



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

Case reference : **LON/OOBH/HNA/2023/0028**

Property : **Flat 2, Lord Clyde Apartments, 175
Capworth Street, London E105AR**

Applicant : **Neil Murphy**

Representative : **Mr Williams**

Respondents : **The London Borough of Waltham Forest**

Representative : **John Fitzsimons**

Type of application : **Appeal against a financial penalty**

Tribunal : **Judge Shepherd
Appollo Fonka FIEH**

Date of Decision : **3rd November 2023**

Decision

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1. In this appeal the Applicant, Mr Murphy (“The Applicant”) is seeking to challenge a financial penalty imposed by the Respondents, The London Borough of Waltham Forest (“The Respondents”). The penalty which was served on 9th March 2023 was for the amount of £4000. The penalty was served for operating a property without a licence.

2. The salient facts are that the Applicant is a landlord who owns premises at Flat 2, Lord Clyde Apartments, 175 Capworth Street, London E105AR (“The premises”). The Respondents are a local authority that operate a selective licencing scheme under which all rented properties require a licence.
 - On 16th May 2016 Mr Murphy applied for a licence under a previous selective licencing scheme. The licence was granted on 7th October 2016.
 - On 1st February 2020 the Respondents advertised the fact that they were introducing a new scheme.
 - On 1st March 2020 the Applicant’s selective licence expired.
 - On 1st May 2020 the new selective licencing scheme commenced.
 - On 2nd February 2021 the Respondents wrote to the Applicant about the absence of a licence for the premises.
 - On 25th February 2021 the Respondent made an abortive visit to the premises.
 - On 15th March 2021 the Respondent confirmed that the Applicant still owned the premises.
 - On 19th March 2021 a s.239 letter was sent to the Applicant.
 - On 29th March 2021 the Respondents’ officers visited the premises and met the tenant Rafique Rhoades who confirmed he had been renting for three years.
 - On 28th September 2021 the Respondent sent the Applicant a notice of intention to serve a financial penalty notice for £5000.
 - On 29th September 2021 the Applicant made representations saying that he had contacted the Respondent by email following receipt of their letter in February 2021. The email was not received as it had the wrong address on it.
 - The Applicant made an application for a licence on 12th October 2021.

- The Respondents served the civil penalty final notice for £4000 on 9th March 2023.
 - The notice was appealed by the Applicant to the Tribunal on 24th March 2023.
3. The application notice to the Tribunal stated the following:
- As I am a private landlord and rent a flat with Waltham Forest (WF), WF wrote to me in February 2021 to advise that I would need to apply for a licence but also within this same letter they advised that if you not think that you need a licence to contact them. I contacted them in March 2021 and explained the rental situation and asked if I needed a licence. The individual I spoke with was unable to answer this question but in turn arranged a site visit at the flat. This lead me to believe that my doubts on requiring a licence had grounds. Following their site visit I contacted my tenant who said that the visit went well and I also contacted WF for their conclusion but was told that it was still in hand. I chased WF periodically the following months for their advice to no avail and it was not until October 2021 that someone finally advised me to apply for the licence. I applied for the licence the following week after this conversation. I called WF again a few times after the application but was again told that "it's in hand". Eventually after receiving no further advice I assumed that the matter was settled. In February 2023, some 15 months later, WF wrote to advise of their intent to fine me for applying for my licence 8 month after their letter of February 2021. I responded by telephone and email to this letter of intent to draw their attention to the fact that I had responded to their letter of February 2021 and enquired, as per their invitation within the same letter, as whether I needed a licence or not. WF were not available to discuss this matter or even respond to any of the points made within my email but in turn sent me a brief email to simply say that the fine had been upheld, papers will follow and I can now only appeal via the First Tier Tribunal. I feel that this imposed fine is not only financial devastating to my family but is completely unfair given that I have always communicated and complied with WF and that the delay in applying for a licence is wholly due to their failure to communicate with me.*

4. In their written response the Respondent deny that the Applicant's account demonstrated that they had a reasonable excuse for not obtaining a licence. They remind the Tribunal that the offence under s.95 (see below) is one of strict liability and that ignorance is no excuse. They say that the Applicant knew about the previous licencing scheme and therefore should have known about the current one. They had no records of his call in March 2021 and he used the incorrect email address. They also say that there was no correspondence from him chasing the matter up.
5. In a further response dated 29th June 2023 the Applicant raises a number of issues including the effect of the disruption caused by the pandemic. He also said that he thought that the letter from the Respondent dated 2nd February 2021 was offering assistance and advice. He repeats that he spoke to an officer and sent an email. He thought the site visit in March was in response to his contact. He didn't hear anything after this until they had decided to serve a financial penalty. He submitted a reference from his tenant, Mr Rhoades.

The law

6. The Respondent was entitled to designate an area of its district as subject to selective licencing under s80(1)) of the Housing Act 2004 under which every house must be licensed (s85(1)). The person managing or having control of the house commits a criminal offence if he manages/controls a house in respect of which he has not obtained a licence. He may defend any such proceedings on the basis that he had a reasonable excuse for failing to obtain such licence (s95(4)). The burden of establishing such a defence is on the person asserting it, not the authority (I R Management Ltd v Salford CC [2020] HLR 24, UT at [24]-[26]).
7. There is no requirement that a person knows that a property must be licenced in order to be guilty of such offence. Accordingly, the authority need not prove such knowledge (R(Mohamed) v Waltham Forest LBC [2020] 1 WLR 2929, [40]-[48]).

8. As an alternative to prosecution the authority may, if satisfied beyond reasonable doubt that the person's conduct (including a failure to act) amounts to an offence under s95(1), impose a financial penalty of up to £30,000 (s249A(1)-(2), (4), (9)). Before imposing a penalty, the authority must give notice of its intent to do so, which notice must be given within six months of the last date on which the criminal conduct was committed (sch13A para.1, 2(2)). The recipient may make written representations about the proposal to impose a penalty (sch.13A para 4). If the authority decides to impose a penalty it must serve a final notice (sch.13A para 5-6). The authority must include specific matters in the Final Notice (sch. 13A para 8).
9. The recipient of a final notice may appeal to this Tribunal against the decision to impose the penalty or its amount (sch. 13A para 10(1)). Such appeal is to be a re-hearing, which may be determined having regard to matters of which the authority was unaware, and at the conclusion of which the Tribunal may confirm, vary, or cancel the final notice (sch. 13A para 10(2)-(4)).

The hearing

10. The Tribunal are grateful for the representation given by Mr Williams for the Applicant and Mr Fitzsimmons for the Respondents.
11. Mr Fitzsimmons opened the hearing explaining the chronology of events (see above). He said that there was no reasonable excuse for operating without a licence. The amount of the penalty was £4000 as the Respondent had reduced the penalty due to the Applicant applying for a selective licence prior to the financial penalty being issued.
12. Sandra Mcgrath gave evidence on behalf of the Respondent. She was the Environmental Health Enforcement Officer but at the relevant time was the licencing enforcement officer. She said she had not spoken to the Applicant but he had her details. The visit in February 2021 was part of a departmental task force aiming to deal with unlicensed properties.

13. Catherine Lovett who is Team Manager for the Respondent Private Sector Housing Team also gave evidence. She detailed the advertising of the selective licencing scheme. She also took the Tribunal through the Respondents' matrix for determining the penalty. The penalty in the present case had been set at Band 2 Moderate. The starting point was a £5000 penalty. She said the "early bird" scheme to sign on to the current selective licencing scheme had been extended to 31st October 2020 from 1st April 2020 as there were recognised problems during Covid.
14. The Applicant gave evidence. He was asked what steps he had taken to familiarise himself with the licencing scheme. He repeated that he had called the council several times during 2021 but had difficulty getting through. He did not have records of the phone calls before October 2021. He assumed that no news was good news. He said he was not aware that he needed a licence. He didn't receive the newsletter. If he'd known he would have obtained a licence before he did. He said he was not a professional landlord.
15. Mr Fitzsimmons said that a lot of the Applicant's submissions were based on ignorance which is not a defence. The burden lay on him to show that he had a reasonable excuse. He clearly had received the letter in February 2021 and there were no call records to suggest he had responded. The penalty imposed was in accordance with the council's policy.

Determination

16. It is clear that at the relevant time when the current selective licencing scheme came into force the Applicant should have had a licence for the premises but he did not. In reality, the Respondent conceded that they did not really enforce the selective licence until October 2020 when the "early bird" discount ended. Nonetheless it is clear and indeed unchallenged that the new scheme was advertised in all of the usual channels. The Applicant was responsible for keeping himself informed of the licencing regime in operation. He would or

should have been aware that his previous licence had expired. That ought to have prompted an inquiry by him.

17. At the very latest the Applicant was made fully aware of the need to have a licence when he received the letter of 2nd February 2021.

18. The letter was addressed to the Applicant and made reference to the premises. The selective licencing scheme was described and it was stated:

According to our records, the above property was granted a selective licence during the last licencing scheme which ran from 1st April 2015 to 31 March 2020. Having checked our records it appears that a new licence has not been applied for.

If the property is still rented so that it requires a property licence, please visit our user -friendly online portal which will ensure that you apply for the right licence.....

If you do not think you require a licence or, have already applied, please email the team at the above address and we will update our records.

Please note that failure to licence a property is an offence under the Housing Act 2004 and can result in prosecution and a fine of unlimited amount. Alternatively, the council has the option to impose a civil penalty of up to £30000 as an alternative to bringing prosecution proceedings. The council reserve the right to still take steps further in the future, if deemed necessary, regardless if an application is made as a result of this letter.

19. This was a robust and clear letter. It should have left the Applicant with no doubt that he needed to get a licence. He had a tenant and therefore needed a licence. He may have sought to contact the Respondent by email or even by phone but its not clear why. He should have just applied for the licence. He didn't do this until October 2021 leaving his tenant living in an unlicensed property.

20. In summary the Applicant had no reasonable excuse for the offence and he was liable for a financial penalty. He did not seek to challenge the level of penalty which was at the low end of the fines that could be imposed under the council's matrix. In any event we consider that the penalty was reasonable in the circumstances.

21. The appeal is dismissed.

Judge Shepherd

27th October 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.