

LONDON CORPORATE APARTMENTS LTD

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

DECISION

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal refuses the appeal.

REASONS OF THE TRIBUNAL

Introduction

1. This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against a Final Notice Ref 00006 issued by the London Borough of Tower Hamlets (“the Council”), in which the Council imposed a financial penalty of £5,000 on the Appellant company for operating as a letting agent without being a member of an approved redress scheme.

Legislation

2. Article 3 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (“the 2014 Order”) requires that any person engaged in letting agency work be a

member of an approved redress scheme for dealing with complaints in connection with that work.

3. A letting agent is defined in section 84 of the Consumer Rights Act 2015 ('the 2015 Act') as follows:

(1) In this Chapter "letting agent" means a person who engages in letting agency work (whether or not that person engages in other work).

(2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person's employment under a contract of employment.

(3) A person is not a letting agent for the purposes of this Chapter if—

(a) the person is of a description specified in regulations made by the appropriate national authority;

(b) the person engages in work of a description specified in regulations made by the appropriate national authority.

4. Section 86 further defines 'letting agency work':

(1) In this Chapter "letting agency work" means things done by a person in the course of a business in response to instructions received from –

(a) a person ("a prospective landlord") seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person ("a prospective tenant") seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

(2) But "letting agency work" does not include any of the following things when done by a person who does nothing else within subsection (1)

(a) publishing advertisements or disseminating information;

- (b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;
- (c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.

(3)“Letting agency work” also does not include things done by a local authority.

5. Section 87 imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.
6. The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a ‘notice of intent’ to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:
 - (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason.

Final Notice

7. In the present case the Final Notice dated 28 March 2017, addressed to the appellant, stated that the Council believed that on the 23 November 2016 the appellant had committed a breach of its duty to belong to an approved redress scheme, contrary to Article 3 of the 2014 Order.

The Appeal

8. The Appellant appealed to the Tribunal on 24 April 2017. The Appellant requested an oral hearing before the Tribunal. Initially, the grounds of appeal were:

- a) the decision to impose a monetary penalty was based on an error of fact, as the Appellant company is not a letting agency nor a property management company, but rather an “accommodation provider and property development company”;
- b) the decision was wrong in law, as the 2014 Order does not apply to the Appellant company as it is not acting as an independent agent.

9. The Council contended that the Appellant company, in responding to instructions from individuals seeking a dwelling to rent and arranging such dwellings, was acting as a Letting Agent. It also noted that the Tribunal had found that the Appellant was acting as a Letting Agent in a previous hearing of 8 March 2017.

10. In light of the response, the Appellants resiled from their contention that they were not letting agents. They instead argued that any monetary penalty should be nominal, as their breach was as a result of having been misled by the Council in regards to their legal duties. The Appellant claimed that it was previously registered with a redress scheme, but upon advice that such registration would mean all tenancies and letting agreements that the Appellant granted would therefore be short holds, they withdrew their membership.

Witness Statements

11. Ms Bridget Rushmoor provided a witness statement detailing the chronology of the Council’s dealings with the Appellant company and complaints received by the Council regarding the Appellant. Regarding the Appellant’s claims of misleading advice from the Council, Ms Rushmoor provided to the Tribunal a copy of a witness statement from December 2016 from Mr Khaled Abedalrazak, sole director of the

Appellant Company. Mr Abedalrazak at that stage stated that he had joined a redress scheme as the Council had told him to, but considered this to be the wrong advice as he did not provide assured short hold tenancies and therefore he allowed the membership to elapse.

12. Mr Asif Mahmood provided a statement setting out a complaint he made to the Council about his dealings with the Appellant company, in which it came to light that it was not a member of a redress scheme to assist him in a dispute over deposit monies.

13. The Tribunal has considered the papers in the bundle provided including the witness statements enclosed therein and those referred to above and are satisfied that the Appellant at all material times did engage in Lettings Agency work while failing to comply with its duty to belong to an approved redress scheme as required.

14. The Tribunal accepts that the fine of £5,000 is proportionate and appropriate in the circumstances and has not seen any evidence to suggest otherwise or that there are any mitigating circumstances that would warrant a reduction on the facts before it in this case.

Brian Kennedy QC

9 NOVEMBER 2017.

Promulgation date: 10 November 2017