FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/HNA/2021/0036**
HMCTS code (paper, video, audio)	:	**V: CVP REMOTE**
Property	:	**Ground floor flat, 2 Queen Mary Road London SE19 7XJ ("the Property")**
Appellant/applicant	:	**Kathryn Ann Matthews**
Representative	:	**In person**
Respondents	:	**London Borough of Croydon**
Representative	:	**Alex Radley of Counsel**
Type of Application	:	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Members		**Judge Professor Robert Abbey and Mr C P Gowman MCIEH (Professional Member)**
Date of Hearing	:	**7 February 2022**
Date of Decision	:	**8 February 2022**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of non-paper-based digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to impose a financial penalty is upheld in the total sum of £2000. For the reasons set out below the Tribunal has determined that the financial penalty of £2000 should not be subject to any reduction or increase.
2. In the light of the above, the appeal by the appellant against the imposition of a financial penalty by the respondent under section 249A and schedule 13A of the Housing Act 2004 is therefore refused.

Introduction

3. This is the hearing of the applicant's application regarding the **Ground floor flat, 2 Queen Mary Road London SE19 7XJ** ("the Property"), pursuant to Schedule 13A of the Housing Act 2004 ("the 2004 Act"), to appeal against a financial penalty imposed by the respondent under s249A of the 2004 Act. A financial penalty of £2,000 has been imposed on the applicant by the respondent in a Notice dated 16 June 2021 for having control of a property which was not licensed and therefore committing an offence under section 95(1) of the Housing Act 2004.The applicant was the long leaseholder of the property and the respondent is the local authority responsible for the locality in which the property is situate.

The Hearing

4. The appeal was set down for hearing on 7th February 2022 when the applicant was not represented and so appeared in person. Mr Alex Radley of Counsel appeared for the respondent. This hearing is a re-hearing of the local authority decision, see paragraph 10(3)(a) of Schedule 13A to the 2004 Act. The Tribunal is therefore to consider whether to impose a financial penalty afresh, and is not limited to a review of the decision made by the respondent.

5. The imposition of the financial penalty was imposed on the basis that the Applicant committed an offence under s.95(1) of the 2004 Act by being a person in control of a property which was required to be licensed under Part 3 of the 2004 Act but was not so licensed. The applicant is the leaseholder under a 999-year lease of the Property.

6. In regard to this dispute and at all material times the applicant admitted she had failed to hold a selective licence (under Part 3 of the 2004 Act) and so the Property was not licensed. This was notwithstanding that Croydon had a borough wide scheme in place for selective licences from 1 October 2015. As a result of the above an offence was committed under s.95(1) of the 2004 Act.

7. Accordingly, the dispute was not about the existence of a licence but rather about the quantum, the amount of the penalty.

8. The crux of the Applicant's argument in her application was that she was not aware of the licensing scheme, correspondence from the respondent was not received until July/August 2020, personal circumstances were of material consequence during the pandemic, the scheme ended before she could get a licence, she was not a rogue landlord, the respondent was out of time for serving the notice of intention and the penalty was excessive. In effect this all amounted to saying that the applicant had a reasonable excuse for not being licenced.

9. At the hearing the applicant maintained that the level of the financial penalty was too high given the circumstances of the tenancy, the consequences of the COVID-19 pandemic and the willingness of the applicant to comply with the requirements of the Council. On the other hand, the respondent considers that the financial penalty should remain as imposed. As the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.)

Decision and Reasons

10. From the evidence before it and the admission mentioned above, the Tribunal was satisfied that the applicant was in breach of the requirements of selective licencing scheme. With regard to the effects of the COVID-19 pandemic The Tribunal noted that the time of the first national lockdown did occur during the timescale of this dispute. The country entered the lock down in mid-March and the restrictions were not lifted until July. During this time the applicant said that she found it very difficult to deal with a lot of pressing issues both of a personal nature and also relating to the property.

11. On the other hand, it is the case that the Covid pandemic will have had an effect but Government Guidelines made it clear that there was still

an expectation on landlords to carry out important inspections/repairs and other requirements such as licensing matters such as those required in this dispute even in the midst of the pandemic. Accordingly, with regard to this first ground, the Tribunal was not persuaded by the effects of the national lockdown as it was clear from the Guidance from the Government that there was an expectation that important and necessary inspections and or repairs and other matters such as licensing would nevertheless be required and should have been carried out.

12. The applicant says she was not aware of the scheme. Ignorance of the law is no defence. The applicant should had completed a more robust process of due diligence before creating the tenancy to check what legal requirements there were for landlords in this London Borough. The applicant confirmed she worked as a solicitor in private practice but that she did not work in the area of Housing Law and so did not know about this potential pre-requisite for lettings in Croydon. The Tribunal was told by the respondent that details of the scheme were widely advertised when the scheme was created and that comprehensive details were on the Council website along with an online application form. This assertion therefore fails to assist the applicant in mitigating the penalty.

13. At the hearing much was made about how the respondent communicated with the applicant. The Tribunal considered all the evidence before it in this regard and was firmly of the view that all the documentation was properly communicated and served by the respondent on the applicant and there is nothing in this regard that might assist the applicant.

14. The respondent accepted that the applicant was not a “rogue landlord” and had maintained the property in a proper and acceptable condition. Certainly, the tenant in occupation had not made any complaints about the tenancy or the property to the local authority that had been brought to the attention of this Tribunal.

15. The applicant asserted that the scheme ended before she could get a licence. In fact, she had a long period of time to licence the property, i.e., from the start of the tenancy until the end of the scheme. The tenancy start date was 9 April 2017 and the scheme ended on 30 September 2020. The applicant tried to say that she only had time from when warning letters were issued by the respondent in July 2020. In the light of the above, this is incorrect but even then there were still two months to make the application. The Tribunal could not find anything in this assertion that might assist the applicant.

16. With regard to the issue of the Council being out of time in serving its notice of intention the Tribunal was satisfied that this was not correct. As the respondent correctly observed the offence continued until the

end of the scheme (30 September 2020) and as such the six-month period for serving the notice expired on 31 March 2021 and the applicant confirmed that the notice was in fact served on 23 March 2021.

17. Finally, the Tribunal considered the level of the penalty. The applicant says the level of the penalty is excessive as they tried at all times to co-operate with the respondent. The respondent says it has a policy and a fee matrix that dictates how and why a financial penalty might be imposed and at what level. As has been noted previously as the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.).

18. The applicant says she looked into the "Penalty Banding Grid" designed by the respondent and in the circumstances, she considers a Band 2 penalty to be excessive given:

> "a) Factor 1: Culpability – this should be assessed as low. I had no knowledge of the licensing scheme. (I am not a professional landlord, but a single mother and sole provider for two young children who rents out a flat to help make ends meet.) The failure to get a license was an oversight and an isolated incident during a very stressful time during a global pandemic.
>
> b) Factor 2: Level of Harm – this should be assessed as low. I maintain the flat to a high standard and the tenants have suffered no adverse effects from me not having a license. The tenants are happy to give a statement to this effect.
>
> c) There are no aggravating factors.
>
> d) The penalty should be amended due to mitigating factors (listed in her evidence, and
>
> e) There are no previous offences."

19. Finally, the applicant says "that the Band 1 financial penalty where the offence is assessed as low is £250, and a penalty at that amount would be more proportionate in these circumstances, if indeed it is considered that a penalty is proportionate at all. "

20. The Council produced to the Tribunal a copy of the respondent's detailed enforcement policy. The Tribunal noted that this was comprehensive and very detailed. The respondent showed the Tribunal details of their five Stages in 'Determining the Level of a Financial Penalty'. They are: -

> "Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors. The scores are

multiplied to give a penalty score which sits in one of four penalty bands;

• Culpability of the landlord; and • The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord's ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour."

21. The respondent then showed the Tribunal how each factor would be dealt with by "banding the offence" from significant through high and moderate down to low. Points were assessed for each level. A total was then reached and applied to the level of the penalty. This seemed to the Tribunal to be a fair and proportionate methodology when deciding the level of a financial penalty.

22. Once the penalty was assessed the applicant made representations to seek its review. In response the respondent did review the case by Mr Michael Goddard, the Head of Environmental Health Trading Standards and Licensing, at the London Borough of Croydon as follows-

"Records show that Kathryn Ann Matthews (formerly Arogundade) has owned the Ground Floor Flat, 2 Queen Mary Road, London, SE19 3NW since November 2012. Marta Grilo has lived at the property as a tenant since April 2017. From 2015 onward, the Croydon Private Rented Property Licensing Scheme was widely and extensively advertised. I have read the representations received. The extensive advertising of the Croydon Private Rented Property Licensing Scheme before, during and since its introduction in 2015 and the letters, sent by post and email to Kathryn Ann Arogundade at both the rented property in SE19 and her home address in SE20 make it reasonable to believe that Ms. Arogundade was aware of the requirement to apply for and obtain a Croydon Private Rented Property Licence under the Scheme introduced on 1 October 2015 but that she failed to do this. In addition, Ms. Arogundade has acknowledged that she received the e mail correspondence sent in July 2020 in her representations.

Failing to licence the property is an offence and the only defences to that offence are as contained in Section 95(3) of the Housing Act 2004. I agree that the scoring of the offence, at 5 points, is correct. This places the offence at the lower end of the scale in Band 2 with a financial penalty of £2000. In September 2020, Ground Floor Flat, 2 Queen Mary Road, London, SE19 3NW had been occupied by the current tenant for over three years with no licence being applied for or obtained by the landlord since the landlord licensing scheme was introduced in October 2015. This scores culpability at medium and therefore 2 points. I agree that the risk of harm to the tenant was moderate and that a score of 2 points is appropriate. I agree that the failure of Kathryn Ann Arogundade to apply for a licence even after having been written to is an aggravating factor and that this increases the score by 1 point to 5 points. After due consideration of the representations received, the Council intends to issue] [a] Financial Penalty to [Kathryn Ann Arogundade, landlord] for the contravention] with section [95(1)] of Housing Act 2004 (as amended) which occurred on 24 September 2020. The final Financial Penalty falls into Band [2] with a penalty score of [5]. *The final Financial Penalty is £2000".*

23. The Tribunal was of the view that this summary of the offence and the penalty calculation was a fair and proportionate application of a proper and clear policy. As such the final figure of £2000 is both appropriate and proportionate.

24. Accordingly, we consider that the amount set by the respondent in the sum of £2000 to be a reasonable amount for an offence of this type, since the local authority scored the matrix with leniency (according to their Counsel.)

25. Consequently, in the light of the above, the appeal by the appellant/applicant against the imposition of the financial penalty levied by the respondent under section 249A and schedule 13A of the Housing Act 2004 is refused.

26. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert Abbey **Date:** 8 February 2022

Annex

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).

Appendix

249A Financial penalties for certain housing offences in England

(1)The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2)In this section "relevant housing offence" means an offence under—

(a)section 30 (failure to comply with improvement notice),

(b)section 72 (licensing of HMOs),

(c)section 95 (licensing of houses under Part 3),

(d)section 139(7) (failure to comply with overcrowding notice), or

(e)section 234 (management regulations in respect of HMOs).

(3)Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4)The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5)The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a)the person has been convicted of the offence in respect of that conduct, or

(b)criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6)Schedule 13A deals with—

(a)the procedure for imposing financial penalties,

(b)appeals against financial penalties,

(c)enforcement of financial penalties, and

(d)guidance in respect of financial penalties.

(7)The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8)The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9)For the purposes of this section a person's conduct includes a failure to act.

Schedule 13A

Notice of intent

1Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).

2(1)The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2)But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a)at any time when the conduct is continuing, or

(b)within the period of 6 months beginning with the last day on which the conduct occurs.

(3)For the purposes of this paragraph a person's conduct includes a failure to act.

3The notice of intent must set out—

(a)the amount of the proposed financial penalty,

(b)the reasons for proposing to impose the financial penalty, and

(c)information about the right to make representations under paragraph 4.

Right to make representations

4(1)A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2)Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5After the end of the period for representations the local housing authority must—

(a)decide whether to impose a financial penalty on the person, and

(b)if it decides to impose a financial penalty, decide the amount of the penalty.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8The final notice must set out—

(a)the amount of the financial penalty,

(b)the reasons for imposing the penalty,

(c)information about how to pay the penalty,

(d)the period for payment of the penalty,

(e)information about rights of appeal, and

(f)the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1)A local housing authority may at any time—

(a)withdraw a notice of intent or final notice, or

(b)reduce the amount specified in a notice of intent or final notice.

(2)The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

10(1)A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a)the decision to impose the penalty, or

(b)the amount of the penalty.

(2)If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3)An appeal under this paragraph—

(a)is to be a re-hearing of the local housing authority's decision, but

(b)may be determined having regard to matters of which the authority was unaware.

(4)On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5)The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a)signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b)states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4)A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5)In this paragraph "chief finance officer" has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A