



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

Case reference : **LON/00BE/HNA/2022/0027**

Property : **114 Sedgmoor Place, London SE5 7SE**

Applicant : **Mr. Mohammed Karim**

Representative : **In person**

Respondent : **London Borough of Southwark**

Representative : **Name Ms. Xenia Baldiviezo
(Ref: NOU/097497)**

Type of application : **Appeal against a financial penalty -
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal : **Judge Robert Latham**

Venue : **10 Alfred Place, London, WC1E 7LR**

Date of Decision : **8 December 2022**

DECISION

1. The Tribunal strikes out this application pursuant to rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is an appeal against a Financial Penalty imposed by the Respondent. The Respondent has withdrawn the Financial Penalty. The Tribunal therefore has no further jurisdiction in this matter.

2. The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Reasons for the Decision

1. On 14 April 2022, the London Borough of Southwark ("the Respondent") imposed a Financial Penalty on Mr Mohammed Karim ("the Appellant") in the sum of £1,000 pursuant to section 249A of the Housing Act 2004 ("the Act"). The Financial Penalty was imposed in respect of an alleged offence under section 72(2) of the Act. The Respondent alleged that the Applicant had an HMO licence permitting the property at 114 Sedgmoor Place, London, SE5 7SE to be occupied by 4 people in 3 households. The Respondent alleged that between 26 August 2021 and 6 September 2021, the Respondent permitted it to be occupied by at least 8 people in 5 households.
2. On 10 May 2022, the Applicant issued an appeal to this Tribunal against the Financial Penalty. He denied that he had committed an offence. On 26 July 2022, the Tribunal issued Directions for the determination of the appeal.
3. On 6 September 2022, the Respondent notified the Applicant and the Tribunal that it was withdrawing the Financial Penalty "following a review of the case and having sought advice from our legal team". No further explanation was provided for conceding the appeal. In an email to the Tribunal, the Respondent added: "In the circumstances, I trust the Applicant/Tribunal will withdraw this Appeal."
4. At this point, the Tribunal ceased to have any jurisdiction in respect of the appeal. The only remaining issues related to the costs of the application. The Applicant had paid an issue fee of £100. This is normally a "no costs jurisdiction". The limited circumstances in which a tribunal can make an award of costs is set out in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
5. The Tribunal would have expected the Applicant to apply to withdraw his application or for the parties to file a Consent Order disposing of the appeal. Neither of these have occurred.
6. On 27 October 2022, Judge N Carr reviewed the case papers. She indicated that she considered that the Tribunal had no further jurisdiction in this matter. However, she was willing to give the Applicant the opportunity to argue that there were any outstanding issues to be determined. She gave the following Directions:

 "(i) Mr Karim must no later than 4pm on 17 November 2022 to send to the Tribunal copied to the Respondent a clear and legally founded argument explaining how it is that he says the Tribunal has any jurisdiction regarding those additional matters set out in his submissions of 29 September 2022, in context that the only appeal before the Tribunal is in relation to a financial penalty notice that has been withdrawn. He must support his argument by caselaw and Tribunal Rules as appropriate, of which copies must be provided. He must also address the question of why the Respondent should pay his £100 application fee.

(ii) The Respondent may make any reply by no later than 4pm on 1 December 2022. It must also support its argument by caselaw and Tribunal Rules as appropriate, of which copies must be provided. It must also address the question of why it should not pay the Applicant's application fee.

(iii) On the basis of the paperwork provided, the Tribunal will consider whether it has any further jurisdiction in this case, and whether the Respondent should pay to the Applicant the application fee of £100, or may determine that the case should continue as already directed, in the week commencing 5 December 2022."

7. On 17 November 2022, the Applicant filed the following:

(i) A Skeleton Argument setting out a range of issues which the Applicant contends are still in dispute.

(ii) A Draft Consent Order. The Respondent has not agreed to the terms of the Order. It therefore has no relevance to these proceedings.

(iii) A Statement of Costs in the sum of £9,700. This includes a claim that he be reimbursed the tribunal fees of £100 which he has paid.

(iv) A statement from Mr Mahfuz Karim together with a number of exhibits.

8. The Respondent has not filed any material in response to the material filed by the Applicant.

9. The property at 114 Sedgmoor Place is on two floors. There is a kitchen and two living rooms on the ground floor and four rooms and a bathroom on the first floor. On 27 November 2016, the Applicant applied for an HMO licence under which four rooms were to be occupied as bedrooms. When the Respondent granted an HMO licence, only three rooms were approved for sleeping accommodation. Two rooms on the first floor were assessed as being too small to be occupied as sleeping accommodation. The two other rooms were assessed as being suitable for one person. One of the rooms on the ground floor was assessed as being suitable for two people in a single household. The Respondent therefore licenced the property for a maximum of four people in three separate households. The Tribunal has not been provided with a copy of the licence. It would seem that the Applicant did not appeal against this decision.

10. On 10 October 2017, the Applicant applied to the Respondent to vary the licence. He argued that the second living room on the ground floor should be licenced as a double bedroom. The property should therefore be licenced for a maximum of six people in four separate households. The Applicant contends that the Respondent has failed to lawfully determine this application. The Tribunal has had regard to the Respondent's letter, dated 4 October 2022. The Respondent note that the HMO licence has now expired and the property is now subject to a Temporary Exemption Notice.

11. This Tribunal has no jurisdiction to determine whether the Applicant had made a valid application for a variation or whether the Respondent had failed to make a lawful determination of such an application. Any remedy would need to be sought in the Administrative Court. If the HMO licence has now expired, it would be necessary for the Applicant to make a further application for a new licence.
12. The Applicant argues that the Respondent owed him a duty of care and that he has a claim against the Respondent in negligence. This Tribunal has no jurisdiction in respect of any claim for damages.
13. Finally, the Respondent seeks costs in the sum of £9,700 pursuant to "CPR Under Parts 44 to 47". The Civil Procedure Rules have no relevance to proceedings before this Tribunal. This Tribunal is rather governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
14. Rule 13(2) permits this Tribunal to make an order requiring a party to reimburse to any other party any tribunal fees that have been paid. The Applicant has paid tribunal fees of £100. The Respondent has withdrawn the Financial Penalty. The Applicant has therefore secured a successful outcome and is entitled to a reimbursement of the fees that he has paid.
15. This Tribunal is normally a "no costs jurisdiction". A successful applicant can only recover their costs under Rule 13(1)(b), if he can establish that the respondent acted "unreasonably" in "defending or conducting" the proceedings. The high threshold for establishing that a party has acted unreasonably was considered by the Upper Tribunal in *Willow Court Management Company v Alexander* [2016] UKUT 290 (LC). The Applicant has adduced no evidence to establish that the Respondent has acted unreasonably in defending or conducting this appeal. A decision to withdraw the Financial Penalty cannot be considered to be unreasonable. Any complaint in respect of the manner in which the Respondent has addressed any application for a variation of the HMO licence does not relate to the conduct of these proceedings.

Judge Robert Latham
8 December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made **by e-mail**

to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).