First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	**:**	**MAN/00BY/HNA/2019/0106V**
Property	**:**	**82 Hudson Gardens, Duke Street, Liverpool, L1 5BB**
Appellant	**:**	**Mr Godfrey Gummer**
Respondent	**:**	**Liverpool City Council**
Representative		**Ms Jodie Wildridge**
Type of Application	**:**	**Under paragraph 10 of Schedule 13A to the Housing Act 2004 – an appeal against a financial penalty under s.249(a)**
Tribunal Members	**:**	**Judge P Forster** **Mr I James MRCS**
Date of Decision	**:**	**1 April 2021**

DECISION

Decision

The Tribunal is satisfied beyond reasonable doubt that between 6 April 2017 and 24 June 2019 the Appellant committed an offence under s.95 of the Housing Act 2004 and that he is liable to pay a financial penalty of £3,825.00.

Introduction

1. Godfrey Gummer, the Appellant, appeals against the decision dated 7 October 2019 made by Liverpool City Council, the Respondent, to impose a financial penalty on him under s.249A of the Housing Act 2004 ("the 2004 Act") in respect of 82 Hudson Gardens, Duke Street, Liverpool, L1 5BB ("the Premises").

2. The Respondent served the Appellant with a notice of intent dated 5 August 2019 to impose a financial penalty in respect of the Premises. This was followed on 7 October 2019 by a final notice imposing a penalty of £3,251.25.

3. The Tribunal issued Directions on 16 March 2020 that provided for the Respondent to address the issues raised by the appeal and to provide a bundle of relevant documents for use at the hearing. The Appellant was also directed to provide a bundle of relevant documents, to include an expanded statement of the reasons for the appeal.

4. The hearing of the appeal was delayed by the Covid-19 pandemic. It was held remotely by video link on 18 March 2021 without an inspection of the Premises. The Appellant represented himself and the Respondent was represented by counsel, Ms Jodie Wildridge.

The Appellant's case

5. The Appellant's case was stated succinctly in the notice of appeal as:

   - "false representation on the evidence provided by LCC resulting in extra charge
   - charge disproportionate to the alleged offence
   - discriminatory behaviour by LCC on 2 counts"

6. The Respondent complied fully with the Directions but the Appellant failed to provide any additional details to explain or substantiate the grounds of appeal. The Tribunal issued further Directions on 5 August 2020. The Appellant responded on 26 August 2020 by making a further submission:

   the Appellant states that he contacted the Council in April 2015 to advise them he was the landlord of the Premises.

   1) there were numerous calls and emails from the Appellant to the Respondent which have not been included in the Respondent's bundle of documents.

   2) the information on the Respondent's website was misleading. It stated that an application for a licence could not be made until the fit and proper

person test been passed. Once the Appellant had been told this was not the case, he tried on a number of occasions to arrange a meeting with the Respondent but this did not happen. The Council provided a telephone number to call which the Appellant was eventually told by the Council was not in use. The Appellant was at no stage informed that he had passed the fit and proper person test.

3) the Appellant alleges that the Council acted in an unprofessional way and should not have assumed that he knew about the need to obtain a licence. He complains about the wording of emails from the Council.

4) the Respondent did not inform the Appellant of the need to obtain a licence in April 2015. The Respondent knew that he was a landlord. The only landlords who were informed were those to whom housing benefit was paid. The Appellant alleges that this was discriminatory and left him vulnerable "to unknowingly committing an offence".

5) the Respondent says the Appellant took too long to complete the licence process but following his interview it was the Council that elongated the process to the point that when he paid for the licence, they still told him that he had not paid. The Respondent did not provide the Appellant with correct guidance. The Appellant believes that Mr Sloan, the Council's compliance officer, took a personal dislike to him thus minimising his chance in a fair hearing.

The Appellant feels that the penalties imposed are not only excessive but incorrect because he has been fined for circumstances outside his control.

The Respondent's case

7. The Premises was within a designated selective licensing area. The Appellant is the leaseholder and council tax and housing benefit records show that the Premises was tenanted at the relevant time. The Appellant appears to challenge the penalty on the grounds of reasonable excuse in failing to obtain a licence during the period 6 April 2017 to 24 June 2019. The Respondent submits that the Appellant did not have a reasonable excuse and that it is beyond reasonable doubt that he committed an offence.

8. In response to the points raised by the Appellant, the Respondent says:

1) it has not withheld emails or records of contacts between the Appellant and the Respondent. The Respondent exhibited copies of emails regarding some contact with the Appellant and the Council which it relied on and after a further search a small number of additional emails, on which it does not rely, have now been produced. These relate to the Appellant arranging a meeting with Mr Quinn to get help completing Part 2 of the licence application. This was after 31 January 2019 which is after the period when the offence was committed.

the Respondent has no record that the Appellant contacted it in April 2015 to advise that he was the landlord of the Premises.

2) the licensing process was clearly explained on the Respondent's website and this led to over 55,000 licence applications being correctly submitted during the lifetime of the scheme. As demonstrated by the emails, contact with the Appellant only started from 31 January 2019 and therefore only relates to the latter part of the offending period. The Appellant did not respond until 25 February 2019.

3) the Respondent submits that the allegations of unprofessional behaviour are not a matter for the Tribunal. Any complaint should be made using the Respondent's formal complaint procedure.

4) the Respondent publicised the selective licensing scheme which was introduced on 1 April 2015. All known landlords who were receiving housing benefit were sent information. Ignorance of the law is not a defence. The Respondent was under no obligation to write to each landlord advising them of the scheme. The Respondent complied with the requirement under section 85(4) to take all reasonable steps to secure that applications for a licence were made to them in respect of houses in their area which are required to be licensed but are not so licenced. The Appellant was not in receipt of housing benefit for his tenant and therefore he was not one of the known landlords who were written to directly.

5) the Respondent denies that it failed to provide correct guidance as alleged.

The Law

Commission of Relevant Offences

9. All references are to the Housing act 2004.

10. A local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England (s.249A(1)).

11. An appeal against the imposition of a financial penalty is to be a re-hearing of the local authority's decision (para 10(3) to Schedule 13A). The Tribunal must therefore similarly be satisfied, beyond reasonable doubt, that such an offence has been committed.

12. Local authorities are empowered to designate areas within their district as a selective licencing area under s.81(1). A *"relevant housing offence"* includes an offence under s.95. A person commits an offence under s.95(1) if he is a person having control of or managing a house which is required to be licenced, but is not so licenced, under the selective licencing scheme. Local authorities are empowered to designate areas within their district as a selective licencing area under s.81(1).

13. Statutory defences are set out in s.95(3) and (4) where notification has been duly given under s.62(1) and s.86(1) or an application for a licence has been duly made under s.87 or where a defendant had a reasonable excuse for having control or managing the premises without a licence.

Amount of Penalties

14. A person who commits a relevant offence is liable on summary conviction to an unlimited fine (s.95(5)). Under s.249A, a local authority may impose a civil penalty instead of bringing a prosecution. The penalty cannot exceed £30,000 (s.249A(4)). Under the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, it is clear that the purpose of imposing such penalties is to allow the local authority to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector (reg.4(1)).

Guidance

15. The Secretary of State published guidance in 2016 (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities), which was re-issued in 2018 and is relevant to offences under section 95(1) of the 2004 Act. Pursuant to Schedule 13A, a local housing authority is to have regard to any guidance given by the Secretary of State about financial penalties.

Reasons for the Decision

16. The Appellant is registered at HM Land Registry under title number MS482166 as the leasehold proprietor of the Premises. He acquired the Premises in 2005 and lived there himself for some time. The Premises was let to tenants from about September 2016. The Appellant manages the Premises himself. He does not let any other premises.

17. The financial penalty was imposed for the period 6 April 2017 to 24 June 2019.

18. The Tribunal heard evidence from Paul Sloan, a senior compliance officer with the Council, and from two of the Council's private sector housing enforcement coordinators: Jennifer Driscoll and Andrew Parsons. They provided evidence about the Respondent's selective licencing scheme and about their involvement in the present case.

The Offence

19. The Appellant challenges the imposition of the financial penalty. He accepts that the Premises was tenanted, he was in control of the premises and that a licence was required. The Appellant claims to have a reasonable excuse for not obtaining a licence.

20. The selective licencing scheme was introduced by the Respondent in April 2015. Before the scheme started, the Respondent invited landlords to register their details with the Council and these were inputted into a landlord licensing database. Ms Driscoll told the Tribunal that the scheme was widely advertised, including posters on buses, articles in the Liverpool Echo and by flyers sent out with council tax demands. The Tribunal accepts that the Respondent advertised the selective licencing scheme widely in the Liverpool area. The Appellant said that he did not know about the licencing scheme. After the start of the scheme, landlords on the database were invited to make their application. The Appellant's

details were not on the database. On the evidence, there was no need for the Appellant to register because the Premises were not let to tenants until about September 2016.

21. The Appellant stated that he contacted the Council's council tax department in 2015 to advise that he was the landlord of the Premises and not liable for the council tax. On the evidence, it is more likely that was in 2016 because that is when the Premises was let to tenants.

22. The Appellant asserts that the Respondent knew that he was a landlord and complains because the Council did not contact him about the licencing scheme. At an early stage of the scheme, the Respondent obtained information from the department that deals with housing benefit and wrote to landlords who were receiving direct payments of housing benefit. The Appellant's tenants were not on housing benefit and so he was not one of those landlords. The Respondent did not obtain information from the council tax department, and in any event, it would not have been able to identify landlords from the data held.

23. The licensing process changed during the duration scheme. Until September 2016, an applicant would complete a Part 1 application relating to whether they were a fit and proper person and pay a fee of £50. Once it was determined that they were indeed fit and proper, the applicant was sent an email to complete Part 2 of the application. Since September 2016, an applicant completes Part 1 of the application and an email is then automatically generated asking the applicant to complete Part 2 of the application. There is a link on the email to take them to Part 2 enabling them to complete the application.

24. Based on the Respondent's evidence, a computer generated file is created only when both Part 1 and Part 2 of the licence application is received. This is because Part 2 relates to the property address and the computer files are linked to the address. A person who has more than one property to license would only submit one Part 1 application. If a person submits a Part 1 application but does not submit a Part 2 application a file is not opened.

25. It came to the Council's attention in September 2018 that the Premises were tenanted but no application had been made for a licence. The Respondent wrote to the Appellant on 1 October 2018 about the need for a licence and on 4 October 2018 he submitted a Part 1 application. Under the Respondent's process, on receipt of the Part 1 application an email would have been sent to the Appellant to start the Part 2 application. The Appellant denies receipt of the email. The Appellant did not provide evidence that he had searched his email account to ascertain if an email had been received from the Respondent. Having made the Part 1 application, the onus was on the Appellant to pursue matters even if, as he claims, he did not hear from the Respondent. The Tribunal finds on the balance of probabilities that the Appellant simply did not take any action.

26. On 15 January 2019, the Respondent sent a notice to the Appellant under s.235 of the 2004 Act, requiring him to provide information. On 31 January 2019, the Appellant sent an email to the Respondent asking someone to call him back. The Appellant wanted some assistance to complete the Part 2 application, ideally, he wanted to meet someone from the Council. Mr Sloan phoned the Appellant the

same day and one of his colleagues, John Quinn, sent an email to the Appellant which included a hyperlink to allow the Part 2 application to be completed.

27. On 12 February 2019, a further email was sent to the Appellant asking him to respond to the s.235 notice. The Appellant was reminded that he needed to make the Part 2 application. The Appellant replied on 23 February 2019 to say that a family member had passed away and that he was in the process of completing the application.

28. On 12 April 2019, the Respondent wrote to the Appellant asking him to attend an interview under caution to be held on 2 May 2019.

29. The Appellant did not submit a Part 2 application until 25 June 2019.

30. The Appellant complained that the Respondent initially failed to produce all relevant emails. That is explained by the Respondent: emails or telephone contacts made before the file is set up are not formally recorded. The Tribunal accepts this explanation and finds that the documents it has seen provides a detailed and accurate record of the contact between the Appellant and the Respondent. The Appellant has not produced any documents of his own to contradict the picture.

31. The Tribunal finds that the Appellant had several opportunities after the need for a licence was brought to his attention at the start of October 2018 to make an application and he failed to do so. The Tribunal rejects the Appellant's claim that information provided by the Respondent was misleading. He knew a licence was required and he cannot shift the blame for his failure to take action on the Respondent On the balance of probabilities, the Tribunal finds that the Respondent sent an email to the Appellant on about 4 October 2018 and that the Appellant failed to respond to it.

32. At the interview on 2 May 2019, the Appellant was asked what he had done to keep himself updated about current legislation and the obligations imposed on landlords. He relied: "*not much to be fair…the term "landlord" for me is probably a grandeur one, if I am brutally honest…I am a landlord, if that's what you want to call it. Not by choice…if I could sell the flat …then I would…that's kind of how it's come about…I made sure that everything was up to scratch [in the flat] and that was, as far as I was concerned, that was all that was, was required of me*".

33. The Appellant is an "accidental landlord" but that does not absolve him of all the legal obligations that are imposed on anyone who lets property. The Appellant was under a duty to licence the Premises and he cannot shift the burden to the Respondent. The burden is not on the Respondent to go out and look for landlords. Ignorance of the law is no excuse.

34. The Tribunal is satisfied beyond reasonable doubt that the Appellant committed an offence under s.95(1). On the evidence, the Appellant does not have the legal defence of reasonable excuse as provided for in s.95(3) and (4).

Penalty

35. The Tribunal is required to pay great attention to the Respondent's policy on financial penalties and should be slow to depart from it. The burden is on the Appellant to persuade the Tribunal to do so - Waltham Forest LBC v Marshall [2020] UKUT 35 (LC) endorsed by the Court of Appeal in Sutton v Norwich [2021] EWCA Civ 20.

36. At the hearing, the Appellant questioned the Respondent's decision to impose a civil penalty rather than seek a criminal conviction. It is unusual for an Appellant to advocate criminal proceedings. The Respondent's enforcement policy provides that when deciding to prosecute, consideration is given to whether there is sufficient evidence to obtain a conviction and then applies the public interest test. In respect of the public interest, the more serious the offence, the more likely a prosecution will be appropriate. Seriousness is assessed on culpability and harm. In the present case, culpability was found to be at a medium level and the risk of harm to be low. The Respondent decided that it would not be proportionate to commence criminal proceedings but rather to impose a civil penalty. That decision was in line with the Respondent's published enforcement policy. The Appellant describes the decision to impose a penalty as a money making scheme. The Tribunal rejects that suggestion. It is clear that the Appellant has not considered the consequences of having a criminal conviction against his name.

37. As to the amount of the penalty, the Respondent's policy mandates the use of a matrix to determine the starting point based on its assessment of the level of harm and culpability. The Tribunal relies on its findings of fact set out above and applies the Council's policy as it is required to do.

38. The Appellant was not aware of his general responsibilities as a landlord and in particular, he did not trouble to inform himself of his obligation to obtain a licence under the selective licencing scheme. He was told in October 2018 that he needed a licence but he failed to follow the process and did not make the Part 2 application until 25 June 2019. The Tribunal finds that the level of culpability was medium, applying the Respondent's civil penalty policy.

39. The Premises is within a well-maintained block of apartments and there are no complaints about this repair or other relevant matters. The tribunal assesses the risk of adverse effects on individuals as low in accordance with the Respondent's policy document.

40. Applying the Respondent's policy on civil penalties via the matrix: an offence of medium culpability and low harm falls within the range of £3,750 to £5,200. The Tribunal adopts the Respondent's starting point as the midway figure of £4,500.

41. There were no previous convictions or cautions or civil penalties over the previous 2 years. The only aggravating feature is the delay in applying for a licence which is assessed by the Tribunal at 10% of £4,500. This adds £450.

42. This was a first offence and only related to one property. The Tribunal reduce the penalty by 25%, taking regard to the Respondent's policy. A reduction of £1,125 is applied.

43. The final step in the Respondent's policy is to review the amount of the penalty to determine if it meets the stated objectives as set out in the statutory guidance. The penalty should reflect the extent to which the offender fell below the required standard. The civil penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through commission of the offence.

44. The Respondent's policy provides that the amount of the penalty should be reviewed and, if necessary, adjusted to ensure that it fulfils the general principles.

45. The Respondent's policy provides for a further reduction to be made for an early admission of guilt. The Respondent made a reduction of 15%, £575.75. The appeal is a rehearing and the Tribunal is able to take account of facts which were not available when the Respondent made its decision. The Appellant did not admit his liability for the penalty and the Tribunal finds concludes that it would not be appropriate or within the Respondent's policy to make a reduction for an admission of guilt. The Respondent has incurred additional costs in responding to the appeal which cannot be recovered.

46. Accordingly, on the evidence, and applying the Respondent's policies on enforcement and the imposition of penalties, the Tribunal concludes that it is fair and proportionate to impose a penalty on the Appellant of £3,825.

P Forster
Tribunal Judge
1 April 2021

RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.