FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CE/HNA/2019/0014**
Property	**:**	**49 Staveley Street, Edlington Doncaster, DN12 1BW**
Applicant	**:**	**Abdul Munir**
Respondent	**:**	**Doncaster Metropolitan Borough Council**
Type of Application	**:**	**Appeal against financial penalty – Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Judge J.M. Going** **W. Reynolds MRICS**
Date of Deliberations	**:**	**13 August 2019**
Date of Decision	**:**	

DECISION

The Decision and Order

The Final Notice is to be varied by amending the penalty charge to £475.

Preliminary

1. The Applicant appealed on 21st January 2019 to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under paragraph 10 of Schedule 13A of the Housing Act 2004 ("the Act") against the Respondent's issue on 11th January 2019 of a Penalty Charge Notice ("the Final Notice") requiring the Applicant to pay a penalty charge of £1615, the Respondent having been satisfied that the Applicant had failed to apply for a licence for the property within what had been designated as a Selective Licensing Area.

2. The Tribunal gave Directions.

3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other. Neither requested a hearing.

4. The Tribunal made its deliberations on 13th August 2019.

The Property

5. The Tribunal did not inspect the property but understands it is to be a house in tenanted residential occupation.

Facts and Submissions

6. None of the following matters have been disputed, except where specifically referred to.

7. According to documents obtained from the Land Registry the Applicant became the freehold owner of the property on 14th January 2016.

8. The property is in Edlington Doncaster, whereas the Applicant's address is in Halifax approximately 44 miles away by road.

9. On 7th November 2017 the Respondent in exercise of its powers under the 2004 Act designated part of Edlington as a Selective Licence area with effect from 7th February 2018. To better advertise the new designation and the consequent need for relevant persons to apply for a licence, the Respondent posted notifications on its website, informed various letting agents, and sent out various letters to known landlords.

10. Such letters included those sent to a previous owner of the property in January, April, and July 2018. Because there was no response, the Respondent then carried out a Land Registry search and discovered that the Council Tax records that it had been working from were out of date.

11. The Respondent states that it then sent out further letters on 14th August 2018 including one to the Applicant at his home address. The Applicant states that he has no record of receiving that letter.

12. Having received no response the Respondent made the decision to issue a financial penalty of £1900, and on 7th November 2018 sent a formal Notice of Intent to the Applicant at his home address stating that any representations that he might wish to make must be made in writing and received on or before 7th December 2018.

13. The Applicant responded with a letter dated 13th November 2018 stating that "I would like to make it clear that I have not received any communication from Doncaster Metropolitan Borough Council or anyone else in relation to obtaining a Selective Licence. Until I received your letter, I did not even know what a Selective Licence was. I am willing to put this licence in place, if you would advise me on how to do this. I would appreciate it if you could excuse me this fine and I am very pleased with the Council for making efforts in making Staveley Street a more pleasant place to live."

14. The Respondent replied with a letter dated 26th November 2018 advising that the procedure for applying for the appropriate licence was set out on its website and as to the urgency of the matter.

15. The Respondent avers that the Applicant telephoned the Respondent on 29th November 2018 requesting a call back because of having difficulty applying for the licence, and that the call was returned on the same day, further advice given and confirmation also given that he should call again if further assistance was required.

16. The Respondent received the Applicant's application for a selective licence on 17th December 2018.

17. The Respondent reviewed the previously proposed financial penalty on 19th of December 2018 and advised the Applicant of a proposed reduction in the fine, because steps had been taken to obtain the licence and the Applicant was deemed to have co-operated and admitted responsibility.

18. The Final Notice was issued and dated 11th January 2019 and referred to the penalty charge being reduced to £1615**.** It was further confirmed that a 33% discount could be applied if payment was made within 14 days reducing it to £1082.05. The Final Notice contained advice as to the Applicant's right to appeal to the Tribunal.

19. On 14th January 2019 the Respondent issued a draft licence and on 6th March 2019 the final licence was issued.

20. The Respondent in its statement of case argued that it has been reasonable in its actions and acted in accordance with its Enforcement Policy.

21. The Applicant has argued that the fine is not justified because of not being treated equally with, and given the same amount of time to comply as, those landlords who were successfully contacted with initial letters.

The Statutory Framework and Guidance

22. Section 249A(1) of the 2004 Act (inserted by the Housing and Planning Act 2016) states that 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…"

23. A list of relevant housing offences is set out in Section 249A(2),which includes the offence, under section 95(1) of 2004 Act, of a person having control or managing a house which is required to be licensed under part 3 of the 2004 Act that is not licensed. Section 95(4) states that "it is a defence that he had a reasonable excuse".

24. Section 249A(3) confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

25. The procedural requirements are set out in Schedule 13A of the 2004 Act.

26. Before imposing a penalty the local housing authority must issue a "Notice of Intent" which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

27. Unless the conduct which the penalty relates (which can include a failure to act) is continuing the notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

28. A person given notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the notice was given. (Para 4)

29. If the housing authority then decides to impose a financial penalty it must give a "Final Notice" imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final notice was given. (Paras 6 and 7)

30. The final notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,

- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the notice. (Para 8)

31. The local housing authority in exercising its functions under Schedule 13A or section 249A of the 2004 Act must have regard to any guidance given by the Secretary of State.(Para 12)

32. Such guidance ("the Guidance") was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled "Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

33. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

34. The Guidance states "Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the… penalty is set at an appropriate level:

- severity of the offence,…
- culpability and track record of the offender,…
- the harm caused to the tenant,…
- punishment of the offender,…
- deter the offender from repeating the offence,….
- deter others from committing similar offences,….
- remove any financial benefit the offender may have obtained as a result of committing the offence…

35. The Respondent has documented its own "Enforcement policy – Private Sector Housing" ("the Respondent's policy") and included a copy of that in the papers. The Tribunal makes further reference to the Respondent's policy later in these reasons.

36. A person receiving a Final Notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the 2004 Act).

37. The final notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

38. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

39. The Tribunal may confirm, vary or cancel the Final Notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

The Tribunal's Reasons and Conclusions

40. There are three substantive issues for the Tribunal to address: –

- whether the Tribunal is satisfied beyond reasonable doubt that the Applicant has committed a "relevant housing offence" in respect of the property,
- whether the authority has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and if so has been set at the appropriate level.

Dealing with each of these issues in turn:-

41. The Applicant readily admitted that he did not have a licence for the property at times when it should have been licensed and the Tribunal finds that he did not have a reasonable excuse for this failure. The Tribunal has taken into account that initial letters attempting to warn of the obligation to apply for a licence were incorrectly addressed but is not satisfied that the Applicant's ignorance of the need for a licence is a reasonable excuse. The Applicant as a landlord has a responsibility to ensure that relevant legislation is complied with. The Applicant was over 10 months late in applying for the necessary licence. The Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to an offence under section 95(1).

42. The Tribunal carefully reviewed the actions taken by the Respondent and the timing and information set out in its different notices and concluded that it has satisfied the necessary procedural requirements to be able to impose a financial penalty.

43. The Tribunal then considered the appropriateness and amount of a penalty, reminding itself when so doing that it is not simply reviewing whether the Respondent's decisions were reasonable but conducting a re-hearing and making its own determination.

44. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence. It considered whether rather than impose a financial penalty a caution would been sufficient, but decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.

45. The Tribunal then went on to consider the amount of that penalty. In so doing it has had particular regard to the 7 factors specified in the Guidance referred to in paragraph 34 above.

46. Although not bound by it, the Tribunal has reviewed the Respondent's policy it and found that it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. As such the Tribunal is content to use it as a tool to assist its own decision making.

47. The Respondent's policy is itself based on factors specified in the Guidance, and the Respondent went through a checklist before calculating the financial penalty of £1900 referred to in the 7th November 2018 Notice of Intent. In assessing culpability and harm it concluded that there was a low harm rating and a medium culpability rating. This resulted in an assessment that the penalty should be in the 2nd of 5 penalty level bands which it had set as follows: –

Penalty level 1	£500-£2,000.
Penalty level 2	£2,000-£4,000.
Penalty level 3	£4,000-£6,000.
Penalty level 4	£6,000-£15,000.
Penalty level 5	£15,000-£30,000.

Taking into account that the offence related to a single property owner with limited financial income from property rentals it was decided that the starting point of its calculation should be at the bottom of penalty band 2 i.e. £2000. The Respondent then decided that, as part of the mitigating factors and because there were no previous convictions a 5% deduction should be applied resulting in an amended figure of £1900.

48. After receiving the Applicant's representations in response to the Notice of Intent the Respondent reviewed its calculation and applied a 5% discount because the Applicant accepted responsibility and a further 10% discount because of taking action to comply by applying for a licence. This resulted in the sum of £1615 referred to in the Final Notice. A one third reduction payment option was also offered, if payment was made early and within 14 days.

49. The Tribunal in making its own decision and applying the criteria in the Guidance previously referred to above agrees with the assessment of harm as low, but finds that severity and culpability are also low. There is no assertion that the Applicant is other than of good character, and with an unblemished record. It is noted that the Respondent issued the licence quickly when the application had been made. The offence appears to have been committed accidentally rather than by being motivated by any financial gain, and indeed the Applicant has voiced his support for the designation part of the Edlington, as a Selective Licence Area as a way of trying to improve the housing stock.

50. It is also noted that, whilst the requirement to obtain a licence was published on its website, the Respondent initially relied on records that were inaccurate and that direct notification to the Applicant was delayed as a consequence. Whilst not a reasonable excuse in respect of committing the offence, the Tribunal nonetheless has sympathy with a landlord, living at considerable distance, being unaware of new designations relating to the area within which a property is situated.

51. The importance of a failure to obtain a licence should not however be understated. The Tribunal understands and agrees with the Respondent that an unlicensed property undermines its regulatory role and poses a potential for harm. As referred to in the Guidance there is the need to consider deterring an offender from repeating the offence and deterring others from committing similar offences.

52. The Tribunal has made its own calculation of the appropriate amount of the penalty as follows:

53. Adopting the matrix in the Respondent's policy, and having found the Applicant's culpability to be low, the Tribunal's starting point is penalty band 1, ie between £500 - £2000. The offence does not appear to have had any direct impact on housing standards, adversely affected any tenant, or contributed to any direct gain for the Applicant. He also appears to be a person of good character. Taking all these considerations into account the Tribunal sees no reason to set its starting point other than at the lowest figure in the band ie £500. The Tribunal agrees with the Respondents analysis that there are no aggravating factors. It also finds that in mitigation, and because the Tribunal accepts that the Applicant, through no fault of his own, did not receive as much direct warning of the new designation as some other private landlords, it is appropriate to reduce that figure by 5%.

54. By these calculations, the Tribunal has concluded that the appropriate financial penalty should be £475 and that this is just and proportionate in all the circumstances.

Signed: Judge J.M. Going
Dated: