



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

| | | |
|----------------------------------|---|--|
| Case Reference | : | CHI/00HE/HNA/2019/0013. |
| Property | : | 7 Hutton Heights Highertown Truro Cornwall TR1 3PY. |
| Applicant Representative | : | Maurice R Hutton. None |
| Respondent Representative | : | Cornwall Council. Kevin Hill Solicitor. |
| Type of Application | : | Appeal against a financial penalty; Section 249(a) Housing Act 2004 (the Act). |
| Tribunal Members | : | Judge C A Rai (Chairman) Michael Woodrow MRICS Chartered Surveyor. |
| Date and venue of Hearing | : | 12 September 2019. St Austell Conference Centre St Austell Business Park St Austell Cornwall PL25 2FD. |
| Date of Decision | : | 26 September 2019. |

DECISION

1. The Tribunal confirms the Respondent's decision to impose a financial penalty on the Applicant and the amount of the penalty of Fifteen Thousand Pounds (£15,000). The reasons for its decision are set out below.

Background

2. The Applicant made an application dated 14 March 2019 appealing against the financial penalty imposed on it by Cornwall Council following his failure to comply with two Improvement Notices.
3. The Applicant has not appealed against the two Improvement Notices, both of which related to 7 Hutton Heights, Highertown, Truro, TR1 3PY, (the Property).
4. Following receipt of the application the Tribunal issued Directions but there is no copy of those Directions in the Hearing Bundle prepared by the Respondent and sent to the Tribunal before the Hearing.

5. Before the Hearing the Tribunal received a letter dated 16 August 2019 from the Applicant which confirmed that he would not be attending the Hearing and with which was enclosed a copy of a letter of the same date sent to the Respondent which he said explained his reasons. The Respondent sent the Tribunal a copy of its skeleton argument.
6. The Applicant has not provided a statement of his reasons for appealing against the financial penalty or complied with any directions made by the Tribunal. He has sent various letters to the Respondent copies of which are included in the Bundle, for the most part in date order.
7. Where references have been made to documents in the Hearing Bundle, these are to the page numbers in that Bundle.

The Hearing

Preliminary matters

8. Mr Kevin, Hill Solicitor, and Mr Ryan Goldsworthy, Senior Development Officer for the Respondent represented the Respondent at the Hearing.
9. Mr Hill provided the Tribunal with further “complete” copies of the Final Notice to Issue a Financial Penalty dated 5 March 2019 and two further signed witness statements made by Mr Goldsworthy for the Respondent both dated 23 August 2019.
10. As both the Tribunal and Respondent knew that the Applicant would not be attending the Hearing, Mr Hill had prepared his skeleton with the benefit of that knowledge.
11. The Tribunal told the Respondent that it accepted that the Applicant had received the Improvement Notices which were dated 4 May 2018 and that he has not appealed against them.
12. It reminded the Respondent that for the Tribunal to consider the appeal against the Financial Penalty it must first be satisfied “beyond reasonable doubt” that an offence has been committed. In the absence of any cogent evidence from the Applicant to dispute that, it was likely to conclude that was the case. The Tribunal also confirmed that it is aware that the Applicant is 99 years old.
13. Mr Hill stated that his skeleton argument addressed the failure of the Applicant to provide information about his financial means as he had been directed to do and also that he had not provided the Tribunal or the Respondent with a statement of his case or any witness statement or other evidence in support of the Application. He has included evidence in the Bundle regarding the Respondent’s considerations prior to deciding to impose a Financial Penalty

including the Respondent's analysis of whether it was in the public interest to seek to convict the Applicant of an offence.

14. The skeleton argument also addressed how the Respondent calculated the amount of the penalty.

The Applicant's case

15. The Applicant has claimed that because the tenancy agreement for the Property provided that the tenant is responsible for heating the Property he cannot be responsible for the hazard of excess cold. He has provided the means of heating. He claimed to have supplied convector heaters in the Property. He did not respond to correspondence from Mr Goldsworthy which recorded that no heaters were present during the first inspection and that even if convector heaters are now supplied this would be insufficient to address the hazard of "excess cold".
16. The Applicant sought information from the Respondent of recorded incidents of actual "falls from stairs", appearing not to understand that the hazard of "falling from stairs" was in relation to the risk of falls, not an actual incident. He had justified the current guarding of the stairs as being sufficient because he said it had been compliant with planning permission when the building was constructed.
17. The Applicant alleged that he had been told by Mr Goldsworthy that if he was intending to sell the Property the Notices would be revoked.
18. He told Mr Goldsworthy that he was actively trying to sell the Property but this was not proven and later it appeared that he had told his agent that the Property was not to be sold.
19. The Applicant chased the Respondent for an update following Mr Goldsworthy's inspection in October 2018 because he said in his letter dated 2 October 2018, [Page C64] that "Flat 7 tenant has moved out but we are unable to let it or do any work that may be required until you have inspected the flat".
20. In a letter dated 10 February 2019, sent after the Respondent had issued "Notices of Intent to issue a Financial Penalty" dated 17 January 2019, the Applicant confirmed that the sale was not proceeding. He said "there is no question that Section 1 and 2 Notices were served without due cause. There are 16 apartments at Hutton Heights, Highertown, Truro and there was only one flat, Flat 7 that made a complaint. The occupier of that apartment vacated on 26 September 2018; the improvement notice was no longer required to be complied with." [Page C96].

The Respondent's case

21. The facts which led to the Respondent imposing a financial penalty are set out in Mr Ryan Goldsworthy's witness statements. One of the two additional statements supplied to the Tribunal, prior to the Hearing, corrected some of the dates in an earlier version of the statement included in the Bundle and the other statement refers to the correspondence exchanged between the Respondent and the Applicant. Although the Applicant has provided no statement in support of the Application, nor any response to Mr Goldsworthy's statements, the correspondence from the Applicant to the Respondent included in the bundle provides insight into the manner in which the Applicant has dealt with the Respondent's correspondence and reacted to its inspections.
22. The background preceding the issue of the Financial Penalty Notices was that, prompted by the receipt of a complaint about the Property, Mr Goldsworthy inspected it, by appointment, on 12 March 2018. During that inspection he identified deficiencies categorised as "excess cold", a Category 1 Hazard and "falling from stairs" a Category 2 Hazard.
23. Two Improvement Notices dated 4 May 2018, (the **Notices**), were issued by the Respondent and served on the Applicant as the owner of the Property. The Notices required works be undertaken to the Property to eliminate the hazards which works had to be started on or before the 4 June 2018 and completed by 4 September 2018.
24. Correspondence was exchanged with the Applicant who suggested that he would sell the Property and even the entire block which comprises the Property and 15 other flats.
25. The Property was not sold and the agent who had been instructed confirmed to the Respondent that the Applicant had told him he had decided not to sell the Property. [Page C59].
26. Mr Goldsworthy arranged a further visit to the Property to find out what works had been undertaken which took place on 8 October 2018. He established that no works had been undertaken to address the "excess cold" and that, although limited works had been done to address the hazard of "falling from stairs", these did not comply with the requirements set out in the Notices. He sent a letter dated 19 October 2018 to the Applicant which contained a formal caution. [Page C76].
27. The Applicant had committed an offence by failing to comply with the Notices by the stated date. Just prior to that letter being sent the Applicant had written to Mr Goldsworthy, (see letter dated 2 October 2018 at page C64 and referred to in paragraph 19 above), chasing him to reinspect the Property because he claimed he could not re-let the Property until he knew what works remained outstanding. He also disclosed that the original tenant had vacated the Property.

28. Mr Goldsworthy thereafter sought advice from the Respondent's legal department to establish if the offence should be prosecuted and received advice that there would be a reasonable prospect of securing a conviction against the Applicant.
29. The Respondent sent a letter dated 17 January 2019 to the Applicant confirming the Respondent's intention to issue a financial penalty as an alternative to convicting him of an offence.
30. Further correspondence was exchanged between the parties and the Respondent reconsidered the amount of the civil penalty imposed which had been a total of £20,000, (£15,000 + £5,000) and reduced the penalty by 25% to a total of £15,000. Two final civil penalty notices dated 5 March 2019 were sent to the Applicant on that date. [Page C102].
31. The Respondent's skeleton argument addressed such grounds of appeal as are apparent from the limited information which the Applicant has provided.
32. The Respondent dismissed the Applicant's repeated arguments questioning the validity of the Notices as irrelevant since the Applicant had not appealed against them.
33. It dismissed the suggestion that any contractual obligation in the Tenancy Agreement could exempt the Applicant from complying with his legal obligation to supply a heating system of a type, quality and cost which would eliminate the hazard of "excess cold".
34. It stated that the Applicant's suggestion that construction of the staircase in compliance with planning permission at the date of construction would excuse non-compliance with current standards is not correct.
35. The Respondent said, insofar as the Applicant claimed that he expected the notices to be revoked if he intended to sell the Property, that was his interpretation of a statement in a letter from Mr Goldsworthy which letter had indicated that the Respondent would review the situation if the Property was vacant and the Applicant intended to sell it. On the facts before it, the Respondent believed that there was no real intention to sell the Property and the correspondence between the Respondent and the Applicant's estate agent confirmed that the Property, if ever marketed, was removed from sale within a month of the Respondent being notified it would be sold.

36. The Applicant appealed against the Financial Penalty after the issue of the Final Financial Penalty Notice. Prior to that the Applicant had made repeated threats to refer the Notices and the imposition of the civil penalty to his solicitor and to instruct him to take action against Mr Goldsworthy on unspecified grounds. He also suggested, in his letter dated 10 February 2019, [Page C96] that he would send the papers to his solicitor to bring an action against Mr Goldsworthy and the person dealing with the enforcement notice. There is no evidence that the Applicant has ever instructed a solicitor to represent him in connection with either the Notices or the imposition of the Civil Penalty.
37. The Respondent reconsidered the amount of the two penalties, originally £15,000 in respect of failure to comply with the notice relating to the Category 1 hazard and £5,000 in respect of the failure to comply with the notice relating to the Category 2 hazard. Mr Hill told the Tribunal that although he thought the amount of the penalties to be fair, the Respondent had reduced both by 25% to take account of the fact that, as far as it was aware, this was a first offence by the Applicant. However, the offences are both serious because the Property and the other 15 flats within the building are all occupied by “vulnerable” tenants who have been exposed, and remain exposed, to serious and continuing risk on account of the lack of a suitable means to heat the Property and the potential risk of falling from the stairs. Significant harm to occupiers might result from the continued existence of both hazards.
38. Mr Hill referred the Tribunal to the criteria used by the Respondent to assess the appropriate level of civil penalty and referred it to pages [Pages D29 - D30]. In relation to the Category 1 hazard, it considered the tenant had been put at risk, albeit not an imminent risk, of serious harm. The potential for harm from excess cold is cumulative. It believed the actions of the Applicant to be reckless rather than deliberate which is why it imposed a Level 3 penalty, (£7,500 - £15,000).
39. In relation to the Category 2 hazard, the staircase serves more than one of the flats within the building so it was considered appropriate to impose a Level 2 penalty, (£2,500 - £5,000), to take account of the seriousness of the Category 2 hazard. Again the Respondent interpreted the Applicant’s actions, or inaction, as reckless or to demonstrate ignorance rather than indicating that he had deliberately ignored the hazards. Later the reduction, (referred to above), was applied to both penalties.
40. The Respondent has also formed the view that the Applicant has considerable assets. It is aware that he owns all the 16 flats at Hutton Heights and his estate agent has disclosed information revealing he owns at least one other property.

41. Finally, the Respondent referred to Judge Agnew's Directions which required that the Applicant prepare an expanded statement of reasons and any witness statement of facts upon which he wished to rely. The Applicant had been directed to prepare a financial statement of means should he wish the Tribunal to take his means into account when making its decision. He has not provided this to the Respondent or the Tribunal.

The Law

42. The Tribunal's jurisdiction is contained in the Act. Section 249A, a copy of which is in the appendix to this Decision, enables a local housing authority to impose a financial penalty.
43. Schedule 13A of the Act provides that, before imposing a financial penalty, the local housing authority must give notice of the authority's proposal to do so and sets out the required content of the notice and the procedure to be followed subsequently. Paragraph 10 of schedule 13A sets out the rights of the person on whom a notice is served to appeal to this Tribunal and sub paragraph 10(3) states that an appeal made 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.On an appeal, the Tribunal may confirm, vary or cancel the final notice. It has to be satisfied of the allegations to the criminal standard of proof.

Reasons for the Decision

44. The Applicant has not appealed against the Notices. The Bundle includes a copy of the letter dated 19 October 2018 sent to the Applicant by the Respondent confirming that he has committed an offence and formally cautioning him. [Page C76]. The Tribunal is satisfied beyond reasonable doubt from the evidence before it, none of which has been disputed by the Applicant, that he failed to comply with the Notices and has therefore committed an offence.
45. The next issue for the Tribunal is to consider whether the Respondent has followed the appropriate procedure in issuing the Civil Penalty Notices, as an alternative to prosecution of the Applicant, for his failure to comply with the Notices.
46. The Respondent sent a letter enclosing Notices of Intent to issue a Financial Penalty to the Applicant on 17 January 2019. [Page C80] The Notices contained notes indicating that the Respondent could impose Financial Penalties as an alternative to prosecution. The Notices of Intent referred to two penalties of £15,000 and £5,000 and gave the Applicant 28 days to make representations to it. That letter also indicated in what circumstances the Respondent might reduce the penalty.

47. In one of several letters which he sent to the Respondent, the Applicant acknowledged that letter, reiterated that the Notices had been issued without due cause but made no representations, simply stating that his solicitor would deal with any actions regarding the penalty and would be instructed to take action against Mr Goldsworthy. [Page C88].
48. The Tribunal is satisfied that the Respondent has followed the correct procedures and that the Applicant was afforded an opportunity to make representations but chose not to do so.
49. The Tribunal next considered whether the amount of the penalty imposed by the Respondent is appropriate in the circumstances of this case.
50. It has considered the seriousness of the offences. Both offences reflect a failure on the part of the Applicant, considered by the Respondent as reckless rather than deliberate, to accept that it is his responsibility to provide heating of a type and standard sufficient to eliminate the hazard of excess cold and to eliminate, in so far as may be possible, the hazard of falling from stairs. The Applicant suggested that he has now supplied plug in electric convector heaters to the Property. He has ignored correspondence sent to him by the Respondent advising him that this is insufficient to address the hazard. The Respondent acknowledged that limited works have been undertaken to improve the guarding on the stairs, however these works do not conform with the required works so do not eliminate the hazard. The action taken by the Applicant suggests to the Tribunal that he is cognisant that the hazards identified in the Notices are serious and therefore it has concluded that he is likely to be aware of the impact of his failure to address them on the amount of the penalty.
51. It has also taken into account that the nature of the offences put the tenant of the Property in serious and continuing risk, albeit not an imminent risk, of harm. The Applicant is a commercial landlord who appears to own more than one property and to have let the Property and other flats at Hutton Heights for many years. He therefore should have complied with the Notices, not ignored them. His age does not excuse his refusal to engage with the Respondent and his omissions in alleviating or removing the hazards. He has made no effective attempt to improve the Property since the Notices were served. For all of those reasons, the Tribunal determine that the amount of the penalty imposed in the case of each Notice is appropriate and consistent on the basis of the criteria which the Respondent used to assess the amounts. [Pages D29 - D30].
52. The Civil Penalty initially assessed was £15,000 in respect of the Category 1 hazard, excess cold and £5,000 in respect of the Category 2 hazard, falling from stairs.

53. Subsequently both penalties were reduced by 25%, to reflect that this is a “first offence” by the Applicant, to £11,250 and £3,750 respectively totalling £15,000.
54. The Applicant has not made any relevant representations regarding the imposition of the Penalties or the amount sought to the Respondent or to the Tribunal.
55. Having taken into account all the evidence in the Hearing Bundle and the oral submissions made on behalf of the Respondent at the Hearing, the Tribunal finds that the total penalty of £15,000 is appropriate and confirms the penalty imposed by the Respondent.

Judge C A Rai

Chairman
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. 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) - (d) [not relevant to this determination]
 - (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.