



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

Case Reference : **MAN/32UH/HNA/2020/0078**

Property : **12 Portland Terrace, Gainsborough,
Lincolnshire, DN21 1JR**

Applicant : **Miss Muyinatu Ajidele**

Respondent : **West Lindsay District Council**

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

Tribunal Members : **Judge, K Southby
Valuer Member, P Mountain
Valuer member, N Swain**

Date of Decision : **19 May 2021**

DECISION

DECISION: The Respondent’s Final Notice to the Applicant dated is varied and the appropriate penalty is £3000.

REASONS

BACKGROUND

1. The property owner and landlord Miss Ajidele purchased the property at 12 Portland Terrace (‘the Property’) on 7 November 2018, and instructed managing agents Martin & Co.
2. With effect from 18 April 2016 the Respondent designated a Selective Licensing Area which included the property. Consequently, the Applicant, being the person having control of or managing a tenanted property within the area, was required to obtain a Selective Licence from the Respondent.
3. The Applicant accepts that her failure to obtain a licence was an offence under section 95 of the Housing Act 2004.
4. The Applicant commenced an application in November 2018 but did not complete her application for a Selective Licence until 24 August 2020.
5. During that period the property was let for two periods, between 2 August 2019 – 7 June 2020 and 10 July 2020 – 24 August 2020.
6. Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.
7. The hearing took place by way of FVH Video conference on 5 May 2021 at which the Applicant appeared in person and Ms Hornsey and Ms Holmes appeared for the Respondent. All parties confirmed that they could see and hear and participate fully in proceedings.
8. Three bundle of documents of 326 pages, 126 pages and 21 pages had been placed before the Tribunal for their consideration and these had been read by the Tribunal before the commencement of the hearing and were referred to during the hearing.

THE STATUTORY POWERS

9. The Respondent’s powers are contained in Schedule 13A to the Housing Act 2004. An offence having been committed, the Respondent must issue a Notice of Intent before the end of 6 months beginning on the date when the Respondent has evidence of the offence, or at any time when the offence is continuing. In this case the Notice related to the second of the two periods of tenancy referred to above, was dated 1 October 2020 and the penalty proposed by the Respondent was £3500 [page 191].

10. The party 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, make a final decision as to the amount.
11. 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 in bands the resulting figures for the highest and lowest penalties appropriate to the level of blame and harm.
12. 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 she is dissatisfied, the landlord may apply to this tribunal for a review.

CALCULATION OF THE PENALTY

13. The Respondent assessed the culpability of the Applicant as "high", removal of financial incentive as "high", deterrence and prevention as "moderate" and the severity of harm or potential harm as "low" [page 196]. According to the Respondent's published penalty chart, this gave rise to a score of 80 and a penalty of £3500, of which £2500 is the penalty for the failure to obtain a proper licence, and the remaining £1000 arises from the application of their assessments as set out above.
14. After considering the Applicant's written submissions, the Respondent amended the classifications in their scoring matrix to reduce culpability and track record to "moderate" and deterrence and prevention to "low" giving a total matrix score of 50 [page 228], however having reapplied this to the scoring chart the LA concluded that the figure of £3500, was still appropriate.

EVIDENCE

15. The Tribunal heard oral evidence from Miss Ajidele that she initially made an application for a licence through the Home Safe Scheme in November 2018 and that her intention throughout the process following her purchase of the property had been to comply and to make payment when requested following her application. She stated that she was unable to complete this application because she did not have the relevant gas and electricity certification, and the house which she had bought tenanted was in fact not let and required significant work to be done to it before it could be relet.
16. Miss Ajidele gave evidence that her application was withdrawn without her knowledge. She stated that she never cancelled the application and that as far as she was concerned it was 'on hold'. She stated that she felt that the Respondent knew about her and the property and had enough information to have contacted her to request completion of her application, but they did not do so.

17. The Tribunal heard oral evidence from Ms. Hornsey that the Respondent acknowledge that an initial application was submitted but that the requirement for a complete application were not provided. She accepted that the first breach period had been identified by the LA on 30 June 2020 but that some time elapsed before the Respondent took action, during which the second tenancy period commenced.
18. The Tribunal heard oral evidence from Ms. Holmes that when considering what is a low or moderate income received for the purposes of completing the matrix to calculate the penalty, the Respondent considered their knowledge of the rent of £350 per month, and she stated that the Respondent was confident that the rent was being paid over the two periods of tenancy and that this added up to a moderate income.

THE DECISION

19. The Tribunal has seen copies of the documents sent to the Applicant by the Respondent, and notes that the Applicant states that the selective licensing application was initially instigated and then placed 'on hold' by the Applicant as the property was not in a condition to be let out at that time. We note that the Applicant accepts that the property was unlicensed for the periods of the two tenancies set out above. We conclude from this that the Applicant was clearly aware of the requirement for the Property to have a license, although we also note that there is a dispute between the parties about whether or not the application was withdrawn by the Applicant or cancelled by the Respondent without the Applicant's knowledge.
20. We are satisfied beyond reasonable doubt that the Applicant's conduct amounts to a relevant housing offence in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004).
21. Having considered all of the documents provided to us we are also satisfied that the Respondent has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act).
22. We note that only one financial penalty has been imposed on the Applicant by the Respondent, and that the penalty relates only to the second tenancy period.
23. We next considered whether the financial penalty was set at the appropriate level having regard to any relevant factors.
24. The Tribunal finds that notwithstanding the Applicant's clear good intentions in November 2018 when they purchased the property, they nevertheless let the property without having obtained a license. The level of culpability was initially assessed as high but moved down to "medium". The Applicant was clearly aware of the City Council's Selective Licensing Scheme and it is clear that upon the initial purchase the Applicant endeavored to exercise all due diligence in ensuring that any of her premises that should be licensed were licensed. The difficulty arose as the license application could not be

completed as the necessary certifications were unavailable, and it is clear that there was a genuine belief by the Applicant that her application remained with the Respondent 'on hold' however, what is also clear is that the Applicant did not at any stage provide the requisite fee and documentation prior to the letting of the property, and we do not accept that it was the responsibility of the Respondent to chase the Applicant to fulfil their licensing obligations.

25. We considered whether the Respondent had correctly assessed the level of culpability in accordance with its own scoring matrix. We accept the evidence of Ms. Holmes that it is either rather than both of the statements in each section of the matrix which need to be fulfilled, and that a degree of discretion may be required. We note that the initial assessment by the Respondent for culpability was "high!" which states '*One or more enforcement notice served. Offender ought to have known that their actions were in breach of legal responsibilities.*' This was downgraded to "moderate" - wording for the moderate category is '*one or more previous enforcement notice served. Clear evidence of action not being deliberate.*' We are not persuaded that this is the correct category in which to place the Applicant. It is not disputed that the Applicant had no previous enforcement history. It is clear from the downgrading by the Respondent that they on reflection concluded that there was clear evidence of the action not being deliberate. We agree with this assessment. Whilst we think that the Applicant was naïve in her expectation and reliance on the Respondent to chase her if there was a problem, we do note that she instigated the licensing procedure immediately upon purchase of the property which we find to be persuasive evidence that her ultimate failure was through error and oversight not deliberate evasion.
26. Accordingly, having concluded that the Applicant's actions were not deliberate and it being common ground that there was no previous enforcement history, it follows that the downgrading should have been to the "low" classification rather than to moderate.
27. The harm done as a result of the offence has properly been assessed at "low" since the tenant suffered no loss. The Tribunal notes that the property was not in multiple occupation.
28. We note that the Respondent classifies the removal of financial incentive as "high" on the basis that there was moderate income received by the Applicant. We considered the evidence from Miss Holmes, and we note that she refers to both periods of tenancy whereas the notice itself is very clear that it relates only to the second period. The Respondent chose not to take any action about the first period. We find that it is not appropriate to consider income from a period of tenancy which is not the subject of the notice, and for which no proceedings have been brought. Either the Respondent is seeking to impose a penalty for that period, or it has concluded that it is not appropriate to do so – to decide not to proceed in respect of that period, and yet to count it for these purposes does not seem to the Tribunal to be an appropriate approach. We note that the period of the second tenancy which is the subject of this financial penalty is 10 July 2020 to 24 August 2020 which is a period of 46 days. At a monthly rent of £350, this represents an income of approximately £530 less agents' fees of 14% which is a net income of approximately £450. We do not

conclude that this is *'little or no income'* but in our view this is a low rather than a moderate income which would therefore reclassify this area as "low".

29. Having reclassified these elements the overall score, which was originally 80, reduced by the Respondent to 50, is now reduced to an impact matrix score of 20 which gives a level of penalty of £500 rather than the £1000 as previously.
30. The Tribunal notes that the most significant financial element within the penalty is the £2500 for the failure to license the property which remains unchanged, however for the reasons set out above the Tribunal varies the Respondent's decision such that the appropriate penalty is £3000.

K Southby
Tribunal Judge
19 May 2021