



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

Case Reference : **MAN/00CG/HNA/2022/0019**

Property : **Flat to the rear of 73 Chesterfield Road, Sheffield,
S8 0RN**

Applicants : **(1) SALEHA NAUREEN AKRAM
(2) USMA YOUNIS**

Respondent : **SHEFFIELD CITY COUNCIL**

Type of Application : **Appeal against Financial Penalty: Section 249A
and Schedule 13A, Housing Act 2004**

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

Date of Order : **10 February 2023**

ORDER

The Final Notices served by the Respondent on the Applicants and dated 31 March 2022 are confirmed.

REASONS

1. Since 1st November 2018 designated parts of Chesterfield Road, Sheffield have been within a Selective Licensing area.
2. On 11 October 2019 the Applicants bought a shop at 73 Chesterfield Road together with a flat situated to the rear of the building. The property is within the Selective Licensing area. The flat was occupied by a tenant, who had been resident there since about 2010. At the time of their purchase, the Applicants were not supplied with a copy of the tenant's Tenancy Agreement. His rent was paid by social services in the sum of £400 per month.
3. The previous owner of the property had held a licence as required by section 85 of the Housing Act 2004 ("the Act). In or about October 2021 she informed the Respondent that the property had been sold. The Respondent contacted the Applicants to advise them that they should have made an application for a Selective Licence. The Applicants made an application promptly and paid the correct fee, £1500.
4. The Respondent issued a Notice of Intention to impose a financial penalty on each of the Applicants for their failure to apply for a licence on purchasing the property. The penalty originally proposed was £1800 for each Applicant, but after receiving representations from them this was reduced in the Final Notice to £1600 per Applicant. The Applicants admitted that they were due to pay a financial penalty but appealed to this Tribunal against the amount claimed by the Respondent.

THE LAW

1. Section 95(1) of the Act creates an offence where a person has control of or manages without a licence a house which is required to be licensed. On summary conviction the offender is liable to a fine.

2. Section 249A of the Act provides an alternative to prosecution as follows:
“(1) The 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 in respect of premises in England.” An offence under section 95(1) is a relevant housing offence. Schedule 13A to the Act provides for the administration of financial penalties under this section.
3. The government has issued guidance to local housing authorities as to how their financial penalty powers are to be exercised. In line with that guidance, the Respondent has published its policy in relation to housing offences, including the factors which it will consider when establishing the offender’s level of culpability and the harm which has been caused by the offence, and a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.
4. On hearing an appeal against a financial penalty, this tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the council when the Final Notice of Penalty was issued. The tribunal must make its decision in accordance with the Respondent’s published policy unless there are compelling reasons to depart from it.

THE HEARING

5. The hearing took place by video link. The Tribunal had read a bundle of documents including the written representations of each party. At the hearing neither Applicant appeared, but they were both represented by Mr Akram. The Respondent was represented by its solicitor Mrs Ferguson, and the Respondent’s Senior Private Housing Standards Officer Mr W G Sanders was present in order to support his witness statement.

CALCULATION OF THE PENALTY

6. The Respondent’s starting point was that the Applicants’ level of culpability was “medium” and that the harm caused was “low”. The “medium” assessment took into account the length of time since the Applicants had purchased the property and their failure, on purchasing rented accommodation, to take reasonable care to inform themselves about their responsibilities as landlords.

7. The Respondent's matrix gives an initial penalty of £5000, which was adjusted upwards and downwards for the aggravating and mitigating factors set out in the "Civil Penalties Determination Record". The resulting penalty was £3600, which the Respondent chose to divide equally between the Applicants. The Tribunal notes that this was a concession not normally applied by local authorities.
8. Following receipt of written representations from the Applicants, both penalties were further reduced to £1600 to recognize that the Applicants were "engaging with the process".

THE APPLICANTS' CASE

9. The Applicants told the Tribunal that prior to being contacted by Mr Sanders for the Respondent in October 2021 they had no knowledge of the requirement for a Selective Licence. This purchase was their first and only purchase of rented property. They were not informed of the existence of a Selective Licence by the seller of the property or by their own solicitor, who had not advised them of their obligation to apply for a licence. Having no other rented property, they had not seen the publicity material issued by the Respondent around the time that the Selective Licensing requirement was introduced.
10. The Applicants accepted that this was a strict liability offence, but considered that the Respondent had not taken their ignorance of the law - and the increased fee they had paid because of their delay - sufficiently into account when calculating the penalty. Mr Akram further told the Tribunal that the Applicants did not think that the flat was appropriate accommodation for the tenant given his state of health, and that they wanted him to be re-housed more suitably. They were not interested in having the flat occupied and would not re-let it if it became vacant. They had complied fully with the Respondent's requirements once they had become aware of their responsibilities and would continue to cooperate with Mr Sanders in future.

DECISION

11. The Tribunal has carefully considered the level of penalty in the light of the Respondent's published policy and has noted (1) that the electrical repairs that the Respondent required the Applicants to carry out were relatively minor, and (2) that the Applicants are not professional landlords and were badly advised when they purchased the property. If the penalty were to be reassessed based on "low" culpability but not divided between the Applicants, the resulting penalty would be approximately the same as that applied by the Respondent. The Tribunal therefore determined to confirm the penalties imposed by the Final Notices.

Tribunal Judge A Davies

10 February 2023