



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

Case Reference : **LON/OOAM/HNB/2023/0001**

HMCTS : **V: CVPREMOTE**

Property : **Flat 30 Raines Court,19 Northwold
Road, London N16 7DG**

Applicants : **Chris Knight**

Respondent : **London Borough of Hackney**

Type of Application : **Appeal against financial penalty**

Tribunal Members : **Judge Shepherd
Sue Coughlin MCIEH**

Venue of Hearing : **On line**

Date of Decision : **7th July 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

1. This is an appeal against a financial penalty imposed on the Applicant Chris Knight (“The Applicant”) by Hackney Council (“The Respondents”). The penalty relates to premises at Flat 30 Raines Court, 19 Northwold Road, London N167DG (“The premises”). The premises consist of a two bedroom flat in a five storey block of 60 properties.
2. The fine was imposed by the Respondents because the Applicant failed to obtain a license to rent the premises. The premises lie within an area that is subject to a selective licensing scheme. The scheme requires a license for all rented properties within the wards of Brownswood, Cazenove and Stoke Newington.
3. The Respondents wrote to the Applicant on 11th August 2022 notifying him that a doorstep survey had identified his property as requiring a license. The survey had taken place on 10th March 2022. The Respondents said that they were minded to issue a financial penalty.
4. On 10th August 2022 a Notice of Intent to Impose a Financial Penalty was served pursuant to s.126 and Schedule 9 of the Housing and Planning Act 2016. The amount of the penalty was said to be £7500. The notice offered a 20% discount if the Applicant showed willingness to settle within 28 days.
5. A final notice was served on 15th September 2022 for a reduced amount of £5000 following successful representations by the Applicant. This is the notice appealed.
6. In a statement Angela Reynolds of the Respondents explained that she conducted a doorstep survey on 10th March 2022 at which the occupiers confirmed that the property was rented. Checks confirmed there was no license in place which there should have been because the premises are located in the Cazenove ward. A Land Registry check confirmed the Applicant was the owner. The initial penalty was reduced to £5000 following representations by the Applicant relating to the good condition of the property and references from the current tenants. The penalty had been reduced using the Respondents’ matrix from Medium Harm level, low level culpability to low level harm low level culpability.

7. The Applicant appeals the penalty on several bases. These can be broadly summarized as follows: He says that he was unaware of the selective licensing scheme and that the Respondents should have contacted him to explain the scheme. He says that the Act was not intended to deal with landlords like him but with “rogue” landlords and finally that the penalty was disproportionately high.

The Law

8. Part 3 of the Housing Act 2004 Act enables a local authority to introduce a selective licensing scheme requiring properties in their area to have a licence.
9. Section 85 of the 2004 Act makes it mandatory for a Part 3 house (i.e. a house to which Part 3 of the 2004 Act applies) to have a licence.
10. Section 95 of the 2004 Act makes it a criminal offence for a person having control of or managing a Part 3 house not to have a licence. The offence is one of strict liability. Therefore, whether the landlord knew of the licensing scheme or deliberately intended to breach it is not relevant. It is, however, open to a landlord to raise a defence that they had a reasonable excuse for not having a licence (per section 95(4) of the 2004 Act).
11. Section 249A of the 2004 Act enables a local authority to impose a financial penalty for a section 95 offence as an alternative to a criminal prosecution. Under section 294A, a local authority can impose a financial penalty if satisfied beyond reasonable doubt that the person in question has committed the offence.
12. A person to whom a financial penalty has been issued has the right to appeal to the First-Tier Tribunal against the imposition of the penalty or its amount (per schedule 13A of the 2004 Act). An appeal takes the form of a re-hearing of the local authority’s decision but may be determined having regard to matters of which the local authority was unaware (per paragraph 3 of schedule 13A of the 2004 Act).

The hearing

13. The Applicant appeared in person and the Respondents were represented by Alex Campbell of Counsel.

14. The Applicant said that he had moved to Cornwall 6 years ago. He said he was not a commercial landlord. The premises were managed to a high standard and he relied on references from his current tenants. He said that he had applied for a license within 5 days of getting notification of the council's intentions. He said that he should have been warned before the fine was imposed. He said the penalty was too high at eight times the cost of the license fee. He had lost money on the property because the rent was only £800 pcm and he hadn't increased the rent since 2017.
15. In response Mr Campbell said that ignorance of the scheme was not a defence. He did not take issue with the standard of the property being good. He said the council took steps to notify people of the scheme including announcing it on their website. He said it was unreasonable to expect the council to seek out individual landlords. He said the Applicant should have researched the situation. He also said that although the penalties were aimed mainly at rogue landlords the scheme was designed to improve standards. In relation to the penalty he said that it had already been reduced to reflect lower culpability and harm. He said there was no requirement for a warning under the Act. He also said that the financial means of the Applicant were not relevant. The sole issues were the circumstances of the offence and the seriousness of the offence otherwise the enforcement regime would lose teeth.

Determination

16. The Applicant did not have a reasonable excuse for not having a license. The scheme was properly advertised and the onus was on him as a landlord with property in Hackney to carry out research. The aim of the Act is to improve standards in the private rented sector. This will necessarily involve landlords who cannot be described as "rogue landlords". We have no doubt that the Applicant is a good landlord but he failed to have a license which is an offence.
17. We accept that a reasonable starting point was £7500 . We also accept that there should be a reduction from medium to low harm which takes the penalty to £5000. There should then be a deduction of 20 % to reflect the fact that the Applicant applied for the license within 28 days – taking the penalty to £4000. We then consider that there should be a deduction of £1000 in mitigation. In particular the Applicant cooperated with the enquiry process, he is a man of good character and he has no previous convictions. This takes the penalty to £3000.
18. Accordingly the penalty is varied to £3000. If the Applicant pays it within 28 days this will be reduced by 20% i.e. he will receive a discount of £600.

Judge Shepherd

9th July 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the

First-Tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. 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.