

Bills, 197

Ustun: J

CH/4108/2005

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that the appeal tribunal (the tribunal) erred in law in its decision given on 8 June 2005 under reference U/42/919/2005/00359. I allow the Authority's appeal. Under paragraph 8(4) of the Seventh Schedule to the Child Support, Pensions and Social Security Act 2000, I set aside the tribunal's decision, and under paragraph 8(5)(c) I remit the case for rehearing by a differently constituted tribunal. My Directions are given in paragraph 7.

2. Both parties have accepted the view that the decision appealed against was erroneous in point of law. When granting leave to appeal I listed seven decisions, in all, which appeared to have been made in this case and continued:

“However, I must confine myself to the seventh decision appealed against, of 8 December 2004, as decided by the tribunal. It appears that the claimant, the tenant, was not invited to the hearing. Under regulation 77 and Schedule 6 Part IV paragraph 11 of the Regulations, decisions are to be notified containing specific information in relation to direct payments. That information and general information relating to all decisions, reasons for the decision, and the right to appeal is extended to all persons affected. Under regulation 3 of the Housing Benefit and Council Tax (Decisions and Appeals) Regulations 2001, this includes the landlord and the tenant in direct payment cases. None of the relevant information was notified and not all the persons affected were informed, as it appears from the file papers, on several occasions, but I am concerned only with the decision appealed against.”

I am satisfied that the tribunal erred by not dealing with this aspect. The Authority will no doubt now give the appropriate notices to the claimant.

3. Although my decision is limited to the appeal in connection with the decision of 8 December 2004, it appears that the chronology was as follows:

Date-----Decision/event

*Unknown* 1st decision relevant to housing benefit direct payments i.e. they were being made to the landlord, but it is not clear whether that was under regulation 93 (e.g. voluntary) or regulation 94 (e.g. arrears).

19.4.04 The claimant's solicitors requested that payment be made to their claimant (doc 1 page 1), and on 21.4.04 made claims for damages.

26.4.04 2nd relevant supersession/revision decision - ended direct payments. The decision does not appear to have been recorded, or notified to the parties, there is no indication of the grounds, but it seems to have been taken on 26 4.04 (by changing payment instructions - effective from 5.4.04.)

4.5.04 The landlord claimed there were 8 weeks of arrears (document 2/page2).

5.5.04 First monthly payment (for April) to claimant

6.5.04 3rd relevant supersession/revision decision making direct payments to landlord on the grounds of 8 weeks arrears (document 3/page 3)

11.5.04 Benefit suspended

13.5.04 Claimant's solicitor challenged 3rd decision – there were not 8 weeks arrears (document 4/page 4)

14.10.04 Benefit cancelled from 3. 5 .04

2.12.04 Claimant's solicitors asked for payments to the claimant to be made

8.12.04 Presumably a decision made to reverse the suspension and cancellation above because a 4th direct payment decision was made to send housing benefit for the period up to the claimant losing possession on 7.12.04. No grounds or notification, as before, and the payment is made to the claimant's solicitors, possibly in breach of regulation 92(3)

It appears, at least from the file papers, that none of the decisions was properly notified, and the Authority, the landlord and the claimant may wish to consider the arguable point that all the parties still have the right to notification, and therefore of appeal against any hitherto un-notified decisions. In particular, the second decision, that of 26 April 2004, which was challenged by the landlord on 4 May 2004, was probably not properly made and notified, although in that case the month's rent was sent to the claimant, and was not a direct payment made to the landlord. The third decision of 6 May 2004 reinstated direct payment to the landlord because he was of the opinion that there were eight weeks of rent arrears. As can be seen from the chronology, this was challenged by the claimant's solicitors on 13 May 2004, two days after benefit was suspended, on 11 May 2004.

4. Although there is no decision reinstating benefit within the papers, it is clear rent was eventually paid to the claimant's solicitor (document 15, page 22) but it is not clear under what authority that payment was made, a point raised by the tribunal, and I see no error in its findings in paragraph 10 of the Statement of Reasons. In the absence of any agreement to the contrary, the solicitors would hold any such sums as agents for their client, to whom they must account.

5. However, despite the heading "A Red Herring" to paragraph 10 of the Statement of Reasons, it is rather the question of rent arrears and counter claim/offset which may have been the red herring in this appeal. Regulation 93 of the Housing Benefit (General) Regulations 1987 states:

" 1. ... a payment of rent allowance shall be made to a landlord .....

<(a) does not apply>

(b) where sub-paragraph (a) does not apply and the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interest of the claimant not to make direct payments to the landlord.”

Regulation 93 requires the arrears to be equivalent to eight weeks or more of “the amount is liable to pay his landlord as rent”. The regulation is concerned with the tenant’s liabilities. Questions of offset and counter claim do not arise, as the tribunal found on the facts that the terms of the tenancy precluded the withholding of deductions or set-off from the rent, the liability in this case must have been in excess of 8 weeks’ gross rent.

6. The tribunal went into considerable detail as to whether it was in the overriding interest of the claimant/tenant not to make direct payments to the landlord. Regulation 93 deals with whether it is in the overriding interest of the claimant for the Authority not to make direct payments to the landlord, as for example where a tenant wishes to withhold rent to try to put pressure on a landlord to do essential repairs. The question of the tenant’s overriding interest as set out in Regulation 93 must be a question for the Authority’s discretion, and thus appealable only on judicial review grounds such as impropriety or illegality. The decision of the tribunal in R(H) 3/04 on that point has been reinforced by the recent decision of a Tribunal of Commissioners in CH/4234/2004 (paragraph 39).

7. There are therefore further matters for consideration by each of the parties, the Authority, the landlord and the claimant. Clearly if in the event, further appeals are made, it would be helpful if they were coordinated if possible, so that they could all be dealt with at the same tribunal hearing. I direct that a copy of the decision be sent to the claimant’s solicitors.

8. For the reasons stated, the Authority’s appeal succeeds and my decision is set out in paragraph 1.

(Signed on the Original) E A Jupp  
Commissioner

5 June 2006