

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Local Government Finance Act 1992; Hierarchy of Liability; Appeal Allowed.

RE: 28C Arlington Gardens, London W4 4EY

APPEAL NUMBER: VT00013761

BETWEEN:	QM-D	Appellant
	and	
	London Borough of Hounslow Council (Billing authority)	Respondent

PANEL: Ms C Caiquo (Presiding Senior Member)
Mrs A Fielder (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 12 June 2023

APPEARANCE: The Appellant
Ms R Purewal, Billing Authority's representative

Summary of decision

1. Appeal allowed. The appellant, as tenant, was not liable for the council tax in respect of the appeal property for the period from 31 May 2022 to 18 September 2022.

Introduction

2. This appeal has been brought by the appellant: The appeal was made against the decision of the billing authority to regard the appellant, as tenant, liable for the council tax for the period from 31 May 2022 to 18 September 2022.
3. 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 her evidence first to assist the unrepresented appellant.
4. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary Issue

5. The appellant had provided evidence to the Tribunal prior to the hearing which she stated had been sent to the billing authority but not included in the evidence pack. Ms Purewal did not dispute this and did not object to the evidence being admitted. As there were no objections the panel agreed to admit the evidence.

Issue

6. The issue before the panel was whether the appellant, as tenant, was liable for the council tax for the period 31 May 2022 to 18 September 2022.

Evidence and submissions

7. The appellant had submitted an appeal form and evidence which included amongst other things: a copy of her tenancy agreement; a copy of an email advising Notting Hill Genesis (NHG) (a housing association) that she intended to leave the appeal property at the end of May 2022; an acknowledgement for this email; a termination of gas plan; a council tax bill for her new residence. The appellant argued that she should not be held liable for council tax for the period in dispute.
8. The billing authority had provided a submission which included: a written statement; a copy of a tenancy end form; a copy of a crime report; and correspondence between the parties.

Decision and reasons

9. In arriving at its decision, the panel had regard to section 6 of the Local Government Finance Act 1992, which outlines the persons liable to pay Council tax as follows:

“6 Persons liable to pay Council Tax

(1) The person who is liable to pay Council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

- (a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;
- (b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;
- (c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;
- (d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;
- (e) he is such a resident; *or*
- (f) he is the owner of the dwelling.”

10. The terms owner and resident are defined in section 6 (5) as follows:

“(5) In this Part, unless the context otherwise requires—

“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;

“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.”

11. Material interest is defined in section 6 (6) as follows: “material interest” means a freehold interest or a leasehold interest which was granted for a term of six months or more.”

12. The panel accepted that the billing authority had acted on information provided by NHG who had been contacted by the billing authority and had provided a tenancy end form which stated that the tenancy ended on 18 September 2022. However, it also noted that significant evidence had been provided by the appellant to contradict this.

13. The panel found the appellant to be a credible witness. She explained that she had been living at the appeal property but that she had been harassed and had had to call the police, hence the incident report provided in evidence. She had contacted NHG on 3 May 2022 to find out how much notice she had to give to end the tenancy. Whilst NHG did respond to the email, it did not answer that particular question so on 4 May 2022 the appellant advised NHG by email that she intended to leave the property on 31 May 2022. This was corroborated by a copy of the email in the evidence provided.

14. Ms Purewal stated that the billing authority had to act on information from NHG who had stated that because the appellant did not complete an end of tenancy form until 18 August 2022 the tenancy did not end until 18 September 2022.

15. Whilst the panel was satisfied that the appellant had ended the tenancy, it also noted that the tenancy agreement provided by the appellant stated that “*This Tenancy Agreement is a weekly periodic assured shorthold tenancy of the premises pursuant to section 19A of the Housing Act 1988 (“The Act”). This means that this Tenancy Agreement will continue as a periodic tenancy until and unless it is ended in accordance with the Act or with the terms of this Tenancy Agreement*”, it also stated that “*This tenancy may be brought to an end by the Tenant on giving four weeks’ notice to NHG expiring on a Monday.*”

16. It was not disputed that the appellant vacated the appeal property on 31 May 2022, therefore the panel held that she could not fall to be liable under section 6(2)(a) to (e) of the 1992 Act above, which all related to the resident of a property. However, section 6(2)(f) made the owner(s) liable if there was no adult who had their sole or main residence in the dwelling concerned.

17. The panel turned to the definition of owner as contained in section 6(5) of the Local Government Finance Act 1992. The panel noted that an owner was defined as the person(s) who held a material interest in that property, or part of a property, which was not subject to

an inferior material interest. A material interest in a property was shown as either a freehold interest or a leasehold interest for six months or more. In this appeal, the tenancy agreement was a weekly periodic assured shorthold tenancy. As the weekly periodic tenancy was not a leasehold interest which was granted for a term of six months or more, the tenant in such an arrangement could not be liable for council tax if he or she was not resident in the dwelling.

18. The supporting documentation was considered by the panel to be significant and ultimately determinative; the appellant had produced convincing and credible evidence. The panel was able to accept the appellant's argument that she should not be held liable for the council tax, as she had presented sufficient evidence that she was not resident in the property and the panel was satisfied the property was unoccupied throughout the period in dispute.
19. The appellant had been advised by the police not to live in the appeal property after the harassment incident. Ms Purewal had advised the appellant to provide proof of the date of the police incident and a police report which would enable the billing authority to grant an exemption due to occupation of the property being prohibited by law. The panel was aware that Class G of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558) (as amended), allowed exemption from council tax to a property that was prohibited from occupation by law. However, the Class G exemption referred to the dwelling itself and not the personal circumstances of the owner; there was no evidence to show that a Prohibition Order had been issued in respect of the appeal dwelling and therefore an exemption under Class G was not applicable.
20. In appeals of this nature, the onus is on the appellant to prove their case. In this case the appellant had provided sufficient evidence to persuade the panel that she should not be held liable for the council tax, the panel therefore allowed the appeal.

Order

21. Under the provisions of regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the billing authority to reverse its decision since the appellant was not liable for council tax in respect of the appeal property from 31 May 2022 to 18 September 2022.
22. Under regulation 38(9), the billing authority must comply with this order within two weeks of the date of its making

Date: 30 June 2023

Appeal number: VT00013761

Appeal Rights: Any party who is aggrieved by the tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice