

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0011/09/17

IN THE MATTER OF: 39 Orchard Street, Newport NP19 7DL

AND IN THE MATTER OF sections 73 and 74 Housing Act 2004

BETWEEN:

Applicant: JAMES SANDERSON

-and-

Respondent: ROBERT IVOR GROVELL

Before: E.W. Paton (Chair),
K. Watkins (Surveyor),
C. Calvin-Thomas (Lay Member)

Sitting at the RPT Office, Wood Street, Cardiff

Hearing date: 20th March 2018

DECISION

1. By an application dated 15th September 2017, the Applicant applied for a Rent Repayment Order under sections 73 and 74 of the Housing Act 2004. By a tenancy agreement dated 1st April 2016, for an initial period of 6 months, the Respondent let to the Applicant a room at the above premises (39 Orchard Street, Newport) under an assured shorthold tenancy for a rent of £235 per month.
2. The premises were at the material time a House in Multiple Occupation (HMO) within the meaning of the Housing Act 2004. On 19th May 2017 the Respondent was convicted at Newport Magistrates Court of an offence under section 72 of the 2004 Act, operating the premises as an HMO without a licence. According to a letter from Newport City Council to the Applicant dated 8th August 2017, that conviction related to the period 10th August 2016 to 29th January 2017.

3. It appears, from a document he showed to us at the hearing, that on 8th August 2017 Newport City Council served on the Respondent a "Notice of Intended Proceedings" for a Rent Repayment Order under section 73(7) of the 2004 Act, in relation to some £1795.12 of rent paid in housing benefit to occupants of rooms at the premises. Some £201.44 of that sum was said to relate to Housing Benefit paid to the Applicant for the period between 10th August and 5th September 2016. In the event, the Council made no application to this Tribunal. The Respondent informs us that they subsequently wrote to him to confirm that no such application would be made.
4. The Applicant was nevertheless free as the "occupier" of part of the premises to bring such an application, and as stated he did so on 15th September 2017.
5. Procedural directions were given on 9th October 2017. It is fair to say that almost none of these were complied with. The Applicant has served no statement of case, no schedule or proof of payment of rent, and no other evidence, save that a copy of the initial tenancy agreement was eventually provided.
6. The hearing was listed for 20th March 2018. We are satisfied that both parties had notice of this hearing. The Respondent attended in person. The Applicant did not attend.
7. We heard briefly from the Respondent. He stated that he had in fact never received any payments of rent from the Applicant, directly or by way of redirected Housing Benefit. He stated that the Applicant had previously been homeless, and in the event, after initially inviting various other people to the premises to sleep on his floor, did not in fact spend a significant amount of time at the premises.
8. The absence of any evidence of payment, and the absence of the Applicant, makes it straightforward to dismiss the application. By section 73(8), on an application by an occupier, the Tribunal has to be satisfied as to the fact of the conviction [s73(8)(a)], that the application was made within 12 months of the date of the conviction [s73(8)(c)], and, of most relevance for present purposes:-

"that the occupier paid, to a person having control of or managing the HMO , periodical payments in respect of occupation of part 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.." [s73(8)(b)]
9. We have no such evidence of payment from the Applicant, and the Respondent's unchallenged evidence is that no such payments were ever received in the period to which the application relates.

10. The application is therefore dismissed. It is a matter of regret that such an application was made in such a way. The Applicant, having engaged the Tribunal and the Respondent, failed to give evidence in support or attend the hearing of his own application. The application was, however, not withdrawn so the Tribunal had to list and deal with it.

Dated this 4th day of April 2018

A handwritten signature in black ink, appearing to read "E.W. Paton".

E.W. Paton
Chair, Residential Property Tribunal (Wales)