

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**

**Reference: RPT/0005/04/22**

**In the matter of an Application under Section 32 & 33 Housing (Wales) Act 2014 for a Rent Repayment Order in relation to 17 Hopkin Street, Brynhyfryd, Swansea, SA5 9HN**

**APPLICANT: Rent Smart Wales**

**RESPONDENT: Mr James Burke**

**Appearances: Richard Grigg, Solicitor for Rent Smart Wales  
Magdalena Stachowiak Enforcement Officer  
Thomas Shaw from Rent Smart Wales (Observer)**

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

**TRIBUNAL: Kelly Byrne, Legal Chair  
Anna Harrison, Surveyor Member  
Susan Hurd, Lay Member**

**Hearing on 13<sup>th</sup> September 2022 via a remote hearing on CVP**

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**DECISION**

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**Preliminary issues**

1. On the day of the hearing the Respondent was not present, and he has not engaged with the Tribunal regarding these proceedings or provided any written evidence.
2. In line with Regulation 32 of the Residential Property Tribunal Procedures & Fees (Wales) Regulations 2016 the Tribunal had to be satisfied of the following before proceeding in absence of the Respondent: -
  - a) That Notice of the hearing has been given to the Respondent in accordance with the Regulations and
  - b) That it is not satisfied that there is a good reason for the failure to appear by the Respondent

3. The Tribunal had the benefit of seeing correspondence that the administrative office of the Tribunal had provided to the Respondent where he had been informed of the date of the hearing. No communication had been received, so the Tribunal were satisfied that there was no good reason for his failure to appear and that the hearing could go ahead in his absence.

### **Background**

4. By an application dated 28<sup>th</sup> April 2022, the Applicant, the licensing authority for Wales, seeks a Rent Repayment Order (“RRO”) under Sections 32 & 33 of the Housing (Wales) Act 2014 (“the Act”) against the Respondent for payments of Housing Benefit paid to him for the period of 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021 in respect of the Tenant Richard Elias, at 17 Hopkin Street, Brynhyfryd, Swansea, SA5 9HN (“the property”). The Respondent is the freehold owner of the property.
5. On 9<sup>th</sup> June 2022 Directions were given in preparation for this hearing; they were subsequently amended on 30<sup>th</sup> June 2022. The directions required the submission by both parties of witness statements and evidence to be relied upon in the proceedings. The Applicant complied with the directions by way of submission of a hearing bundle; there has been no communication received by the Tribunal from the Respondent.
6. As stated, 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> November 2015, to be registered as a landlord with Rent Smart Wales (“RSW”) who are the designated licensing authority for Wales, and to be licensed for certain letting and management activities in relation to dwellings subject to being 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.
7. In her written statement Magdalena Stachowiak explained that on 16<sup>th</sup> May 2017 an officer from the Housing and Public Health Division in Swansea advised RSW that both the property at 17 Hopkin Street, Brynhyfryd, Swansea and that the landlord James Burke (Respondent) were unregistered. The Respondent had been contacted by telephone on 16<sup>th</sup> February 2017, which was followed up by letter on 14<sup>th</sup> March 2017, to prompt him to register the property and himself.
8. On 6<sup>th</sup> July 2017 RSW wrote to the Respondent at his place of residence to remind him of his legal requirements to register and they also wrote to the Tenant of the property. A final warning letter was also sent to the Respondent on 3<sup>rd</sup> August 2017.

9. On 18<sup>th</sup> August 2017 a fixed penalty was sent to the Respondent, which went unpaid and subsequently led to a prosecution under sections 4(2), 6(4) and 7(5) of the Housing (Wales) Act 2014 in respect of the premises. The Respondent was found guilty in his absence at Cardiff Magistrates Court on 1<sup>st</sup> February 2018 and given a financial penalty. The memorandum of conviction has been provided to the Tribunal.
10. The Respondent was further prosecuted and convicted in absence at Cardiff Magistrates Court on 21<sup>st</sup> February 2019 for offences contrary to sections 4(2), 6(4) and 7(5) of the Housing (Wales) Act 2014 in respect of the premises and given a financial penalty. The memorandum of conviction has been provided to the Tribunal.
11. On 14<sup>th</sup> December 2020 RSW received information from the City and County of Swansea that the Tenant living at the property was in receipt of Housing Benefit.
12. On 22<sup>nd</sup> January 2021 RSW, having obtained information from the City and County of Swansea, sent a letter to the Tenant of the property to establish information regarding the tenancy agreement and rent paid.
13. On 2<sup>nd</sup> December 2021 an email was received by RSW from City and County of Swansea confirming that the amount of Housing Benefit that was awarded to Tenant at the property between 7<sup>th</sup> December 2020 to 3<sup>rd</sup> October 2021 was £4453.08.
14. On 13<sup>th</sup> December 2021 RSW sent a Notice of Intended Proceedings for a Rent Repayment Order to the Respondent at his home address. The Notice states that RSW are claiming the amount of Housing Benefit claimed for the period between 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021 to the sum of £4453.08.
15. In the written submissions made by Magdalena Stachowiak she states that based on further information received from The City and County of Swansea, on 30<sup>th</sup> June 2022 and 1<sup>st</sup> July 2022, that for the period of 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021 the amount of Housing Benefit claimed was £4068.45.

16. **The law**

**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.

### **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 3

### **The Hearing**

17. The Tribunal heard evidence in person from Magdalena Stachowiak to supplement her written statement and also heard 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.
18. The tribunal questioned Magdalena Stachowiak regarding the checks that RSW had made to ascertain that the address that they were writing to the Respondent at was the correct address. She confirmed that RSW had consulted the website 192.com and electoral roll checks. She was asked whether RSW had telephoned the Respondent as information contained in the bundle states that back in 2017 The City and County of Swansea had spoken to the Respondent via telephone, she confirmed that RSW do not hold a telephone number for the Respondent.
19. It is noted by the Tribunal that the address on the memorandum of convictions states the same correspondence address for the Respondent, but it is further noted that these cases proceeded in absence. She was asked by the Tribunal whether the Respondent had been paying the fines and costs awarded, she advised that she did not have this information.
20. Magdalena Stachowiak confirmed that the hearing bundle had been delivered to the Respondent via recorded delivery and that this had been signed for. RSW have no information as to why the Respondent is not engaging.
21. The Tribunal note that the Notice of Intended Proceedings for a Rent Repayment Order that was served on the Respondent states that the application was for the period between 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021 in the sum of £4453.08.



22. The Tribunal read the submissions and heard oral evidence from Magdalena Stachowiak on this point and she clarified that the amount being sought under a Rent Repayment Order was the lesser sum of £4068.45. She advised the Tribunal that the Respondent had not been informed of this reduction in the amount being claimed and could not provide an explanation as why he had not been notified, but that it was within the hearing bundle which as stated above had been delivered by recorded delivery.
23. The Tribunal also heard oral evidence in respect of the documentation before it in relation to the calculation of the Housing Benefit and how the documentary evidence was formatted specifically in respect of the Housing Benefit payment schedule.
24. Before the Tribunal was a witness statement, signed and dated 20<sup>th</sup> April 2022 by Richard Elias who is the Tenant of the property. In that statement he confirms that he is the current occupier of the property and has been since 2008. He explains that whilst he initially had a written tenancy agreement, that when his wife left the property, the tenancy agreement was verbal. He confirms that his landlord is the Respondent, that he pays the Respondent rent of £550 a month and that there is no letting/management agent.
25. Mr Grigg made submissions to the Tribunal where he referred to the relevant parts of the Act and sub sections under sections 32 & 33. He submitted that as the Respondent has been convicted of relevant offences that the Tribunal must make an order under section 33(1)(a)(ii) and that the full amount of Housing Benefit of £4068.45 should be ordered.
26. The Tribunal asked for Mr Grigg's submissions regarding the fact that the amount on the Notice of Proceedings was more than what is now being sought, his view was that it did not preclude the Tribunal from considering the application.

### **Decision**

27. The Tribunal accepts the evidence of Magdalena Stachowiak, the supporting documentation and the submissions of Mr Grigg.
28. The Tribunal have concluded that the Notice of Intended Proceedings dated 13<sup>th</sup> December 2021 complies with section 32(6) (a) (i) – (iv) of the Act.
29. The Tribunal have decided that whilst the Notice of Intended Proceedings, states the amount being claimed as £4453.08, when the actual amended amount being sought is £4068.45, that they can properly consider the application without a fresh Notice of Intended Proceedings being issued. This is because there is no prejudice

to the Respondent as the amount is less; the Tribunal might have taken a different approach if this had not been the case.

30. The Tribunal recommend that if such circumstances arise in the future where the amount being claimed is less than the amount stated on the Notice of Intended Proceedings, that RSW notify any future Respondents of that fact.
31. The Tribunal have been provided with evidence of the amount of Housing Benefit paid between 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021 to the Tenant as £4068.45 and we have been provided with a written statement of truth from the Tenant Richard Elias that this has been paid to the Respondent as part of his rent.
32. The Tribunal found some of the evidence submitted in relation to the amount of Housing Benefit awarded, quite confusing at times and would request that RSW consider providing the figures in a clearer format in future applications.
33. The Tribunal is satisfied on the written and oral evidence that RSW have been communicating to the Respondent at the correct address and the Tribunal itself has been communicating to the Respondent at the same address and has not received any information that this is incorrect.
34. Section 33(4) of the Act 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. There was no evidence before us 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 Rental Repayment Order.
35. **The Tribunal therefore makes a Rent Repayment Order against the Respondent in the sum of £4068.45** being the amount of Housing Benefit claimed in respect of 17 Hopkin Street, Brynhyfryd, Swansea, SA5 9HN for the period of 13<sup>th</sup> December 2020 to 4<sup>th</sup> October 2021.

### Costs

36. Mr Grigg confirmed that there was no cost order being sought on behalf of the Applicants.

Dated this 20<sup>th</sup> day of October 2022

K Byrne

Chairperson