



Appeal number: PR/2018/0009

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)**

**EK ESTATES LIMITED
T/A KEYSTONES PROPERTIES**

Appellant

- and -

**LONDON BOROUGH OF
TOWER HAMLETS**

Respondent

**JUDGE ALISON McKENNA
Sitting in Chambers on 31 July 2018**

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Decision

1. The Appeal is dismissed.
2. The Final Notice dated 15 January 2018 is confirmed.

Reasons

Background

3. The Appellant is a letting agent. The Respondent (“the Council”) is the enforcement authority which served a Final Notice on the Appellant on 15 January 2018. The Notice imposed a financial penalty of £1,000 in total, (reduced from an initial proposed penalty of £5,000 after consideration of representations) for failure to publicise landlord and tenant fees inclusive of VAT on its website.
4. By its Notice of Appeal dated 7 February 2018, the Appellant asserts that the penalty was too high in all the circumstances.
5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

The Legal Framework

6. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015. Section 83 (4) (c) provides that the fee must be “inclusive of any applicable tax”.
7. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
8. Schedule 9 paragraph 5 to the 2015 Act provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the 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. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

Submissions and Evidence

9. The Council relied on the witness statement of Alexandra McKeown, its Consumer Protection Officer. Her evidence was that the Appellant's website did not publish fees inclusive of VAT when she checked it on 6 November 2017. She exhibits a screen shot of the website. She attended the Appellant's premises and issued a Notice of Intent on 6 November 2017. This proposed a financial penalty of £5,000. Ms McKeown subsequently received representations from the Appellant to the effect that an administrative error had been made and corrected swiftly so that the penalty was unreasonable.
10. In response to the representations received from the Appellant, the Council reduced its initial penalty of £5,000 to £1,000.
11. The Appellant has not filed a witness statement in this appeal and did not produce any evidence, so its case relies on the grounds of appeal only. It is there conceded that the Appellant's website was in breach of the legal requirements but submitted that the error was minor and caused no harm. Further that the Appellant had gained no financial benefit from the error and that it provides a service to the local community in housing DSS clients.

Conclusion

12. The Appellant does not dispute that it breached the requirements of the legislation. I must consider whether the penalty imposed was in all the circumstances unreasonable.
13. In relation to the list of fees, I do not regard the failure to publish VAT-inclusive fees as a "technical" breach of the legislation. I note that the Appellant was in breach of its legal obligations for a period of over two years since the introduction of the new law.
14. The Council took the Appellant's representations into account in reducing the penalty to £1,000. I am satisfied that the amount of financial penalty finally imposed by the Council was reasonable in all the circumstances of this case and that an appropriate reduction was made in response to the submissions.
15. I have received no evidence of financial hardship which suggests that the Appellant could not pay the penalty imposed.
16. Accordingly, this appeal is now dismissed, and the Final Notice is confirmed.

(Signed)

Alison McKenna

Chamber President

Dated: 31 July 2018

