



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

Case Reference : **MAN/30UD/HNA/2019/0039**

Property : **12 Penistone Street, Burnley BB12 0PS**

Applicant : **PATRICK MURPHY**

Respondent : **BURNLEY BOROUGH COUNCIL**

Type of Application : **Appeal against penalty:
s249(a) Housing Act 2004**

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

Date of Determination : **25 July 2019**

Date of Decision : **8 August 2019**

DECISION

DECISION: The Respondent's Final Notice to the Applicant dated 18 January 2019 is varied by substituting the sum of £5000 for the penalty charge of £11000.

REASONS

THE FACTS

1. The Applicant lives in Burnley and owns 12 Penistone Street in the same town ("the Property"). The Property was bought originally as accommodation for the Applicant's son while he was at college, and was subsequently occupied by friends who were not charged rent.
2. The Applicant does not have other let properties, and does not employ a managing agent.
3. In 2014 the Respondent Council designated a Selective Licensing Area, which included the Property. Landlords of housing within a Selective Licensing Area are required to apply for a licence, the purpose of which is to ensure that leased housing is maintained to an acceptable standard.
4. From 22 July 2018 the Property was occupied by a tenant who appears to have signed a tenancy agreement stating that the rent was £200 per month. The Applicant says that the rent was low because he was trying to help his tenant, who was in financial difficulties. The tenant, however, applied for housing benefit and stated in his application that he was paying rent of £360 per month.
5. On becoming aware of the tenancy, the Respondent sent the Applicant a reminder to obtain a licence, and subsequently wrote to him with a request that he attend for interview. Receiving no reply, a notice of intent was served, warning that the intended penalty was £13,500. No representations were received from the Applicant and a final notice was issued. The penalty imposed in the final notice was £11,000.
6. The Applicant has appealed to the Tribunal for a re-determination of the penalty he should pay.

THE STATUTORY POWERS

7. The Respondent's powers are contained in Schedule 13A to the Housing Act 2004. Failure to comply with the conditions contained in a licence for a property within a Selective Licensing Area is an offence. The Respondent must issue a Notice of Intent before the end of 6 months beginning on the date when the Respondent has evidence that an offence has been committed, or at any time when the offence is continuing. The Notice of Intent sets out the Respondent's intended penalty.

8. The landlord on whom a Notice of Intent is served may make representations within 28 days, and the Respondent must then decide whether to impose a financial penalty, and if so, decide on the amount.
9. A local housing authority has some discretion as to how to calculate financial penalties, but must consider whether the landlord's culpability is "high", "medium" or "low" and whether the harm (as defined) caused by the failure to obtain a licence is "high", "medium" or "low". A chart published by the housing authority sets out the resulting figures for the highest and lowest penalties appropriate to the level of blame and harm.
10. On receipt of a landlord's representations, the amount of penalty indicated in the Notice of Intent may be varied as seems appropriate to the housing authority. If he is dissatisfied, the landlord may apply to this tribunal for a review.

CALCULATION OF THE PENALTY

11. The Respondent assessed the Applicant's culpability as "high" with a "low" level of harm, and added an additional penalty for an aggravating factor, namely the Applicant's lack of co-operation with the licensing and interviewing process.
12. Applying the Respondent's discretion and based on its published penalty chart, the penalty was reduced from £13,500 to £11,000.

THE DECISION

13. The Applicant says that he did not receive the Respondent's letters warning him to obtain a licence, asking him to attend for interview, or advising him of the intended penalty. He says that this is because of a complicated house numbering system in his street which, together with some vacant properties, results in post being mis-delivered. However the Applicant is self-employed and should therefore have measures in place to ensure that he receives his post. The Respondent has produced certificates of posting completed by its staff, and appears to have taken all reasonable steps to inform the Applicant of the process.
14. Nevertheless the Tribunal considers that the penalty is excessive because
 - (a) the Property was let for a relatively short time before a licence was issued
 - (b) there were no recorded defects or wants of repair at the Property
 - (c) this was the Applicant's only let property and his bad example was unlikely to influence other landlords
 - (d) for the same reason a high penalty is unlikely to have much impact as a deterrent

- (e) failure to attend for interview or to complete the Respondent's forms are not in themselves be aggravating factors
 - (f) the penalty is high compared to the value of the Property, which is under £30,000.
15. The Tribunal applied a reduction for the Applicant's previous good record and the mitigating factors set out in his representations, resulting in a penalty of £5000. The Final Notice was varied accordingly.

A Davies
Tribunal Judge
8 August 2019