FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/HNA/2020/0014**
Property	**:**	**06 Watch Street, Sheffield, S13 9WX**
Appellant	**:**	**Mr Joseph Steadberth Roy Morgan**
Respondent	**:**	**Sheffield City Council**
Type of Application	**:**	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	**:**	**Mr Phillip Barber (Tribunal Judge)** **Mr William Reynolds (MRICS)**

DECISION AND REASONS

Decision

The Tribunal confirms the Final Notice and the level of penalty therein of £15,000 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 6 Watch Street, Sheffield S13 9WX.

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, Mr Joseph Morgan. Mr Morgan has, throughout been represented by Mr Mark Dixon.

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 with 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. Mr Morgan, the Appellant, did not appeal the improvement notice. In fact, he seems to have agreed that the works were necessary. 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 to the maximum provided for by the Act of £30,000. 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 the Appellant amounts to a "relevant housing offence" under section 30 of the Act – i.e. that Mr Morgan has failed to comply with an improvement notice in that he had failed to begin and complete any remedial action specified in the notice.

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. Mr Morgan is the freehold owner and landlord of the property at 6 Watch Street, Sheffield S13 9WX ("the property").

14. There is no dispute as to the chronology of events and this has been very helpfully set out in the witness statement of Ms Jacqueline Bull, the Private Sector Housing Standards Officer, involved in this case.

15. The property is a 3-storey mid terrace house in Sheffield and is occupied by a private sector tenant, Mrs Glenda Maher and her family. Mrs Maher has lived at the property for some 36 years during which time, Mr Morgan purchased the property (with Mrs Maher in situ) in February 1990. Mrs Maher pays rent to Mr Morgan.

16. On the 13 November 2018, following a complaint, Mr Munroe (another Housing Standards Officer from Sheffield Council) visited the property for the purposes of inspecting its condition. Photographs were taken at that time and are exhibited to Ms Bull's witness statement at JB3 and on the 10 January 2019, Mr Munroe wrote to Mr Morgan detailing the hazards he found at the property and the remedial action required. That letter is at exhibit JB4 of Ms Bull's witness statement.

17. It appears that thereafter, Mr Morgan contracted with Mr Maher, Mrs Maher's husband, to undertake some of the works at the property, including fitting a hand-rail (which had been done by the 13 February 2019) and installing the new windows to be supplied by Mr Morgan. Mr Munroe confirmed with Mr Morgan that Mr Maher had been contracted to carry out the works. However, by the 19 March 2019, Mrs Maher made contact with Mr Munroe about a water leak resulting in the shelf on which the boiler was located collapsing and the absence of hot water apart from that provided by the electric shower. On the 26 March 2019, Mr Munroe served a section 239 notice (Power of Entry) on Mr Morgan with a view to visiting the property on the 28 March 2019.

Findings of Fact

18. On the 28 March 2019, Mr Munroe carried out a second inspection of the property and again took a number of photographs which are exhibited to Ms Bull's witness statement as JB6 and thereafter served an improvement notice under sections 11 and 12 of the Housing Act 2004 on Mr Morgan on the 30 April 2019, which Mr Morgan verbally acknowledged receipt of by telephone on the 01 May 2019. The Respondents provide a copy of a note from their system detailing the telephone conversation with Mr Morgan during which he made various comments about Mrs Maher, including that she was preventing access.

19. On the 07 May 2019, Mr Munroe spoke to Mrs Maher about the current state of works and he was told that Mr Morgan had by that time arranged for a plumber to look at installing central hearing and again confirmed that he had agreed for Mr Maher (a trained window fitter) to fit the windows. She also reported that Mr Maher had visited the property and, rather bizarrely, accused Mr Munroe and Mrs Maher of having an affair. Apparently, that discussion became heated and Mr Morgan was asked to leave. This seems to have spilled over into a dispute with Mr Maher as he called Mr Munroe on the 13 May 2019 to state that he would not be fitting the windows due to Mr Morgan's attitude to Mrs Maher. Mr Munroe recorded the circumstances of these calls on the Sheffield Council system known as the "Flare database".

20. By the 16 May 2019, it must have become apparent to Mr Morgan that he was unable to meet Mr Munroe's timescale as he called the Respondent to say that his plumber was busy with other work. He was advised to try other plumbers which he seems to have done as the Respondents evidence is that Mrs Maher called Mr Munroe on the 21 May 2019 to report that a plumber had tried to gain access to the property at 10pm the previous evening without notice, and unsurprisingly, he had been refused access.

21. By 12 June 2019, following a discussion between Mr Munroe and Mrs Maher, it was ascertained that no works had been commenced but that another builder had visited with a view to looking at the window installation and the heating system.

22. Following a conversation on 5th August 2019 between Mrs Maher and the Respondent in which she commented on the Electrical Consumer Unit and subsequently forwarded photographs to the Respondent, two of the Respondents housing standards officers visited the property on the 06 August 2019. They found that an attempt to replace the consumer unit had resulted in the supplier's cut off fuse being removed and bridged by 2.5mm core cabling, leaving connection tales between the consumer unit and meter exposed and it was decided that a further visit was necessary on the 09 August 2019 with two council electricians. The electricians were unwilling to carry out remedial work to the consumer unit due to the fuse bypass. During this visit an electrician instructed by Mr Morgan also attended and refused to carry out works. As a result, National Grid were made aware and attended the same day to make the consumer unit safe.

Thereafter Mrs Maher employed her own electrician to carry out an Electrical Condition Installation Report and reinstate the supply.

23. A further inspection was conducted by Mr Munroe together with Ms Bull on the 30 August 2019. It was established that the installation of the front bedroom window had commenced but works still remained outstanding, namely: replace and overhaul the windows throughout the property; install a fixed space heating system and relocate the cooker. Various photographs from that visit are exhibited at JB16 to Ms Bull's witness statement.

24. It was, accordingly, apparent by that date that many of the works required in the improvement notice of the 30 April 2019 had still not been started despite the requirement to complete them by the 22 August 2019.

25. It seems that at this point, Mr Morgan stopped communicating with the Respondent and so Ms Bull and Mr Munroe visited him at home on the 04 October 2019 when the status of the works and the requirement to carry them out properly was discussed. He was asked to respond with proposals in relation to the works by the 13 October 2019 and on the 08 October, Mr Dixon (who has since represented Mr Morgan) rang to agree the necessary works. The works to be completed were confirmed in an email from Mr Dixon of the 09 October 2019.

26. There was no further communication in relation to the works or their completion from either Mr Morgan or Mr Dixon and on the 12 November 2019, Ms Bull served a Notice of Intent to Impose a Financial Penalty on Mr Morgan as an alternative to prosecution. The decision to look to impose a financial penalty was made in accordance with the Respondent's Policy in relation to Civil Penalties, which is exhibited at JB21 of Ms Bull's witness statement. She sets out, in basic terms her reasons for this decision in paragraphs 30 through to 37 and we generally agree that those reasons are strongly persuasive of the need to take remedial action and that as a result, a financial penalty is the most appropriate mechanism.

27. There was yet no response to the Notice of Intent and accordingly, Ms Bull and Mr Munroe again visited Mr Morgan at home on the 06 December 2019 to discuss the need to carry out the works on the property and the importance of making representations by the 13 December 2020. No representations were forthcoming and on the 10 January 2020, Ms Bull served the Final Notice on Mr Morgan with a financial penalty in the sum of £15,000.

28. On the 22 January 2020, Mr Dixon responded to the financial penalty in an email set reproduced at exhibit JB27. That email and the matters raised in the appeal documents are important considerations for this Tribunal in relation to the level of the fine and so it will be addressed in the following section. Suffice it to say at present that the main crux of the appeal relates to whether, in the circumstances of this case, it is "fair and proportionate" to make a financial penalty in the sum of £15,000. That email was followed up with further representations by Mr Dixon on the 27 January 2020 and a copy of that email is at JB28 of Ms Bull's witness statement.

29. The Respondent replied to these representations on the 28 January 2020, pointing out, amongst other things that the time for representations had expired and the appropriate course of action is to appeal to this Tribunal which Mr Morgan did on the 04 February 2020.
30. By the 06 March 2020 all outstanding works at the property were completed.

Our Assessment of the Appeal

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

32. As required by section 249A of the Act and for the reasons given above, we are satisfied, beyond reasonable doubt, that Mr Morgan's conduct amounts to a relevant housing offence under section 30 of the Act. Mr Morgan, the freehold owner and landlord of the property, was properly served with an Improvement Notice on the 30 April 2019 in which he was required to start works by the 30 May 2019 and complete them within 12 weeks under the terms of that notice. He failed to start many of the works by the 30 May and he failed to complete any of the works by the end of August as required and that is without doubt.

33. 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.

34. Accordingly, and given our findings of fact; that there is a breach and that Mr Morgan is culpable the only remaining issue is the level of the financial penalty.

The Amount of the Penalty

35. 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.

36. Exhibit JB21 of the Respondent's bundle reproduces the Respondent's policy on civil penalties under the Act, and we considered that as part of our decision-making process in determining the outcome of this appeal. We also considered the Ministry of Housing, Communities & Local Government "Guidance to Local Authorities on Civil Penalties under the Housing and Planning Act 2016", and in particular, that Guidance gives a number of factors which the Local Authority (and the Tribunal) might have regard to in determining an appropriate financial penalty and we note that the Respondent Authority has considered these in its reasons for serving the Final Notice and as set out in its scoring schedule at exhibit JB19.

37. 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.

38. By reference to the scoring matrix, we view the circumstances of Mr Morgan's failure to comply with the terms of the Improvement Notice to have a high level of culpability and a medium level of harm giving rise to an initial amount of £15,000 and we apply this amount in accordance with the following considerations.

Severity of the Offence

39. 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 her family were at serious risk of injury from a number of category 1 and category 2 hazards, including excess cold, a category 1 hazard as a result of the poor windows throughout the property and lack of a properly regulated space heating system. We note that the Appellant is a professional landlord with a number of properties and it seems to us that he ought to have known about his responsibility to comply promptly with the Improvement Notice and certainly within the time limits.

40. In his defence to the failure to comply, the Appellant has sought to blame the tenant by suggesting that she has either failed to provide timely access and that he had agreed with her husband to install the windows and that it was, as a result, his fault for the delay. We place no weight on these factors.

41. Firstly, we note that on occasion Mr Morgan has sent work contractors with no notice given (a plumber attended at 10pm, for example) and Mrs Maher, on these occasions cannot be criticised for refusing entry. Secondly, whilst we note that Mr Maher was contracted to undertake the works, it was Mr Morgan's remarkable suggestion that his wife was having an affair with Mr Munroe which caused the breakdown of this relationship. In any event, we saw no reason why Mr Morgan could not have obtained another window fitter fairly swiftly once it became apparent Mr Munroe would not be fitting the windows.

42. At the point when the Respondent was assessing the issue of the financial penalty, it is noted that by that date, very little in the way of works had been done and that those that were done "were of poor standard" with the tenants having "elected to complete the works themselves…" and that even at that point the cooker – which should have been a relatively straight forward job – had still not been relocated.

43. In addition, we note that on two occasions, Mr Morgan failed to engage with the process to such an extent that officers of the Local Authority had to visit him at home to discuss the current state of the property and the lack of works.

44. Ultimately, however, and through no fault of her own, Mrs Maher and her family have been left without adequate heating, at risk of scalds and burns from the improperly situated cooker and at risk from excess cold and falls arising from the condition of the windows, for many months and in the case of the inadequate heating for well over 12 months.

Culpability and track record of the offender

45. The Appellant has no previous convictions but we do not reduce the amount to take account of this. In our view the considerable period of time over which the hazards have been allowed to continue and the inexcusable delay in undertaking the works amount to aggravating factors which outweigh any mitigation in having no previous convictions. In any event, and as pointed out below, Mr Morgan has been on a landlord course and so should be aware of his responsibilities.

Punishment of the Offender

46. 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

47. We note that Mr Morgan has other properties and that he has previously been on a landlord training programme as part of his position as a landlord of a house in multiple occupation. We agree with the Respondent that as a result he ought to have known the importance of carrying out the works promptly and to an acceptable standard. The fact that he chose to delay undertaking the works despite having been on the training course suggests there should be an element of deterrence in the level of the fine.

Deter others from Committing Similar Offences

48. We note that Sheffield 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

49. We note Mr Morgan is claiming that his rental income and rental profits are very low and we accept that that may well be the position. However, this does not, in our view, limit or cap the appropriate level of the financial penalty which is required to also act as a deterrent and is in substitution for the Respondent's alternative means of action by criminal prosecution.

General Considerations

50. We also place weight on the Respondent Authority's attempt to seek to have matters dealt with informally at the outset and their enforcement policy as contained within 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 set a level of fine which it justifies by reference to the calculation in that policy.

Conclusion

51. 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 £15,000.

23 November 2020