



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

Case reference : **LON/OOAG/HNA/2021/0034**

Property : **123A Camden Street, NW1OHX**

Applicant : **LRSL**

Representative : **Michael Kennedy**

Respondents : **London Borough of Camden**

Representative : **Ruwani Roberts**

Type of application : **Appeal against penalty notice**

Tribunal : **Judge Shepherd**
Antony Parkinson MRICS

Date of Decision : **18th April 2023**

DETERMINATION

1. This is an appeal against penalties imposed by the local authority under s.249A Housing Act 2004. The appeal is brought pursuant to Schedule 13A of the Housing Act 2004. The appeal relates to premises at Flat A, 123 Camden Street, London NW1OHX (“The premises”) which consist of a licensed HMO. The license holder is Raja Chowdhury. The Appellant is LRSL Ltd the managing agent at the relevant time and the Respondent is the London Borough of Camden. Steven Govier is the Director of the Appellant company. The Appellant company are no longer managing the premises. Michael Kennedy a former employee of LRSL represented the Appellant at the hearing.
2. The background to the matter is as follows: The Respondents received a complaint about disrepair in the premises on 19th October 2020. The

Respondents visited the premises on 9th December 2020. They found the premises to be unsatisfactory. Works specified in the HMO License had not been carried out. There was a lack of good management in the flat. Conditions in the bathroom were poor according to them. Photos show the bath is scaled and cracked tiles which according to the Respondents increased the risk of infection. A gas safety inspection had expressed concern about a lack of earth bonding.

3. On 14th January 2021 the Respondents sent a letter of alleged offence to the Appellant. The Respondents allege that the Appellant failed to comply with Reg 7(1) (a) of the Management of Houses in Multiple Occupation (England) Regulations 2006 in that they failed to ensure that the common parts were maintained in good and clean decorative repair because the bath was in a scaled condition, the wall tiles were cracked and dirty. The Respondents alleged that when the license was issued there was a list of minor contraventions which required immediate attention. The bath and flooring were listed to require attention.
4. The Respondents follow an enforcement policy which provides guidance on Civil Penalty notice offences. The notices vary in severity from moderate (0-£10000) Serious (£10001-£20000) and severe (£20001- £30000).
5. The policy goes on to state broadly that an aggravating feature may include the fact that an agent has a significant property portfolio and/ or has committed the same offence more than once. Applying the policy the Respondents imposed a fine of £7500. It was considered that the Appellant had a large portfolio and there had been previous cases involving them.
6. The Notice of Intent to impose a Financial Penalty under s 249A and Schedule 13A Housing Act 2004 was served on 5th May 2021.
7. Mr Kennedy made representations on 1st June 2021. These were responded to on 24th June 2021 and a final civil penalty notice was served on 30th June 2021. This is the penalty appealed.
8. In a further statement the Respondent's representative Vincent Arnold details previous fines imposed and current action being taken against the Appellant at different premises.

9. The Appellants dispute that the conditions in the flat were generally unsatisfactory at the time of the Respondents' visit. They state that the wife of the owner of the premises visited regularly with the Appellants and addressed issues of disrepair. Property inspections occurred regularly. They say that no Hazard Improvement Notice was served and the tenants had not complained of the condition in the bathroom. One of the tenants provided a statement saying the bathroom was functional and usable. The owner's wife had arranged for the bath enamel to be repaired. The Appellants raised various defences to the penalty which were largely misguided, including the suggestion that they had a reasonable excuse because the Respondents had not served an Improvement Notice on the owners which would have allowed them to de-instruct themselves as agents. It is for the Respondents to decide which notices to serve.

The law

10. The Housing Act 2004 deals with financial penalties for housing offences

249A Financial penalties for certain housing offences in England

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

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

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

(b) section 72 (licensing of HMOs),

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

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

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

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

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

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

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

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

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

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

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

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

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11. Subsection (2)(e) is the relevant provision here. The management regulations referred to are the Management of Houses in Multiple Occupation (England) Regulations (2006). Regulation 7 states the following:

Duty of manager to maintain common parts, fixtures, fittings and appliances

(1) The manager must ensure that all common parts of the HMO are—

(a) maintained in good and clean decorative repair;

(b) maintained in a safe and working condition; and

(c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(a) all handrails and banisters are at all times kept in good repair;

(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;

(c) any stair coverings are safely fixed and kept in good repair;

(d) all windows and other means of ventilation within the common parts are kept in good repair;

(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and

(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that—

(a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;

(b) any garden belonging to the HMO is kept in a safe and tidy condition; and

(c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(6) In this regulation—

(a) “common parts” means—

(i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;

(ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

(iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

Determination

12. As already indicated none of the defences put forward by the Appellants have real merit. They were managing the premises and the bathroom was in a relatively poor condition. However, the Tribunal rejects the suggestion put

forward by the Respondents that the scaling in the bath and the cracked tiles were serious breaches. The penalty imposed is exceptionally high even if one considers previous breaches by the same managing agents (in any event no proper detail was provided as to these breaches). The breach was minor and should have attracted a penalty towards the bottom of the moderate scale under the Respondents' policy.

13. The final notice served by the Respondents is varied so that imposes a penalty of £2000.

Judge Shepherd

18th April 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the

First-Tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.