



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

Case reference : **LON/00AB/HNA/2023/0086**

Property : **5 Warren Cottage, Whalebone Lane
North, Romford RM6 6RB**

Applicant : **DSCG Limited**

Representative : **David Fowler**

Respondent : **London Borough of Barking and
Dagenham**

Representative : **N/A**

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

Tribunal members : **Judge H Carr
Mr A Lewicki**

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

Date of decision : **3rd June 2024**

DECISION

The documents that the Tribunal were referred to are in a bundle provided by the applicant comprising 29 pages the contents of which have been noted . No bundle was provided by the respondent.

Decisions of the tribunal

- (1) The tribunal determines to vary the final notice imposing the financial penalty to reduce the penalty to zero.
- (2) The tribunal orders the respondent to reimburse the applicant with its application and hearing fee within 28 days of the date of this decision.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant is appealing against the imposition of a financial penalty by the respondent, the London Borough of Barking and Dagenham
2. The financial penalty was imposed for an offence under section 95(1) of the Housing Act 2004 i.e. failure of a person having control of or managing a house which is required to be licenced but is not so licensed. The date of the offence was 10th March 2022.
3. The financial penalties imposed are as follows:
 - (i) £5000 for failure to licence a property which requires licencing
4. The property is a three bedroom terraced house housing 1 tenant who has been in residence for 27 years, predating the ownership of the applicant.
5. The applicant is the freehold owner of the property. He has owned the property since 2016.
6. The sole director of the company is Mr David Fowler.

The hearing

7. The application was heard on 3rd April 2024.

8. At that hearing the applicant was represented by Mr David Fowler. There was no attendance from the respondent authority. The tribunal notes that the respondent authority has not engaged in the process and that a notice of intention to debar the respondent was issued on 15th March 2024.

The background

9. The respondent provided no information about the scope of the selective licencing scheme but the applicant believes it is borough wide.
10. The applicant owns and manages eight properties situated in the London Borough of Barking and Dagenham. In 2021 it was granted licences for all eight properties. Six of the licences were granted for five years; two were granted for one year only.
11. The reason for the short licences is that those two properties were being licenced for the first time. The other six properties have been licenced since 2018.
12. The licence for the subject property expired on March 10th 2022. On 16th June 2023 the respondent wrote a letter to the applicant informing him that the property was unlicensed and giving him fourteen days to make an application.
13. The applicant failed to apply within the necessary period. Therefore the respondent determined to impose a financial penalty for the offence as set out above. The notice of intent to impose a financial penalty was issued on 10th July 2023.
14. The applicant applied for a licence for the property on 2nd August 2023. The licence was granted without further inspection of the property.
15. The final penalty notice was served on 30th August 2023.

The issues

16. The issues that the tribunal must determine are;

- (i) Is the tribunal satisfied beyond reasonable doubt that the appellant committed the alleged offence?
- (ii) Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act);
- (iii) Does the appellant have a defence of a reasonable excuse?
- (iv) Whether the financial penalty is set at an appropriate level, having regard to any relevant factors, which may include, for example:
 - (a) the offender's means;
 - (b) the severity of the offence;
 - (c) the culpability and track record of the offender;
 - (d) the harm (if any) caused to a tenant of the premises;
 - (e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
 - (f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

The determination

Is the tribunal satisfied beyond reasonable doubt that the applicant has committed the alleged offence?

1. The appellant agreed that the property required licensing. Indeed the applicant has now obtained a licence for the property.

The decision of the tribunal

2. The tribunal determines that the offence has been committed.

The reasons for the decision of the tribunal

3. The applicant concedes that the offence has been committed.

Has the respondent complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?

17. The respondent has not engaged with the tribunal process. It only has the documents provided by the applicant.
18. The applicant says that notices relating to the financial penalty were served incorrectly because they did not specify the correct owner of the property. He says that there was a correction made on July 31st 2023 which was backdated to July 10th, but it remained unclear to the applicant which of the first two letters the council wrote, one to DSCG Ltd and one to Mr Fowler personally that he needed to address. There was no rescission of the incorrect notice.
19. The tribunal considered the notices that the applicant provided to the tribunal. It had some concern that the interim notice, served some 15 months after the date of the offence was out of time. However it notes that Schedule 13A to the Housing Act 2004 the notice can be served at any time during which the offence is continuing. As the offence continued until the application for the licence on 2nd August 2023 it appears that the notice of intent was served in time.

The decision of the tribunal

20. The tribunal determines that the respondent has complied with all of the necessary requirements relating to the imposition of the financial penalty.

The reasons for the decision of the tribunal

21. The interim and final notices provided by the applicant which were served upon him by the local authority comply with the statutory requirements.

Does the appellant have a defence of a reasonable excuse?

22. The applicant's case is that he considered that the decision to grant a licence for 1 year instead of 5 years for this property was an administrative error as six of the eight properties for which he applied for a licence were granted a licence for five years and two were granted for one year.
23. It was only when he read the papers accompanying the licence decision that he discovered that the reason for the short licences were that the properties were being licenced for the first time.
24. In addition a representative of the respondent visited the property in to inspect it during the period it was unlicensed and did not raise the lack of a licence as an issue. The applicant therefore considers that it was reasonable for him to consider the decision to licence for only one year was a mistake.

The decision of the tribunal

25. The tribunal determines that the applicant does not have a reasonable excuse defence.

The reasons for the decision of the tribunal

26. The starting point is that landlords must take reasonable care to ensure that their properties are licensed. In the light of the unexplained failure of the respondent authority to engage with the tribunal process the tribunal can understand why the applicant thought that a mistake had been made. His position is supported by the failure of the respondent to raise the lack of a licence when it inspected the property.
27. Nonetheless the tribunal does not consider this is sufficient to provide the applicant with a sufficient excuse defence. The respondent had provided the applicant with an explanation of its decision and the applicant should have taken note of this.

Should the tribunal confirm or vary the Financial Penalty?

28. The interim fixed penalty notice provided an explanation of how the respondent had calculated the financial penalty.
29. The applicant argues that the proposed financial penalty is too high. He makes the following points
 - (i) Culpability – the applicant disagrees that his culpability is medium (negligent). He says that his failure to recognise the expiry date of the licence as anything more than a council error was reasonable.

He also points out that he has made a new licence application which was granted without an inspection of the property. He argues that there was no warning indicating a risk and that failings were minor and occurred as an isolated incidence the culpability should be classified as low.

- (ii) Offence history – the applicant disagrees that the offence history is low as this indicates previous enforcement history. There is no such history of which the applicant is aware so this should be classified as ‘very low’.
- (iii) Offence severity – the respondent classified this as low justifying this by citing property standards. As it has failed to find fault with the property or its management which is demonstrated by the re-issuing of a licence without a visit to the property, this should be treated as a technical infringement and should be classed as very low.
- (iv) Prevention – the respondent classified this as ‘low’ but the applicant says this is a technical infringement and should be classified as ‘very low’
- (v) Removal of financial incentive and assessment of assets – the respondent classified this as ‘medium’ on the basis of profits achieved over the unlicensed period. The applicant disagrees estimating that the property generated a profit of about £4,375 over the fifteen month period, being about 1/3 of what the respondent has calculated.
- (vi) The applicant makes the additional point that as the property was only granted a licence for one year the applicant has paid an additional licence fee of £900 albeit not until August 2023. The applicant was only granted a licence for a further year which means that he is paying a further £900

The decision of the tribunal

30. The tribunal determines to vary the level of the financial penalty. It uses its discretion to reduce the penalty to zero.

The reasons for the decision of the tribunal

31. The tribunal considers that without any evidence to the contrary this offence should have been treated as a technical infringement and the fine reduced accordingly. The council's failure to consider this, or to engage in mediation with the applicant has been taken into account by the tribunal in its exercise of its discretion.
32. It notes that as the applicant has had to pay an annual licence fee of £900 for the past three years he has more than compensated the authority for his failure to licence the property. The tribunal considers that this is sufficient deterrent for the applicant who appears to have a good record as a landlord. There is no evidence of the applicant having obtained a financial advantage as a result of his failure to licence the property. The explanation provided by the respondent on its interim notice is difficult to understand and is not plausible.
33. The tribunal has taken into account that there is no enforcement history and that there are no complaints about poor standards or poor management of the property. It notes that the property was granted a licence without any difficulty at all when the applicant made its admittedly belated application. The tribunal also notes that no action was taken against the applicant in connection with the other property which remained unlicensed for the same period. As the respondent failed to attend the hearing or indeed engage with the process in any way the tribunal is unable to understand the reason for this apparently arbitrary decision.
34. The tribunal also takes into account that the tenant of the applicant has been an assured shorthold tenant for 27 years, 6 of those years being with the applicant as the landlord. The tribunal considers that this is the type of landlord/tenant relationship that should be encouraged.
35. In the light of this decision and the failures of the respondent to engage in the tribunal process the tribunal determines to order the respondent to reimburse the applicant with its application and hearing fee totalling £300.

Name: Judge H Carr

Date: 3rd June 2024

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).