal may, upon application by any of the occupiers of a HMO, make a Rent Repayment Order if satisfied that:
 - 12.1. The occupiers have paid rent (in whole or part) without the assistance of housing benefit in connection with their tenancy of the property;
 - 12.2. The landlord has been convicted of an offence under s.72(1) Housing Act 2004;
 - 12.3. The rent paid was during any period which it appears to the Tribunal the landlord was committing the offence set out in s.72(1); and

- 12.4. The application for the Order was made within 12 months of the date of the landlord's conviction.
13. A Rent Repayment Order is an order of the Tribunal requiring, in this case, the landlord to pay to the applicant such amount in respect of rent payments made in accordance with Paragraph 12.3 above, as it considers reasonable in the circumstances (ss.73(5) and 74 Housing Act 2004).
14. In determining what is a reasonable amount, s.74(6) of the Housing Act 2004 requires the Tribunal to take in particular the following into account:
- 14.1. The total amount paid during the period that the s.72(1) offence was being committed;
 - 14.2. How much of the rent paid included housing benefit and how much was actually received by the landlord;
 - 14.3. Any conviction under s.72(1) of the Housing Act 2004;
 - 14.4. The conduct and financial circumstances of the landlord;
 - 14.5. The conduct of the applicant.
15. The Tribunal cannot include in a Rent Repayment Order any rent paid which relates to the period falling outside 12 months ending with the date of the application to the Tribunal (s.74(8)). In this case, the 12 month period during which we can consider any rent paid is 22nd January 2012 to 21st January 2013 ('the maximum period').

Findings of Fact

16. Based upon the evidence we have seen and heard, the Tribunal made the following findings of fact.
17. For the purposes of the Housing Act 2004, the property was at the relevant times a HMO. It was a building converted into two self-contained flats, neither of which were occupied by owner occupiers and which had been converted in breach of building regulations.

18. From January 2009, The City and County of Swansea Council ('the council') introduced an additional licensing scheme in the Uplands and Castle wards. This scheme required all HMOs of at least two storeys and occupied by at least three people to be licensed. The property was situated within the geographical scope of this additional scheme.
19. From 14th April 2007, the Claimant occupied the property. During the relevant period, her weekly rent was £125 per week (17.76 per day). The Claimant was in receipt of housing benefit. Her total rent liability for the maximum period was £6,500. She received housing benefit totalling £3,518.77 and paid the balance totalling £2,981.23.
20. From September 2009, the property fell to be licensed under the additional licensing scheme. During April and May 2012, the council wrote to the Respondent informing him that he needed to apply for a licence for the property. They received no reply. A final letter was sent on 13th June 2012, which finally elicited a response. Despite making contact with the Respondent and explaining to him over the phone of the need to apply for a licence, the council did not receive an application. As such, they conducted an inspection of the property on 20th July 2012. The Respondent attended the inspection and told the council that he would deliver the completed application form later that day. We accept the Respondent's evidence that he delivered the application form by hand on 20th July 2012, although the same was not received by the council's environmental health team until 24th July 2012.
21. In December 2012, the occupier of the other flat within the building left and the Respondent did not re-let it. As a result, it ceased to fall within the council's additional licensing regime.
22. In the course of their inspection, the council also concluded that the property was poorly managed in contravention of the HMO management regulations.
23. The Respondent pleaded guilty to the charge of letting the premises without a licence at Swansea Magistrates Court on 1st November 2012.

24. The Claimant left the property in February 2013 and the property has not been re-let.

Conclusions – the Rent Repayment Orders

25. Applying the criteria for making a Rent Repayment Order set out in s.73 of the Housing Act 2004, we are satisfied that:

25.1. The Claimant paid rent for her occupation of the property of £125 per week (or 17.76 each per day);

25.2. The Respondent was convicted of an offence under s.72(1) of the Housing Act 2004;

25.3. The period that payments were made and it appears to us that the s.72(1) offence was being committed is from September 2009 until 20th July 2012; and

25.4. The Claimant made her application to the Tribunal within 12 months of the Respondent's conviction.

26. We are satisfied that it is appropriate for us to make Rent Repayment Orders against the Respondent in favour of the Claimant.

Conclusions – the amount payable under the Order

27. The relevant period for us to consider making an award is from 22nd January 2012 (the start of the 12 month period per s.74(8)) and 20th July 2012 (the date the Respondent submitted his application for a licence and, by virtue of s.72(4), was no longer committing an offence). The period from 22nd January to 20th July 2012 equates to 181 days ('the relevant period'). The rent liability for the relevant period was £3214.48 (181 x £17.76). During the same period, the Claimant received £1728.30 in housing benefit (as apportioned to the aforementioned dates), leaving a shortfall of £1486.18 which she paid herself.

28. Having regard to the further factors referred to in s.74(6) of the Housing Act 2004 (as set out in paragraph 14, above), we have reached the following conclusions:

28.1. The Respondent was not a professional landlord and this was his only investment property. He was an absent landlord and lived away. He admits to being naive about his knowledge and responses to the council's requirements and guidance on the completion of the forms. He did not take advice. When the council officer inspected the premises he said he thought it was just a meeting to complete the forms but it turned out to be an inspection. He had been sent several letters and he acknowledged these by eventually telephoning the council but did not follow it through by submitting the application for a licence because he found the forms confusing. When the council inspected the property the Respondent was formally cautioned. That suggests that the council felt it had given him enough of a warning and there were issues regarding the property that caused concern. However, what would have happened if he had submitted an application? An inspection would have been made and a list of conditions given before the licence was issued. With the council officer's help at the inspection, the Respondent finally completed the application form and took it to the council offices the same day;

28.2. During the tenancy, the Respondent had improved the property. He had not ignored that works were needed. He undertook the repairs and improvements that were obvious to him in terms of the fabric of the building, rather than addressing issues that might be deemed to be health and safety (as evidenced by the items recorded by the council's officer as being contraventions of the HMO management regulations);

28.3. The Respondent's conduct in owning the property and letting it to the Claimant appears to be one of good intent. He had some degree of flexibility over the rent and the electricity payments. He did respond when she informed him of disrepairs. It does not appear that he had been financially advantaged by owning the property to date. It may have cost him more than he received in income although property is a long term investment. He is in full time employment although it appears there will be some degree of hardship as the property is empty. It has generated no income since the Claimant moved out in February 2013. The Respondent also faced a not insubstantial fine following his conviction;

28.4. In respect of the Claimant, there was an initial history of irregular rent payments.

She moved in her mother. There is no evidence of her actively seeking alternative accommodation until much later in the tenancy. However, she did pay rent regularly latterly. She, like the Respondent, was naive as to her rights and her awareness of safety. However, there is no evidence that she seemed threatened by the deficiencies noted by the council, most of which were relatively minor. She did not ask for new floor coverings or new worktops for example. In terms of the severity of the contraventions, these come down to the fire alarm battery, the bolted door and the low window sill height. However, she did have a means of escape through the back door, which she considered her entrance door. It is likely a full health and safety rating assessment would have highlighted a lot more issues but that is not relevant for this application.

29. On balance, the arrangement between the parties appeared to have suited them both well. The Respondent was less commercially robust than he could have been and this was to the Claimant's advantage. Nevertheless, he did have sufficient notice that there was a legal requirement to apply for a licence and he could have been more diligent about this. He has paid a price through his conviction. The Claimant has not been seriously prejudiced by the failure to apply for a licence but nevertheless she is entitled to a Rent Repayment Order.

30. Having regard to all these factors, we have concluded that it would be reasonable to order the Respondent to pay the Claimant a sum equivalent to 35% of the rent paid by the Claimant (less housing benefit) during the relevant period. The rent paid in that period was £3214.48 for which the Claimant received housing benefit of £1728.30, leaving her with a balance that she paid of £1486.18. 35% of that amount is calculated to be £520.16.

31. We therefore make a Rent Repayment Order against the Respondent and in favour of the Claimant in the sum of £520.16.

A handwritten signature in black ink, appearing to read 'S A Povey', with a stylized flourish at the end.

S A Povey

Chairman

3rd October 2013