



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

Case Reference : CHI/40UC/HBA/2022/0002

Property : Flat Above, 112 St John Street, Bridgwater,
Somerset, TA6 5HZ

Applicant : Sedgemoor District Council

Representative :

Respondent : Mr Nur Miah Choudhury

Representative : -

Tribunal : **D Banfield FRICS, Regional Surveyor
Judge Hingston**

Date of Hearing : **5 May 2022**
Hearing by Video Platform

Date of Decision : **9 May 2022**

DECISION

SUMMARY OF THE DECISION

The Tribunal declines to make the Banning Order requested

BACKGROUND

1. The Tribunal received an application from a local housing authority (LHA), under section 15(1) of the Housing and Planning Act 2016, for a banning order against a person who has been convicted of a 'banning order offence', being one of the offences described in the Annex to these directions.
2. The application was made on 15 March 2022.
3. A 'banning order' is an order made by the Tribunal, banning a person (for a period of at least 12 months) from:
 - (i) letting housing in England;
 - (ii) engaging in English letting agency work;
 - (iii) engaging in English property management work; or
 - (iv) doing two or more of those things.
4. On 18 March 2022 a Legal Officer of the Tribunal directed that the Application would be heard on 5 May 2022. The Respondent did not provide a statement of case in compliance with the directions.

Preliminary issue

5. On 3 May 2022 Mr Choudhury made an application to adjourn the hearing to enable him to obtain representation. At the hearing he said that he found it all very complicated and had only recently obtained sufficient funds to seek representation from the Solicitor who assisted him in his case before the Magistrates. He said that the Solicitor required 4 weeks to prepare papers for a hearing.
6. Mr Hellard opposed the application referring to a series of attempts to engage with Mr Choudhury from 2 February 2022 onwards and to which no responses were received until the application to adjourn without explanation. The Tribunal's directions were clear that hearings would only be adjourned in exceptional circumstances and this was not one of them. It was now 3 months from the Notice of Intention and a month's delay was not in accordance with the overriding objective. Finally he could not understand what papers a solicitor would have to prepare to present a case such as this.

7. The Tribunal members retired and on returning refused the application to adjourn.

The substantive hearing

8. Mr Steven Hellard, appeared for the Council. The Respondent appeared in person.
9. The Council supplied a bundle of documents for the hearing. References to pages in the bundle are in [].

Consideration

10. Under section 16 of the 2016 Act a Tribunal may make a banning order against a person who has been convicted of a banning order offence preventing her from letting housing in England, engaging in English letting agency work; engaging in English property management work; or a combination of these.
11. Banning orders were introduced into legislation as part of a package of measures directed at rogue landlords who do not meet their legal obligations, sometimes exploiting their tenants by renting out substandard, overcrowded or dangerous accommodation.
12. Lord Bourne of Aberystwyth explained in the House of Lords Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 (2017 Banning Order Regulations) that

“These landlords often do not respond to legitimate complaints made by tenants. Some would even prefer to be prosecuted rather than maintain their properties to a decent standard”.

“The purpose of banning orders is to target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. The Orders will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely”¹.

13. The Council stated that the Respondent had been convicted of an offence contrary to section 1(2) Protection from Eviction Act 1977 on the grounds that he did on 19 December 2021 unlawfully deprive Ponciano Jose da Silva of his occupation of the flat at 12 St John Street Bridgwater Somerset.

¹ See Hansard 22 January 2018 Volume 788 HL Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

14. The Respondent was sentenced to 6 months imprisonment suspended for 12 months and ordered to pay £3,000 compensation to Mr Da Silva in recompense of his loss of possessions and suffering and distress.
15. The Applicant considers that this was a serious offence as identified by the Chairman of the Bench in his summing up and that it is considered appropriate that the Respondent be the subject of a Banning Order.[6]
16. Before the Tribunal can consider making a banning order under section 16 of the 2016 Act it must be satisfied of various matters.

Whether the Respondent has been convicted of a banning order offence?

17. The Council produced a Memorandum of Entry of the Register of the Avon & Somerset Magistrates' Court which showed that "On 10 January 2022 at Taunton Deane & West Somerset Magistrates' Court the Respondent was convicted of an offence of "On 19/12/2020 at BRIDGWATER unlawfully deprived Ponciano Jose Da Silva, the residential occupier of premises, namely flat 112 St John Street Bridgwater Somerset of his occupation of the premises. Contrary to Section 1(2) and (4)of the Protection from Eviction Act 1977." To which offence he pleaded guilty and was "Committed to prison for 6 months suspended for 12 months. Reason: Offence so serious. Reason for custody: Planning, complainant deprived of all his property, left homeless. Suspended due to having regard to defendant's medical history, lack of previous offending. Credit equates to Magistrates retaining jurisdiction. In the event of activation of sentence) bail remand to court. Overall length of sentence 6 months. To pay compensation of £3,000; To pay costs of £250.00. To be paid at £2,000 per month from 7/02/2022. [19]
18. The Tribunal observes that the Offences of section 1(2) of the Protection from Eviction Act 1977 are named as a Banning Order offence in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. [14]
19. The Tribunal is satisfied that the Respondent has been convicted of Banning Order Offences.

Whether the Council has given the Respondent a notice of intended proceedings in compliance with section 15 of the 2016 Act, and whether it has otherwise complied with the procedural requirements of that section?

20. On 2 February 2022 the Council issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order for a period of 5 years. The Respondent was given the opportunity to make representations by 3 March 2022 [17].

21. No response was received.
22. The Council made Application for the Banning Order to the Tribunal on the 15 March 2022 [7]. The Council notified the Respondent of its Application for a Banning Order on 15 March 2022.[34]
23. The Tribunal finds that;
 - (1) the Notice of Intended Proceedings was issued within 6 months of the Respondent's conviction for banning order offences;
 - (2) the Notice of Intended Proceedings stated that the Applicant was applying for a Banning Order for a period of 5 years because he had been convicted of "You did on 19/12/2020 unlawfully deprive Ponciano Jose Da Silva, the residential occupier of the premises known as the flat above 112 St John Street Bridgwater Somerset TA6 5HZ of his occupation of those premises contrary to Section 1(2) Protection from Eviction Act 1977." [17]
 - (3) the Respondent was invited to make representations within a period not less than 28 days;
 - (4) the Respondent made no representations
 - (5) the Application to the Tribunal was made after the closing date for receipt of representations.
24. The Tribunal is satisfied that the Council has given the Respondent a Notice of Intended Proceeding and has complied with the procedural requirements of section 15 of the 2016 Act.

Whether, at the time the offence was committed, the Respondent was a 'residential landlord' or a 'property agent'?

25. In a witness statement dated 1 February 2021 [30] Mr Ponciano Jose da Silva says that "I was a tenant living in the HMO above Moghul Takeaway, 112, St John Street Bridgwater Somerset TA6 5HZ. I moved to live in 112 on 12 June 2020 and lived there continuously until I was unlawfully evicted on Saturday 19th December 2020. I paid rent of £260 each month, and also gave the landlord a deposit of £130.I have never been given a receipt, rent book or tenancy agreement but signed a piece of paper to say I had given the deposit to the landlord who I knew as "Baba""
26. In a witness statement dated 8 March 2021 [27] Ms Kelly Brown who works in the Private Sector Housing Team at Sedgemoor District Council stated "I asked Mr da Silva to describe the physical appearance of the landlord to me. The Landlord and property are known to me and it

sounded as though “Baba” could be Mr Nur Miah Choudhury.” Mr Da Silva told me there were 7 people living in the property” “ I wrote to Mr Choudhury on the 15 December 2020 advising him of the complaint

27. In a witness statement dated 21 December 2020 [33] Councillor Margaret Burrows referred to reporting the theft and illegal eviction to the police who said they could only interview the landlord about the theft.
28. The Tribunal is satisfied that at the time the offences were committed the Respondent was a residential landlord.

Whether a Banning Order should be made?

29. Having regard to the above findings the Tribunal is satisfied that it can make a banning order. The next question is whether the Tribunal should exercise its discretion to do so.

The Applicant

30. Mr Hellard considered that the seriousness of the offence required a Banning Order to be made. He referred to the Respondent’s actions leading to Mr da Silva’s eviction from the property and the disastrous affect that the loss of his home and possessions had had on him.
31. The Chairman of the bench had clearly considered the offence serious enough to award a custodial sentence of 6 months suspended for 12 months when the maximum was 2 years and an unlimited fine.
32. The Respondent had shown a lack of integrity in his dealings with a local councillor and it was important for the Council to demonstrate that such behaviour from landlords would not be tolerated.
33. Mr Hellard referred to a publication “Banning Orders for landlords and property agents under the Housing and Planning Act 2016” which gave guidance to local authorities and which they had followed in this case.
34. The Tribunal expressed concern that the guidance had not been contained in the bundle and available to the Respondent but undertook to explain to Mr Choudhury the relevance of the questions it was about to put to Mr Hellard.
35. Referring to section 1.7 of the guidance; Who are banning orders aimed at? The Tribunal noted that they were for “Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders”
36. The Tribunal noted that there was nothing in the bundle to suggest that the property was substandard, or that previous enforcement action had been taken by the Council. Mr Hellard while accepting that there was no evidence in the bundle he believed that an improvement notice had been

served. On questioning on how the Respondent's offence fell on the scale of severity he considered that Mr Choudhury fell within the "most serious" category due to the seriousness of his offence as recognised by the Magistrates.

37. On the Tribunal's questions Mr Hellard said that the property was not a licenced HMO and that it was currently being refurbished the other tenants having vacated.
38. Mr Hellard further accepted that no violence had been displayed in the eviction, that there were no previous convictions and that Mr Choudhury did not appear on the Rogue Landlord Database.

The Respondent

39. Mr Choudhury said that he accepts that he made a mistake for which he pleaded guilty and has apologised to Mr da Silva for his actions. He has been punished by the Magistrates and the publicity has caused him difficulties within his community.
40. His Probation Officer said he was a good person and he has no other record. This incident "just happened" and he is paying compensation to Mr da Silva "slowly"
41. He had followed the advice of Miss Brown of the Council on the provision of fire precautions and regulations at the flat which he said contained 3 rooms.
42. His only income is from the rent he receives from letting the flat, the takeaway restaurant beneath belonging to his daughter. He owns no other rental property.
43. Under section 16(4) of the 2016 Act the Tribunal must consider the following factors in deciding whether to make a banning order.
 - (a) the seriousness of the offences of which the Respondent has been convicted;
 - (b) any previous convictions that the Respondent has for a banning order offence;
 - (c) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents (pursuant to section 30 of the 2016 Act); and
 - (d) the likely effect of the banning order on the Respondent and anyone else who may be affected by the order.
44. The Council confirmed that the Respondent's name had not been included in the Database of Rogue Landlords. The Council, however, indicated that

it would place the Respondent's name on the Database if a banning order was made.

45. The Tribunal is concerned that evidence which may have been helpful in determining this case such as an Improvement Notice was not included in the bundle. Relying on a guidance document which had not been provided to either the Respondent or the Tribunal should not have occurred.
46. On the evidence before the Tribunal this is Mr Choudhury's only offence and no evidence has been provided that the flat was substandard.
47. Clearly the Magistrates considered Mr Choudhury's offence a serious matter and the Tribunal agrees. However, the purpose of this legislation is to prevent the "serial offenders" of unfit property to be prevented from continuing to exploit the vulnerable.
48. On the evidence presented Mr Choudhury and his property do not fall into that category. As he readily admits he made a mistake for which he has been severely punished, and the Tribunal is not satisfied that his actions warrant a Banning Order to be made.
49. The Tribunal declines to make a Banning Order under Section 16 of the Housing and Planning Act 2016

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.