

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference:

In the matter of 34 High Street, Newport, NP11 5GQ

In the matter of an application under section 32(1) of the Housing (Wales) Act 2014 For a Rent Repayment Order.

APPLICANT : Rent Smart Wales
RESPONDENT: Stuart Evans
Tribunal: Tribunal Judge Trefor Lloyd
 Mr. T Daulby MRICS (Surveyor Member)

Date of determination: 10th July 2024 on the papers.

DECISION

The Tribunal makes a Rent Repayment Order against the Respondent who must pay to the applicant the sum of £5,385.12 within 14 days of the date of this decision.

REASONS FOR DECISION

Background

1. The Applicant is the Licencing Authority in Wales for the purposes of Part 1 of the Housing (Wales) Act 2014 (“the 2014 Act”) which inter alia deals with maintaining a register, administering landlord registrations and granting agent and landlord licences. Since the 23rd of November 2015 under the provisions of the 2014 Act there is a legal obligation for all private sector landlords to be appropriately registered, trained and licenced or have in place a licenced agent to let and manage the property.
2. On the 18th of May 2022 the Applicant was contacted by telephone with a report as to antisocial behaviour by the tenant of 34 High Street Newport NP11 5GQ (the “Property”). The complainant wished to learn of the contact details of the landlord so as to make an official complaint. A search of the public register confirmed that the property was not registered. A further check of the Land Registry database confirmed the property to be owned by the Respondent.
3. Housing benefit information was received on the 16th of September 2022 indicating that the property was tenanted by a Mr Phillip Hardwicke and named the Respondent of 18 Main Street Crumlin Newport as the owner/landlord. A further land registry search was undertaken showing the Respondent to be the owner of 18 Main Street Crumlin.

4. A Companies House search revealed that 18 Main Street Crumlin was linked to a company called Payroll Admin Solutions limited where the Respondent (Mr Stuart Evans) was the named director.
5. A standard unregistered and unlicensed landlord letter was sent to the Respondent on the 28th of September 2022 at 18 Main Street Crumlin. He was given 14 days to register the property. Thereafter the 22nd of November 2022 a letter was sent to the Tenant of the property informing him the landlord was unregistered and unlicensed.
6. Further land registry and council tax checks revealed that 18 Main Street Crumlin as being a non-residential property.
7. On the 2nd of March 2023 housing benefits information again confirmed the Property was tenanted by Mr Hardwicke and that housing benefit payments were made to the landlord named as Mr Stuart Evans (the Respondent). A further unregistered and unlicensed landlord letter was sent to the Respondent on the 8th of March 2023 giving him 14 days to register the property. On the 14th of March 2023 Mr Nelson Edwards-Ramos the officer dealing with the case on behalf of the applicant spoke to Mr Hardwicke the tenant of the property who again confirmed the landlord as Mr. Stewart Evans (the Respondent).
8. On the 14th of March 2023 a telephone call was made to Payroll Admin Account Solutions at which time Mr Ramos was told Mr. Evans was on a call. Despite leaving a message the Respondent did not return the call. As a consequence a fixed penalty notice under Section 4(2) of the 2014 Act was served upon the Respondent for failing to be registered.
9. Further inquiries with Caerphilly environmental health department showed complaints had been received about the property and that it was rented, and the landlord detailed was the Respondent. This line of inquiry also revealed a property at 90 Gladstone Street, Cross Keys, Newport, NP11 7PN as being a forwarding address at a time when the Respondent was himself living at the property. Further Royal Mail search and Council Tax inquiries and a land registry search revealed that 19 Gladstone Street Cross Keys Newport NP11 7PM to be owned by the Respondent and Bethan Evans.
10. On the 20th of June 2023 the Applicant sent the Respondent a Notice of Intended Prosecution to 90 Gladstone Street Cross Keys. The Respondent was found guilty in his absence of committing an offence under Sections 7(1) and 7(5) of the 2014 Act on the 23rd of November 2023. Following prosecution on the 29th of November 2023 the Applicant sent the Respondent a post prosecution letter advising that the respondent was still non-compliant.
11. On the 3rd of January 2024 after carrying out various other inquiries a notice of intended prosecution was served on the respondent at 90 Gladstone St Newport. That correspondence indicated that the applicant intended to apply to this tribunal for a rent repayment order in relation to the property. The respondent was given 28 days to provide representations. In addition to the correspondence by post the applicant sent an e-mail to the e-mail address of Payment Admin Solutions Limited for the attention of the Respondent.

12. This current application before us was received on the 9th of February 2024 and despite directions being sent to the Respondent, as was the case in the earlier proceedings he has not engaged at all within these proceedings.
13. The Applicant was content for the matter to be dealt with on the papers and seeks a rent repayment orders to cover the 12 months period prior to the notice of intended proceedings i.e. a period between the 3rd of January 2023 and 3rd of January 2024. The total amount the applicant is seeking to be repaid is £5,385.12.
14. The application is contained within a trial bundle which amounts to 107 pages. A copy of the memorandum of conviction can be found at page 7 which confirms the matter was proven in the Respondent's absence on the 23rd of November 2023. In total including costs and victim surcharges the Respondent was ordered to pay £1535.15.
15. The letter informing the Respondent of the application to this Tribunal for a rent repayment order can be found at pages 9 and 10 of the bundle and the notice of intended rent repayment order at pages 12 and 13 of the bundle. One point of note is that there is an error at page 14 in the bundle being the second page of the notice of intended rent repayment order at paragraph 4 as it states as follows "if you wish to make representations to Rent Smart Wales in relation to the proposed application to the residential Property Tribunal Wales for a rent repayment order, this must be done **within 28 days of this letter** that is **on or before the 31st of January 2023**". Given the notice is dated the 3rd of January 2024 as is the covering letter the reference to 31st January 2023 is clearly a typographical error. It is abundantly clear that anybody reading the content of the notice of intended rent repayment order would understand it was an error and would also understand giving there is reference to within 28 days *before the date of this letter* that the 31st of January 2023 date was an error. Furthermore, the actual covering letter itself mentions the correct date of 31st January 2024. As a consequence, we as a Tribunal are content that this error in no way invalidates the application before us.
16. A schedule of housing benefit payments can be found at page 15 which in total mirror the sum now claimed. Again, there is a typographical error here insofar as the last payment is said to have been made to cover the period 4/12/23 – 01/01/23 whereas clearly it should read 01/01/2024. Again, this in no way in our view invalidates the application

THE LAW

17. Section 7(1)-(3) of the Act in summary requires landlords to be licenced to carry out property management activities. Those activities include all normal management of residential properties such as the collection of rent arranging for repairs, access, being the principal point of contact for the tenant and serving a notice to terminate the tenancy.

Section 7(5) of the Act makes contravention of subsections 1-3 an offence liable on summary conviction to a fine.

18. Section 32 of the Act is set out as follows:

(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.

Discussion

18. We have been invited to and have agreed to determine this matter on paper. Accordingly, we have read through the entire trial bundle and find as a fact the following:

- (i) The Respondent is the owner of the property and for the purposes of this application he is clearly the landlord.

- (ii) At no time has the property been registered nor the Respondent licenced as a landlord.
- (iii) The Respondent is clearly the relevant person for the purposes of this application as there is evidence of housing benefit payments being paid directly to him.
- (iv) The Respondent has been prosecuted as a consequence of non-registration and being unlicensed.
- (v) The proper procedures have been followed in accordance with Section 32(6) of the 2014 Act in terms of giving a notice of intended proceedings, allowing 28 days for comment, and as the Respondent did not comment there was nothing further to consider under Section 32(6)(c) of the 2014 Act.

19. We must be satisfied in accordance with Section 5(a) that at any time within the period of 12 months ending with the date of the notice of intended prosecution an offence under sections 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. Given our findings of fact as listed above we are satisfied an offence has been committed in contravention of Section 7(5) of the 2014 Act during the 12 month period leading up to the intended prosecution and in this instance that housing benefit has been paid during any period during which it appears to us that such an offence was being committed.

20. We as a Tribunal are further satisfied that the correct procedure was followed as found at 18(v) above.

21. In the circumstances and for all the reasons set out above we Order that the Respondent is to pay the amount of £5,385.12 to the Applicant within 14 days of the date of this decision.

Dated this 17th day of July 2024.

Tribunal Judge T. Lloyd