

Decisions From General Tax Rent CPAG

Arrears - Must Prove The Arrears -

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MR/SH/4

Commissioner's File: CIS/220/1994

108/94
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SOCIAL SECURITY ACT 1986

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal. The decision of the Central London social security appeal tribunal dated 23 November 1993 is erroneous in point of law. I set that decision aside and refer the case to a differently constituted tribunal for determination.

2. The claimant was represented at the hearing before me by Ms Virginia King, solicitor of Messrs. Hartnells of London SE5. The adjudication officer was Mr George Roe. I am very grateful to both of them for their helpful submissions.

3. On 16 November 1992 and adjudication officer determined that there should be deducted from the claimant's income support the sum of £3.87 per week so that that sum could be paid to the London Borough of Southwark in respect of water charges and of rent arrears. The determination was made pursuant to paragraph 5 of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 which provides:-

" (1) Subject to paragraph 8, this paragraph applies to a beneficiary if -

- (a) he has been awarded the specified benefit; and
- (b) he or his partner is entitled to housing benefit in the form of a rent rebate or allowance; and
- (c) he or his partner has arrears of rent which equal or exceed four times the full weekly rent payable and -

(i) there are arrears of rent in respect of at least 8 weeks and the landlord has requested the Secretary of State to make payments in accordance with this paragraph; or

(ii) there are arrears of rent in respect of less than 8 weeks and in the opinion of the adjudicating authority it is in the overriding interests of the family that payments shall be made in accordance with this paragraph.

....

(3) Subject to sub-paragraph (4), the adjudicating authority shall determine that a weekly amount of the specified benefit awarded to the beneficiary shall be paid to his or his partner's landlord if -

(a) he or his partner is entitled to housing benefit and in calculating that benefit a deduction is made under regulation 10(3) of the Housing Benefit Regulations in respect of either or both of water charges or service charges for fuel; and

(b) The amount of the beneficiary's award is not less than the amount of the deduction, and the amount to be paid shall be equal to the amount of the deduction.

....

(6) In a case to which sub-paragraph (1) applies the adjudicating authority may determine that a weekly amount of the specified benefit awarded to that beneficiary equal to 5 per cent. of the personal allowance for a single claimant aged not less than 25 shall be paid to his landlord until the debt is discharged.

...."

£1.72 per week was deducted under paragraph 5(3) in respect of water charges and £2.15 per week was deducted under paragraph 5(6) in respect of arrears of rent.

4. The claimant appealed against the adjudication officer's decision on the ground that there were no rent arrears. The case came before the tribunal on 8 June 1993. No adjudication officer appeared. There was no evidence in the documents as to rent arrears save for a standard form letter from the London Borough

of Southwark to the local office of the Department of Social Security requesting deductions, stating that the rent arrears stood at £761.53 at 3 October 1993 and stating that the water charges were £1.72 per week. The claimant told the tribunal that the question of rent arrears was the subject of proceedings in the county court. The tribunal adjourned the hearing, stating that the case should not be relisted for six months by which time it was hoped that the county court proceedings would have been determined. However, deductions were still made and the county court proceedings came no nearer any conclusion and so, on the claimant's application, the appeal came before a differently constituted tribunal on 23 November 1993.

5. The tribunal confirmed the adjudication officer's decision. They adopted the "statement of facts" in the adjudication officer's written submission:-

" 5. STATEMENT OF FACTS

5.1 [The claimant] is a single man aged 59 who lives alone in local authority accommodation. His only income is Income Support and he has no savings.

5.2 A letter was received at Southwark District Office from Southwark Council (see page 1) requesting that direct payments be made from [the claimant's] Income Support.

The amount owed for rent arrears was £761.53. [The claimant] receives assistance with his rent in the form of housing benefit, but he is still required to pay £1.72 weekly for water rates.

5.3 On 16 November 92 the Adjudication Officer determined that deductions should be implemented from 30 November 92 at the rate of £2.15 for rent arrears and £1.72 for water rate.

5.4 [The claimant's] letter of appeal was received in the District on 23 November 92. He is appealing because, he says, he does not owe Southwark Council any money."

Under the heading "Findings of tribunal on questions of fact material to decision", the tribunal also recorded:-

"[The claimant] states that he does not owe Southwark Council any arrears. He is waiting for a court case to determine whether or not this is so. He produces a rent book showing he is now paying £1.85 from April-September, the correct sum."

The only additional reason the tribunal gave for their decision was:-

"This is because the adjudication officer has determined that at the request of the Southwark Borough Council in

respect of water rates and rent arrears, deductions of £3.87 per week should be made.

Regulation 35 of Social Security (Claims and Payments) Regulations 1987 and Schedule 9 to the Social Security (Claims and Payments) Regulations."

The claimant now appeals against the tribunal's decision with the leave of the tribunal chairman.

6. Ms King submitted that the tribunal had clearly failed to address the central issue before them which was the question of fact as to whether there were any arrears of rent at all. Mr Roe supported that submission and I accept it. It appears that the tribunal believed that a mere request by a landlord for deductions was sufficient. That is not so. There can be no deductions under paragraph 5 of Schedule 9 to the 1987 Regulations unless all the conditions of sub-paragraph (1) are satisfied. Sub-paragraph (1)(c) requires the tribunal to be satisfied that there are in fact rent arrears and, indeed, it is necessary for the tribunal to determine whether or not the arrears are in respect of at least eight weeks, or at least four weeks, so as to enable them to decide whether either head (i) or head (ii) is applicable.

7. Doubtless an adjudication officer or tribunal is entitled to rely upon a bald statement from a landlord as to the amount of rent arrears where there is no dispute that there are more than eight weeks arrears. However, if a claimant submits that there are no arrears, it will often be necessary for further evidence to be obtained from the landlord. As the deductions are made for the benefit of the landlord, it is not unreasonable to expect the landlord to provide the adjudication officer with the evidence necessary to prove the case. Where there is a dispute on the arrears, a landlord cannot expect to avoid consideration of the tenant's case by asking the Department of Social Security to make deductions from benefit and not prosecuting county court proceedings. The evidence provided should usually be sufficiently detailed to enable the adjudicating authority to identify the rate at which, and the period over which, the arrears are alleged to have accrued so that the claimant has a realistic opportunity of adducing evidence to meet the allegation.

8. Ms King told me that the London Borough of Southwark had never produced a copy of the rent account and so she was not aware over which period it was alleged that the claimant had fallen into arrears. She said that the possession proceedings, based on rent arrears, had been launched in 1990 and that the claimant had submitted a defence, denying the arrears, and had also submitted a counterclaim based on the landlord's failure to keep the premises in a proper state of repair. The case had been adjourned and the landlord had carried out some repairs in consequence of the counterclaim. The matter had never come back to court although it had not been abandoned.

9. Ms King submitted that a tribunal should have regard not only to a claimant's defence but also to any counterclaim. Again, Mr Roe supported that submission and I accept it. A tribunal is not entitled to try a counterclaim and to set damages off against arrears of rent. However, as Mr Roe pointed out, paragraph 5(6) - in contrast to paragraph 5(3) - provides a mere discretionary power to determine that a sum should be deducted from the claimant's benefit and paid to the landlord. The existence of an arguable counterclaim by the claimant against the landlord for a sum of damages exceeding any rent arrears is a matter an adjudicating authority might properly take into account in deciding not to exercise that power.

10. In the absence of any detailed evidence from the landlord, I am unable to determine the present case in favour of the adjudication officer, although I could determine it in favour of the claimant. I think it would be unfair to the landlord if I were to determine this case in favour of the claimant without the landlord ever having been given the opportunity of providing further evidence to the adjudication officer. I therefore refer this case to a differently constituted tribunal for determination. It would, of course, simplify the task of the tribunal if the claimant and the landlord were to settle their county court proceedings or else get them to court.

(Signed) M. Rowland
Commissioner
(Date) 9 November 1994