

VALUATION TRIBUNAL FOR ENGLAND

Referencer:

Council tax liability appeal, Local Government Finance Act 1992, section 6, material interest, tenant liable for period in dispute, appeal allowed.

Appeal – 4720M67692/244C

Hearing on: Tuesday 12 July 2011

At: Bewleys Hotel, City Walk, Sweet Street, Leeds, LS11 9AT

Parties in attendance: The appellant's representative
Leeds City Council

Members: Mr K Peck (Chairman)
Mrs J Jaram
Ms M Benson

Introduction:

1. 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 when coming to its decision. Consequently, the absence of a reference to any statement or evidence should not be construed as it having been overlooked.
2. This was an appeal under section 16 of the Local Government Act 1992. The appellant was aggrieved by the billing authority's determination that, as owner, he was the liable for payment of the council tax for the period 20 August 2010 to 22 September 2010.

Billing Authority's Case:

1. In its evidence, the billing authority explained to the panel that a tenant had resided in the appeal property from 23 January 2009, but that he vacated the property and moved to one which he had purchased on 20 August 2010. From this date, the sole or main residence of the tenant changed from the appeal property to that of his own home.
2. As the appeal property was a furnished property, the billing authority explained that, even though it was unoccupied, council tax was still payable and, in its opinion, that liability fell on the appellant owner until it was occupied by a different tenant with effect from 5 November 2010. In support of its opinion, the billing authority referred to section 6 of the Local Government Finance Act 1992 which stated that if there was not a resident of a property, then the owner of that property was liable. The regulations defined an owner as a person who fulfilled the following conditions:

- 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.
3. The billing authority contended that this definition applied to the appellant owner, as the tenant's material interest in the property ended when he vacated the property. A material interest was defined in the regulations as "a freehold interest or a leasehold interest which was granted for a term of six months or more" and the billing authority accepted that the tenant's initial six month statutory tenancy was a material interest. After the initial six months had expired, the billing authority stated that the tenancy became an assured periodic tenancy, which they did not consider to be a material interest, although the tenant was still liable for council tax purposes as a resident and, after he vacated the property, it changed again to a common law tenancy which, as it commenced on 20 August 2010 for a period of less than six months, then it too did not meet the definition of material interest. To summarise the situation, the billing authority stated that, in its opinion, the tenant had had three different tenancies at the appeal property rather than the second and third being a continuation of the first and, as the third was not a material interest, then it was the owner, not the tenant who was liable for council tax purposes.
 4. In view of the above, the billing authority asked the panel to dismiss the appeal.

Appellant's Case:

5. On behalf of the appellant, his representative accepted council tax liability from 23 September 2010, but stated that, as the tenant had retained the keys to the appeal property until 22 September 2010, then he remained liable for council tax purposes until that date, despite his sole or main residence being elsewhere.
6. The panel was informed that the tenant had served notice to quit on the landlord with effect from 22 September 2010 and paid rent up to and including that date. Furthermore, if the appellant or his letting agent had entered the property prior to that date without good cause, then they would have been in breach of the initial tenancy agreement, which the representative contended remained in force, as a continuation of its original six month period.
7. Consequently, the representative was of the opinion that, for council tax purposes, the tenant had a material interest in the appeal property until 22 September 2010 and it was he, not the owner, who was liable for council tax up until that date.
8. In view of his evidence the representative asked the panel to allow the appeal.

Decision and Reasons:

9. The decision in this appeal was dependent upon the panel's interpretation of the definition of "material interest" under section 6 of the Local Government Finance Act 1992.
10. The panel was of the opinion that in the event of any dispute between the landlord and tenant following the commencement of the original tenancy on 23 January 2009,

then the aggrieved party would have been able to take action based on the clauses within that tenancy agreement, even after the expiration of the initial six month period. Consequently, the panel concluded that the original tenancy agreement remained in force and was legally binding up to the date when then tenant ended the agreement on 22 September 2010. This suggested clearly to the panel that the three periods referred to by the billing authority were a continuation of the original agreement and not three separate and different agreements and it therefore followed that the tenant had a material interest in accordance with section 6 of the Local Government Finance Act up until 22 September 2010. In deciding this particular aspect of the appeal, the panel also considered the view of a “reasonable onlooker” and concluded that they would also arrive at the same conclusion.

11. Having decided that the tenant had a material interest in the property for the period in dispute, the panel considered the definition of owner in respect of section 6 and concluded that, as the tenant had a material interest which was inferior to that of the freehold owner’s, then the freehold owner could not be regarded as owner for the purposes of section 6. With regards to the tenant, there was no other material interest inferior to his and it was he, therefore, who met the definition of owner.
12. It was not disputed that the sole or main residence of the tenant changed when he occupied the property which he had purchased, but the sole or main residence of a person did not preclude that person from also being liable for council tax at another address. Consequently, it was possible for the tenant to be liable for council tax purposes at both addresses, even though he only resided in one of them.
13. After consideration of all the evidence before it, the panel concluded that the billing authority’s decision was incorrect and it therefore found in favour of the appellant and allowed the appeal.

Order:

14. 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 within two weeks of the date of this order the billing authority must alter its records to show that the tenant was the liable person of the appeal property until 22 September 2010 and not the freehold owner.

Date of Order: 27 July 2011

Colin Grimley IRRV (Hons)