



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

Case reference : **LON/00BB/HNA/2019/0029**

Property : **165A Barking Road, Victoria Docks,
London E16 4HQ.**

Applicant : **Dr. Tokunbo Ogatimirin and
Mrs. Olufunmilayo Ogatimirin**

Respondent : **London Borough of Newham**

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

**Dr. T. Ogatimirin and Mrs. O.
Ogatimirin (Applicants in person)**

Appearances : **Ms. C. Zang of Counsel (for
respondents)**
Ms. J. Bull LB Newham
Mr. W. Pobi LB Newham

Tribunal : **Ms. A. Hamilton-Farey
Ms. S. Coughlin MCIEH**

**Date and venue of
hearing** : **17th June 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **1 July 2019**

DECISION

On 12 February 2019 the Respondent served a Final Financial Penalty Notice (“FPO2) on the joint Applicants under section 249A of the Housing Act 2004 requiring Dr. Ogatimirin to pay £2,500.00 and Mrs. Ogatimirin to pay £5,000.00 The Applicants appealed against the Notice under Schedule 13A of the Act.

Having heard the evidence and submissions from the parties, the tribunal determines that the appeal should be dismissed.

Reasons

1. The subject property is jointly owned by Dr. and Mrs. Ogatimirin. On 17 June 2016 a selective licence was issued in respect of the property for a period of one year. No appeal was made against the terms of this licence.
2. On 8 May 2017, the respondents reminded the applicants that the licence was due to expire, and they were therefore required to re-licence the property. The applicants did not re-apply for a licence with the consequence that the licence expired on 16 June 2017.
3. The tribunal has been provided with copies of warning letters to the applicants from the respondents in relation to the lack of licence, and a final warning was sent on 8 November 2018.
4. The respondents inspected the property twice in December 2018 and found the property to be in occupation by Abiodun Ayeni and family. Their occupation was subject to an assured shorthold tenancy, a copy of which was provided to the tribunal.
5. A Notice of Intent to issue a financial penalty was served on the applicants on 19 December 2018, having received an application for a selective licence the day before. It was the respondents' case that the offence had been committed on 10 December 2018.
6. Correspondence was exchanged between the parties during January and February 2019, with the result that the Financial Penalty Notices were served on 12 February 2019.
7. A five-year selective licence was issued by the respondents on 14 February 2019.
8. The applicants do not deny that the property was occupied by tenants on 10 and 13 December 2018. The applicants' case is that, first of all no FPO should have been served on Mrs. Ogatimirin because she was not responsible for the property. However, the tribunal noted from the Office Copy Entries provided that the applicants were joint freeholders of the property and were therefore both in control/management of an unlicensed property no matter what the personal arrangements they made between them. We were also told that the rent received paid the joint mortgage on the property. We are satisfied that both applicants are therefore liable for any penalty due to the lack of licensing.
9. The applicants said they had not experienced the grant of a one-year licence before, and having paid the £500.00 for a five-year term, expected to receive one, as they had done for their other properties in Barking and Dagenham. The applicants say that, if the licence was for only one year, they should have only paid a proportion of the fee for a

five-year licence. It was explained by Ms. Bull that the fee charged was not linked in any way to the length of the licence granted, and the same fee was payable whether or not a licence was granted, or one for any term up to five years. The licence was issued for a period of one year only because the applicants had failed to provide details relating to their ability to fund repairs to the property when requested.

10. We are satisfied that the fee payable is not linked to the length of the licence, and therefore there is no refund due to the applicants for having only received an initial one-year licence.
11. The main thrust of the applicants' argument is that they had a reasonable excuse for the failure to licence as they did not receive either a copy of the first licence or any of the correspondence relating to the licensing of the property from the respondents during the period from 2017 (when the licence was due to expire) until 2019 when they were served with the FPOs. Dr Ogatimirin stated that he checked the Respondent's on line database regularly to check on the progress of the original licence application and believed that the application was still ongoing. We were shown copies of the letters which the applicants said were not received and noted they had been served on the subject property, on the hairdresser below (which was owned and managed by the applicants) as well as an address in Avondale Court, which had been given by the applicants as one of their contact addresses.
12. The applicants did not dispute that any of the addresses were valid but maintained they had not received anything from the respondents.
13. Dr. Ogatimirin told us that, he was often away from the property looking after a sick relative in Nigeria, but that during his periods of absence, his wife and his children checked the post box and went to the property on a regular basis.. He said that neither his wife, nor his children had received anything from the respondents.
14. In addition to their claim that no correspondence had been received, Mr. Ogatimirin also said that he did not understand how the fines had been calculated, and he had also received an invoice for £237.50, which he did not understand, and had not paid.
15. Ms. Bull took us through the matrix used by the respondents, and which was based on the statutory guidance 'Civil penalties under the Housing and Planning act 2016 – Guidance for Local Housing Authorities' when determining the level of penalty.
16. We were taken through the matrix and were able to see that the differential in the FPO was due to the fact that Dr. Ogatimirin was considered to be a medium risk of further offending, whereas his wife had accepted a caution in 2015 under the Housing Act 2004 for failing to licence 63 Avondale Court, Avondale Road, London E16 4PU.
17. This evidence was not disputed by either of the applicants, and we consider that given the previous offence by Mrs. Ogatimirin, that there should be a differential in the FPO served.
18. With respect to the invoice for £237.50, this was a completely different matter and the invoice related to a Disrepair Notice that had been

served under S.49 of the Act and is not related to the FPO's subsequently issued.

19. Having heard all of the evidence, we are not satisfied that the applicants' case can succeed. Their ignorance of the law is not an excuse for not licencing the property, nor does it seem plausible to the tribunal that no correspondence was received from the respondents at all as has been claimed. If the applicants were to be away for any period of time, then it was for them to ensure that correspondence by whatever method was received and dealt with. We are satisfied that the property was not licensed when the Respondent inspected in December 2018 and should have been licensed. and on balance we are satisfied that the applicants did not have a reasonable excuse for the failure to licence.
20. The applicants said that they considered the FPO's to be too high, however it was brought to their attention during the hearing the legislation enables a fine of up to £30,000.
21. We consider the amount of the penalty is relatively modest compared to this statutory maximum of £30,000 And that the financial penalty of £2,500 in relation to Dr. Ogatimirin and £5,000 in relation to Mrs. Ogatimirin are proportionate to the circumstances of the Applicant's offence.

Tribunal: Ms. A. Hamilton-Farey.

Date: 1 July 2019.