

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL

In the Matter of: RPT/0001/04/19

In the matter of an Application under Section 32(1) Housing (Wales) Act 2014 (“the Act”) for a Rent Repayment Order in relation to 16, Chapel Street, Penmaenan, Penmaenmawr, LL34 6PA.

APPLICANT: Rent Smart Wales

RESPONDENT: Mrs Joanne Day

Hearing; 23<sup>rd</sup> August 2019 at the Tribunal Offices, Oak House, Cleppa Park, Newport, NP10 8BD.

Tribunal;  
Richard Payne – Legal Chair  
Dr Angie Ash – Lay Member  
Anna Harrison – Expert surveyor member.

Appearances;  
Mr Richard Grigg, solicitor and Mr Stuart Moon, Senior Housing Surveyor for the Applicant.

There was no appearance by or on behalf of the Respondent.

**Decision.**

**Background.**

1. By an application dated 4<sup>th</sup> April 2019, the Applicant, the licensing authority for Wales, seeks a rent repayment order (RRO) under section 32 of the Housing (Wales) Act 2014 (“the Act”) against the Respondent for payments of Housing Benefit paid to her for the period of 28<sup>th</sup> January 2018 – 28<sup>th</sup> January 2019 in respect of a tenant at 16, Chapel Street, Penmaenan, Penmaenmawr, LL34 6PA (“the property”). The Respondent is the freehold owner of the property.
2. Directions were given on 15<sup>th</sup> May 2019 to prepare this matter for hearing to include the submission of witness statements and relevant evidence. Whilst the Applicant complied with the directions and submitted a hearing bundle, there has not been any communication at all with the tribunal from the Respondent or anyone on her behalf. The Respondent failed to comply with directions and did not attend at the hearing.

3. The tribunal had the benefit of the written statement and documentation prepared by Mr Moon.
4. The facts are that the Respondent is the freehold owner and landlord of the property and as such is subject to the legal obligations in force in Wales since 23<sup>rd</sup> of November 2015 to be registered as a landlord with Rent Smart Wales (“RSW”, the designated licensing authority for Wales) and to be licensed for certain letting and management activities in relation to dwellings subject to, marketed or offered for let under a domestic tenancy in Wales. It is an offence under section 4(2) of the Act if a landlord is not registered, and it is likewise an offence under sections 6(4) and 7(5) respectively if a landlord is carrying out letting and/or property management activities in Wales whilst unlicensed.
5. Mr Moon’s written evidence explained that in January 2018 RSW received a report from the Housing Enforcement team at Conwy County Borough Council stating that the property was tenanted and both the property and the landlord, the Respondent Mrs Joanne Day, were unregistered and thus committing an offence. Upon investigation, RSW established that both the landlord and the property were unregistered and there was no landlord or agent licence connected to the property. RSW wrote to the Respondent at the address they had for her in Llanrwst but have not had any contact or information back from her.
6. RSW served a Fixed Penalty Notice upon the Respondent for failing to register as a landlord but again Mrs Day failed to respond to this. RSW were satisfied from the enquiries they made and the evidence they obtained that the Respondent was continuing to operate as both an unlicensed and unregistered landlord and the property remained tenanted. On 8th June 2018 the Respondent was found guilty of three offences (failure of a landlord to be registered, failure of a landlord to be licensed to carry out lettings activities and failure of a landlord to carry out property management activities) and fined £1540 by Cardiff magistrates. A notification of the outcome of these proceedings was sent to the Operational Manager at RSW, amongst others, and was included in the Applicant’s bundle.
7. Mr Moon’s statement describes how further correspondence was sent to Mrs Day after the conviction inviting her to comply with the landlord registration and licensing process but she again failed to respond to correspondence and to complete the registration and licensing process. The tribunal was informed that Mrs Day has been further prosecuted for offences under the Act and found guilty in her absence at Cardiff Magistrates Court in March 2019 of the same three offences in relation to a different time period but for the same property.
8. RSW had made enquiries of the Respondent’s current address, whether the property was tenanted and if it was subject to payments of Housing Benefit and had this information confirmed to them by Conwy County Borough Council who also confirmed in an e mail of 15<sup>th</sup> January 2019 that there was an ongoing Housing Benefit entitlement of £80 per week from the 31<sup>st</sup> January 2018 that was being paid direct to the landlord Mrs Joanne Day. Accordingly,

on 28 January 2019 a Notice of Intended Proceedings for a Rent Repayment Order was sent to Mrs Day. This notice informed her that within the period of 12 months ending on 28 January 2019 she had committed an offence under section 7 (5) of the Act, namely the failure of a landlord to obtain a licence to carry out property management activities, and that during this time a payment of housing benefit had been made to her. The notice informed her that RSW proposed to recover the amount of £4160 from her in relation to the period of 28 January 2018 to 28 January 2019. The notice explained that this had been calculated as 12 months housing benefit or 52 weeks based on £80 per week.

9. The notice invited the Respondent to make any representations in writing about this proposed action within 28 days to RSW. In fact, no representations were received within that 28 day period or at all from the Respondent. Accordingly on 4 April 2019 RSW applied to the tribunal for a RRO.

### **The law.**

10. Section 32 of the Act empowers the tribunal to make a Rent Repayment Order. It states:

#### ***“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”. [Our emphasis on particularly relevant parts of the section.]

11. There are further provisions relating to RRO's in section 32 which says;

### **“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 sub-paragraph (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.” [Again, we have emphasised relevant parts of the section.]*

### **The hearing.**

12. The tribunal heard evidence in person from Mr Moon to supplement his written statement and representations made by Mr Grigg. Mr Grigg submitted that in accordance with sections 32 and 33 of the Act that the tribunal must make the order requested.
13. The tribunal explored whether RSW were certain that they were communicating with the Respondent at the correct address. Mr Moon explained that they had verified the address as being correct through three different sources. They had consulted the website 192.com and confirmed her address under the voters electoral roll, they had also confirmed it via enquiries made of the local authority as the address for which housing benefit was received and had the Respondent's address confirmed by the tenant of the property. Mr Moon also pointed out that the Respondent had been prosecuted upon two occasions for these licensing offences and the same address had been used for the Respondent in the prosecutions.
14. The tribunal asked about documentation and for example the Applicant's tribunal bundle. Mr Moon explained that the bundle prepared for this hearing was sent to the Respondent by registered post and was signed for. He said that they had obtained a copy of the scanned signature but it was not possible to determine a name from the signature but he said that another male lived and was registered at her address, not just the Respondent. However he confirmed that no letters or the tribunal hearing bundle had been returned to RSW in the dead letter system. He said that none of these communications from RSW to the Respondent had prompted any comment or response from her. He explained that the postal address was the only means of communication with the Respondent since he was not aware of any email address or telephone number for her.
15. The tribunal enquired as to whether there was any information that RSW had that could potentially explain the lack of response upon the part of Mrs Day, for example any evidence about illness or disability? Mr Moon said there was no

such information. Mr Moon further explained that his understanding was that when the Respondent was first prosecuted in Cardiff Magistrates Court on 8 June 2018, that although the document in the tribunal bundle referred to the plea as being “guilty in absence”, his understanding was that there had not been any communication by or on behalf of the Respondent and there had not actually been a guilty plea submitted, rather that she was found guilty in her absence upon the facts and fined £1540. He explained that they received reports from the solicitor dealing with this at the Magistrates Court and that was the source of his information. He was not aware whether or not the Respondent had paid that initial fine.

16. In submissions Mr Grigg referred us to the appropriate law under sections 32 and 33 and stated in the light of her conviction that the tribunal must make the order requested under section 33(1)(a)(ii) and that the full amount of housing benefit received should be repayable. The tribunal had asked Mr Grigg whether the Notice of Intended Proceedings dated 28<sup>th</sup> of January 2019 was defective by reason of its failure to identify the property to which the proposed RRO related. Mr Grigg accepted that the notice did not identify the rental property but submitted that it complied with the strict requirements of section 32(6) (a) (i) – (iv) of the Act and therefore was lawful and sufficient to initiate the RRO process before the tribunal.

17. Mr Grigg referred to section 33(4) which enables the tribunal to make an order that does not require 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, and submitted that since the Respondent had not provided any information at all it could not be said that there were any exceptional circumstances in this case. He reiterated that the full amount should be payable and that RSW had provided evidence of the amounts that had been paid to the Respondent that had been provided to them by the local authority.

### **Decision.**

18. The tribunal accept the evidence of Mr Moon and the submissions of Mr Grigg as being correct. Whilst the Notice of Intended Proceedings of 28<sup>th</sup> of January 2019 does not identify the property in respect of which Housing Benefit was paid to the Respondent, we accept that the notice does comply with the requirements of section 32(6). However we strongly recommend that RSW ensure that in future any notices of intended proceedings do clearly identify the rental property for which rental payments were received and which is to be the subject of an application for a RRO.

19. RSW have provided evidence and a calculation of 12 months Housing Benefit (based on £80 per week for 52 weeks) that was paid between January 2018 and January 2019 to the Respondent totalling £4160. The tribunal is satisfied upon the written and oral evidence that was before us, that letters have been sent to the correct address for the Respondent and that she was aware of these proceedings and this hearing. The tribunal has also sent correspondence and orders to the same address for the Respondent and



likewise has not received any communication of any type from or on behalf of the Respondent, nor have any letters from the tribunal to the Respondent been returned in the dead letter system.

20. There was no evidence before us of any kind from or on behalf of the Respondent and therefore no grounds to conclude that there are any exceptional circumstances which would make it unreasonable for the Respondent to be required to pay the amount of the RRO. Whilst it is a statement of the obvious, the tribunal strongly recommends to the Respondent that she seeks advice and does engage in any other current or future dealings with RSW.

21. **The tribunal therefore makes a rent repayment order against the Respondent in the sum of £4160** being the amount of Housing Benefit received by the Respondent in respect of 16 Chapel Street, Penmaenan, Penmaenmawr, LL34 6PA for the 12 month period ending with the date of the notice of intended proceedings given on 28<sup>th</sup> of January 2019.

### Costs.

22. Mr Grigg asked that the tribunal make an order for costs in the sum of £500 and confirmed that the cost of the amount of time spent upon this case both by Mr Moon and himself comfortably exceeded that amount. The tribunal heard brief evidence from Mr Grigg and Mr Moon about the costs they had incurred and is satisfied that more than £500 has been incurred upon the case by RSW. However, under regulation 34 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016, the tribunal must not make a determination on costs in respect of a party without first giving that party an opportunity of making representations to the tribunal. Therefore, it is only fair to point out to the Respondent that the tribunal is minded to make the order for costs against her of £500 but will defer any decision on costs until **12 noon on Friday, 20 September 2019**. The Respondent Mrs Day is entitled to make written representations to the tribunal upon the question of costs and any such representations must be provided by no later than **12 noon on 20<sup>th</sup> of September 2019**.

DATED this 4<sup>th</sup> day of September 2019



Richard Payne  
CHAIRMAN