FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/HNB/2019/0015**
Property	**:**	**17 Elloway Road, Liverpool L24 4SB**
Applicant	**:**	**Anthony Radjenovic**
Respondent	**:**	**Liverpool City Council**
Type of Application	**:**	**Appeal against financial penalty – Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Judge J.M. Going** **I.R. Harris M.B.E FRICS**
Date of Deliberations	**:**	**25th February 2020**
Date of Decision	**:**	**19 March 2020**

DECISION

The Decision and Order

The Final Notice is to be varied by amending the penalty charge to £1800.

Preliminary

1. The Applicant ("Mr Radjenovic") by an Aplication dated 20th June 2019 appealed 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 ("the Council")'s issue on 16th May 2019 of a Penalty Charge Notice ("the Final Notice") requiring Mr Radjenovic to pay a penalty charge of £2531.25, the Council having been satisfied that Mr Radjenovic 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 25th February 2020.

The Property

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

Facts

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

7. Zelko Radjenovic, Mr Radjenovic's father, became the freehold owner of the property on 15th October 2004.

8. The property was tenanted throughout the periods in question and apparently from as long ago as 2008 by the same tenant.

9. Mr Radjenovic received rent paid in the form of housing benefit direct into his bank account on behalf of his father who was then living abroad.

10. In October 2014 the Council in exercise of its powers under the 2004 Act designated the whole of Liverpool as a Selective Licence area with effect from 1st April 2015, meaning that a licence was required for each privately rented dwelling in the city, unless it fell within a statutory exemption.

The Council's Submissions

11. The Council's evidence is that the introduction of licensing was widely advertised and publicised through various means including notes contained in

Council Tax demands, and that it has subsequently issued over 48,000 licences to more than 8,000 individual licence holders.

12. Copies of internal emails between Council officers were produced to show that Mr Radjenovic was included in a list of known landlords in receipt of housing benefit to whom letters were sent in February 2015 advising of the Selective Licensing scheme. Mr Radjenovic has made no reference to that letter, stating the first letter that he received was that dated 23rd October 2018 referred to in paragraph 15 below.

13. In February 2018 the Council became aware that the property was still privately rented but not licensed, and has provided a copy of a letter sent to Mr Radjenovic at his home address on 27th February 2018 explaining that it was a criminal offence under the Act not to have a licence stating that "it is vital you submit an application for a licence immediately". Mr Radjenovic states that he has no record of receiving that letter.

14. Having received no response, the Council's evidence is that in April 2018 it checked the ownership of the property at the Land Registry, and in June checked its databases which showed that Mr Radjenovic was still in receipt of housing benefit for the property. It also stated that it sent a further letter to Mr Radjenovic's address, addressed to his father, on 19th June 2018, and that Mr Radjenovic later acknowledged that he had authority to open his father's mail, but that he was unaware of the letter.

15. On 23rd October 2018 the Council sent its next letter to Mr Radjenovic inviting him to attend an interview its offices to be conducted in accordance with the requirements of the Police and Criminal Evidence Act 1984 ("Pace") on 31st October 2018. A further letter was sent on 31st October 2018 stating Mr Radjenovic had failed to attend the interview and had not contacted the Council to attempt to rearrange it.

16. Mr Radjenovic submitted his application for a Licence on 8th November 2018, which was granted by the Council on 2nd January 2019.

17. A Pace interview took place on 8th January 2019. The Council's evidence is that Mr Radjenovic "admitted guilt in respect of the… offence but tried to distance himself from responsibility of managing this effectively by claiming he had not received letters from the authority advising of the requirement to licence and that Liverpool Council should have made more of an effort to contact him".

18. The Council, following a case conference between various officers, made the decision to issue a financial penalty of £2805, and on 25th February 2019 sent its formal Notice of Intent to Mr Radjenovic at his home address.

19. Mr Radjenovic responded with a letter dated setting out his submissions as referred to below.

20. The Council reviewed the previously proposed financial penalty but did not agree that Mr Radjenovic's submissions justified the reduction that he had

offered. The Council did however decide to alter its calculations having noted what it regarded as mathematical errors. The Council also considered on reflection that a further mitigation should be applied and that there should also be a greater percentage reduction for the early admission of guilt. As a consequence the figure of £2850 which had been referred to in the Notice of Intent was in the Final Notice reduced to a figure of £2531.25.

21. The Council included with the Final Notice copies of the checklist/record that it had completed in February showing its initial calculation, and a further checklist/record completed in April showing the calculation the revised figure. The Final Notice contained advice as to Mr Radjenovic's right to appeal to the Tribunal.

22. The Council in its statement of case argued that it was reasonable in its actions, acted in accordance with its Enforcement and Civil Penalties Policies, and that the amount of the penalty is reasonable, appropriate, and proportionate in all the circumstances.

Mr Radjenovic's Submissions

23. Mr Radjenovic argued in his response to the Notice of Intent, the Application, and in his submissions to the Tribunal that the amount of the penalty is disproportionately high, having regard to the circumstances of the case.

24. He stated repeatedly that he did not receive the Council's letter of 27th of February 2018, complained that there was an 8 month delay before the Council's next letter and that it was unjustifiable that his first notice that the property needed to be licensed was a letter calling him to a Pace interview. He confirmed that the reason that he did not immediately respond to that letter was because he was away when the letter arrived. He stated that the interview set down for 31st October 2018 was never agreed upon nor intentionally missed.

25. Mr Radjenovic disputed that the Council had not been given sufficient information to agree with his contention that the imposition and amount of the penalty would cause financial hardship, arguing that he had given the Council all the evidence that it requested, and that its interpretation that his bank statements did not show that he was on a low income did not properly take into account his occupation is as a self-employed tradesman. He explained that a number of the credits shown on his statements related to payments received from creditors including for various working materials.

26. He argued that the Council had been wrong to classify the offence as having a medium rather than a low culpability, pointing out that he was not the landlord of the property, acted simply as a go-between the Council and his father who was abroad, that the failure to licence property was a minor and an isolated one-off incident, that he had little or no warning of the risks/circumstances of the offence, that he gained no personal financial benefit, having passed on all the rent to his father, and that as soon as the necessity for the property to be licensed was communicated to his father, the

licence was promptly applied for. Mr Radjenovic confirmed that he was fully compliant with all aspects of the investigation and duly admitted the offence when he and his father became aware of the scheme. He also emphasised that there was no disrepair to the property, and that the long-standing tenant who had been at the property for more than 10 years had a good rapport with his father as the landlord. He also confirmed that he had initially offered the Council £1000, being the maximum that he could afford.

The Statutory Framework and Guidance

27. 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…"

28. 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".

29. Section 263 (1) states "person having control" means… the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee for another person)…" and "(2)… "rack-rent" means a rent which is not less than two thirds of the full net annual value of the premises".

30. 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.

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

32. 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)

33. 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)

34. 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)

35. 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)

36. 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)

37. 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)

38. 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".

39. 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.

40. 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…

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

42. 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).

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

44. 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))

45. 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

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

- whether the Tribunal is satisfied beyond reasonable doubt that Mr Radjenovic has committed a "relevant housing offence" in respect of the property,
- whether the Council 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:-

47. Mr Radjenovic 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 Mr Radjenovic's statement that he did not receive, or has no recollection of, initial letters attempting to warn of the obligation to apply for a licence but is not satisfied that any ignorance of the need for a licence is a reasonable excuse. The licensing requirement covered the whole city, and would or should have been well known to all those involved in private residential letting particularly as time went on. Mr Radjenovic as the person having control of the property has a responsibility to ensure that relevant legislation is complied with. He was over 3½ years late in applying for the necessary licence and the Tribunal is satisfied, beyond reasonable doubt, that his conduct amounts to an offence under section 95(1).

48. The Tribunal has carefully reviewed the actions taken by the Council 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.

49. The Tribunal then considered the appropriateness and amount of a penalty, reminding itself when so doing that it is not simply reviewing whether

the Council 's decisions were reasonable but conducting a re-hearing and making its own determination.

50. 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. The Tribunal has had careful regard to Mr Radjenovic's representations as to the effect of the fine being a criminal conviction but notes that it is an alternative to criminal prosecution.

51. 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 40 above.

52. Whilst not bound by it, the Tribunal has reviewed the Council's policy and found that broadly it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. The Tribunal accepts that the policy has come from a democratic process whereby the Council has sought to fulfil its statutory duty to provide a clear and rational basis for its determinations on a case-by-case basis. As such the Tribunal is content to use it as a tool to assist its own decision making, paying very close attention to the views expressed by the Council, to see if after making its own decision (in place of that made by the Council) the Tribunal agrees or disagrees with the Council's conclusions. In doing so it makes no criticism of the way in which the Council has approached the case, or the procedures which it has followed.

53. The Council's policy is itself based on the factors specified in the Guidance, and refers to the following matrix when deciding on the amount of a penalty :-

Low Culpability	Starting Point	Penalty Band Range
Low Harm	£1500	£750 – £2250
Medium Harm	£3000	£2250 – £3750
High Harm	£4500	£3750 – £5250
Medium Culpability		
Low Harm	£4500	£3750 – £5250
Medium Harm	£7500	£5250 – £12000
High Harm	£12000	£9000 – £15000
High Culpability		
Low Harm	£7500	£5250 – £12000
Medium Harm	£12000	£9000 – £15000
High Harm	£16500	£15000 – £20000
Very High Culpability		
Low Harm	£12000	£9000 – £15000
Medium Harm	£16500	£15000– £20000
High Harm	£25500	£20000– £30000

54. In calculating the sum referred to in the Final Notice, the Council determined that the offence came within its medium culpability and low harm ratings, which gave a starting point of £4500 on the matrix. A further 10%, or £450, was added to that figure as consequence of what was referred to as an aggravating factor of the offence having happened over a prolonged period. The Council then made the following reductions for mitigating factors being, 25% of the starting point, £1125, for there being no previous convictions cautions or unpaid civil penalties, a further 5% of the starting point i.e. £225 for it being a one-off event and not commercially motivated and a further 5% of the starting point, or £225, for a good record of maintaining the property and there being no history of disrepair. This resulted in a calculation of £4500 plus £450 i.e. £4950 less £1575 resulting in a net figure of £3375. The Council then applied a 25% reduction to the net figure (being £843.75) to take account of the early admission of guilt, which resulted in the amount included in the Final Notice of £2531.25.

55. The Tribunal in making its own decision and applying the criteria in the Guidance previously referred to above agreed with the Council's assessment of harm as low. The offence does not appear to have had any direct impact on housing standards, nor has it adversely affected the tenant. There has been no suggestion that there was any non-compliance with the conditions attached to the Licence.

56. However, the Tribunal also agreed with the Council's assessment of culpability as medium. Whilst there is no assertion that Mr Radjenovic has anything other than an unblemished record, and it is noted that the Council issued the licence quickly when the application had been made, that application was over 3½ years late. The Tribunal agrees with the Council's assessment that the offence was committed as a consequence of an omission which a person exercising reasonable care would not have committed.

57. Nor should the importance of a failure to obtain a licence be understated. The Tribunal understands and agrees with the Council 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.

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

59. Adopting the matrix in the Council 's policy, the Tribunal's starting point is (as was the Council's) £4500. The Tribunal then had regard to those factors which were listed in the Council's policy as examples of aggravating or mitigating factors, which should result in an upward or downward adjustment from the starting point. The Council's policy lists 13 aggravating factors and 10 mitigating factors. It does not appear to give any guidance as to what percentage weighting it would normally apply to the individual examples (other than to state that relevant recent previous convictions, cautions or civil penalties are likely to result in substantial upward adjustment) and the Tribunal accepts that there may well need to be flexibility to deal with each

matter fairly on a case-by-case basis. In this instance the Tribunal decided that it would be equitable to allow 10% for each of the applicable examples. There was only 1 relevant aggravating factor being that "the offending happened over a prolonged period of time". There were however also 5 mitigating factors being "no relevant unspent previous convictions/good character" "no relevant cautions within the last two years" "no relevant civil penalties within the last two years" "one-off event, not commercially motivated" and "good record of maintaining property". Offsetting the 1 aggravating factor against the 5 mitigating factors led the Tribunal to reduce its starting point figure by 40% (£1800) to £2700.

60. The Council's policy sets out as a further step in the process being a consideration of whether there should be a reduction for early admission of guilt and confirms that "the maximum level of reduction for an admission of guilt will be one-third of the penalty amount". In all the circumstances the Tribunal decided that the full one third reduction should be applied.

61. By these calculations, the Tribunal concluded that the appropriate financial penalty should be £1800.

62. The Tribunal in making its decision has had regard to the evidence produced and the submissions of the parties in respect of Mr Radjenovic's means as well as the rental income from the property, and has concluded that setting the financial penalty at £1800 is just and proportionate in all the circumstances.