

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Housing Appeals and Review Panel    **Date:** Monday, 1 September 2014

**Place:** Committee Room 1, Civic Offices, High Street, Epping    **Time:** 2.30 - 4.55 pm

**Members Present:** Councillors B Rolfe (Chairman), Mrs J Lea (Vice-Chairman), L Mead and A Mitchell MBE

**Other Councillors:**

**Apologies:** Ms G Shiel

**Officers Present:** A Hall (Director of Communities), J Hunt (Assistant Housing Options Manager (Homelessness)) and A Hendry (Democratic Services Officer)

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### 1. MINUTES

#### RESOLVED:

That the minutes of the meeting of the Panel held on 12 May 2014 be taken as read and signed by the Chairman as a correct record.

### 2. SUBSTITUTE MEMBERS

The Panel was advised that there were no substitute members present.

### 3. DECLARATIONS OF INTEREST

There were no declarations of interest made by members of the Panel in pursuance of the Code of Member Conduct.

### 4. Exclusion of Public and Press

#### RESOLVED:

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as they would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

<b>Agenda Item Number</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
6	Application No. 5/2014	1

## 5. Application 5/2014

### Introduction

The Panel considered an application for a review of a decision made by officers under delegated authority that the applicant was intentionally homeless.

The applicant attended the meeting to present her case supported by her partner.

Mr J Hunt, Assistant Housing Options Manager (Homelessness) attended the meeting to present his case. Mr A Hall, Director of Communities attended the meeting to advise the Panel as required on relevant legislation and on national and local housing policies relevant to the application.

The Chairman introduced the members of the Panel and officers present to the applicant.

The Chairman explained the procedure to be adopted for the meeting in order to ensure that proper consideration was given to the review of the application.

The Panel had before them the following documents which were taken into consideration:

- (a) A summary of the case including the facts of the case;
- (b) The case of the Assistant Housing Options Manager (Homelessness);
- (c) Copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
  - (i) Notice requiring possession (S21), dated 2 January 2014;
  - (ii) Tenancy agreement dated 8 November 2010;
  - (iii) Letter to EFDC from the applicants landlord dated 29 April 2014;
  - (iv) Letter to EFDC from the landlord's agents dated 6 May 2014;
  - (v) The tenant rent statement from November 2010 to February 2014;
  - (vi) Typed copy of notes dated 11 February 2014, 8 April 2014 and 20 May 2014 of interviews of the applicant by a Housing Officer;
  - (vii) An affordability assessment for the month preceding the service of the notice;
  - (viii) A schedule of the Housing Benefit paid from November 2010 to February 2014;
  - (ix) Letter dated 7 July 2014 from the Assistant Housing Options Manager (Homelessness) to the applicant; and
  - (x) Copy of correspondence from the Private Sector Housing Team (Environmental Health) dated 13 August 2014, 3 October 2013 and 14 August 2014.
- (d) Copies of documents submitted by the applicant, namely:
  - (i) Her completed application form to the Housing Appeals and Review Panel dated 25 July 2014;
  - (ii) A letter on behalf of the applicant from the Citizen Advice Bureau dated 23 July 2014;
  - (iii) A CAB client consent form dated 21 July 2014;
  - (iv) A letter from the Landlord to the applicant dated 30 November 2013;

- (v) Notice requiring possession (S21), dated 2 January 2014;
- (vi) Acceptance of Bond Scheme from Newham Borough Council by the applicant dated 10 November 2010;
- (vii) Letter to Landlord's agents by EFDC on repair issues to the rented property dated 12 December 2012;
- (viii) Letter to the applicant from EFDC's Environmental Health Officer dated 3 October 2013; and
- (ix) Letter to Landlord's agent from EFDC's Environmental Health Officer dated 3 October 2013.

**Presentation of the case of the Assistant Housing Options Manager (Homelessness)**

(a) The Panel considered the following submissions in support of the case of the Assistant Housing Options Manager (Homelessness):

(b) The applicant was British and 36 years of age; she had approached the Council as homeless when she was served with notice on her two bedroom privately rented house. The notice was served on 2 January 2014 and expired on 7 March 2014.

(c) The applicant was eligible for assistance because she had no accommodation available to her and was in priority need because she had a partner and three dependent children. The homelessness legislation required this Council to be satisfied that the applicant had not made herself intentionally homeless.

(d) Enquiries made with the landlord and letting agent resulted in this Council being made aware that the applicant had been served with notice to quit due to rent arrears and that she owed £2,811.30 at the time notice was served. She had lived in the property from 8 November 2010 to 5 March 2014. It was noted that the accommodation would have continued to be available to the applicant had there not been rent arrears.

(e) The Panel noted the letter sent by the landlord's agent to EFDC's Assistant Housing Manager giving the background to this case along with a copy of the tenant's rent statement from November 2010 to February 2014.

(f) The applicant had initially been living on her own and was claiming Housing Benefit. In August 2012 her partner moved in and helped with the rent. However, being self employed he had on occasions less work and a reduced income. Housing Benefit had to be claimed during these periods. Attention was also drawn to the schedule of Housing Benefit paid to the applicant from November 2010 to February 2014.

(g) The applicant had provided an affordability assessment for the period of December 2013, which indicated that she had enough money to pay the rent.

(h) During interviews with the Council's homelessness officer the applicant asserted that the landlord had just wanted to sell the property. She had also had cause to call Environmental Health because of the bad state of the property. Soon after this, the repairs had been carried out. The Panel noted the copies of emails and letters from EFDC's Environmental Health Officers regarding the state of disrepair and the subsequent repair resulting from the officer's intervention on behalf of the applicant. It was noted that that the owner/agents were deemed to be co-operative in sorting this out amicably.

(i) The Panel noted the relevant homelessness legislation and that the Code of Guidance (11.7) states that: *a person becomes homeless, or threatened with homelessness, intentionally if:*

- i) he or she deliberately does or fails to do anything in consequence of which he or she ceases to occupy accommodation (or the likely result of which is that he or she will be forced to leave accommodation);*
- ii) the accommodation is available for his or her occupation; and*
- iii) it would have been reasonable for him or her to continue to occupy the accommodation.*

(j) In responding to the Citizens Advice Bureau's (CAB) letter the Assistant Housing Options Manager (Homelessness) noted that:

(i) The CAB had indicated that the applicant was not aware of any rent arrears in the months leading up to the issuing of the notice and that the landlord said that she was a model tenant; but yet a month later said she was in rent arrears. He was unsure why this was, although at their interview with the EFDC Housing Officer in February 2014, the applicant did state that she was once friends with the landlord. Also in the letter dated 6 May 2014 from the Landlord's agent to EFDC, they stated that they had made numerous phone calls to the applicant about their rent arrears.

(ii) As for the second point made by the CAB that the applicant could not get a rent statement from the agents and that there were errors in the statement eventually received, EFDC officers had asked for more information on this and had noted that there were mistakes made on the statement. They did find some of the missing payments in the statement, but they had been split into two payments, such as the £190 payment, which was logged as two payments of £189.86 and of 0.14 pence. Officers have since gone through the entire statement and could only find a £30 non-payment anomaly, as there was no receipt for this. The date for this £30 payment being 23 November 2012, which was not listed.

(iii) The third point made by the CAB, officers had noted that a rent statement was not available at the time of the Section 21 notice.

(iv) The fourth point made was that no attempt had previously been made by the Landlord or his agents for the recovery of any rent arrears. However, the Tenancy Agreement clearly states that the tenant would pay the rent specified at all times and was contractually liable to pay the rent as specified. Also the agent claimed that they did make numerous phone calls (their letter dated 6 May 2014 refers). This did not explain why the rent had not been paid.

(v) The fifth point made was that when the keys were returned to the agents this had been signed off by the agents saying all outstanding bills had been paid. However, this was no evidence that the rent had not been paid as this form was for any outstanding bills, which had not been paid, not the rent.

(vi) Officers noted the sixth point made about the deposit bond guaranteed from Newham Council and that no attempt had been made to recover the rent arrears from this bond scheme.

(vii) The rest of the letter suggested that the notice had been served in response to the repair problems, as opposed to the rent arrears. However the EFDC Environmental Health Officer, in her email dated 13 August 2014, specifically commented that this was not a “retaliatory notice”.

(k) The Assistant Housing Options Manager (Homelessness) concluded that there was a wilful persistence to not pay the full rent. It would also have been reasonable for the applicant to occupy the accommodation in question, which would still be available to occupy if the rent had been paid in full.

(l) The Panel was invited to uphold the officer’s decision; in the event of upholding that decision, it was suggested that the applicant should be given reasonable notice to vacate the Council’s Homeless Person’s Hostel and, with her consent, a referral should be made to Children and Families Services on account of the applicant’s children being at risk of homelessness.

**Questions from the Applicant on the case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from the applicant:

- (a) He accepted that the applicant’s payments had been rounded off.
- (b) He did not ask for proof himself that the repair work had been carried out, as he was happy to accept the view of the Environmental Health Officer who was dealing with this case.
- (c) He had emailed Newham Council asking about what had happened about the Bond they had provided, but they had not replied to him as yet.

**Questions from Members of the Panel on the case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from Members of the Panel:

- (a) He reaffirmed that he could find all the receipts except for one £30 payment.
- (b) He explained that Newham Council helped tenants by paying their deposit. To this end a bond had been issued. Some are only there to cover damage costs, others cover rent arrears. The CAB said that the agents only went to Newham Council for the cost of repairs. To aid them, some councils carry out a background check before they issue a bond. He did not know if Newham Council did so in this case (the applicant affirmed that they did carry out a check on her). In any case, it was not for the Council to establish why no claims on rent arrears were made.
- (c) He agreed that the tenancy agreement stated that they had to pay the rent and could not withhold it for any reason. The CAB asserted that there were no letters chasing up the arrears and said that the notice to quit had resulted from the problems of not carrying out repairs on the property.

**Presentation of the Applicant's Case**

The Panel considered the following submissions made by the applicant:

- (a) They asserted that they had no intention not to pay their rent and that they had been asked to pay £300 a week. They had also never received a total figure of what they owed. At the start of the tenancy the applicant had been asked to pay three weeks' rent after she had only been there for two weeks. As soon as she was in receipt of Housing Benefit the rent was paid on time.
- (b) It seems that the tenant rent statement did not include one of their payments made, and that had not been taken into account.
- (c) The notice to quit had been stuck to their door. They then took this notice to EFDC housing services.
- (d) The landlord had made an appointment with the agent to see their property and the repairs that were needed. He said that he had paid the agency to fix their property, but they had not done this. The applicant had asked for the carpet to be changed; the agents asked for £200 to do this; the landlord said that he did not know about this. They would have probably recharged the landlord as well for this. In the end her partner did some of the repairs himself (the Panel were shown photos of the problems that they had in their flat). They also had problems with their fence. She kept ringing the agents to report the problems and they kept saying that they would get back to them; no one ever did. At this point they did the repairs themselves and asked the Environmental Health Officer to come and have a look.
- (e) The agents kept phoning the applicant when she was pregnant, harassing her, but she never received a letter from the agents.
- (f) As far as the applicant knew she was up to date with her rent. The first thing they knew about it was when they had received the notice to quit. She did not understand how they had arrived at the final amount. If they had given them a final figure they would have set up a repayment regime.

**Questions from the Assistant Housing Options Manager (Homelessness) to the Applicant**

The applicant gave the following answers to questions from the Assistant Housing Options Manager (Homelessness):

- (a) The applicant did not accept that there was any unpaid rent. When her partner was off work they would get Housing Benefit. They had paid back £1000 but only £700 was shown in the statement.
- (b) She had copies of the receipts with her, dated 1 August 2011, 22 August 2011 and 27 August 2011 (copies were made of these receipts and given to the Panel and presenting officer). However, the Assistant Housing Options Manager (Homelessness) noted that the receipts for 11 August and 22 August were shown on the rent statement.
- (c) In answer to the point raised by the CAB that they did not know about the arrears but then complained about the harassment they received by phone, the applicant said that the only rent arrears that she knew about was when she first moved into the premises.

### **Questions from Members of the Panel to the Applicant**

The applicant gave the following answers to questions from members of the Panel:

- (a) The applicant commented that no one had mentioned the use of the Bond. Only the CAB brought this up.
- (b) The applicant said she did not know how the rent statements were recorded and had asked for a meeting with the agents to find out how they worked this out. But it never took place.
- (c) The Environmental Health Officer had checked back at the property that the repairs had been done.
- (d) The rent statement did not show all their £300 weekly payments, but she had her bank statements available at the meeting and could show them to the Panel.

The meeting then adjourned in order to get photocopies of the bank statements for the Panel and officers to study. During this time the Applicants and the Assistant Housing Options Manager (Homelessness) left the room. They were called back when the Panel had studied the new paperwork they had received.

The Chairman the stated that having cross referenced the bank statements with the rent statements, all the payments shown on the bank statements were also shown on the rent statements on the original paperwork submitted.

- (e) The applicant noted that the bank statements confirmed that they had made all the necessary payments as asked for.
- (f) The applicant confirmed that the first time that they knew that they were in arrears was when they received the notice to quit. They then consulted the CAB about it.
- (g) They had changed from cash to standing order payments because the agent did not keep to one date when withdrawing from their account, which resulted in them going into debt.

### **Summing Up**

Neither the Applicant nor the Assistant Housing Options Manager (Homelessness) had anything to add to their cases.

### **Deliberations**

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The applicant, her partner and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on:

- (a) Reaching a view on why the applicant had not paid the rent for her privately rented property;
- (b) Whether the applicant had deliberately done or failed to do anything as a consequence of which she had ceased to occupy the property; and
- (c) Whether the property would have been affordable and reasonable for the applicant had she continued to occupy it.

**RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from the privately rented property she occupied from 8 November 2010 and 5 March 2014 be upheld for the following reasons:

(a) the applicant when applying as homeless in February 2014 had been eligible for assistance being British, homeless because she had received a Possession Order requiring her to leave the privately rented property she had occupied and in priority need because she had three dependent children; the household consisted of the applicant, her partner and their three daughters aged 8, 5 and 1;

(b) the applicant had held the tenancy of a privately rented flat between 8 November 2010 and 5 March 2014; the Assured Shorthold Tenancy for the property had been in her sole name;

(c) the landlord of the applicant's former privately rented property had obtained a Possession Order from the Court dated 2 January 2014 which required the applicant to leave the property on 7 March 2014;

(d) the landlord's agent of the applicant's former privately rented property had stated that they had taken proceedings to end the applicant's tenancy because of rent arrears; the landlord's agent had stated that the property would have continued to be available to the applicant had there not been the rent arrears;

(e) the applicant and partner had both been in employment earning a household income of £1,915.02 per month; the affordability statement completed by the applicant had shown monthly expenditure of £1,735.58 per month which had included the rent for the property;

(f) the applicant had been entitled to intermittent Housing Benefit over this period to assist her in paying the rent when her partner was not living with her and then after her partner had moved in (in August 2012) but being self-employed had on occasion less work and a reduced income;

(g) the applicant stated that both she and her partner were unaware of the arrears until the time they had received their notice to quit although there had been periods when the rent had not been paid because her partner had been working less;



(h) the applicant had said that she had made repeated attempts to get a rent statement from the agents but had been refused. She maintained that no attempts had been made to recover the arrears whilst she was still at the property;

(i) the Landlord's Agent stated that they had made numerous phone calls to the applicant about the arrears;

(j) when the applicant and her partner had been served with a Section 21 notice (notice to regain possession of the property) the arrears of rent for the property had been £2,811.30. The Agent had stated that the notice had been served due to rent arrears and that the property would have continued to be available to the applicant and her partner had there not been rent arrears;

(k) the applicant stated that she had been given notice because the landlord had wanted the property back and that there were repair problems with the property;

(l) a Council's Environmental Health Officer had confirmed that although there had been repair problems, the agent and owner had been co-operative and work was completed in October 2013. At the meeting it was stated, by the applicant, that the applicant's partner had carried out some of the repairs himself;

(m) the affordability assessment for the month preceding the service of notice showed that the applicant had sufficient income to pay her rent and other necessities;

(n) on the evidence available, the Panel is of the opinion that the applicant and her partner were able to afford the rent on their private rented property;

(o) for the reasons set out above, the Panel finds that the applicant and her partner's persistent refusal to pay the rent on the privately rented property was a deliberate omission, as a consequence of which a possession order was made which led them to cease occupying their privately rented property. It was also the Panel's view that the property would have continued to be available and reasonable for the applicant, her partner and her three daughters to occupy.

(2) That no deficiency or irregularity has been identified in the original decision made by the Council officers or the manner in which it was made.

(3) That provided the applicant complies with the terms of her licence at Norway House, the Council's Homeless Persons Hostel, the Council would continue to provide her and her family with interim accommodation for a period of eight weeks (until 11.00am on Monday 27 October 2014) in order to allow her reasonable opportunity to secure alternative accommodation.

(4) That the officers, with the applicant's consent, refer the applicant to Children and Families Services to seek their assistance in helping her find alternative accommodation and that the officers continue to offer housing advice and assistance to the applicant.

**CHAIRMAN**