



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BY/HNA/2020/0001**

Property : **28 Hursley Road, Liverpool L9 6BQ**

Appellant : **Phoenix Property (NW) Limited**

Respondent : **Liverpool City Council**

Type of Application : **Appeal Against Financial Penalty**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Determination : **1 September 2020**

Date of Decision : **10 September 2020**

DECISION

DECISION The Final Notice dated 5 December 2019 is varied so as to impose a financial penalty of £3,094 on the Appellant.

REASONS

BACKGROUND

1. The Appellant owns a number of residential properties in the Liverpool area, including 28 Hursley Road L9 6BQ (“the Property”). The Property was let to a Ms Dudderidge from 2014. The tenant damaged the property and failed to comply with her obligations under the tenancy agreement to pay rent, keep the property in good condition etc.
2. With effect from 1 April 2015 landlords of residential properties in the City of Liverpool have been required to obtain a licence from the Respondent, and to comply with the conditions of the licence. Condition 5.6 of the licence granted to the Appellant states

“The licence holder must ensure that inspections of the property are carried out a minimum of every 6 months to identify any problems relating to the condition and management of the property. The records of such inspections must be kept for the duration of this licence. The records must contain a log of who carried out the inspection, date and time of inspection and issues found and action(s) taken. Copies of these must be provided to [the Respondent] within 28 days on demand.”

The Appellant says that this condition was printed on the licence in unreasonably small font, but does not claim that it was unaware of the obligations contained in it.

3. On 12 April 2019 the Respondent asked to see the Appellant’s records for the period 11 April 2018 to 10 April 2019, pursuant to condition 5.6. On 9 or 10 May 2019 Mr Evans of the Appellant emailed to the Respondent copies of three letters sent by the Appellant to the tenant, requesting access to the Property.

FINDINGS AS TO OFFENCE

4. Licence condition 5.6 does not require the record or log of visits to be contained in a single document. It implies (but does not say) that the record should be contemporaneous with the visit. It does not require the licence holder to produce original documents on request. It does not state that the visits must be made at times when the only reason to inspect the property is to comply with condition 5.6.
5. The Appellant did not produce copy documents with the required details of inspection visits to the Property - and their findings and consequent action taken – within 28 days after 12 April 2019. An offence has therefore been committed.

6. The Appellant visited the Property more often than once every 6 months during the 12 months ending 10 April 2019, and kept records as to who had attended, the date and time of attendance, findings in relation to the Property and action taken as a result of those findings. Those records were contained in various documents including Mr Evans' notebook and camera, and on his computer.
7. After discussion with the Respondent, the Appellant has changed its procedure so as to allow for the creation of a single document recording each visit to its properties in a format acceptable to the Respondent.

FINDINGS AS TO PROCEDURE

8. The Appellant invites the Tribunal to find that the Final Notice is invalid, because although dated 5 December 2019 it was not posted until 23 December, and reached the Appellant very shortly before the Appellant believed the period for appeal expired. The Respondent has not explained why the notice was not posted on 5 December.
9. The Tribunal finds that although the delay in posting was deplorable, the Final Notice was valid. The Appellant had 28 days from the date of service of the notice to lodge its appeal to the Tribunal. The appeal application was dated 31 December 2019.

THE FINANCIAL PENALTY

10. The Respondent has identified the Appellant as having medium culpability in relation to the offence, on the published ground: "Offence committed through act of omission which a person exercising reasonable care would not commit". Coming to this conclusion, the Respondent has considered that the Appellant has a number of let properties and should be aware of the licence conditions. Further, the Respondent notes that the Appellant chose not to attend an inspection of the Property with the Respondent's representatives on 10 April, although it is not clear whether the Appellant had any obligation to do so. Other factors taken into account were
 - a) no evidence was produced that "routine inspections" were made at the Property
 - b) no-one representing the Appellant attended for a PACE interview arranged for 3 June 2019.
11. The Tribunal agrees that the Appellant's conduct merits a finding of medium culpability. However condition 5.6 does not state that "routine inspections" are required, and neither does the Respondent specify what form the record of inspections should take.
12. As to the level of harm, the Tribunal accepts the Respondent's finding that the risk of any adverse effect was "low".

- 13.** On reviewing its initial decision as to the level of penalty following representations and documents supplied by the Appellant, the Respondent decided against reducing the penalty, partly because there was no admission of guilt, and partly because copy rather than original documents had been provided. However there is no requirement in condition 5.6 that the licence holder produce original documents.
- 14.** The Respondent's published range of penalty for a finding of medium culpability and low harm is £3750 to £5250, and the Respondent has taken the middle of the range - £4500 – as its starting point. 10% was added for the fact that property management was the Appellant's only or main business. The Tribunal finds that in view of a lack of clarity around licence condition 5.6 the appropriate starting point in this instance is £3750, increasing to £4125 after the 10% addition. This sum was reduced by the Respondent by 25% for the fact that the Appellant had no recent relevant convictions or cautions. Applying the same % reduction, the Tribunal finds that the appropriate penalty is £3094.

A M Davies
Tribunal Judge
10 September 2020