Community Interest Company

Judge Siobhán McGrath,
President First-tier Tribunal Property Chamber,
10 Alfred Place, Fitzrovia, London WC1E 7LR
LONDON

cc Sir Ernest Ryder, Senior President of Tribunals

28/12/2018

Dear Judge McGrath,

Rent Repayment Orders: Possible mistake in RRO1 form & HaPA 2016 Interpretation

By way of introduction: we are a not-for-profit group helping tenants make Rent Repayment Order (RRO) applications.

We have been discussing with an officer at the Royal Borough of Greenwich (RBG) a possible serious error in the form used by both Local Authorities (LAs) and tenants to apply for RROs: the form RRO1.

The form clearly states the following:

IMPORTANT NOTE: The application must be made not later than 12 months after the date of the alledged offence. The Tribunal is not permitted to order payment of any amount in respect of any time falling outside the period of 12 months ending with the date of this application.

Figure 1: extract from front page of RRO1

We recently realised this error with a client who wanted to make a RRO application for illegal eviction 10 months earlier. They decided not to apply as the RRO1 form implied that they could only receive a maximum award of 2 months rent. However, there is nowhere in the HaPA 2016 that limits the tribunal to only consider rent paid in the 12 months prior to application (unlike the Housing Act 2004- which may be where this error has originated).

The attention of the officer of RBG was drawn to this matter by the necessity of LAs to write a letter of intended proceedings (LIP) prior to application which entails a notice period of 28 days and perhaps further delays if there are representations by the landlord. This means that, as the interpretation stands, the authority can never apply for the full 12 months of Housing Benefit (HB) or Universal Credit (UC) payments in the case of tenants that have left their property as the LA can only apply after this procedure has been complied with. The current interpretation of the Housing and Planning Act (HaPA) 2016 on form RRO1 therefore reduces the amount of public funds that can be recovered by the LA: it is difficult to imagine that this was the intention of the government with this legislation.

In cases where the LA is applying for sitting tenants, the authority has to clearly state how much HB/UC will be applied for in the LIP. Therefore, the LA needs to make a prediction, in the LIP, of the amount to be claimed at the time of the later RRO1 application. This is clearly very difficult or impossible as the LA does not know when the letter will be responded to during the subsequent 28 day period nor if there might be further delays (e.g. due to landlord representations) before application for a RRO.

For cases of illegal eviction, harassment or violent entry, the HaPA 2016 specifies that only the 12 months prior to the offence can be considered for a RRO award (Row1 column2 of table in Housing Act 2016 s44(2)). For an illegally evicted tenant on HB, for example, the LA would need to assess the case, decide on the course of action, issue the LIP and wait for the expiry of the notice period or the landlord's response before making a RRO application. On the current interpretation, on form RRO1, it is therefore impossible for such cases to receive the full 12 months award. Again, it is difficult to believe that it was the intention of the government to limit the recovery of public funds from criminal, "rogue" landlords in these cases: arguably the most serious offences in this section of the legislation.

A similar situation exists for private tenants, who LAs are not obliged to assist. In the case of illegal eviction, for example, tenants need time to find shelter and re-organise their lives after such a traumatic event before they can even consider to make themselves aware of their rights, gather evidence and submit an application for a RRO. Each day delayed in making the application after an illegal eviction would, on the RRO1 wording, reduce any potential award accordingly: clearly unfair to the victims of such distressing crimes.

However, the HaPA 2016 does not limit the period to be considered for the award to the 12 months prior to the application, as the form RRO1 wrongly suggests. The key parts of the legislation, in respect of timing, are, for LA applications: s42(5) & s45(2)

and for tenant applications: s41(2)(b) & s44(2). S41 & s42 appear under the title "***Application for rent repayment order***" and are the rules regarding the acceptability of the application, not about the calculation of the award:

LAs- S42(5): *A notice of intended proceedings* [or LIP above] *may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates*.

Tenants- S41(2)(b): *the offence was committed in the period of 12 months ending with the day on which the application is made.*

So long as the offence coincided at some point with the 12 months prior to application (tenants) or the LIP (LAs), then the application should be allowed. There is no mention that the tribunal can only consider awards for rent paid in this period. S42(5) & s41(2)(b) are rather statutes of limitation for these offences: application or LIP must be within 12 months of the offence.

In contrast, sections 44 & 45 are sub-titled "**Amount of order: ….**" and deal with the calculation of the award. The period of rental payments that can be considered by the tribunal for the award are specified in s45 & s44 and are essentially the same for tenants and LAs:

Both- S45(2) & S44(2): *the period of 12 months ending with the date of the offence* [offences 1,2 s40(3)]
or
a period, not exceeding 12 months, during which the landlord was committing the offence [offences 3,4,5,6,7 s40(3)]

So long as the offence was committed at some point in the timeframe of 12 months before the LIP (LA) or RRO1 application (tenant), then the tribunal may consider 12 months of rental payments prior to the offence ('acute' offences 1 or 2) or up to 12 months rental payments made during the offence ('chronic' offences 3,4,5,6 or 7). Crucially, these 12 month periods do not need to be within 12 months of the LIP (LAs) or the application (tenants).

Consequently, LAs and tenants are able to make applications for a RRO that can recover a full 12 months of HB/UC or rent where possible as this period is not further reduced by the date of application.

Figure 2 below helps illustrate the situation:

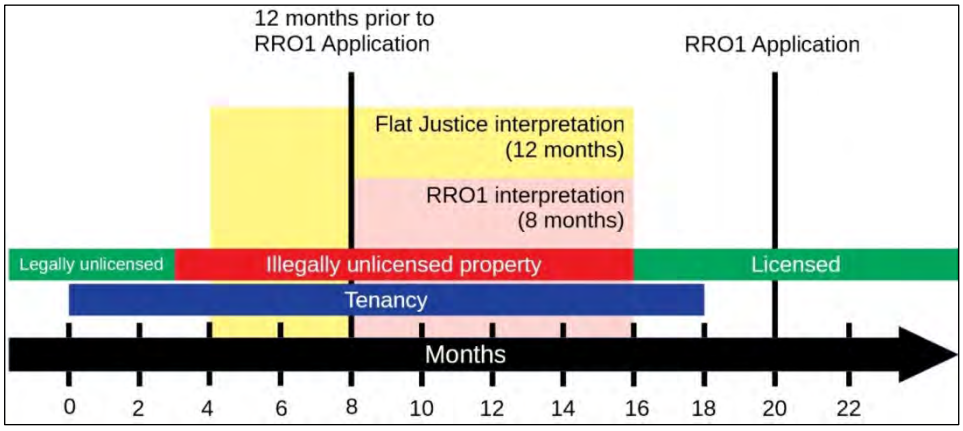

Figure 2: Timing of RRO

We have reviewed 18 RRO cases brought by tenants in London under the HaPA 2016. In some it was not clear how the award was calculated and whether the RRO1 wording had been applied. Most seemed consistent with the RRO1 wording as the rental periods fell inside the pink band above. Of course, we cannot say how many applicants, including LAs, have been discouraged by the RRO1 wording from submitting an application at all.

We hope you will be able to look at this matter soon and look forward to your response.

With kind regards.
Yours sincerely,

Guy Morris
MA (OXON) P.G.C.E.(London)
(director)

cc: Sir Ernest Ryder, Senior President of Tribunals