



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

Case Reference : **MAN/00DA/HNA/2021/0127**

Property : **4 Bude Road Beeston Leeds LS11 6EQ**

Applicant : **Mr. Habibur Habib**

Representative

Respondent : **Leeds City Council**

Representative : **Brynmores Adams, Counsel**

Type of Application : **Appeal against a Financial Penalty s249A and Schedule 13 A Housing Act 2004**

Tribunal Members : **Mr John Murray LLB
Mr. Ian James**

Date of Decision : **30 September 2022**

DETERMINATION

ORDER

1. The appeal is dismissed and the Respondent's notice is upheld.

INTRODUCTION

2. The Applicant submitted an application dated 10th October 2021 to the Tribunal to appeal a decision made by the Respondent to impose a financial penalty made by final notice dated 14 September 2021 under s249A Housing Act 2004 ("the Act").
3. The Tribunal made directions on 21 April 2022 for the parties to prepare for the appeal hearing.
4. The Tribunal convened to determine the application by way of video hearing with the consent of the parties.
5. The Applicant appeared in person. The Respondent was represented by Mr. Brynmore Adams of, Counsel; officer Ms. Jenna Koskivuori and Principal Legal Officer Ms. Hayley Lloyd-Henry were also in attendance.

LEGISLATION

6. The Tribunal has powers to determine appeals against decisions made under s249A of the Act contained in Schedule 13.
7. S249A reads as follows:

Financial penalties for certain housing offences in England

(1)The 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.

(2)In this section “relevant housing offence” means an offence under—

- (a)section 30 (failure to comply with improvement notice),
- (b)section 72 (licensing of HMOs),

- (c) section 95 (licensing of houses under Part 3),
- (d) section 139(7) (failure to comply with overcrowding notice), or
- (e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

8. Schedule 13 reads as follows:

Financial penalties under section 249A

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2(1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

4(1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
- (b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

10(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

- (a) is to be a re-hearing of the local housing authority's decision, but
- (b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of financial penalty

11(1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a) signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

SUBMISSIONS FOR THE APPLICANT

9. The Applicant set out the following grounds in his application:

(a) That due to a change in personal circumstances the house became empty. It was then let out for a short period of time. However the family living there came from Italy. It was agreed they would return after the short stay. It is clear they had alternatives in mind they got council involved wishing to get council housing etc.

(b) Having no or poor knowledge in relation to property rental we were not aware at all about the selective licensing scheme, it was privately rented out for much below the market rent without any deposit or references

- (c) Had we known about the scheme, potential fine or consequences we would either avoid renting or obtain a licence prior to renting the property out. It has to be noted it was not deliberate or intentional not to obtain a licence, simply house would not be used for rental purposes.
- (d) In order to comply with the authority even though the house will be occupied by ourselves, we have already applied for the licence to avoid any future issues.
- (e) Given the level of fine imposed for the breach is too high, this has to be considered by the Authority and the Tribunal.

10. In his written submissions in accordance with directions, the Applicant asked the Tribunal to cancel or lower the civil penalty. He stated that the property had been subject to his bankruptcy (30th January 2018) and had been bought by his niece from the Trustee in Bankruptcy on 11th March 2021. Another property he owned, 21 Clovelly Avenue Leeds LS11 6EB was similarly brought by his brother in law.

11. He had tried to get the tenant to leave. The Council had intervened and told him he could not do so whilst an Improvement Notice was in force. The Applicant stated he considered matters could have been discussed and established in an informal manner. He said that the property had a mortgage and it was sold to family members, and he remained as the mortgagor as it was "cheaper and easier". He said he lived at 21 Clovelly Avenue with his nephew and his friends. He had owned this too, but it was transferred from the Trustee in Bankruptcy to his brother in law. He said that the Respondent had tried to justify the fine and build a more compelling case against him that he was an individual with no regard for policy and the rule of law, by bringing in other property (21 Clovelly Avenue). He said that the officer's approach was not to help and support him but to punish him with financial and practical hardship.

12. He stated he would be handing over the management and had no means of paying the fine, and no one to raise the funds from either.

13. On questioning by the Tribunal, the Applicant was not clear about 21 Clovelly Avenue. When asked about the name on the Council Tax register, he said a friend of his nephew had registered; but he said they were not paying rent.

14. He said that 21 Clovelly Avenue had been owned by him before he went bankrupt; he seemed to be living between that property, his sister's at number 17, and 4 Bude Road. He said that he was not renting 21 Clovelly Avenue out, but he was paying the mortgage.

15. A third party was named on the council tax register for 21 Clovelly Avenue. The Applicant was vague about who this person was, he thought possibly his nephew's friend. When questioned by the Tribunal how this person could be registered for council tax without ownership or a tenancy agreement, the Applicant did not have a satisfactory answer.
16. The Applicant confirmed to the Tribunal that he accepted the offence was made out, but that the fine should be reduced, or cancelled, on account of his lack of intention, and his conduct.

SUBMISSIONS FOR THE RESPONDENT

17. The Respondent made the following submissions:
18. The Respondent had served a notice of intent to impose a monetary penalty on the Applicant on the 20 July 2021.
19. The Respondent had set out their methodology and reasoning on their final notice dated 14 September 2021.
20. The Respondent was satisfied, beyond reasonable doubt, that the Applicant had committed a relevant housing offence under s249A of the Act, the Applicant being a person having control of, or managing a house which is required to be licensed under Part 3 of the Act (selective licensing) but was not so licensed, and offence under s95(1) of the Act.
21. The Respondent was entitled to make written representations about the intention to impose a financial penalty within 28 days but failed to do so.
22. The Respondent considered the statutory guidance under Schedule 9 of the Housing and Planning Act 2016, their own enforcement policy and civil penalty policy and decided to invoke a financial penalty rather than a prosecution.
23. The Respondent filed a schedule of issues and positions responding to each ground of appeal.
 - (a) *That due to a change in personal circumstances the house became empty. It was then let out for a short period of time. However the family living there came from Italy. It was agreed they would return after the short stay. It is clear they had alternatives in mind they got council involved wishing to get council housing etc.*

The Respondent stated that the Applicant had admitted the Property was occupied, and the length of the tenancy was irrelevant. The Property had been let

on an assured shorthold tenancy for an initial term of six months, and a statutory periodic tenancy would have arisen at the end of the fixed term and the Applicant would have had to serve two months' notice at the end of the term.

The Applicant had been made bankrupt on 30 January 2018, but rented the property from September of 2020. On 11 March 2021 the Applicant's Trustee in Bankruptcy sold the Property to Shefa Begum, the Applicant's niece, for £500. The Property continued to be let and managed by the Applicant. He admitted that he was managing the Property on 24 May 2021.

(b) Having no or poor knowledge in relation to property rental we were not aware at all about the selective licensing scheme, it was privately rented out for much below the market rent without any deposit or references

The Tenancy Agreement showed the rent was £450 per month. No evidence was provided by the Applicant that this was below market rent, which the Respondent disputed. Rent level was immaterial. The Applicant admitted that he was manager of the Property on 24 May 2021 and was still the manager on the 11 October 2021 when a licence application was made.

(c) Had we known about the scheme, potential fine or consequences we would either avoid renting or obtain a licence prior to renting the property out. It has to be noted it was not deliberate or intentional not to obtain a licence, simply house would not be used for rental purposes.

Ignorance of the law is no defence; the offence is a strict liability offence. The Respondent had extensively consulted and publicised the selective licensing scheme before it was introduced in January 2020, and the tenancy began only a few months later.

(d) In order to comply with the authority even though the house will be occupied by ourselves, we have already applied for the licence to avoid any future issues.

Although this ensured that the offence did not continue, it did not absolve the Applicant for the unlicensed period. The penalty was imposed on 14 September 2021; the application for a licence was not made until 11 October 2021, after the penalty had been imposed.

(e) Given the level of fine imposed for the breach is too high, this has to be considered by the Authority and the Tribunal.

The level of fine was considered appropriate, having been calculated in accordance with the Respondent's Civil Penalty Policy. The penalty of £2,500 repre-

sented a low level of culpability and harm in the policy. The Applicant's culpability was considered low and the level of harm or potential harm caused by the offence was also considered low.

The Applicant had had a financial gain – the cost of the licence (£280) the costs of the investigation (£280) and 10 months of rental income (£4500). The Applicant had adduced no evidence of his ability to pay, and he would have continued to receive rental income until he stopped managing in June 2022.

DETERMINATION

24. The Tribunal determines an appeal against a financial penalty under s249A of the Act by way of a re-hearing of the Respondent's decision to impose the penalty, and /or the amount of the penalty. The Tribunal may have regard to matters of which the Respondent was not previously aware.
25. The Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amounted to a relevant housing offence. The Property was in a selective licensing area, and did not have a licence at a time the Applicant was managing it's rental. The Applicant admitted to these facts and accepted that an offence had been committed. His appeal was based on the premise that he was unaware of the law, the Respondent could have dealt with matters differently, he had since applied for a licence, and co-operated with the Respondent.
26. The Tribunal was satisfied on the evidence before it that the Respondent had complied with the necessary requirements contained in s249A and paragraphs 1 to 8 of Schedule 13A of the Act.
27. The Tribunal considered that it was appropriate to issue a fine, in all the circumstances, as a consequence for the offence, and a deterrent for others. The Applicant's ignorance of the law was no defence. The letting of residential premises is subject to much regulation and legal requirement, and those who choose to operate in this field have a responsibility to tenants, and to acquaint themselves with their legal obligations.
28. In terms of whether the fine was set at the correct level, the Tribunal must consider relevant factors, including the offender's means, the severity of the offence, the culpability and track record of the offender, the harm (if any) caused to a tenant of the premises, the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or the need to remove any financial benefit the offender may have obtained as a result of committing the offence.
29. It is open to the Tribunal to take into account facts not known to the Respondent and indeed possible to impose a higher fine .

30. In his evidence, and at the hearing, the Applicant admitted that he had another property in the licensing area - 21 Clovelly Avenue Leeds LS11 6EB. When setting the fine, the Respondent was unaware of this property, which might have led to a higher fine. The Applicant stated that "others" were living at 21 Clovelly Avenue. His answers to questions were evasive as to why he would pay a mortgage for others to reside in a property he owned, and why the occupants might pay council tax but not rent.
31. The Tribunal noted that the same tenant was still living in 4 Bude Road, although the Applicant maintained he was not managing it. He had carried out the necessary works required by the Respondent over time.
32. The Tribunal determines that the fine imposed by the Respondent was set at an appropriate level given all the circumstances taken into account by the Respondent, and the evidence given by the Applicant at the hearing, and there is no grounds to interfere with it. It was at the lower end of the scale, given the Applicant's previous non-offending history, the relatively low harm to the tenant, the financial enrichment to the Applicant, and the necessary deterrent factors to others.
33. The Applicant offered no information let alone evidence as to his financial circumstances. The Applicant was clearly an intelligent man, who had been able to research and understand the reasoning behind the selective licensing system, and given he made reference to his financial circumstances, ought to have been perfectly capable of producing information/evidence to back up his claims he was unable to pay the fine.
34. The Respondent's evidence was that had they known he owned another property in the selective licensing scheme they would have taken that into account and that would or could have led to a higher fine being imposed. The Tribunal considered the evidence before it on the point, and whilst the Applicant was vague in his response to questioning, there was no evidence he received rental income from it, and therefore no reason for the Tribunal to impose a higher fine.
35. For these reasons, the appeal is dismissed, and the financial penalty remains the same.

J N Murray
Tribunal Judge

30 September 2022