

THE VALUATION TRIBUNAL FOR ENGLAND



CTL; Council Tax Liability; Section 6 Local Government Finance Act 1992; Sole or main residence; Sole occupancy discount; Reasonable onlooker test; Appeal dismissed

Re: 25 Somerset Gardens, London SE13 7SY

APPEAL NUMBER: VT00000937

BETWEEN:	Ms Jane Gasengayire	Appellant
	and	
	London Borough of Lewisham	Respondent
	(Billing Authority)	

PANEL: Mr M Heslop-Mullens (Chairman)
Ms J Barnes

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 15 March 2021

APPEARANCES:

Ms J Gasengayire (The Appellant)
Mr C Knight (On behalf of the Billing Authority)

Summary of decision

1. Appeal dismissed.

Introduction

2. The Valuation Tribunal for England received an appeal brought by the appellant under Section 16 of the Local Government Finance Act 1992. The appellant is aggrieved by the decision of the responding billing authority (BA) to remove the 25% single person discount back to 1 April 2014.

3. Following a fraud investigation, the BA initially removed the single person discount with effect from 1 April 2017, as it considered Mr Kenyon and Ms Gasengayire resided together at 25 Somerset Gardens. The appellant, aggrieved with this decision, appealed to the Valuation Tribunal. The matter was heard on 7 October 2019 and the BA's decision was upheld.
4. The BA later made the decision to remove the single person discount for the period of 1 April 2014 until 31 March 2017, as it was satisfied that, following the outcome of court proceedings in respect of Mr Kenyon, 25 Somerset Gardens was both Mr Kenyon and Ms Gasengayire's main residence for this period.
5. On 27 November 2019, upon receipt of the council tax adjustment notice, Miss Gasengayire emailed the BA to question why the discount had been removed. The BA sent a response on 2 December 2019, and again on the 13 December 2019, with the latter informing Miss Gasengayire of her right to appeal the decision to the Valuation Tribunal.
6. The period in dispute is 1 April 2014 until 31 March 2017.
7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
8. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.
9. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.
10. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and invited the respondent to present their evidence first to assist the unrepresented appellant.

Issue

11. The issue before the panel was, for the period in dispute, was the appellant the only resident and therefore entitled to a 25% single person discount.

Evidence and submissions

12. The BA served, prior to proceedings, an evidence bundle which contained contributions from both parties. This included correspondence between the appellant and the BA regarding the removal of the discount, an internal email from the housing officer which summarised the outcome of Mr Kenyon's court proceedings, a chronology of events, the BA's statement of case and the appellant's originating appeal to the tribunal. A copy of the previous Valuation Tribunal decision (appeal M0214516), concerning the period from 1 April 2017, was also included; this contained witness statements and reference to the legislation and the relevant case law.
13. The appellant's contention was that she lived alone at 25 Somerset Gardens for the disputed period. Ms Gasengayire asserted that the witness statements were selective and that no evidence has been provided to prove that Mr Kenyon resided with her. Furthermore, she considers that, as Mr Kenyon's Crown Court proceedings had concluded at the time of her previous hearing with this Tribunal, the BA cannot now decide to remove the discount from an earlier period.
14. The BA's submission stated that, following a fraud investigation, it was discovered that Mr Kenyon had been subletting his flat, number 28 Somerset Gardens since 2009. Criminal proceedings were brought against Mr Kenyon and the Crown Court charged him with fraud. The BA asserted that the weight of evidence, together with Mr Kenyon's conviction, placed him at 25 Somerset Gardens from the date the appellant took on the tenancy. The BA submitted that, following internal fraud investigations, the discount was only initially removed from 2017, but Miss Gasengayire had been informed that depending on the outcome of the court proceedings, the discount might be removed from an earlier date. They consider that Mr Kenyon's main residence was 25 Somerset Gardens for the period on 1 April 2014 until 31 March 2017.

Decision and reasons

15. Council Tax was introduced by the Local Government Finance Act 1992 (the '1992 Act'). It is a tax based on the value of a dwelling placed in one of eight bands in a number of Valuation Lists, with discounts and exemptions granted by the Local (Billing) Authority where the liable person meets the relevant statutory criteria. Sections 1 and 2 of the Act introduce Council Tax in respect of dwellings (properties) and the concept of liability.
16. Liability to pay council tax is to be determined having regard to the provisions of Section 6 of the 1992 Act. Section 6, paragraph 5 defines resident for the purpose of this act as: -

 'resident', in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.
17. Section 11 of The Act makes provision for discounts as follows:

‘(1) The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—

(a) there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount; or

(b) there are two or more residents of the dwelling and each of them except one falls to be disregarded for those purposes.

.....

(3) ‘In this section . . . “the appropriate percentage” means 25 per cent or, if the Secretary of State by order so provides in relation to the financial year in which the day falls, such other percentage as is specified in the order.’

18. In accordance with the legislation, due to the relationship between the number of residents and the awarding of the 25% single person discount, the issue before the panel was whether Ms Gasengayire was the only resident for the disputed period.
19. During proceedings, Ms Gasengayire questioned why the BA had removed the single person discount back to 2014. She stated that, in her previous appeal to the Valuation Tribunal, the date was agreed as 1 April 2017. She therefore submitted that the BA should not be able to backdate the discount beyond this date.
20. The panel noted that, in respect of the previous decision made by this Tribunal, the period in dispute was with effect from 1 April 2017. Whilst the panel understood Ms Gasengayire’s contention, the fact is, as at the time of the appeal, the BA had not removed the discount prior to 1 April 2017 and therefore, that appeal would have been limited to that effective date.
21. The BA later made the decision to remove the discount for the period of 1 April 2014 until 31 March 2017. This was a new decision which carried its own appeal rights, and for that reason, the panel was satisfied that the period relating to this appeal had not and could not have been decided on previously. The panel therefore placed little weight on the appellant’s contention that the BA were required to raise the earlier date at the previous hearing.
22. The Valuation Tribunal decision, dated 7 October 2019, had been submitted as evidence. This decision included witness statements to the effect that Mr Kenyon had resided with Ms Gasengayire from 1 April 2014, confirmation that Ms Gasengayire and Mr Kenyon held a joint savings account, and stated that Mr Kenyon was named as the father on Ms Gasengayire’s daughter’s birth certificate.
23. Within the BA’s submission, there was an email from the housing officer, in which she confirmed that Mr Kenyon was found guilty of fraud. Within this email, she quoted the Crown Court Judge, who stated that the court was satisfied that Ms Gasengayire was Mr Kenyon’s partner and that he was the father to their daughter.

24. Ms Gasengayire maintained that Mr Kenyon did not reside with her for the disputed period and states that the witness statements were selective. The panel questioned, if Mr Kenyon did not reside at number 25 with the appellant, where was his place of residence? In response, the appellant stated that she believed his residence to be number 28 Somerset Gardens for the disputed period. The panel attached very little weight to this, given that Mr Kenyon had been subletting number 28 since 2009.
25. When considering who was resident for the period in dispute, the panel was assisted by the leading case, *Williams v Horsham DC* [2004] EWCA Civ 39, [2004] 1 WLR 1137. In this authority, Lord Phillips MR held at paragraph 26:
- “...in section 6(5) of the Act “sole or main residence” refers to premises in which the taxpayer actually resides. The qualification “sole or main” addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of “main residence” that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case.”
26. In the panel's opinion, the appellant failed to persuade the panel that she was the sole occupier and therefore entitled to the 25% discount. She did not provide any evidence to show that Mr Kenyon's main residence was elsewhere and her response to the panels questioning contradicted the circumstances evidenced in the Crown Court.
27. The panel gave due consideration to all the facts and evidence presented in this case and found that, on balance, a reasonable onlooker would conclude that Mr Kenyon resided with Ms Gasengayire for the disputed period.
28. For the reasons stated, the panel found nothing erroneous with the BA's decision to remove the single person discount and the appeal was dismissed.

Date: 24 March 2021

Appeal number: VT00000937