



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

Case Reference : **MAN/00BR/HNB/2019/0012**

Property : **106 STATION ROAD, ECCLES M30 0GA**

Applicant : **DARREN DAVIES**

Respondent : **SALFORD CITY 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 £3000 for the penalty charge of £5000.

REASONS

THE FACTS

1. The Applicant lives in Urmston, Manchester, and owns 106 Station Road, Eccles ("the Property"). The Property is let at a rent of £450 per month. The Applicant does not have other let properties, and does not employ a managing agent.
2. The Respondent Council had designated a Selective Licensing Area, which included the subject property. Landlords of housing within a Selective Licensing Area are required to apply for a licence, which is issued subject to compliance with conditions, including a condition that a gas safety certificate is obtained and supplied to the Council annually.
3. The Applicant obtained a gas safety certificate and lodged it with the council in January 2017. He failed to have the gas installations checked again until July 2018, and failed to supply a copy of the certificate to the Respondent until January 2019. Accordingly a penalty of £7000 was imposed by the Respondent, who reduced it to £5000 on receipt of the gas safety certificate from the Applicant.
4. The Applicant has appealed to the Tribunal for a re-determination of the penalty he should pay.

THE STATUTORY POWERS

5. 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, and in this case the figure proposed by the Respondent was £7000.
6. 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.
7. 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.

8. 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

9. The Respondent assessed the culpability of the Applicant as "medium", and the harm also as "low". According to the Respondent's published penalty chart, this gave a penalty level of between £5000 and £9999. Initially a fine of £7000 was deemed appropriate but following receipt of the gas safety certificate from the Applicant, the Respondent reduced the fine to £5000.

THE DECISION

10. The Tribunal finds that the Applicant was aware of the licence condition and his obligations, because he had complied with them the previous year. Although he may have been distracted by the birth of his daughter and the illness and death of his father, he received a number of warning letters from the Respondent. As a self employed plasterer he should be expected to manage his correspondence effectively. The Tribunal agrees with the assessment of culpability as "medium".
11. The harm done as a result of the offence has properly been assessed at "low" since the tenants suffered no loss, and the Applicant had only one licensable property. The Applicant has produced evidence that the plumber who carried out the work did not seem to realise the importance of supplying a certificate. The Applicant chased him for the document for a number of months before it was finally provided.
12. The Applicant has taken steps to ensure that similar delays do not happen in future years. As he owns only one house, his bad example is unlikely to influence other landlords. Because his failure to send the gas safety certificate to the Respondent was caused by the contractor's delays, it appears right to the Tribunal to impose a penalty that reflects the Applicant's failure to obtain a licence between January and July 2018.
13. 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 £3000, which is just under 7 months' rent. The Final Notice was varied accordingly.

A Davies
Tribunal Judge
8 August 2019