



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

Case Reference : **MAN/00CE/HNA/2019/0012**

Property : **96 Staveley Street, Edlington, Doncaster DN12
1BP**

Applicant : **John Currie**

Respondent : **Doncaster Metropolitan Borough Council**

Type of Application : **Appeal against penalty, s. 249(a) Housing Act
2004**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

**Date of
Determination** : **17 May 2019**

Date of Decision : **22 May 2019**

DECISION

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The Respondent's Final Notice to the Applicant dated 18 January 2019 is varied by substituting the sum of £1900 for the penalty charge of £3000.

REASONS

THE FACTS

1. The Applicant owns 96 Staveley Street, Edlington, which at all material times was let to tenants. The Tribunal is told that the Applicant also owns, jointly with others, other properties which are let to tenants.
2. In February 2018 the Respondent Council exercised its statutory powers to designate part of Edlington a Selective Licensing Area, which included the subject property. Landlords of housing within a Selective Licensing Area are required to apply for a licence, which is issued subject to compliance with conditions, relating, for example, to the state of repair of the property.
3. The Applicant's tenants at 96 Staveley Street were not paying their rent, and the Applicant intended to apply for possession and subsequently to sell the property. He therefore applied for an exemption from licensing, which was granted on 4 May 2018. The Temporary Exemption Notice stated that it would expire on 4 August 2018 but the Applicant says he overlooked this fact. It appears that he erroneously believed that his tenants no longer had a right to remain in his property, as the initial term of the statutory tenancy had expired.
4. Following expiry of the Temporary Exemption Notice, the Respondent wrote by email to the Applicant at an email address he no longer received. The Respondent is said to have sent the Applicant a letter he did not receive, and the Applicant is said to have notified the Respondent by telephone of his new email address, but there is no record of this. In any event, the Applicant first had notice of his failure to apply for the necessary licence on 7 November 2018 when he received an Intention to Issue a Financial Penalty Notice (Notice of Intent) proposing a penalty of £5000. On receipt, the Applicant applied for a licence, paid the relevant fee, and made representations to the Respondent as to why the proposed financial penalty should be reduced.
5. The Respondent took those representations into account, and reduced the penalty to £3000 with a further discount of 33% if the penalty was paid within 14 days. No further reduction was forthcoming from the Respondent, and so the Applicant applied to this tribunal on 24 January 2019 for a review of the amount of the penalty.

THE STATUTORY POWERS

6. The Respondent's powers are contained in Schedule 13A to the Housing Act 2004. Failure to apply for a licence for a property within a Selective Licensing Area 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.

7. 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.
8. 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.
9. 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.

CALCULATION OF THE PENALTY

10. The Respondent assessed the culpability of the Applicant as "medium", and the harm also as "medium". This gave a penalty level of between £4000 and £6000. Although the Applicant had an interest in other let properties, 96 Staveley Street is the only one within a Selective Licensing Area and as a result the Respondent fixed the starting point at £4000, being the lowest figure in the published range. As there were no previous convictions, a 5% discount was applied, giving a penalty of £3800.
11. Subsequently the Applicant's representations were considered, and the penalty was further reduced to £3000.

THE DECISION

12. The Tribunal finds that while the Applicant's culpability was "medium", the harm should properly be assessed as "low" since the tenants suffered no loss, the Applicant had only one licensable property, and the Applicant promptly and fully remedied his failure so as to avoid undermining or challenging the Respondent's licensing policy. £2000 is the lowest figure in the published range of penalties, and this therefore becomes the starting point. The Tribunal applied a reduction of 5% for the Applicant's previous good record and the mitigating factors set out in his representations, resulting in a penalty of £1900. The Final Notice was varied accordingly.

Signed: Judge Angela Davies

Date: 22 May 2019