



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

Case reference : **LON/00AG/HNA/2019/0043**

Property : **Flat 126 Penhurst, Queens
Crescent, London NW5 3QJ.**

Applicant : **Chase Apartments**

Representative : **Obi Nwokei of Counsel**

Respondent : **London Borough of Camden**

Representative : **Mr. E. Sarkis and Ms. G. House
(EHO)**

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

Tribunal member(s) : **Ms. Aileen Hamilton-Farey
Mr. Michael Taylor FRICS**

**Date and venue of
hearing** : **18 September 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **7 October 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appeal by Chase Apartments against the financial penalty be dismissed.
- (2) The tribunal determines that the financial penalty of £5,000.00 should be paid by Chase Apartments within 28 days of this decision.

The application

1. The applicant seeks a determination pursuant to Section 249a and Schedule 13A to the Housing Act 2004 in respect of a financial penalty amounting to £5,000.00 imposed on the applicants by the respondent local authority on 29 November 2018.
2. The application to the tribunal is dated 21 March 2019 and originally appeared to be out of time. However, by a decision of a differently constituted tribunal (The Martynski tribunal), time was extended for the applicants to make their application. This extension of time, led to today's hearing.

The facts:

3. The subject property is a four-bedroom, split-level property situated on the third and fourth floor of a council block in NW3. Originally the property had been council owned but a tenant had exercised their statutory Right to Buy, leading to the property being sold on leasehold terms.
4. The property is owned on a leasehold basis by Felipe Oliveros and Catalina Garzon, the office copy entries from the Land Registry show the property to be the residential address of the leaseholders.
5. On 27 June 2018, Ms. Grace House, an environmental health officer of the respondent council, obtained a warrant of entry of the subject premises. That warrant was executed on 30 August 2018.
6. The property was occupied at that time by three tenants, all of whom were paying rent to an Elliot Gambino. Copies of the relevant assured shorthold tenancies were obtained at that time.
7. On 12 September 2018, Ms. House sent Notices Requesting Information under S.16 of the Local Government (Miscellaneous Provisions) Act 1976 to each of the tenants and other interested parties. The respondents' bundle contains copies of the completed forms. These included a response from the leasehold owners, to the effect that

they were letting the property to Mr. Elliott Gambino and Maria Acosta for £2,150.00 per calendar month. Chase Apartments were noted as the agent for the landlord.

8. The tenancy agreement to Mr. Gambino and Ms. Acosta was counter-signed by a representative of Chase Apartments, who collected rent on behalf of Mr. Oliveros and Ms. Garzon.

The Applicants' case:

9. The applicants do not deny that the property is a House in Multiple Occupation and requires a licence but they say that they are not responsible for obtaining the licence because they are neither in control of, or managing the property on behalf of the landlord. They say that the responsibility for licensing rests with the landlords, Mr. Gambino and Ms. Acosta), and that they merely provided a 'tenant find' service.
10. Mr. Nwokeji took us through the documents. He told us that the Financial Penalty Notice was invalid by reason of Schedule 13 8(a) of the Act that required the amount to be conclusive, and the amount of the financial penalty had to be shown in the notice, and because this was primary legislation the notices would be invalid if the amount was not shown. He showed us both the Notice of Intention to serve a Financial Penalty and the Final Notice, both identified in the reasons for the penalty that the sum would be £10,000, but then showed £5,000.00 on the face of the document and the amount of penalty box on the rear of the form. He said that, because of this inconsistency the notices were invalid and could not be used to impose a penalty on the applicant.
11. With respect to the control or management of the property by the applicants, Mr. Nwokei said that the applicants obtained references on behalf of the landlords, who then decided whether they would complete the contract with the proposed tenants. If the landlords were content to proceed then the contracts would be signed and the tenancy started.
12. To support the assertion that the applicant was neither in control or managing the property, Mr. Nwokei referred to the lack of an electrical certificate and said that the applicants would have been in possession of this, had they been in control/management of the property.
13. He accepted that the applicants received rent but said that this was passed over to the landlord, less a lettings fee. He said that the fee was not a management fee, but the tenant finding/letting fee spread over the term of the tenancy and therefore deducted from the rent on a monthly basis.

14. He referred us to S.263 of the Act, and on questioning, he conceded that the applicants were both in 'control' and 'managing' the property in accordance with the Act.

The Respondent's case:

15. Mr. Sarkis called Ms. House to give evidence. Ms. House took us through the history of the process leading up to the service of the Notice of Intention to Serve a Financial Penalty, including her visit to the property, interview with the persons present and the documents she obtained from the tenants and landlords. Ms House said that, at no time, did she receive a copy of the management agreement between the applicants and the leaseholders.
16. Ms. House accepted that there was an error on both the Notice of Intention and Final Penalty Notices where both the £5,000 and £10,000 were noted, but said that this did not, in her view, invalidate the Notices and that it was clear on the front of the Notice that the Penalty was £5,000.00. She said that the applicants had not responded to the Notices.
17. Ms. House informed us that the applicants had three offices and should therefore have been aware of the legislation and sought advice if necessary. She said that as a professional agent the applicants should have been alerted to the letting was to a couple, (Mr. Gambino and Ms. Acosta) and they were occupying a four-bedroom flat.
18. She also said that the substance of the tenancy agreement showed that the applicants had control of the property. In particular she referred us to the following clauses in that agreement: -
 - (i) 1.7.2 The rent shall be paid clear of unreasonable or unlawful deductions or set off to the Landlord's Agent by bankers standing order or such other method as the Landlord's Agent shall require.
 - (ii) 4.1.5 Pay a £75.00 + VAT fee being the reasonable costs of the Landlords Agent for each letter the Landlord's Agent, acting reasonably has to send to the Tenant concerning breaches of the tenancy agreement.
 - (iii) 4.1.6 Pay a charge of £20.00 to the Landlord's Agent for any payment presented to the Landlord's Agent's bank but returned, refused or re-presented by the bank for any reason

- (iv) 4.3.1 Promptly notify the Landlord's Agent in writing when the Tenant becomes aware of -; then listing various potential breaches of the tenancy.

19. We were also shown the references in relation to Mr. Gambina and Ms. Acosta and were concerned to see that the one in relation to Ms. Acosta clearly stated that she was not leaving her current property, and would be occupying the subject property part-time whilst working in the area. Ms. Acosta was tenant with the largest financial liability under the agreement, and this reference should have alerted the applicants to the possibility that sub-letting would have occurred.

Reasons for the decision:

20. We have considered all of the evidence on which the parties wish to rely. We find from that information, that the applicants were in control of the property, they received the rent, and despite their view that the tenants were to contact the landlord in the event of repairs etc, the tenancy agreement is clear that the tenants would contact the agents.

21. We are not persuaded the deduction from the monthly rent amounts to a letting fee. We were shown an invoice for the total sum for lettings, and in our view the agents would not therefore have any need to make a deduction from the rent. We find on the evidence supplies that the monthly fee amounts to a 'management fee' and that the applicants are managing the property.

22. We find on balance therefore the applicants to be both in control of and managing the property, which required a licence and which was not licensed with the consequence that the respondent is entitled to levy a financial penalty. We find the method of calculation of the penalty to be in line with the general guidance, and we do not find that the inconsistency within the Notices invalidates them. The applicants made no contact regarding the Notices to query the figures, or take any real part in these proceedings.

23. We find that the applicants should have been alerted to the fact that they were letting a four-bedroom flat to two people, and that the references for one of those tenants demonstrated that she was not going to live in the property full-time. These events should have caused the applicants concern, but it appears they did not, and the letting proceeded.

24. On balance we find the appeal should be dismissed and the financial penalty of £5,000.00 is to be paid within 28 days of this decision.

Name: Aileen Hamilton-Farey **Date:** 7 October 2019

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).