



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

**Case reference** : **LON/00AU/HTD/2023/0002**

**Property** : **10 Tompion House, Percival Street,  
London EC1V 0HU**

**Applicant** : **City Accommodations Re Ltd**

**Representative** : **Kelly Owen solicitors**

**Respondent** : **London Borough of Islington**

**Type of application** : **Appeal against a financial penalty -  
Section 8 & Schedule 3 of the Tenant Fees Act  
2019**

**Tribunal members** : **Judge Nicol  
Mr C P Gowman MCIEH MCMi BSc**

**Date and venue of  
hearing** : **29<sup>th</sup> September 2023  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **29<sup>th</sup> September 2023**

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**DECISION**

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**The Tribunal quashes the penalties imposed by the Respondent on the Applicant by the Final Notice dated 13<sup>th</sup> January 2023.**

Relevant legislation is set out in the Appendix to this decision.

**Reasons**

1. The Applicant rents out the subject property. The local authority Respondent has sought to impose the following financial penalties on the Applicant for acting contrary to section 2 of the Tenant Fees Act 2019 (“the Act”):

- £2,500 for including in their licence agreement clause 3(bb), “In the event that at the end of the Licence the Room is not left in the condition required by this clause 3 and/or the room is not professionally cleaned upon the termination of the licence, pay the cleaning cost of £50.00, save major cost.” and
  - £500 for including clause 3(y), “To pay to the Licensor interest on the License Fee or other payments at the rate of 5% per annum above the base rate of National Westminster Bank PLC from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the License Fee or any other payments due under this license (whether such interest is formally demanded or not)”.
2. The final penalty notices were served on 13<sup>th</sup> January 2023. The Applicant appealed to this Tribunal on 10<sup>th</sup> February 2023.
  3. The Applicant’s appeal was heard by the Tribunal on 29<sup>th</sup> September 2023. The attendees were:
    - The Applicant’s solicitor, Mr Anthony Owen of Kelly Owen solicitors, accompanied by Mr Chan, a paralegal
    - The Respondent’s representative, Mr Quentin Paterson
    - Mr George Moraitis, Trading Standards Officer
    - Mr Alonso Ercilla, Trading Standards Officer
  4. The Tribunal had the following documents:
    - Applicant’s Bundle, 145 pages; and
    - Respondent’s Bundle, 52 pages.
  5. There was a number of grounds of appeal but one presented a fundamental problem. The Applicant is not the agent of the owner of the property. Instead, they operate a scheme commonly known as “let-to-let”. The owner lets to them and they sub-let to others. The owner receives a guaranteed sum while the let-to-let company keeps as profit any amount received in rent from their sub-tenants over the guaranteed sum.
  6. There are many criticisms of let-to-let schemes, including that, in practical terms, the difference between let-to-let companies and managing agents is not always clear. However, in legal terms there is no doubt that a let-to-let company operates as the landlord in their own right.
  7. Letting agents are defined in section 27 of the Act as persons who engage in letting agency work which, in turn, means things done by a person in the course of a business in response to instructions received from a landlord who is seeking to find another person to whom to let housing. The Applicant does not operate by instructions from the owner of the property but in their own right.
  8. Prohibitions on payments required by landlords are covered in section 1 of the Act while payments required by letting agents are covered in

section 2. The Applicant is a landlord, not a letting agent. The Respondent has sought to impose penalties pursuant to section 2 which is the wrong section.

9. It does not help the Respondent that the provisions in question would be equally prohibited under section 1. Financial penalties such as the Respondent has sought to impose here are akin to criminal sanctions which should not be imposed unless they are clearly made out. The Respondent has not made out any failure to comply with section 2.
10. When the Tribunal put this point to Mr Paterson, he immediately conceded that the wrong section had been referred to. He proposed:
  - (a) The Tribunal could amend the Notice of Intent and/or the Final Notice. However, the Tribunal has no power under the Act to do so.
  - (b) The Tribunal could waive the error on the basis that the reasonable recipient would have understood which section was being referred to and the Applicant would suffer no prejudice. However, Parliament has chosen to provide separately for landlords and letting agents. It is not clear that the Respondent intended to refer to section 1, rather than section 2 – the Respondent did not mention the issue until the hearing despite its having been raised earlier by the Applicant. Even if it were clear, identifying the correct section is fundamental and cannot be waived.
11. Therefore, the appeal must succeed. The penalties must be quashed.

**Name:** Judge Nicol

**Date:** 29<sup>th</sup> September 2023

### **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 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).

## **Appendix of relevant legislation**

### **Tenant Fees Act 2019**

#### **2 Prohibitions applying to letting agents**

(1) A letting agent must not require a relevant person to make a prohibited payment to the letting agent in connection with a tenancy of housing in England.

(2) A letting agent must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England.

(3) A letting agent must not require a relevant person to enter into a contract with the agent or a third party in connection with a tenancy of housing in England if the contract is—

- (a) a contract for the provision of a service, or
- (b) a contract of insurance.

(4) A letting agent must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England.

(5) For the purposes of this section, a letting agent requires a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the letting agent—

- (a) requires the person to do any of those things in consideration of arranging the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy,
- (b) requires the person to do any of those things pursuant to a provision of an agreement with the person relating to such a tenancy which requires or purports to require the person to do any of those things in the event of an act or default of a relevant person,
- (c) requires the person to do any of those things pursuant to a provision of an agreement with the person relating to such a tenancy which requires or purports to require the person to do any of those things if the tenancy is varied, assigned, novated or terminated,
- (d) requires the person to do any of those things—
  - (i) as a result of an act or default of a relevant person relating to such a tenancy or housing let under it, and
  - (ii) otherwise than pursuant to, or for the breach of, an agreement entered into before the act or default, or
- (e) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person's occupation of housing in England.

(6) For the purposes of this section, a letting agent does not require a relevant person to make a payment, enter into a contract or make a loan if the letting agent gives the person the option of doing any of those things as an alternative to complying with another requirement imposed by the letting agent or the landlord.

#### **8 Financial penalties**

(1) Where an enforcement authority is satisfied beyond reasonable doubt that a person has breached section 1 or 2 or Schedule 2, the authority may impose a financial penalty on the person in respect of the breach.

(2) The financial penalty—

- a) may be of such amount as the authority determines, but
- b) subject to subsection (3), must not exceed £5,000.

## **27 Meaning of "letting agent" and related expressions**

- (1) In this Act "letting agent" means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) In this Act "letting agency work" means things done by a person in the course of a business in response to instructions received from—
  - (a) a landlord who is seeking to find another person to whom to let housing, or
  - (b) a tenant who is seeking to find housing to rent.
- (3) A person is not a letting agent for the purposes of this Act if the person engages in letting agency work in the course of that person's employment under a contract of employment.
- (4) A person who is an authorised person in relation to a reserved legal activity is not a letting agent when carrying on legal activity in response to instructions from a landlord or tenant who does not instruct that person to do other things within subsection (2).
- (5) In subsection (4)—
  - (a) "legal activity" and "reserved legal activity" have the meanings given by section 12 of the Legal Services Act 2007;
  - (b) "authorised person" has the meaning given by section 18 of that Act.

## **SCHEDULE 3**

### **FINANCIAL PENALTIES ETC**

#### **6**

- (1) A person on whom a final notice is served may appeal to the First-tier Tribunal against—
  - (a) the decision to impose the penalty, or
  - (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought within the period that is the relevant period in relation to the penalty by virtue of paragraph 4(4).
- (3) If an appeal is brought under this paragraph, the final notice is suspended so far as it relates to the penalty which is the subject of the appeal until the appeal is finally determined, withdrawn or abandoned.
- (4) An appeal under this paragraph—
  - (a) is to be a re-hearing of the authority's decision, but
  - (b) may be determined having regard to matters of which the authority was unaware.
- (5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied so as to make it impose a financial penalty of more than £5,000 unless section 8(3) applies.
- (7) If section 8(3) applies, the final notice may not be varied so as to make it impose a financial penalty of more than £30,000.