



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

Case Reference : **MAN/00CF/HNA/2019/0062**

Property : **17 Albany Street, Clifton, Rotherham S65 1AE**

Applicant : **Abid Rakhman**

Respondent : **Rotherham Metropolitan Borough Council**

Type of Application : **Appeal against penalty: s249(a) Housing Act 2004**

Tribunal Members : **A M Davies, LLB
A Ramshaw, MRICS**

Date of Decision : **24 April 2020**

DECISION

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DECISION

The Respondent's Final Notice to the Applicant dated 12 June 2019 is varied by substituting the sum of £3854.70 for the penalty charge of £5254.70.

REASONS

THE FACTS

1. The Applicant lives in rented accommodation in Luton, and owns 17 Albany Street, Clifton, Rotherham ("the Property"). The Applicant does not own other properties.
2. With effect from 1 May 2015 the Respondent Council designated as a Selective Licensing Area part of central Rotherham, which included the Property. Landlords of private housing within a Selective Licensing Area are required to apply for a licence, which is issued subject to compliance with conditions designed to ensure the health and safety of tenants.
3. The Applicant bought the Property in November 2017 at a price of £42,000, having borrowed much of that sum from family members. He let it from 8 February 2018. On a number of occasions beginning on 23 January 2018 the Respondent contacted the Applicant to advise him of the need to obtain a licence if the Property was to be let. No application for a licence was received. The Applicant failed to attend for interview.
4. A Civil Penalty Assessment was originally made by the Respondent on 18 September 2018 and signed off by the responsible officer on 24 January 2019. The culpability level was then assessed at "very high", and the harm level was assessed at "medium". This resulted in a penalty, according to the Respondent's published policy, of £6250.
5. The Respondent eventually applied for a licence on 5 March 2019, following service on him of a Notice of Intention to apply a financial penalty of £6250 and £254.70 costs. A licence was issued on 24 April 2019.
6. On reviewing the penalty in the light of representations received, a discount of £20% was applied by the Respondent, resulting in a penalty of £5254.70 including costs. A final notice was issued on 12 June 2019. On 24 June 2019 the Applicant appealed to the Tribunal for a re-determination of the penalty.

THE STATUTORY POWERS

7. The Respondent's powers are contained in Schedule 13A to the Housing Act 2004. Letting a property situated within a Selective Licensing area without a licence is an offence. The Respondent must issue a Notice of Intent before the end of 6 months beginning on the date when the Respondent has evidence that an offence has been committed, or at any time when the offence is continuing. The Notice of Intent sets out the Respondent's intended penalty, and in this case the figure proposed by the Respondent was £7000.
8. The landlord on whom a Notice of Intent is served may make representations within 28 days, and the Respondent must then decide whether to impose a financial penalty, and if so, decide on the amount.

9. A local housing authority has some discretion as to how to calculate financial penalties, but must consider whether the landlord's culpability is "high", "medium" or "low" and whether the harm (as defined) caused by the failure to obtain a licence is "high", "medium" or "low". A chart published by the housing authority sets out the resulting figures for the highest and lowest penalties appropriate to the level of blame and harm.
10. On receipt of a landlord's representations, the amount of penalty indicated in the Notice of Intent may be varied as seems appropriate to the housing authority. If he is dissatisfied, the landlord may apply to this tribunal for a review. The Tribunal may consider all the facts, including any facts not known to the Respondent when the penalty was assessed. The housing authority's Final Notice may be confirmed, varied, or cancelled by the Tribunal

THE DECISION

11. The offence is admitted by the Applicant.
12. The Tribunal finds that the Respondent correctly assessed the Applicant's culpability as "very high", since he was fully aware of the requirement for a licence and failed to apply for one (or to make an effective application) until after he had notice of the intended penalty.
13. The Tribunal reassesses the level of harm at "low". In its initial assessment, the Respondent noted that council officers had not had an opportunity at that time to view the condition of the Property. Since it was possible that there were hazards and delapidations, there was a potential for harm to tenants as well as harm in terms of public policy. In the event, the Property was found to be in good condition and the Applicant was granted a 5 year licence. On this basis, the level of harm has been reduced to "low", in line with the categories published at page 14 of the Respondent's Policy for the Use of Civil Penalty.
14. This reduces the penalty to £4500. The Respondent applied a 20% reduction to the initial assessment after taking into account the Applicant's means and his cooperation in applying for a licence in March 2019. The same reduction is applied to the new assessment, resulting in a penalty of £3600. In addition, the Respondent's costs of £254.70 are payable.

Judge A M Davies
24 April 2020