

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Landlord disputing liability contending tenant remained in possession of the property beyond the date notified to the Billing Authority; dispute as to 'material interest' under tenancy; section 6 of The Local Government Finance Act 1992; MacAttram v London Borough of Camden [2012] EWHC 1033; Leeds City Council v Stephen Broadley [2016] EWCA Civ 1213.;Appeal dismissed

Re: 63 Bates Close, Newton Aycliffe, DL5 7NH

APPEAL NUMBER: VT00006367

BETWEEN:

Mr J Singleton

Appellant

And

Durham City Council
(Billing Authority)

Respondent

PANEL: Mr A Backway (Senior Member)

Mr K Richardson

CLERK: Mr L Bertie

REMOTE HEARING on 6 December 2021

PARTIES PRESENT: Mr J Singleton, the appellant
Ms A Fearn, representing the respondent

Summary of decision

1. Appeal dismissed. The panel found the appellant liable for council tax for the period in dispute.

Introduction

2. This appeal was brought in respect of the following: the billing authority (BA) were holding the owner, Mr J Singleton and his daughter, Ms S Singleton as the liable person for council tax in respect of the appeal property for the period 6 March 2020 to 24 March 2020, the period in dispute. Mr Singleton challenged the BA's decision, on the grounds that the tenants, Mr and Mrs Ross did not move out of the property until 24 March 2020.
3. The appeal dated 11 April 2021 had been accepted by the Valuation Tribunal for England as an appeal made under Section 16 of the Local Government Finance Act 1992 (LGFA 1992). This allowed appeals to be made regarding the calculation of bills, the determination of the liable person and disputes over whether dwellings were chargeable.
4. 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.
5. 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.
6. In order to assist the BA and the appellant, the panel varied the Tribunal's model procedure and invited the BA's representative, to present her evidence first.
7. 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.

Evidence and submissions

8. In the evidence bundle, the BA confirmed that the former tenant, Mrs Ross moved into the appeal property on the 09/05/2016 and was responsible for the Council Tax liability from this date. Her partner Mr Ross moved in on 07/06/2018.
9. The BA received correspondence from Mr & Mrs Ross on the 25/02/2020 to inform it that they had signed a tenancy agreement for a new property from the 25/02/2020 although a move in date was unknown at that point.

10. On 28/02/2020, the BA received Mrs Ross's change of address application form and copy of her new tenancy agreement. The tenancy agreement confirmed her new tenancy commenced from 25/02/2020. Mrs Ross has confirmed she had not moved in on the tenancy date because of issues related to her disabled child.
11. On 04/03/2020 Mrs Ross applied for overlapping Housing Benefit for her 63 Bates Close. On this application, she confirmed that she moved out of 63 Bates Close and made her Sole or Main Residence elsewhere from 06/03/2020, and confirmed the following:
- She accepted the new tenancy on the 25/02/2020
 - Notice was given to end the tenancy at 63 Bates Close on the 25/02/2020
 - Rent was charge up to 25/03/2020
 - Moved out of 63 Bates Close on the 06/03/2020
12. On 09/03/2020, Liability for the council tax empty property charge was amended to Mr Singleton and Miss Singleton from 06/03/2020 and a council tax bill was issued on 18/03/2020. This was followed by a reminder on the 18/02/2021.
13. On 10/03/2020, Mrs Ross's application for dual Housing Benefit was assessed. She satisfied the conditions for overlapping Housing Benefit in respect of her former address (63 Bates Close) therefore, Housing Benefit was awarded up to 25/03/2020.
14. On 22/02/2021, Mr Singleton contacted the BA about the Council Tax reminder bill they had received for 63 Bates Close. He said that Mrs Ross lived at the property up to and including 24/03/2020 and Housing Benefit was paid until 25/03/2020. Therefore, he believed his council tax liability for the empty property charge should only be from 25/03/2020 to 02/04/2020 (when the new tenant moved in). Mr Singleton provided a copy of:
- A Housing Benefit notification letter
 - Housing Benefit Landlord Schedule showing HB payments
 - Tenancy agreement in respect of new tenant dated 03/04/2020.
15. The BA did not dispute that Mrs Ross held on to the keys for 63 Bates Close, Newton Aycliffe while she was living at her new address. But, based on the evidence that it had received, the BA decided that Mrs Ross made her sole or main residence elsewhere from 06/03/2020 and the property became vacant from 06/03/2020.
16. Mr Singleton confirmed that in his opinion, Mrs Ross was still liable for rent up to and including the 24/03/2020, this being the end of her notice period of vacating the appeal property. He highlighted that there were possessions of the tenant left in the back yard which had to be disposed of.
17. He believed in the hierarchy of Council Tax Liability; Mrs Ross was also responsible for the council tax liability until 25/03/2020.

18. Reference was made by both parties to the Court of Appeal and the High Court judgments pertinent to landlord and tenant liability namely *Genevieve Macatram v London Borough of Camden* [2012] EWHC 1033 (Admin) and *Leeds v Broadley* [2016] EWCA Civ 1213.

Decision and Reasons

19. The statutory framework for council tax liability was provided in section 6(2) of the 1992 Act. It set out a hierarchy of who was liable to pay council tax in respect of a dwelling as follows:

- (a) A resident with a freehold interest in the whole or any part of it.
- (b) A resident with a leasehold interest in the whole or any part of the dwelling which was not inferior to another such interest held by another such resident.
- (c) A resident with a statutory, secure or introductory tenancy of the whole or any part of the dwelling.
- (d) A resident with a contractual licence to occupy the whole or any part of the dwelling.
- (e) A resident.
- (f) The owner of the dwelling.

20. The person who was liable under section 6(2) was the person who fell within the first paragraph of the foregoing list, taking paragraph (a) of that list first, paragraph (b) next, and so on.

21. The definition of 'resident' was contained in section 6(5) of the 1992 Act:

“ '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.”

22. The definition of 'owner' was contained in section 6(5) of the 1992 Act:

“ 'owner', in relation to any dwelling, means the person as regards whom the following conditions are fulfilled –

- (a) he has a material interest in the whole or any part of the dwelling; and
- (b) at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest.”

23. Section 6(6) provided the following definition:

“ 'material interest' means a freehold interest or a leasehold interest which was granted for a term of six months or more;”

24. As the tenant had advised the BA she resided elsewhere, the panel found that there was no resident in the appeal property for the period in dispute. There had been no evidence

supplied from the appellant to support otherwise. Therefore, it was for the panel to determine the 'owner' who had a material interest in the property under Section 6(2)(f).

25. The panel was aware of the Court of Appeal and the High Court judgments pertinent to landlord and tenant liability namely *Genevieve Macatram v London Borough of Camden* [2012] EWHC 1033 (Admin) and *Leeds v Broadley* [2016] EWCA Civ 1213. Both decisions placed importance on examining the terms of the tenancy before deciding whether a new tenancy arose on the expiry of the fixed term or whether the existing tenancy continued.
26. In the *Leeds v Broadley* decision, the Court of Appeal determined that there must be explicit terms in the original lease to enable the lease to continue, after the fixed term, on the same terms as the original lease.
27. The High Court judgment in *Macatram v Camden* had considered the operation of section 6(5) in a case where the council had rented a house from Mrs Macatram, so that the council could provide accommodation for homeless families. The original lease was granted for three years and at the end of that term, the council continued to pay rent on a monthly basis. The Court held that the old, fixed term tenancy had been replaced by a new periodic monthly tenancy on the same terms and conditions. It held that a monthly periodic tenancy was not granted for a term of six months or more and was not a 'material interest' within the meaning of section 6(6).
28. For the appellant to avoid liability for council tax for the disputed period of time, he had to satisfy the panel that the tenant should be regarded as the owner.
29. The panel held that the tenants fixed term tenancy began on 9 May 2016 and it ended six months later on 9 November 2016. The terms of the tenancy agreement did not specify that at the end of the agreement the tenancy continued on the same existing conditions, and therefore fell to be a rolling tenancy.
30. This meant that when the tenant vacated the property on 6 March 2020, despite the fact that she had to give one month's notice and did not hand the keys back until 24 March 2020, and that there were possessions of the tenant left in the back yard which had to be disposed of, the tenant was still on a monthly periodic tenancy, which did not form a material interest. As such, from 6 March 2020, the former tenant could not be held liable for the council tax as they did not fulfil the definition of an owner under Section 6(2)(f).
31. Accordingly, the panel upheld the BA's decision that the appellant had been correctly held liable for the council tax charge on the appeal property for the disputed period as he met the criteria of an owner in accordance with Section 6(2)(f).
32. Having regard to the above, the panel dismissed the appeal.

Date: 4 January 2022

Appeal Number: VT00006367