

VALUATION TRIBUNAL FOR ENGLAND



*Council Tax Liability; Person Liable on Last Day of a Tenancy; state of affairs subsisting at the end of the day; Sections 2 and 6 of the Local Government Finance Act 1992.
Appeal Allowed*

RE: The Appeal Property

APPEAL NUMBER: 0235M233864/282C

BETWEEN	The Appellants	Appellants
	And	
	Bedford Unitary Authority (Billing Authority)	Respondent

PANEL: Mr J Rogers (Chairman)
Mrs F Higgin

SITTING AT: De Vere Venues, Habben House, Tickford Street, Newport Pagnell,
Bucks, MK16 9EY

ON: Thursday, 1 November 2018

Summary of Decision

- 1 Appeal Allowed: The appellant is not the liable person for the payment of council tax in respect of the appeal property on the 22 September 2017.

Introduction

- 2 The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as being overlooked by the panel.
- 3 Both parties choose not to attend the hearing. They requested the matter be determined in their absence and on the papers that had been served on the tribunal when the appeal was made and in accordance with the Tribunal's Standard Directions, which had been served on the parties with notice of this

hearing. The panel decided that, in view of the very small sum of money involved in this dispute (which is understood to stand at £4.64), it was in the interests of justice that the appeal would be dealt with on that basis.

- 4 This appeal has been brought in respect of the following: The Valuation Tribunal for England received, on the 21 June 2018, an appeal brought by the appellants under Section 16 of the Local Government Finance Act 1992 (LGFA 1992) against a decision of the Bedford Unitary Authority that the appellant was the liable person for the payment of council tax in respect of the appeal property on the 22 September 2017.

Issue

- 5 It was the appellants' contention that the appeal property was let to a tenant on the day in dispute and that the appellant, who is the owner of the property, was not therefore liable for the payment of council tax. The respondent argued that as the tenant had vacated the property on that day the circumstances appertaining to the property at the end of the day was that it was unoccupied and, accordingly, liability to pay the tax for that day rested with the appellant as the owner of the dwelling.

Legislation

- 6 The relevant legislation for the purposes of this appeal was contained in Sections 2 and 6 of the Local Government Finance Act 1992 which state:

“2 Liability to tax determined on a daily basis

- (1) Liability to pay council tax shall be determined on a daily basis.
- (2) For the purposes of determining for any day—
 - (a) whether any property is a chargeable dwelling;
 - (b) which valuation band is shown in the billing authority's valuation list as applicable to any chargeable dwelling;
 - (c) the person liable to pay council tax in respect of any such dwelling; or
 - (d) whether any amount of council tax is subject to a discount and (if so) the amount of the discount,

it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day.”

“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*

[(ea) in the case of a dwelling situated in the area of a billing authority in England, the person is a mortgagee in possession of the owner's interest in the dwelling; or]

(f) he is the owner of the dwelling.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.

(4) Subsection (3) above shall not apply as respects any day on which one or more of the persons there mentioned fall to be disregarded for the purposes of discount by virtue of [paragraph 2 (severely mentally impaired) or 4 (students etc) of Schedule 1 to this Act] and one or more of them do not; and liability to pay the council tax in respect of the dwelling and that day shall be determined as follows—

(a) if only one of those persons does not fall to be so disregarded, he shall be solely liable;

(b) if two or more of those persons do not fall to be so disregarded, they shall each be jointly and severally liable.

(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.

(6) In this section—

[“introductory tenant” means a tenant under an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996;]

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

“secure tenant” means a tenant under a secure tenancy within the meaning of Part IV of the Housing Act 1985;

“statutory tenant” means a statutory tenant within the meaning of the Rent Act 1977 or the Rent (Agriculture) Act 1976.

Facts Found by the Tribunal

- 7 In the absence of the parties the panel, in making its findings of fact, had to do the best it could with the written submissions provided. It was the choice of the parties not to attend these proceedings, which, in view of the very small amount of money involved, is perhaps understandable. However, this meant that any question of fact rested on an interpretation of these submissions without the benefit of questions or cross examination.
- 8 It was not in dispute that the appellant is the owner of the appeal property, which the panel interprets to mean she has the freehold, or possibly a long leasehold, interest in the dwelling.
- 9 The property was let on a tenancy which ended on the 22 September 2017. The tenant to the agreement vacated the dwelling during that day. At the end of that day the property was therefore an unoccupied dwelling. The property was then let on a subsequent tenancy to a new tenant from the 23 September 2017.

Decision

- 10 In deciding this appeal the panel was required to make a finding as to whether the appellant was the ‘owner’ of the property at the end of the 22 September 2017 when, as an unoccupied dwelling on that day, liability under Section 6(2)(f) of the LGFA 1992 rests with that person.
- 11 Questions in the parties’ submission about the actual time of the end of the day were not felt to be relevant in this case as the wording of the legislation is clear that it is the actual end of the day rather than any particular time which must be assumed to exist for that day. That must be read and interpreted to a common sense meaning of the words.
- 12 According to the appellants, the property had been subject to a tenancy that ended on that day and they stated in their submission that no time for the ending of the term was expressed in the agreement. Unfortunately, neither party had included copies of either this agreement or the agreement to the new tenant so

the panel could not examine these documents. There was however no evidence to show that the appellant's contention on this point was incorrect and the panel therefore, made a finding of fact that the tenancy was in existence until the end of the day.

- 13 On that basis therefore, at the end of the day the property was still subject to the tenancy granted to the tenant who vacated the property on the 22 September 2017. By extension therefore the property was subject to the tenancy granted to the person who moved into the property on the 23 September 2017 from the start of that day.
- 14 Having reached that conclusion the panel had to decide whether, in accordance with the definition contained in Section 6(5) of the LGFA 1992, the appellant was the owner of the dwelling at the end of the day (as it is accepted the dwelling was unoccupied at that time). This was a point where the absence of the parties meant the panel had to do the best with what it felt the evidence indicated rather than having the benefit that might have arisen had the parties chosen to attend for such evidence to be cross examined.
- 15 The panel is aware that the most common type of tenancy is a six month shorthold tenancy agreement. On the submission made by the appellants, it seems the actual tenancy held by the occupier on the 22 September 2017 expired on that day and the panel reads that to mean that the term prescribed in the tenancy agreement came to an end on that day. If, and the panel felt in the absence of anything to counter this view it was reasonable to make this assumption, the tenancy held by that person was a six month shorthold tenancy, they had a material interest in the dwelling inferior to that of the appellant on that day. The appellant was not therefore the 'owner' of the dwelling on that day as defined in the aforementioned Section 6(5) of the LGFA 1992 and was not therefore the liable person for the payment of council tax on that day. The appeal was therefore allowed.

Order

Under the provisions of Regulation 38 (1) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders that Bedford Unitary Authority shall, within two weeks of this Order, reverse its decision that the appellant was the person liable to pay the council tax in respect of the appeal property for the 22 September 2017.

Date: 16 November 2018

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