



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **MAN/00EJ/HSE/2019/0002**

**Property** : **26 James Street, Easington  
Colliery, Co Durham, SR8 3LZ**

**Applicant** : **Durham County Council**

**Representative** : **Ms Susan Cousins, Private Sector  
Housing Team, Durham County  
Council**

**Respondent** : **Mr M. Hunter**

**Representative** : **Castledene Property Management**

**Type of application** : **Rent Repayment Order - Section 40  
Housing and Planning Act 2016**

**Tribunal members** : **Judge Lancelot Robson  
Mr I D Jefferson TD BA BSc FRICS**

**Date of Determination** : **10 December 2019**

**Date of Decision** : **10 January 2020**

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**DECISION**

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## **Decision of the Tribunal**

1. The Tribunal refused the application
2. The Tribunal made the other detailed decisions noted below.

### **The Application**

3. On 29th March 2019 the Tribunal received an application under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) from the Applicant local authority for a rent repayment order (“RRO”). The Tribunal gave Directions on 30th May 2019 requiring both parties to prepare their respective cases and stating that a paper determination would be made unless either party requested a hearing. The Applicant sent in its case bundle in compliance with the Directions. The Respondent did not take any part in the proceedings.

### **The Law**

4. Sections 40-46 of the 2016 Act contain the provisions in respect of RROs. In summary, Section 40 provides that the Tribunal may make an RRO in favour of a local housing authority where a landlord has committed a relevant offence - in this instance the offence set out in Section 95(1) of the Housing Act 2004; the control or management of an unlicensed house. Section 41 stipulates that a local housing authority may apply for an RRO only if the offence relates to housing in the authority’s area and the authority has complied with Section 42, by serving a notice of intended proceedings in accordance with that section and considering any representations, before applying for an RRO. A Section 42 notice must comply with Section 42(5) by being served within 12 months of the date of the offence

5. Section 43 states that the tribunal may make an RRO if satisfied beyond reasonable doubt that a landlord has committed the offence. The amount of the order is set out in section 45 by reference to the amount of Universal Credit paid (where the order is made under Section 95(1) of the Housing Act 2004). Where there has been a conviction, Section 46 states that an order in favour of a local housing authority is the maximum the tribunal is entitled to order subject to any exceptional circumstances which the tribunal considers would make it unreasonable for the landlord to pay that amount.

### **Applicant’s Case**

6. Ms Susan Cousins, and Ms Joanne Thompson, members of the Applicant’s Housing Management Team both made written statements, attaching the documents required by the Directions dated 30th May 2019, with the exception of “a detailed list of each separate payment of housing benefit or universal credit made during the period of the offence including the amount; the period to which it related, and to whom it was paid”. In the absence of any challenge to the Applicant’s evidence, the Tribunal found the following facts:

a) Selective Landlord Licensing was introduced to the Wembley area of Easington Colliery (including the subject property) on 7th July 2014.

b) The Respondent bought the property on or about 24th March 2017. On 13th April 2017 the Respondent's letting agent contacted the Applicant with a view to advertising the property on the Applicant's "Durham Key Options" website. On 28th April 2017 the Respondent contacted the Applicant's office requesting details of the licensing process. An application form was sent to him.

c) The Applicant sent reminders to the Respondent requesting return of the completed form and evidence on numerous dates between 20th July 2017 and 22nd January 2018. The Respondent telephoned the Applicant's office on 23rd January 2018, stating he had not received the application form. On 24th January, Ms Thompson called the Respondent. It appeared that he had confused being accredited with the Applicant and having a Licence. This was clarified and he promised to send some information that day. On 24th January 2018, the Applicant emailed to advise the Respondent what documents were still required to complete his application. On 29th January 2018 certain documents were sent by email, with a promise that the application form would be sent by recorded delivery. After a further reminder, a licence application arrived on 13th February 2018, which was incomplete. The Applicant sent another letter on 14th February advising what further information was required. The property was finally licensed on 28th March 2018.

d) The property had been let on an assured shorthold tenancy to Ms A Bain on 27th July 2017 at a rent of £395 per month, payable monthly in advance.

e) The Respondent pleaded guilty to having control of or managing 26 James Street, Easington Colliery, Co Durham, between 27th July 2017 and 28th March 2018, which was required to be licensed, but was not so licensed, contrary to Section 95 (1) and (5) of the Housing Act 2004. He was sentenced to a fine of £138, to pay a victim surcharge of £30, and to pay costs of £400.

f) A notice of intended proceedings to apply for a rent repayment order (RRO) was sent to the Respondent on 23rd January 2019, (which appeared to be in order). The notice gave the Respondent a period of 28 days ending on 20th February 2019 to make written representations against the notice. No such representations were received.

### **Respondent's Case**

7. The Respondent made no submissions but in related proceedings his managing agents sent a copy of the tenant's rent account for the relevant period.

### **Determination**

8. The Tribunal considered all the evidence and submissions. As noted above, on 6th June 2018 the Respondent pleaded guilty to a breach of Section 95(1) and (6) of the Housing Act 2004; that in the period between 27th July 2017 and 28th March 2018 he had control of or managed a house (i.e the subject property) which was required to be licensed under Part 3 of the Housing Act 2004 but was not so licensed. He was convicted.

9. The Respondent made no submissions in this application, The Tribunal noted that the Respondent's representative supplied two dissimilar copies of the rent account of the tenant for the period from 27th July 2017 to 27th January 2019.

10. The Tribunal therefore found that beyond reasonable doubt the Respondent had been guilty of the offence, and that the Section 42 Notice had been served on 23rd January 2019 within 12 months prior to the last day of the offence (28th March 2018). However details of the Universal Credit paid were almost entirely lacking.

11. The Applicant had applied for a payment of £3,851.16. It had disclosed that the Benefits Agency had failed to supply the Applicant with such details for more than 6 months, despite reminders. While the Tribunal had some sympathy for the Applicant, the sum demanded appeared very specific, and without a breakdown, and further evidence (which should have been available from consultation with the tenant), the Tribunal declined to make any order. While the Respondent's agent's summary had some basic information, the evidence was fragmentary and confused. No attempt had been made by either party to explain it. The Tribunal made some calculations of its own using the evidence available, but these figures bore little resemblance to the sum applied for. It appeared that the Applicant may have been claiming for a period in excess of that permitted by the regulations. This decision may appear harsh, but to make an order based on the inadequate evidence before it, was asking the Tribunal to make too many assumptions for its decision to be satisfactory.

12. For future reference, the Applicant is referred to Section 6.1 of the General RRO Guidance note, which suggests it should liaise with the tenant who should have a copy of his/her Universal Credit decision, and is also able to apply to the Benefits Agency for copies.

**Tribunal Judge: Lancelot Robson Dated 10th December 2019**

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