FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/HNA/2019/0096**
Property	**:**	**52 Gordon Street, Manchester, M18 8SL**
Appellant	**:**	**Mrs June Simmons**
Respondent	**:**	**Manchester City Council**
Type of Application	**:**	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	**:**	**Mr Phillip Barber (Tribunal Judge)** **Ms Jenny Jacobs (MRICS)**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for the offence of failing to comply with an improvement notice under section 30 of that Act, in respect to 52 Gordon Street, Manchester, M18 8SL should be £6,500.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the Respondent of a financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned by the Appellant, Mrs June Simmons.

2. Both the Appellant and the Respondent have indicated that this appeal can be dealt with on the papers or have not objected to such a course and accordingly the Tribunal is satisfied that the requirements of rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 are made out. We decided that an inspection of the property was unnecessary and that we had all of the necessary evidence within which to make a decision included in the papers. It follows that adjourning for a hearing or to obtain additional evidence was not appropriate.

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 Intent 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. Mrs Simmons, the Appellant, did not appeal the improvement notice. In fact, she seems to have agreed that the works were necessary. She 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 Appellant amounts to a "relevant housing offence" under section 30 of the Act – i.e. that Mrs Simmons has failed to comply with an improvement notice in that she had failed to begin and complete any remedial action specified in the notice and no appeal has been brought.

12. We also considered and took into account the decision of the Upper Tribunal in *London Borough of Waltham Forest v Marshall & Ustek* [[2020] UKUT 0035, The decision makes little difference to the outcome of this appeal.

Findings of Fact

13. Mrs Simmons is the freehold owner and landlord of the property at 52 Gordon Street, Manchester ("the property").

14. There is no dispute as to the chronology of events and this has been very helpfully set out in the Respondent's statement of reasons for opposing the appeal at page 2 of the bundle.

15. On the 18 October 2017, following a complaint from the tenant about a leak in the property, a Compliance Officer from the Respondent Council visited and was invited to make an inspection. The inspection identified a number of potential concerns with the property, including the leak itself, but also a draughty back door; a dripping tap; lack of smoke alarms; no gas safety record and mould growth amongst other things. These faults were reported to the caretaker of the property, a person called Patrick Gorton, who appears to be the manager of the property and working on behalf of Mrs Simmons. He is referred to in some of the documents as "Paddy".

16. Photographs from the visit are reproduced at pages 102 through to 131 and show extensive disrepair at the property which we need not detail at this point.

17. On the 14 November 2017, a hazard notification letter was sent to Mrs Simmons and Mr Gorton following which Mrs Simmons telephoned the Respondent to advise that she would be carrying out works.

18. The Respondent Authority served a Notice of Entry under section 239 of the Act on the 12 December 2017 and following a re-inspection on the 19 December 2017, the Respondent Authority determined that a significant amount of works had not been completed. Notes from that visit are set out on page 100 and page 136 through to 141 of the bundle and include condensation mould to the kitchen; condensation to the windows and walls in the rear bedroom; mould growth in the bathroom; loose tap; problems with a radiator and other matters.

19. Following a further visit to the property on the 19 June 2018, the Respondent Authority noted that works remained outstanding as demonstrated by the photographs on pages 148 through to 193 of the bundle and on the 29 June 2018, the Respondent Authority served an improvement notice on Mrs Simmons, under sections 11 and 12 of the Act in relation to a list of category 1 and category 2 hazards identified in the schedule to the Improvement Notice. These included 2 category 1 hazards: excess cold and damp and mould growth; and 4 category 2 hazards: fire risk; falls on stairs; personal hygiene, sanitation and drainage and carbon monoxide. Schedule 2 to the Notice set out the remedial works required to alleviate the existence of the hazards identified.

20. Mrs Simmons was given until the 29 August 2018 to comply with the terms of the improvement notice.

21. Following email correspondence between Mrs Simmons and the Respondent Authority in relation to the works, the Authority had cause again to serve a Notice of Entry under section 239 on the 15 January 2019, visiting the property on the 21 January 2019 at which point it was established that the works had still not been completed or in some cases started as shown on the photographs on pages 253 through to 292 of the bundle.

22. By 07 May 2019 the Respondent decided to invite Mrs Simmons to answer questions under caution by post and on the same day, the Compliance Officer spoke to Mr Gorton to check on developments and it was agreed that a further inspection would take place on the 03 June 2019 and a further section 239 Notice of Entry was served on the 29 May 2019.

23. On the 03 June 2019 the Respondent again visited the property and took further photographs and notes as set out on pages 348 through to 377 of the bundle. Again, it was noted that many of the works remained outstanding.

24. On the 17 July 2019, the Respondent served a Notice of Intent under section 249A and schedule 13A of the Act indicating that a financial penalty of £6,500 was considered appropriate for the offence under section 30 of the Act, inviting representations from Mrs Simmons within 28 days.

25. Mrs Simmons made representations by email as set out on page 381 of the bundle. Mrs Simmons made 2 points: firstly, that access had been difficult due to the tenant sleeping during the day and working nights; and secondly, that she had had a heart attack in October 2018 and that she had been ill ever since.

26. On the 21 August 2019, the Respondent served a Final Notice under the Act in relation to a financial penalty in the sum of £6,500. Its reasons for doing so are set out in that notice and the notice is reproduced at pages 397 through to 400 of the bundle.

27. On the 27 August 2019, Mrs Simmons made an appeal to this Tribunal against that decision. Her grounds of appeal are set out in the letter of that date but they remained ostensibly the same as her representations on the penalty: her builder could not get entry and she had had a heart attack.

28. On the 16 September 2019, the Respondent Authority again served a Notice of Entry on Mrs Simmons and visited the property on the 25 September 2019. By this date most of the works had been completed, although it was noted that the draught proofing to the external doors was ineffective; that there was still no radiator in the bathroom and the kitchen ceiling plasterboard had not been repaired, however what had been completed was sufficient for the Respondent to withdraw the Improvement Notice on the 07 October 2019.

Our Assessment of the Appeal

29. This is a re-hearing of the decision to impose a financial penalty for the offence committed by Mrs Simmons's under section 30 of the Housing Act 2004.

30. As required by section 249A of the Act and for the reasons given above, we are satisfied, beyond reasonable doubt, that Mrs Simmons's conduct amounts to a relevant housing offence under section 30 of the Act. Mrs Simmons was served with an Improvement Notice on the 29 June 2018 and she had until the 29 August 2018 to complete the works required under the terms of that notice. She failed to do so and that is without doubt.

31. We find as fact that the Notice of Intent and Final Notice were properly served and that they contained the proper statutory information. There were no procedural irregularities.

32. Accordingly, and given our findings of fact; that there is a breach and that Mrs Simmons is culpable the only remaining issue is the level of the financial penalty.

The Amount of the Penalty

33. 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.

34. Pages 26 through to 32 of the Respondent's bundle reproduce the Respondent's policy on civil penalties under the Act, and pages 6 through to 25 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 requirements of the improvement notice. In particular, however, the Guidance gives 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 and we note that the Respondent Authority has considered these in its reasons for serving the Final Notice. The Respondent's reply to the appeal further identifies these factors on pages 3 and 4 of the bundle.

35. However, as this is a re-hearing and whilst we generally agree with the Respondent's assessment in relation to each of those factors we consider each factor afresh as follows.

Severity of the Offence

36. We view the Appellants' failure to comply with the terms of the Improvement Notice as a very serious offence. We note that throughout the period in question, the tenant and his family were at serious risk of injury from fire and that in a number of respects the property and dwelling units within it were serious detrimental to health. We note that the Appellant is a professional landlord with a number of properties and it seems to us that she ought to have known about her responsibility to comply promptly with the Improvement Notice and certainly within the time limits.

37. In her defence to the failure to comply, the Appellant has sought to blame the tenant by suggesting he is at fault by pouring buckets of water over his head and by preventing access due to his sleeping patterns. We place no weight on these factors. Firstly, the Respondent has been able to gain entry for inspection without issue and secondly, we find the suggestion that he is pouring water over his head so that it has caused the leak not credible.

38. The other factor which the Appellant raises relates to her health difficulties and in particular the fact she had a heart attack on 27 October 2018. Whilst we have every sympathy for the difficulties this may have caused her, we note that October 2018 was significantly after the date for compliance with the improvement notice and a year after the service of the Hazard Notice. Accordingly, the fact that the Appellant had a heart attack has little relevance if any to the serious nature of the offence and provides little by way of mitigation.

Culpability and track record of the offender

39. The Appellant has a record of previous offences in relation to other properties owned by her in the Manchester region and we are told of 8 other occurrences of enforcement action, 3 of which were not complied with. Even without addressing the details of those matters, we note that the Appellant has a poor track record for compliance with housing standards. We also note that the Appellant has failed to carry out the required works over a prolonged period of time despite active and regular involvement from the Respondent Authority. In our view, there is little in the way of any excuse for the considerable delay in starting and completing

these works. It follows that we view the Appellant as having a high degree of culpability as well as a poor history of compliance.

Punishment of the Offender

40. Given our findings in relation to the severity of the offences and the culpability of the offender we are satisfied that the Appellant should be appropriately punished and we are satisfied that the level of fine which we have set is an appropriate level of punishment.

Deter the Offender from Repeating the Offence

41. We note that Mrs Simmons has other properties and that she has had previous involvement with Manchester Council Neighbourhood compliance. The level of the fine we have set will appropriately deter her from committing any future offence in relation to her responsibilities as a professional landlord.

Deter others from Committing Similar Offences

42. We note that Manchester is an area with a high proportion of rental properties and it is likely that other landlords will take an interest in the general level of financial penalties and the type of offences for which these penalties are given. We consider that the level of fine we have considered appropriate for the breach to comply with the Enforcement Notice in relation to this property will help deter other landlords from failing to comply with their responsibilities in similar circumstances.

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

43. We note that the cost of carrying out works is not excessive and that Mrs Simmons has continued to receive rent throughout the subsistence of the breach. It strikes us that the level of the fine appropriately removes any financial benefit she has received in letting this property out and failing to comply with the HMO management regulations.

General Considerations

44. We also place weight on the Respondent Authority's enforcement policy at pages 26 through to 32 of the bundle, in relation to the Private Sector in its geographical remit. The Respondent has followed that policy and utilising its expertise and judgment it has appropriate set a level of fine which it justifies by reference to the calculation in that policy.

Conclusion

45. Taking all of the above on board and in accordance with our findings of fact we have decided that an appropriate level of fine for the breach is £6,500.

Signed  Dated 20 August 2020

Phillip Barber, Judge of the First-tier Tribunal