FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HNA/2019/0054, 55, 56, 57**
Property	**:**	**2 & 4 Crosby View, Leeds LS11 9NB**
Appellant	**:**	**Mr G & Mrs S Wellings**
Respondent	**:**	**Leeds City Council**
Representative	**:**	**Leeds Legal Services Department**
Type of Application	**:**	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	**:**	**Mr P Barber (Tribunal Judge)** **Mrs A Ramshaw (Tribunal Member)**
Date of Decision	**:**	**7 January 2020**
Date of Determination	**:**	**14 February 2020**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty for number 2 Crosby View should be £15,000; and the appropriate financial penalty for number 4 Crosby View should be £25,000 under section 249A of the Housing Act 2004.

Reasons

Introduction

1. This Decision and Reasons relates to 4 appeals against the imposition by the respondent of a financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 2 properties owned jointly by the two Appellants: 2 and 4 Crosby View, Leeds. There are four separate appeals but for simplicity the decision in relation to each appeal is contained within this document.

2. We heard all 4 appeals on the 07 January 2019 having inspected both properties earlier in the morning. For the Appellants, only Mr Wellings attended the hearing, representing both himself and Mrs Wellings. Ms Vodanović, of Counsel, represented the Respondent to all 4 appeals, Leeds City Council. We have generally referred to Mr Wellings throughout, Mrs Wellings has played little, if any, part in relation to the management of the properties.

The issues we had to decide

3. By section 249A of the Act:

(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),
.....

4. By subsection (4) the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

5. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

6. After service of the Notice of Intention and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

7. Section 30 of the Act creates the following offence:

   (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

8. "Comply" is defined in section 30(2):

   (2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice–

   (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

9. Mr Wellings did not appeal the improvement notice. He did, however, appeal the financial penalty, and paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

   (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.

10. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; the amount of the penalty and can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted.

11. We had to be satisfied beyond reasonable doubt that the conduct of each of the Appellants (or either of them) amounts to a "relevant housing offence" under section 30 of the Act – i.e. that Mr Wellings had failed to comply with an improvement notice in that he had failed to begin and complete any remedial action specified in the notice and no appeal has been brought.

12. We also considered the very recent decision of the Upper Tribunal in *London Borough of Waltham Forest v Marshall & Ustek* [[2020] UKUT 0035, which was promulgated after the hearing but before this decision and reasons was finalised. The decision makes little difference to the outcome of this appeal.

The Improvement Notices

13. On the 03 May 2018 an improvement notice was served on both Appellants, by the Respondent, in relation to 2 Crosby View. The notice is contained at paragraph 59 through to 64 of the Respondent's bundle and no issue was taken by Mr Wellings in relation to its service.

14. The notice identified a number of category 2 hazards (HHSRS, which both parties are familiar with) which are paraphrased as follows:

Fire Safety

a. Fit 30-minute fire resistant doors between the kitchen and living room and between the living room and staircase;
b. Complete the mains wired fire detection system;
c. Provide a means of escape from the 1st floor by replacing the existing window with an escape window;
d. Cover the exposed ground floor timber match board with plasterboard;
e. Over board the exposed timbers at the top of the stairs above the basement door with 12.5mm plasterboard or equivalent;
f. Board the exposed wooden floorboards with plasterboard or equivalent

Falling on Stairs

g. Provide suitable handrails

Entry by intruder

h. Replace external doors of suitable quality to prevent intruder attack

Damp and Mould

i. Investigate and remedy the damp staining and water penetration in the second-floor bedroom

Falls between levels

j. Reduce the spacing between the balustrading outside the 2nd floor bedroom so as to prevent a child falling through.

15. The deadline for starting works in relation to 2 Crosby View was the 31 May 2018 and the works were to be completed, under the terms of the notice, by 12 July 2018.

16. An improvement notice was likewise served on both Appellants on the 04 May 2018 in relation to 4 Crosby View, and again no issue is taken by the Appellants in relation to service of this notice. The notice identified a number of category 1 and category 2 hazards as set out on pages 208 through to 212 of the bundle and are similar in nature to number 2 and do not need to be repeated in detail in this Decision and Reasons. The category 1 hazards identified related to the installation of an appropriate heating system and fire safety in similar terms to the first set of category 2 hazards set out above in relation to 2 Crosby View. The items are also paraphrased in the Respondent's statement of case at paragraph 3.b.

17. The deadline for starting the works in relation to 4 Crosby View was the 04 June 2018 and the works were to be completed by the 13 August 2018. The Respondent gave slightly longer for this property due to the elderly nature of the tenant and the volume of personal contents in the property which might require moving and relocating.

18. Mr Wellings confirmed receipt of both notices on the 10 May 2018 but thereafter, as will become apparent from our findings of fact, the way in which Mr Wellings sought to deal with the requirement to carry out remedial action under the terms of the notices became unnecessarily confused and complicated.

19. At various times Mr Wellings had property agents dealing with the properties (Wetherops) however the correspondence and communications in the various bundles do not help in determining when they were instructed to act, when they were not instructed to act and what they had authority to do (see for example the email at page 93 of the bundle dated 27 June 2018). At various times he instructed builders to carry out works but again it is not clear what they were instructed to do or even who they were (he instructed a company which had several different guises – Wetheralds Painters and Building Services Ltd; Wetherals Panters/Decorators and Building Services, for example, operating from Yorkshire House in Grape Street, Leeds). Mr Wellings also entered into telephone communication and written communication with the Respondent in relation to the works, at various times blaming a tenant for the state of the property (see page 91 of the Respondent's bundle) as one reason why works could not start and at other times blaming the fact that he was on holiday (see page 241 of the bundle).

The Events since the deadline for completing the works

20. On 12 July 2018 (the date when works were to be completed) the Respondent decided to reinspect 2 Crosby View and went in on the 20 July 2018. The reinspection notices are reproduced at pages 101 to 105 of the bundle and photographs of the state of the property are reproduced at pages 107 through to 110. The only works which were noted to have been completed at this time were the replacement of the handrails between the basement and ground floor and first to second floor; and the gutters had been cleared. As a result, letters were sent to the Appellants under the Police and Criminal Evidence Act 1984 asking several specific questions in order to obtain information for the purposes of any potential prosecution.

21. Mr Wellings replied on the 13 August 2018 (signed on the 09 August 2018) and when asked "why you failed to comply with the Improvement Notice" stated that "the works were being carried out by a contractor who gave assurances the works had been completed" and when asked what steps had been taken to comply Mr Wellings indicated: "The contractor has been notified of the seriousness of their failure to complete the work and has promised to finish as instructed."

22. Finally, when asked about any other factors to be taken in to account, Mr Wellings stated: "Due to being away from Leeds with emergency family business, I was unable to make visits to see progress. I trusted the word of a reputable contractor. The contractor is going to send a letter confirming what happened and why the delay occurred and I will send this to you when I am back in Leeds."

23. On the 11 September 2018, the Respondent again inspected 2 Crosby View and the outcome of that inspection can be seen at pages 143 through to 147 of the Respondent's bundle. By this time more work had been completed, including the installation of an escape window, but there remained a number of items outstanding from the improvement notice including a failure to remedy the gap round the fire door; necessary works to the basement and replacement of the balustrade on the 2nd floor; and failure to carry out works to the front door.

24. In relation to 4 Crosby View, the Respondent arranged to reinspect this property on the 07 September 2018 and the appropriate notices were served on the 17 August 2018.

25. At the inspection, it was noted that, similar to 2 Crosby View, a significant number of items were outstanding, including the installation of the heating system; the means of fire escape and fire safety requirements (fire doors were present but installed inadequately); the second-floor dormer window was still in a state of disrepair and necessary works to the basement, ground floor and upper floor timbers; the provision of appropriate handrails between the floors. The outcome of the inspection can be seen on pages 261 through to 268 of the Respondent's bundle, and the associated photographs are at pages 269 through to 272.

26. On the 19 September 2018, in relation to 4 Crosby View, letters under the Police and Criminal Evidence Act 1984 seeking information from the Appellants was sent by the Respondent (copies had to be resent) and Mr Wellings replied on the 13 October 2018. In answer to why he had failed to comply with the Improvement Notice, Mr Wellings wrote that the works which could "be carried out without major disturbance to the tenant have been done. The remaining works will require the removal of tenants [sic] belongings and collections which are blocking access to the work areas…Our contractor will not accept responsibility for moving these items and an alternative cannot be found. The contractor has said the tenant does not need further works done as she is happy with the situation."

27. He was asked what steps had been taken to comply and reported that he thought that the Respondent was "looking in to the situation with this tenant as [they – the Respondent] were of the opinion that the house was unsuitable" and that when "safe unrestricted access can be given the work can be completed." When asked in the letter whether there are any other factors he wished to have taken into consideration, Mr Wellings reported that there is no intention not to do work but that there were problems with safety for the contractor (page 290 of the bundle).

28. The Respondent thereafter decided not to prosecute either Mr or Mrs Wellings but instead to impose a financial penalty for their failure to carry out the works in the improvement notices. At pages 303 of the Respondent's bundle is the "civil penalty matrix" for 2 Crosby View which assesses the "level of culpability" as against the "level of harm" utilising a sliding scale and taking into account any aggravating or mitigating factors. The result was a fine of some £13,500 and on the 17 January 2019, the Respondent sent to the Appellants a "Notice of Intent to Impose a Financial Penalty (Civil Penalty) indicating that they were to be fined £13,500.

29. A similar matrix is reproduced at pages 319 through to 323 in relation to 4 Crosby View indicating an appropriate fine of £21,250 and on the 15 February 2019, the Appellants were notified by appropriate notice that the Respondent intended to impose a fine in that sum.

30. Mr Wellings made representations in relation to both of the notices by letter dated 05 March 2019 and reproduced at page 339 of the bundle. That letter now indicated that one problem with carrying out the works in relation to 4 Crosby View was because the contract could not give a proper quote: "after receiving the list of works a contractor was asked to quote for the work involved. He was unable to give a firm figure because there was difficulty inspecting some areas of the house which were obscured by tenants [sic] possessions." Mention was also made of the fact that the tenant had been in hospital and was recovering and that as a result of poor weather (described by Mr Wellings as the "Beast from the East") works were delayed. Mr Wellings attached a letter from the contractor in support of these difficulties (page 340). The letter from the contractor (Wetheralds) and dated 13 September 2018, simply refers to the problems associated with the tenant's possessions in the property and that she will be without electricity whilst some of the works are carried out. There is no mention of the "Beast from the East".

31. In relation to 2 Crosby View, Mr Wellings states in this letter that the "contractor says he completed the work and is not aware of anything outstanding and will revisit if there is snagging to do."

32. As a result, the Respondent revisited the matrix in relation to 4 Crosby View, reducing the penalty to £20,000 but maintained the penalty in relation to 2 Crosby View at £13,500 and on the 20 May 2019 served a final notice in relation to 2 Crosby View in the sum of £13,500 (page 356) and a final notice in relation to 4 Crosby View in the sum of £20,000 (page 373).

33. On the 09 July 2019, Mr Wellings sent a copy of the works schedule for 2 and 4 Crosby View (erroneously the schedule states 2 and 4 Crosby *Avenue*).

34. In the meantime, on the 13 June 2019, Mr and Mrs Wellings appealed both financial penalties. His grounds of appeal in relation to 4 Crosby View are as follows:

    "The council have known from the outset of the difficulty working in a house where the 80-year-old tenant has accumulated possessions over many years preventing access to work areas and creating a hazard to workmen. She is pleased with the work

that has been done and has said on many occasion that she is content with this and does not want further disturbance…"

35. The grounds of appeal in relation to 2 Crosby View are that the contractor has "carried out the majority of work required…the outstanding item has to be done in conjunction with the work at no 4".

36. Both appeals were listed to be heard together on the 07 January 2020 at 11.30am and the Tribunal were to inspect both properties on the same date at 10.00am.

The Tribunal's Inspection

37. The Tribunal inspected both properties in the company of Mr Wellings, representatives from Leeds City Council and the tenants.

38. In relation to both properties we noted that works remained outstanding in relation to both properties as follows:

No 2

39. As shown on the photograph on page 444, there remained a gap between the living room door frame and the wall of the stairs to the first floor in contravention of the category 2 fire hazard, impeding fire safety at the property.

40. As shown on photograph on page 445, no means of preventing a fall between levels (category 2 hazard) remained, in that the gap between the balustrade on the second floor had not been removed.

41. As shown on page 447, no works had been carried out in the basement to the property to deal with the exposed wooden floorboards, joists and laths by covering them with plasterboard and there remained holes in the plaster (photograph 446).

No 4

42. The property still did not have an adequate means of heating and therefore the category 1 hazard, excessive cold, remained.

43. As shown in the photograph on page 442, the remedial works to the basement (exposed wooden joists, floorboards and laths) were still not covered with appropriate plasterboard and again the category 1 hazard remained.

44. As shown in photograph on page 439, The door handle to the second-floor room remained defective, in that if the door closed from the inside, meaning the door still could not be closed in order to prevent the spread of fire and smoke.

45. There was no bannister from the 2nd floor stairs to remedy the category 2 hazard: falls on stairs, as shown on the photographs on pages 440 and 441.

46. As shown in the photograph on page 443, no additional electrical sockets have been provided in the kitchen.

The Hearing

47. We held an oral hearing of the appeal. Mrs Chester gave impressive evidence to the Tribunal and was cross questioned by Mr Wellings. As an unrepresented Appellant, we allowed Mr Wellings considerable opportunity to develop his points in cross questioning, but at times it was difficult to understand the points he was trying to raise with Mrs Chester but as far as we could tell, he was mostly concerned about the fact that the Respondent had not afforded him a greater opportunity to remedy the problems at the properties. Accordingly, he questioned Mrs Chester about why the Respondent did not search the land register for ownership of the properties rather than simply rely on council tax records. There were a number of questions about Mrs Chester's (and her predecessor's) dealings with Wetherops, which were not particularly relevant. Mr Wellings also took the opportunity in cross questioning to put to Mrs Chester that he had had difficulty getting legal representation apparently suggesting that this was somehow, her responsibility. Finally, a number of Mr Wellings questions seem to be aimed at asking Mrs Chester why the Respondent had not simply re-housed his tenant at 4 Crosby View.

48. Generally, we found Mr Wellings cross questioning of Mrs Chester to be of no value. We understand the point he was trying to make – that the Respondent had taken a "draconian" approach to the issue when they could have simply decided to take no action and wait for him to do the works – but unfortunately that entirely missed the point: these were properties in which various very serious health hazards existed and the Respondent was under a statutory duty to ensure that works were done by using a statutory process.

49. Mr Wellings made submissions and was cross questioned by Ms Vodanović during which Mr Wellings admitted that works had not been completed and that as a result he was in breach of the improvement notices – when asked "do you accept you are in breach of the improvement notice [no. 02]" he answered that "must be the case" adding that "because of circumstances I could not do the works". When Ms Vodanović asked him what is stopping him, he replied, tellingly, "it could be done but added expense".

50. During the hearing under cross questioning, Mr Wellings admitted that the majority of the works in relation to no. 2 were not done by the 12 July 2018 and that he had basically left "it up to Wetheralds to deal with…" rather than oversee the process himself.

51. Ms Vodanović asked Mr Wellings about the fact that the works to the dormer window in no. 4 had been completed and that the tenant's belongings had been suitable moved out of the way and he added that additionally things had been "moved out of the room".

52. In relation to no. 4 he admitted that he knew he was "obliged to comply" with the terms of the improvement notices but that "getting access is a problem".

53. In relation to correspondence with his tenants, giving his tenants written notice of works; giving them a deadline and such-like, Mr Wellings was unable to give any indication that he had done any of this. Although he did add that he would go and sit with the tenant of no. 4 and "discussed it with her but she doesn't want the works".

54. Thereafter, both Mr Wellings and Ms Vodanović made submissions to the Tribunal.

Our Assessment of the Appeal

55. This is a re-hearing of the decision to impose a financial penalty on Mr and Mrs Wellings for their failure to comply with the terms of the improvements notices as set out above and the amount of that penalty.

56. For the reasons given above, we are satisfied, beyond reasonable doubt, that both of the Appellants have committed a relevant housing offence in that they have failed (and continue to fail) to comply with the terms of the improvement notices served on them on the 03 May 2018 in relation to 2 Crosby View and 04 May 2018 in relation to 4 Crosby View.

57. We find as fact that the notices were properly served and that by the 12 July 2018 (the date works were to be completed), in relation to 2 Crosby View, a number of works – as set out above – remained outstanding. In relation to 4 Crosby View, by the 13 August 2018, works continued to remain outstanding.

58. There can be no doubt that the Appellants have failed to begin and complete important remedial work specified in the notices and we have found as fact that down to the date of hearing the Appellants continue to fail to comply with the requirements under the improvements notices.

The Decision to impose a penalty

59. Mr Wellings has appealed against the decision to impose a penalty in relation to both properties citing various factors why such an approach was "draconian". We reject each of those arguments for the following reasons:

60. Mr Wellings' first point is that it is the fault of the Local Authority in failing to give him more time. We reject this argument. As mentioned above, the Respondent is under a statutory duty to ensure that private sector tenants live in accommodation in its region which are free from health hazards. They quite rightly inspected both of these properties and initially gave Mr Wellings, and his managing agent (Wetherops) an indication of the works necessary and an opportunity to carry out those works. Nothing was done and, quite properly the Respondent served improvements notices. They gave Mr Wellings ample time to start the works and we were certain that had Mr Wellings demonstrated a proper, professional approach to undertaking the works, then he would have been afforded further time to complete the works. However, he procrastinated; blamed those involved in working with him to complete the works and even admitted to us that the cost of the works was a factor (and we think it was probably a significant factor) in his continued refusal to carry out the works.

61. Accordingly, we find that the Local Authority had given Mr Wellings more than enough time to comply with the terms of the improvement notices. We find that the Respondent has tried to work in a professional and accommodating manner with Mr Wellings.

62. Mr Wellings' second point is that the builders and weather are to blame for his inability to carry out the works and as a result the decision to impose the penalty is unfair. We reject both of these claims. Firstly, the "Beast from the East" even if a problem (which we doubt) was only a temporary impediment and would not have prevented most of the works (including the works which are outstanding); secondly, the builders were under the instruction of Mr Wellings and it is Mr Wellings (and probably Mrs Wellings) who could have given the builders clear instructions on what works to do; when to do them and so on. We can see no reasonably reason why the builders could in any way be to blame for the delay to starting and completing the works.

63. Mr Wellings' third point seems to be that as a result of family problems and various holidays, he has been unable to supervise the works and comply with the terms of the improvement notices and as a result the decision to impose a penalty is unfair for this reason. Again, we have no truck with this argument. We have seen no evidence as to what these family emergencies were and even accepting one- or two-family emergencies which necessitated Mr Wellings (and Mrs Wellings) being away from home, these would not have prevented him from getting the works done. As for the holidays, we are surprised that Mr Wellings even cites this as a possible reason why works could not be started and completed in a professional and timely manner. We accordingly reject these points.

64. Mr Wellings' fourth point is that the tenant at no. 4 does not want the works carried out; that she has failed to make her home safe for the builders to undertake the works and in any event, she might be better being re-housed by the Respondent authority. We reject all of these arguments. We are satisfied that the tenant at no. 4 does want the works done – for example she has had a new bathroom fitted (by the Local Authority by way of disabled facilities) which must have been disruptive; and she has allowed a window to be fitted in her attic and her belongings moved to accommodate its fitting. At the inspection we noted that the tenant at no. 4 does have a quantity of personal items stored at the property and we accept that the necessary works would be more difficult to start and complete (when compared to an empty house) but as mentioned above, a dormer window has been replaced in the attic despite a large amount of furniture in this room, and so we think the works could quite reasonably be carried out by moving and re-siting the furniture. In any event, this is no reason why the bannister could not be replaced or plaster board installed in the basement.

65. When considered in detail, none of the arguments put forward by Mr Wellings in relation to the decision to impose a financial penalty have any merit. We find on the basis of the evidence that the Respondent had taken into account all of the points raised by Mr Wellings and had given him ample opportunity to undertake the works and render the properties hazard free but over a prolonged period of time he failed (and continues to fail) to remedy these hazards. It seems to us that the Respondent was perfectly entitled to decide to impose a financial penalty and looking at this appeal by way of a rehearing, we are satisfied on the evidence today and our finding that Mr and Mrs Wellings were (and are) in breach of the improvements notices which is beyond reasonable doubt, it was necessary to impose a financial penalty.

The Amount of the Penalty

66. There is no guidance in the legislation (other than setting maximum amounts) as to the amount of any penalty. As already mentioned, the Tribunal has power to vary the final notice, and this includes a power to increase the penalty (as we have done).

67. Pages 405 through to 413 of the Respondent's bundle reproduce the Respondent's policy on Civil Penalties, and pages 414 through to 433 reproduce the Ministry of Housing, Communities & Local Government "Guidance to Local Authorities on Civil Penalties under the Housing and Planning Act 2016", both of which we have taken into account in arriving at our determination as to the appropriate amount of the penalty for the Appellants' failure to comply with the terms of the improvement notices. In particular, however, the Guidance a number of factors which the Local Authority (and the Tribunal) might have regard to in determining an appropriate financial penalty under which we make the following findings.

Severity of the Offence

68. It is appropriate to deal with both penalties together at this point.

69. We view the Appellants' failure to comply with the terms of the improvement notices as a very serious offence. We note that both tenants remain at risk of falls on the stairs; that there is a serious risk of fire from the basement and that no remedial action has been undertaken to reduce this risk and that in relation to no 2, there remains a gap in the fire safety door between the living room and the stairs. The tenant at no 4 still has to endure a serious lack of heating in her property and a serious risk of fire safety. As well as this, this tenant lacks suitable electrical sockets in her kitchen.

Culpability and track record of the offender

70. We find as fact that Mr Wellings has a high degree of culpability in relation to the failure to comply with the terms of the improvement notices. As a professional landlord he should be well aware of his responsibility to ensure the health and safety of his tenants and despite this, and for well over 18 months, he has continued to leave these tenants at risk of falls and at a serious risk of injury as a result of fire. Despite a requirement to provide a means of escape to the first-floor bedrooms of both properties (i.e. the window) these were not completed until a few months ago. We find that Mr Wellings' arguments as to why he has been unable to do the works to be without any reasonable degree of foundation and we are satisfied that the only reason why he failed to comply with the terms of the improvement notices was due to the cost. We found his conduct towards the Respondent and his tenants to be reprehensible: these were relatively straight forward works which could have been started and completed within a matter of weeks and certainly within the time given in the notices. We are satisfied that Mr Wellings has demonstrated throughout a serious disregard for his professional responsibilities as a landlord and has throughout attempted to blame others for his inaction. Accordingly, we are satisfied that a significant reason why Mr Wellings has failed to carry out the works is due to the associated costs.

Punishment of the Offender

71. Given our findings in relation to the severity of the offences and the culpability of the offender we are satisfied that the Appellants should be appropriately punished. We take into account that throughout Mr Wellings has shown an unprofessional approach to his responsibility as a landlord to ensure the safety of his tenants and that he has continued to fail to undertake the works up until the day of the hearing. His inaction and clear disregard for the requirement to comply with the terms of the improvement notice cannot go without punishment and accordingly we have had regard to this aspect of our assessment of the appropriate level of fine.

Deter the Offender from Repeating the Offence

72. Down to the date of the hearing, Mr Wellings has continued to fail to comply with the terms of the improvement notices. At the end of the hearing he was asked whether he had any intention of completing the works and despite him stating that he did (and that he would do the works as soon as possible) we were not satisfied that he has any real intention of properly complying with the terms of the improvement notices and ensuring the prompt and appropriate safety of his tenants. We have set the level of the fine so as to ensure that he understands the importance of his responsibilities as a landlord in complying with safety standards in his properties (he has two to our knowledge) and that in the future he will consider his position properly before he fails to undertake any necessary works.

Deter others from Committing Similar Offences

73. We note that the area in which the houses are situated is one that the Respondent has identified as requiring special attention due to the large volume of privately rented properties and the general condition of the housing stock (many of the properties, of which a significant number are back to back properties and are at least 100 years old) we take judicial notice that this will mean that other similar properties will require action to be taken by the Local Authority to bring them up appropriate health and safety standards. We consider that the level of fines we have considered appropriate for these two properties will help deter other landlords from failing to comply with their responsibilities as landlords.

Remove any Financial Benefit the Offender may have Obtained as a result of Committing the Offence

74. We note that one of the reasons cited by Mr Wellings for failing to carry out the necessary works in both of the properties is due to the cost associated with undertaking the works in a piecemeal fashion; together with the cost of having to accommodate the needs of his elderly tenant in no. 4. Whilst there is nothing necessarily wrong with exercising a degree of financial efficiency this cannot be at the expense of keeping his tenants in unsafe accommodation which is (or may well be) detrimental to their health. We have considered that, in our assessment, the appropriate level of fines should reflect the fact that one reason for his reluctance to carry out the necessary works seems to be motivated by a desire to save money. Accordingly, the level of fine includes an element to demonstrate that this approach is wrong and that, regardless of the cost, he should have moved swiftly to bring these properties to a state where they meet the requirements laid down in the two improvement notices.

General Considerations

75. Given the history of both of these improvement notices and the fact that Mr Wellings has shown an unprofessional and an inexcusable disregard for the safety of his tenants for a prolonged period of time, we thought that generally his failure to comply with the requirements imposed on him to be inexcusable. He has attempted throughout the cast blame on his tenant at no. 4 for her unwillingness to move her belongings and allow the works, but we have found that there is no substance to this. In any event we would have expected to see correspondence to his tenants setting out the works which are necessary; when they will be done; how they will be done and a proper and professional approach to his responsibility to ensure their safety. On no occasion did he send any correspondence to his tenants giving them appropriate notice.

Conclusion

76. Taking all of the above aboard and in accordance with our findings of fact we have decided that an appropriate level of fine for no. 2 Crosby View is £15,000 and an appropriate level of fine for no. 4 Crosby View is £25,000.

77. We appreciate that this is an increase in the fines imposed by the Respondent, but we think the increase is justified by reason of the fact that Mr Wellings (and Mrs Wellings) still has not done a significant amount of works required under the terms of the improvement notices. In particular, we note that the works required of the two basements, which will provide an appropriate level of fire safety (currently missing) is still not started and at the date of the hearing, there was no indication as to when these works will commence.

Signed  Dated 14 February 2020

Phillip Barber, Judge of the First-tier Tribunal