

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Local Government Finance Act 1992; Hierarchy of liability; Material Interest; Macattram v London Borough of Camden [2012] EWHC 1033 (Admin); Appeal allowed.

Re: 15 Lismore Close, Birmingham B45 0JE

Appeal Number: VT00013911

BETWEEN:	JD	Appellant
	and	
	Birmingham City Council (Billing Authority)	Respondent

PANEL: Miss L Westwell (Presiding Senior Member)
Mr M Smith (Senior Member)

APPEARANCES: JD (the Appellant)
Ms L Hodgekins (from Coventry CAB, representing the Appellant)
Mr A Noor (representing the Respondent)

CLERK: Mr A Johnson Tech IRRV

DATE: 13 September 2023

Hearing: Conducted remotely via Microsoft Teams

Summary of decision

1. This appeal was allowed.
2. The panel found that the Appellant was not the liable person for council tax in respect of 15 Lismore Close, Birmingham B45 0JE because she did not hold a 'material interest' in respect of it for the period in dispute.

Introduction

3. This decision notice is not a verbatim or contemporaneous record of the proceedings.
4. This appeal had been made to this Tribunal in accordance with Section 16 of the Local Government Finance Act 1992 (hereafter referred to as ‘the 1992 Act’). The appellant had challenged the billing authority’s decision that she was liable person for the payment of council tax in respect of 15 Lismore Close from 9 June 2020 to 30 May 2021.

Preliminary matter

5. On 8 September 2023 Ms Hodgekins emailed a copy of the Appellant’s tenancy agreement in respect of 15 Lismore Close to the Tribunal clerk and requested that it be entered into evidence for the remote hearing. On 11 September 2023 the clerk emailed a copy to Mr Noor in order to give him the opportunity to comment and/or object to its inclusion. Mr Noor replied by email later the same day to advise that he had no objection to the tenancy agreement being entered into evidence.
6. The panel found that the submission of the tenancy agreement at such a late stage was a breach of the Tribunal’s Standard Directions concerning the exchange of evidence between the parties. In deciding whether the tenancy agreement should be accepted into evidence, the panel was mindful of the Upper Tribunal’s guidance in *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460 and the three stage test set out in *Denton v TH White Ltd* [2014] WLR 3926. The panel was also mindful that Mr Noor had not raised any objection or claimed any prejudice on behalf of the billing authority.
7. After due consideration, the panel decided to accept the tenancy agreement into evidence without applying any sanction.

Issue

8. The issue for the panel to determine was whether the billing authority had correctly held the Appellant as the liable person to pay council tax in respect of 15 Lismore Close from 9 June 2020 to 30 May 2021.

Evidence and submissions

9. The panel had been provided with an evidence bundle which contained the submissions of both parties. The tenancy agreement referred to above was added to the bundle. Prior to the remote hearing, the Tribunal clerk circulated copies of *Macattram v London Borough of Camden* [2012] EWHC 1033 (Admin) and *Leeds v Broadley* [2016] EWCA Civ 1213 to the parties.

10. The position of the parties in respect of this appeal can broadly be summarised as follows:

The Appellant

The Appellant says that she notified the billing authority of her intention to terminate the tenancy of 15 Lismore Close from 9 June 2020 (a property she had rented from the respondent billing authority) to take up the tenancy of another property in Coventry. The Appellant says that she was told by an officer of the billing authority to put the keys to 15 Lismore Close through the letterbox of her local housing office (this advice was not usual procedure and was as a consequence of Covid-19 restrictions which were in place at the time). The billing authority subsequently told the Appellant that the local housing office was closed and that she should, instead, put the keys through the letterbox of 15 Lismore Close itself. The Appellant did not do this because she was concerned that doing so would risk someone breaking into the property (the keys were not returned to the billing authority and it became evident during the remote hearing that they remained in the Appellant's possession).

The Appellant argued that the billing authority had been made aware of her intention to terminate the tenancy of 15 Lismore Close and that any apparent failure on its part to maintain proper records was not something she should be held responsible for.

The billing authority

The billing authority says it was unaware of the Appellant's vacation of 15 Lismore Close because, despite her assertions, it had no record of receiving any contact from the Appellant to state that she wished to terminate her tenancy of 15 Lismore Close. However, Mr Noor stated that that he had no reason to doubt that she vacated 15 Lismore Close on 9 June 2020 and moved to Coventry, a move which had been supported by a letter dated 14 April 2022 from Midland Heart (a housing association responsible for the property in Coventry).

The billing authority says that it only became aware of the Appellant's vacation of 15 Lismore Close when they were contacted by West Midlands Police who had gained entry to the property on 11 March 2021 following reports that the Appellant had not been seen for some time. It became apparent, as far as the billing authority was concerned, that the Appellant had abandoned the property. The billing authority subsequently implemented its abandoned property procedure which resulted in the termination of the tenancy on 30 May 2021 and it is the billing authority's position that the Appellant is the liable person for council tax until this date.

Mr Noor acknowledged the case law which had been circulated by the Tribunal clerk which, he submitted, was not applicable in the circumstances of this appeal. Whilst the tenancy of 15 Lismore Close was expressed within the tenancy agreement as being weekly (commencing on 12 January 2015) it was nevertheless a secure tenancy which had been granted for the life of the

Appellant (Mr Noor referred to it as a 'life tenancy'). This, he said, conferred a material interest upon the Appellant. Mr Noor also submitted that the rent was expressed in weekly terms to align with Housing Benefit and Council Tax Reduction which are calculated weekly.

Decision and reasons

11. The legislation which is pertinent in determining liability for council tax in respect of 15 Lismore Close (commonly referred to as the 'hierarchy of liability') is contained within Section 6 of the 1992 Act:

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. 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 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.

12. Subsections 6(2)a to 6(2)e of the hierarchy refer to a person being liable for council tax as a 'resident'. In the case of an unoccupied dwelling, the 'owner' is liable. These terms are defined within section 6(5) of the 1992 Act as follows:

Resident - an individual who has attained the age of 18 years and has his sole or main residence in the dwelling

Owner - a person who:

- a. 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.

13. A 'material interest' is defined within section 6(6) of the 1992 Act as:

“...a freehold interest or a leasehold interest which was granted for a term of six months or more.”

14. Through questioning Mr Noor accepted that, on balance, it was likely that the Appellant had vacated 15 Lismore Close on 9 June 2020 and had become the 'resident' of a property in Coventry from this date. Mr Noor also accepted that the billing authority had no evidence to show that anyone else had been residing within 15 Lismore Close for the period in dispute. Given this, and mindful that the Appellant had not been seen at the property for some time (resulting in West Midlands Police deciding to gain access) the panel found that 15 Lismore Close was unoccupied for the period in dispute.

15. The panel therefore disregarded subsections 6(2)a to 6(2)e of the hierarchy of liability and it found that liability for council tax must fall upon the 'owner' of 15 Lismore Close for the period in dispute in accordance with subsection 6(2)f.

16. In determining the 'owner' of 15 Lismore Close, the panel respectfully rejected the argument put forward by Mr Noor. Whilst the Appellant had held a secure tenancy which could exist for the life of the Appellant (and significantly longer than six months) the tenancy, when granted to the Appellant, did not grant her a freehold or a leasehold interest for a term of six months or more. Therefore, the Appellant could not be the 'owner' of 15 Lismore Close for the period in dispute. Furthermore, the retention of the keys to the property was not found to be relevant because it had no bearing upon the identification of the 'owner' for council tax purposes in accordance with the 1992 Act.

17. Therefore, the panel allowed this appeal.

Order

18. In accordance with 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 amend its records to remove the Appellant's liability for council tax in respect of 15 Lismore Close, Birmingham B45 0JE for the period 9 June 2020 to 30 May 2021.

19. Under regulation 38(9), the billing authority must comply with this order within two weeks of the date of its making.

Date: 18 September 2023

Appeal number: VT00013911

Right of appeal

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.