IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2019] UKUT 249 (LC)
Case No: RRO/3/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – HOUSE IN MULTIPLE OCCUPATION – STATUS OF EXISTING LICENCE WHEN THE PROPERTY CHANGES HANDS

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

GEORGIE KATHLEEN TAYLOR

Appellant

- and -

MINA AN LTD

Respondent

Re: Room 4,
14a Well Hall Parade,
Eltham,
London, SE9 6SP

Elizabeth Cooke, Upper Tribunal Judge

Determination on written representations

Introduction

1. This appeal arises from a misunderstanding of the law relating to houses in multiple occupation ("HMOs"). As is well-known, section 61 of the Housing Act 2004("the 2004 Act") requires certain HMOs to be licensed. A licence ("an HMO licence") may be granted on the application of an individual, to that individual or to someone else if they and the applicant agree (section 64). So although the HMO itself is said to be licensed, the licence is held by an individual. Section 72 of the 2004 Act 2004 reads as follows:

> "A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part … but is not so licensed."

2. Section 68(6) provides:

> "A licence may not be transferred to another person."

3. This means that the purchaser of a tenanted house which requires, and has, an HMO licence cannot rely on the existing licence; the purchaser must apply to the local authority for his or her own. A purchaser who does not do so is committing an offence.

The appeal

4. This is an appeal from a decision of the First-tier Tribunal ("the FTT") on the appellant's application for a rent repayment order ("an RRO"), to which she said she was entitled because her landlord, the respondent, had committed an offence under section 72 of the 2004 Act, set out above.

5. The appellant took a tenancy at the property on 1 July 2016 and left on 14 August 2018; there were other tenants and it is not in dispute that the property was required to be licensed. The then owners had a licence which was issued in 2016 and would expire in 2021. The respondent purchased the property around October 2016. It applied for an HMO licence on 12 May 2017. A licence was granted to the respondent on 6 September 2018.

6. In November 2018 the appellant applied to the FTT for an RRO on the basis that the respondent had committed an offence under section 72(1). The provisions relevant to an RRO are set out in sections 40 and following of the Housing and Planning Act 2016.

7. The FTT at paragraph 3 of its decision explained that the respondent had not applied straight away for an HMO licence because of a misunderstanding:

> "The Respondent had somehow gained the impression that a licence ran with the land so that a new owner did not have to get another licence. That is not correct because, under section 68(6), a licence may not be transferred. Further, under section 63(4)(b) of the Housing Act 2004 the licensing authority must be satisfied that the licence holder is a fit and proper person. Obviously, the authority cannot be satisfied of this if they have not had the opportunity to consider the question."

8. So far so good. However, at paragraph 5 the FTT went on to say:

> "Both parties appear to have operated on the assumption that, since the Respondent owned the property and had not had a licence granted to them until 6 September 2018, the property was not licenced during their period of ownership. However, that is not correct.
>
> 6. The Housing Act 2004 does not expressly address what happens to an HMO licence when the ownership of the relevant property changes. However, in the Tribunal's opinion, the Act operates as follows.
>
> 7. The authority consider whether the requirements for a licence are met on application and prior to grant. If any requirements cease to be met after the grant of the licence, the authority has the power to vary or revoke that licence, as appropriate. There is no provision for the licence to terminate automatically, without a decision from the authority, other than on the death of the licence holder under section 68(7). Essentially, the licence continues unless and until the authority decide otherwise (subject to an appeal under the Act to this Tribunal). The circumstances of a change of ownership may provide grounds for revocation but do not themselves cause the licence to be revoked."

9. The FTT noted that the licence granted in 2016 to the previous owner had not been revoked prior to the grant of the new licence to the respondent, so the property continued to be licensed throughout. Therefore it said it had no power to make a rent repayment order and dismissed the application.

10. The appellant appeals. She says that all the statute needed to say about what happens when the owner parts with the property is, as it says, that the licence may not be transferred. She points out that if a new landlord could rely on the former owner's licence then the policy of the Act would be frustrated. As she puts it:

> "If the FTT decision would be valid it would mean that new owners of formerly licensed properties would enjoy protection from, at least, RRO actions and would have little motivation to re-license. Tenants, such as myself, would be unprotected by the provisions of both the [20014 Act] and the [Housing and Planning Act 2016] in regard of the safety requirements afforded by the licensing regime and in regard of redress sought through a RRO application, all of which were the clear intentions of these Acts."

11. I have read written representations from Tuyet Vo, a director of the respondent. Ms Vo argues that the FTT was correct and that the previous licence continued until revoked. She has produced a notice from the Royal Borough the Royal Borough of Greenwich, dated 3 April 2019, stating that they propose to revoke the existing licence because the property has been sold to a new owner, and a new licence issued to her on 1 May 2019. This, she says, demonstrates that an HMO licence continues until revoked even when a property changes hands.

12. It is not clear to me which licence was being revoked in April 2019. The FTT found that a licence was granted to the respondent on 6 September 2018. It would seem therefore that the licence being revoked in 2019 was not the one granted in 2016 to the previous owners. It is not open to the parties to present new evidence and I make no finding of fact about the material Ms Vo has produced. In any event it appears to have no bearing on what happened between the purchase of the property by the respondent in 2016 and the grant of a licence to the respondent (not to Ms Vo) in September 2016.

13. It remains the law that where a property is sold and the new owner takes over management and control from the seller, that new owner requires a licence. The previous licence cannot be transferred to the new owner and is of no assistance, whether or not expressly revoked, because the new owner does not have a licence.

14. The exception that proves the rule is where the licence holder dies. Section 68(7) of the 2004 Act provides that the licence ceases to be in force on the death of the licence holder; but section 68(8) goes on to say that for the following three months the house is to be treated as if it had the benefit of a temporary exemption notice. There is no such provision for the case where the licence holder ceases to be the owner, or the person in control, of the property. In that event the new owner must take steps to comply with the Act, and section 72(4) provides a defence to a criminal charge provided that an application for a licence has been duly made.

15. Ms Vo argues that if the law is as the appellant says it is then "it would be difficult if not impossible to sell a HMO property as a running business". That is not the case because the new owners can protect themselves by making an application promptly. I would add that there are numerous resources available for the assistance of "buy to let" purchasers and the legal point on which this appeal turns would appear to be well known.

Disposal

16. The appeal is allowed. The Tribunal cannot substitute its own decision about the RRO, because there is a dispute of fact as to when the respondent made a valid application for an HMO and because the FTT will need to hear evidence in order to exercise its discretion as to the amount of the RRO. Section 44(4) of the 2016 Act requires it to take into account the conduct of the landlord and the tenant and the financial circumstances of the landlord. Therefore the matter is remitted to the FTT, which will give directions for a re-hearing.

Dated: 13 August 2019

Elizabeth Cooke
Upper Tribunal Judge