FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/12UD/HNA/2022/0008**
Property	**:**	**11 Kings Walk** **Wisbech** **Cambridgeshire PE13 1HR**
Applicant	**:**	**Mr Ipolitas Naujokas**
Respondent	**:**	**Fenland District Council**
Type of application	**:**	**To appeal against financial penalties**
Tribunal members	**:**	**Judge David Wyatt**
Date of decision	**:**	**29 February 2024**

DECISION

The tribunal's decision

The tribunal:

(1) finds that the relevant final penalty notices were given to the Applicant by late August 2020, so the time limit for appealing to the tribunal against those penalties expired by late September 2020;

(2) does not extend that time limit to 20 July 2022, the date the tribunal received an application form seeking to appeal against financial penalties; and

(3) accordingly, refuses to further consider the applications and, if and to the extent that the refusal to extend time does not determine and dispose of these proceedings, strikes them out under rule 9(3)(b), 9(3)(d) and/or 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Reasons for the tribunal's decision

Procedural history

1. On 20 July 2022, Dr Anton Van Dellen of counsel sent to the tribunal an appeal application form. This sought on behalf of the Applicant to appeal against unspecified financial penalties under section 249A of the Housing Act 2004 (the "**Act**"). It was said the Respondent had not provided a copy of the relevant penalty notices to the Applicant.

2. On 30 July 2022, in response to enquiries from the tribunal office, Dr Van Dellen sent the final notices the Applicant was seeking to appeal against, informing the tribunal that these: "*…were finally provided by the Local Authority at 16:15 yesterday after repeated requests*."

3. These are two final notices dated 21 May 2020 of the Respondent's decision to impose financial penalties of:

   (i) £7,000 for an alleged offence, under s.72(1) of the Act, of failure to licence the Property as a house in multiple occupation ("**HMO**"); and

   (ii) £17,000 for an alleged offence, under s.234(3) of the Act, of non-compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "**Regulations**").

4. On 19 August 2022, a procedural Judge proposed to strike out the applications and invited representations. On 14 September 2022, Dr Van Dellen replied: "*…Any prejudice has been caused to the Appellant by the Respondent only providing these Notices on 29 July 2022, rather than prejudice caused to the Respondent. Further or alternatively, it is in the interest of justice for the Appellant to be granted an opportunity to appeal the Notices, as the Respondent is seeking to enforce the Notices*."

5. On 17 September 2022, Dr Van Dellen wrote to the tribunal and the Respondent: "*My client had not received the Notices and requested the Notices from the Respondent to facilitate his appeal on 22 July 2022. These were subsequently provided by the Respondent*." On 23 September 2022 the Respondent sent a substantive response, giving a fuller description of the background (please see below). The procedural Judge later made a decision striking out the appeals.

6. On 8 August 2023, for the reasons explained in Naujokas v Fenland District Council [2023] UKUT 190 (LC), the Upper Tribunal ("**UT**") set aside that decision and remitted the matter to the tribunal for further consideration. Following the direction given by the UT at paragraph [43] of their decision, the tribunal received on 4 October 2023 a two-page witness statement signed by the Applicant which gave few details and referred to documents but did not produce copies. The Applicant did not indicate whether he wished to give oral evidence.

7. On 13 October 2023, I gave case management directions for the tribunal to determine the following preliminary issues at a hearing:

   (i) when time began to run (i.e. when the relevant final notices were given to the Applicant); and

   (ii) if those notices were given more than 28 days before the appeal to the tribunal on 20 July 2022, whether to extend the time limit under rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"), if not whether to strike out under Rule 9 or take any other action under Rule 8, and otherwise what further directions to give.

8. I warned in the directions that, as the UT had already explained, the onus was on the Applicant to prove that he did not receive the final notices, it was his responsibility to include in a witness statement all matters he relies upon and produce with it copies of all documents he wishes to rely upon, and this was his last opportunity to do so.

9. The parties were asked for dates to avoid. Dr Van Dellen sent a print showing two available working days from December 2023 to early May 2024, neither of which could be accommodated. On 16 November 2023, the tribunal warned that it was minded to fix the hearing for 1 or 15 February 2024 and invited representations. On 30 November 2023, when there had been no response, the tribunal notified the parties that the hearing had been fixed for 15 February 2024.

10. The directions on 13 October 2023 provided for any further evidence from the Respondent and then for the Applicant to by 15 December 2023 produce bundles for the hearing, including the documents produced so far and any further witness statement setting out all matters relied upon by the Applicant and copies of all supporting documents. Following an enquiry from the tribunal office and then a warning that these proceedings would be struck out if the Applicant failed to do so, concise bundles were delivered on 4 January 2024. These contained copies of the UT decision, the directions of 13 October 2023, the notices, invoices, contemporaneous covering letters, certificate of service and file note from the Respondent, a screen print from enforcement agents instructed by the Respondent, two copy tenancy agreements, two pages showing text messages, the appeal form, the Applicant's skeleton argument from the UT hearing and the same witness statement from 4 October 2023.

11. The preliminary issues were heard face to face at Cambridge Magistrates Court on 15 February 2024. Shortly before the hearing, Dr Van Dellen e-mailed a skeleton argument prepared by Miss Nozima Rakhimjonova of counsel. At the hearing, the Applicant was represented by Miss Rakhimjonova and gave oral evidence through an interpreter. The Respondent was represented by Andy Brown and Jo Evans, housing officers. I am grateful to Miss Rakhimjonova, Mr Brown and Mrs Evans for their assistance.

The background

12. The Applicant is from Lithuania. He said that between about 2011 and 2016 he lived at 22 Gordon Avenue in March, with his sister and/or others. From 2016 until 29 July 2020 he lived at the Property, 11 Kings Walk in Wisbech. Since 30 July 2020 he has lived at 21 Elm High Road in Wisbech, his current address. He is now 70 years old and retired, but sometimes works through an agency as a van driver. He said that in previous years he worked several days each week through the agency in a factory.

13. When asked, the Applicant said that seven people lived at the Property, which is a two-storey semi-detached house. He said the other occupiers included his son, Vasily, and his cousin. He said the others were family members or friends. He later said he thought there had been six people, but he did not remember. He agreed he was the only tenant under the tenancy agreement and said that he paid the landlord the rent in cash. He said the occupiers would chip in together to make payments for bills and so that he could pay the landlord. He said that he did not make any profit from the arrangement, he just lived at the Property. He said that his partner had been recorded as the council tax payer for most of their time at the Property, but around the end of 2019 she had gone to Ukraine and ultimately said she was not coming back. The Applicant was registered as the council tax payer for the Property from 1 April 2020 to 29 July 2020.

14. The Applicant produced a copy two-page tenancy agreement dated 24 August 2018 between Adam Pittman as landlord and the Applicant as tenant, letting the Property for a rent of £800 per month. In it, the Applicant agreed that: "*Under no circumstances may more than six people live at the premises*". It appears from a copy notice dated July 2018 that the rent payable under the preceding tenancy was less than £800 per month.

15. The Applicant also produced a copy two-page tenancy agreement dated 24 August 2019 between the same parties. This is generally in similar terms but provides that: "*Under no circumstances may more than five family members live at the premises*."

16. The Applicant said that agreement had actually been produced by the landlord in March 2020, after the Respondent inspected the Property (as noted below). The Applicant relied on undated text messages apparently between the Applicant and the landlord reading: "*Hi Adam I have signed a new this tenancy Agreement this year March month. But you wrote the wrong year you wrote 2019. Why did you write that year?...*". The landlord appears to answer: "*Your agreement has always been August to August...*". The Applicant's reply begins: "*Ok but why didn't you give*". The extract shown to the tribunal cuts off the rest of the exchange. The case management directions invited an explanation of why the date of the text message referred to by the

Applicant in his witness statement had not been provided, but no such explanation was given.

17. On this copy tenancy agreement, someone appears to have added the date "*20 March 2020*" in manuscript, overwriting or amending some fainter marks, in three places in the document: twice at the top and once beside the Applicant's signature. The Applicant did not explain why he had signed the document with the wrong date, but I note that the year might not have been obvious to him because it is written in long form (Two Thousand and Nineteen, rather than 2019). He said that, after the Respondent's inspection, the landlord had told him that only family members, and no more than five people, could occupy. He told me that he signed this tenancy agreement for no more than five family members because after he signed it he only allowed family members, and no more than five, to live at the Property.

18. On 31 January 2020 (without prior warning) and 20 February 2020 (with notice), housing officers from the Respondent inspected the Property. They said that, on each occasion, they found nine tenants in occupation.

19. On 2 April 2020, the Respondent sent notices of intent to impose financial penalties, addressed to the Applicant at the Property. These warned that the Respondent was proposing to impose penalties of £7,000 for alleged failure to licence the Property as an HMO and £17,000 for alleged non-compliance with the Regulations. The notices gave explanatory details. They alleged the Applicant managed the Property and it was occupied by nine tenants forming six separate households in its five bedrooms, sharing the bathroom and the kitchen. They said the tenants on the ground floor were from Lithuania and the tenants on the first floor were from Moldova. They said that on the second inspection at least one occupier gave a different name. They alleged the Applicant and another of the tenants were responsible for sub-letting the Property to the other occupiers.

20. It appears that, also on 2 April 2020, the Respondent sent an improvement notice to the Applicant, saying they intended to charge an additional £240 for taking this action.

21. The Applicant said the landlord had received similar notices earlier. The Applicant told me he did not recall receiving any improvement notice (the UT was informed that he had [11]), but he said the landlord carried out some work to the Property at this time. It appears the Respondent sent similar notices of intent to the Applicant's partner (the other tenant alleged in the notices to have been responsible for sub-letting the Property) at the same time, but had taken no further action about these because they understood she had left the country. The Respondent said that following representations made by the landlord in response to the notices of intent sent to him, reduced penalties of £12,000 and £5,000 had been imposed on the landlord.

22. On 1 May 2020, the Respondent was called by an interpreter who was with the Applicant at a local community centre (the Rosmini Centre in Wisbech), where he had taken the notices of intent. The Respondent confirmed to the Applicant through the interpreter that the penalties had not been finalised, explaining that his representations had been requested and it was in his interests to send these; any payment would need to be organised after final notices had been given. The Respondent agreed to wait an extra week for representations.

23. The Applicant made no representations. When I asked why not, he said that he did not know where to seek help, pointing out that this was during the (first) Covid lockdown. He said the reason he did not contact the Respondent again, to ask for more time or otherwise, was that he presumed their intent was to impose penalties but he was waiting for their final decision which he did not receive.

24. On 21 May 2020, the Respondent sent final notices by post, addressed to the Applicant, to the Property and to 22 Gordon Avenue in March. These noted that no written representations had been received and imposed the penalties which had been proposed the previous month. The final notices were sent with covering letters warning: "*If you wish to appeal this decision you must make a formal application to the Residential Property Tribunal (contact details are included later in this correspondence) within 28 days. If you do not wish to exercise your right to appeal the Final Notice must be paid within 28 days*." They each included wording headed: "*APPEALING AGAINST THIS NOTICE*" which begins: "*You may appeal to a First Tier Tribunal, within the period of 28 days from the day after the date of this notice*", giving an explanation and a link to the contact details of the tribunal.

25. It appears from the Respondent's file note that, on 30 July 2020, the landlord of the Property called to inform the Respondent that the Applicant had moved out on 29 July 2020, so was no longer the council tax payer. The landlord said this was the end of the tenancy, the Applicant had moved to 21 Elm High Road in Wisbech, and the Property was now empty and would be put on the market for sale.

26. The Applicant said that was right; the landlord had suddenly asked about the beginning of July 2020 that he move out. The Applicant had already started looking in June 2020 for somewhere else. He found 21 Elm High Road, which happened to be available, with a different landlord. He said his son and one of his relatives moved to 21 Elm High Road with him and then further relatives had arrived, but no more than five people.

27. On 26 August 2020, the Respondent sent copies of the final notices to the Applicant at 21 Elm High Road, warning that these: "*…require your urgent attention and payment of the fines are now due*" and concluding: "*Please contact us urgently directly or through the Rosmini Centre*".

28. In December 2020, as noted in the UT decision at [11], the Applicant had again sought advice, this time from Dr Van Dellen. The Applicant said that he had done so because he had started receiving letters from bailiffs requiring him to pay outstanding amounts.

29. I understand from the UT decision at [11] that, by e-mail on 26 December 2020, Dr Van Dellen wrote to the Respondent saying that: "*…he had seen the three notices served on Mr Naujokas on 2 April 2020 (i.e. the two notices of intent and the improvement notice) and asked that they be withdrawn, because Mr Naujokas had been a tenant…*". Miss Rakhimjonova (who may not previously have been involved) could not explain why a copy of this e-mail had not been produced to the tribunal but agreed I should base my decision on the description in the UT decision.

30. On 5 January 2021, Mr Brown replied for the Respondent. Again, a copy of his reply was not produced to the tribunal and I base my decision on the description in the UT decision at [12]: "*In it Mr Brown explained that final notices imposing civil penalties totalling £24,000 had been served at the property … on 21 May 2020. He also asked Dr Van Dellen to provide signed authorisation from Mr Naujokas so that the Council could communicate with him about the matter*."

31. I asked the Applicant why this e-mail from the Respondent to his legal representative had not prompted immediate action. He said he was not aware whether he had really been fined because he had not received the correspondence. He did not explain why he had not provided the authorisation requested by the Respondent, or said anything to the Respondent in reply (at all, let alone to the effect that he had not received these notices, or to request copies of the notices). He said that he thought he may have been on holiday at this time for nearly two months, before he could take advice, and he did not remember exactly.

32. A screen print from recovery agents instructed by the Respondent refers to letters in December 2021, January 2022 and February 2022. As noted in the UT decision at [13], it appears that on 19 February 2022: "*the Applicant signed a letter confirming that Dr Van Dellen was indeed his representative*".

33. However, as noted in the UT decision at [14], nothing was done with this; Dr Van Dellen did not communicate with the Respondent for a further five months. On 20 July 2022, Dr Van Dellen sought to appeal to the tribunal: "*…and it was only when the FTT asked for copies of the notices that Dr Van Dellen responded to the Council's request of 5 January 2021 by sending the authorisation. The explanation for these long delays which Dr Van Dellen gave at the hearing was that communication with Mr Naujokas is always difficult because instructions have to be taken through an interpreter*." No other explanation was given to the tribunal, except as noted above.

When time began to run

34. Under Schedule 13A to the Act, if an authority decides to impose a financial penalty on a person, they must give them a final notice imposing the penalty (paragraph 6). It was not disputed that the contents of the final notices complied with paragraphs 7 and 8. The relevant law on giving of notices is explained in the UT decision at [29-32]. If such person appeals to the tribunal against the decision to impose the penalty or the amount of the penalty, the final notice is suspended until the appeal is finally determined or withdrawn (paragraph 10(2)).

35. It appeared to the Respondent in early 2020 that the Applicant was still connected with 22 Gordon Avenue at that time. However, there was no evidence that he was actually connected with anyone still living at 22 Gordon Avenue in May 2020, and he says he had moved to the Property in 2016. Accordingly, I am not satisfied that the final notices sent to the Applicant at that address were given to him.

36. As noted in the UT decision and confirmed at the hearing, it is accepted that in May 2020 the Property, 11 Kings Walk, was the Applicant's proper address for the purpose of s.233(4) of the Local Government Act 1972. I am satisfied by the certificate of service that the Respondent sent the final notices to the Applicant at that address on 21 May 2020 by first class post. The UT decision explains at [33] that the effect of section 26 of the Interpretation Act 1889: "*…is therefore that service was deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post "unless the contrary is proved".*"

37. Similarly, it was accepted that from 30 July 2020 the proper address of the Applicant for the purpose of s.233(4) of the 1972 Act was 21 Elm High Road. Miss Rakhimjonova observed that no outgoing post book, or the like, had been produced in relation to the letter of 26 August 2020. However, Mr Brown said it had been sent. He attended the hearing and there was no request to ask him any questions. I am satisfied that Mr Brown's letter of 26 August 2020 was sent that day by post with copies of the final notices. Accordingly, again, by s.26 of the 1889 Act the notices are deemed to have been given at the time the letter with those notices would have been delivered in the ordinary course of post unless the contrary is proved.

38. As Miss Rakhimjonova pointed out, it may be hard to prove a negative. However, I consider it inherently improbable that neither of these sets of copy final notices reached the Applicant. I bear in mind that the notices of intent in April 2020 and the final notices in May 2020 were sent during the first lockdown, when the postal service was disrupted. As for the copies sent to 21 Elm High Road in August, the general lockdown had been eased during June 2020, before new restrictions were introduced in late September 2020, although there may still have been disruption to the postal service at the time. The Applicant made

no suggestion that post was not delivered at any of these times, but did point out that, in general, post was sometimes delivered to wrong addresses by mistake. He said he was honest and returned such letters but observed that others receiving post for either property at other addresses might throw it away. I take all this into account, but still consider it inherently improbable that the notices of intent were delivered in April but neither set of copies of the final notices sent to his home addresses in May and August 2020 were delivered.

39. The Applicant said that, at the Property, post came through a letterbox and whoever picked it up from the floor would put it on a shelf on the wall. The Applicant said in his witness statement that some letters were probably lost because a man who lived at the Property abused alcohol, so if letters were not sent as registered post they sometimes got lost. The Applicant could not tell me very much about this man, only that the Applicant had thought he was a friend. He said this "*supposed friend*" may have taken and disposed of the notices. The Applicant said he later asked the man to leave because it had become clear that he had a grudge, and he disappeared in July 2020.

40. The Applicant's evidence about this was not convincing and is contradicted by (or contradicts) his evidence that from March 2020 he ensured only family members lived at the Property. Being untruthful about one or both matters does not mean that he is being untruthful when he says that he did not receive the notices. However, this and other inconsistencies in his evidence (in particular, first telling me that seven people lived at the Property and then reducing this when referred to the terms of the undisputed tenancy agreement) make me doubt the reliability of his evidence about whether he received the notices, let alone whether an unnamed person may have intercepted the first copies of them.

41. The Applicant said that, at 21 Elm High Road, post was left on the kitchen table; they were all family members so they trusted each other. He told me that he did not remember whether he had received the letter of 26 August 2020 with the copy final notices. He then said: "*I don't think that I had this one*." I allow for differences in language and the fact that he was speaking through an interpreter. However, his oral evidence was rather less definitive about this, and seemed to me to be nearer the truth, than the earlier evidence/representations that he had not received the notices.

42. I find that the Applicant did receive the final notices (I am satisfied that he is deemed to have received them and on the balance of probabilities did receive them) in late May 2020 and/or late August 2020. The Applicant may think/hope now that he did not, but may have been careless about his post or keeping the notices. He may at the time have been attempting to go to ground, hoping the landlord would be penalised and the problem would go away. This seems consistent with his failure to engage even when, knowing that enforcement agents were seeking to recover penalties from him, his legal representative had been

informed in January 2021 that the final penalty notices had been served and asked for authority from the Applicant to engage with his legal representative about this. It also seems consistent with his evidence that he does not recall receiving the April 2020 improvement notice which Dr Van Dellen confirmed he had.

Whether to extend time

43. Accordingly, the time under Rule 27 by which the notice of application to appeal must have been provided to the tribunal expired by late September 2020. I need to decide whether to under Rule 6(3)(a) extend that time limit until 20 July 2022. As the UT confirms at [42], the guiding principle in considering whether to exercise this power to extend time is found in Rule 3, which describes the overriding objective to deal with cases fairly and justly.

44. I am grateful for the neutral position taken by the housing officers representing the Respondent at the hearing. They did not consent to an extension of time and had been unhappy about the earlier attempts to blame them for the delays. However, they did not oppose extension and did not think they would be prejudiced if the appeals were allowed to proceed (the same officers have been involved throughout so could still give evidence about what they saw when they inspected); I give that significant weight. They largely left it to me to ask any necessary questions of the Applicant and wanted me to decide what was fair in the circumstances.

45. As noted above, the Respondent had proposed to impose the same penalties on each of the three people. After the landlord made representations, reduced but still substantial penalties had been imposed on him. They understood the Applicant's partner had left the country and did not seem to be intending to return, so they were assuming any penalties imposed on her would not be appealed or paid.

The merits?

46. Miss Rakhimjonova urged me to assess the merits of the Applicant's case, as the main reason for extending time and allowing the appeals to proceed. He would, she said, have a very strong case. After I asked about Haziri & Anor v London Borough of Havering [2019] UKUT 330 (LC) at [25-27], Miss Rakhimjonova said the relevant principles concerning questions of case management should be distinguished on the facts (or the circumstances were within the exception for cases so strong that, in effect, it is quickly clear there would be no reasonable prospect of the opponent's case succeeding) because the tenant must be the "*wrong party*". Even if I should seek to assess the merits, I am not satisfied that the case outlined for the Applicant about this is very strong, as explained below.

47. First, I should note it was not disputed that on 20 February 2020 the Property was an HMO and required to be licensed. That is not surprising. The Applicant's evidence at the hearing indicated that the

Property satisfied the standard test for HMOs under section 254(3) of the Act. On the Applicant's evidence that until March 2020 there were five or more people living at the Property and some of them were not family members, it also appears (by reference to the prescribed description applied from 1 October 2018 for the purposes of section 55(2)(a) of the Act by the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (the "**Order**")) that the Property was required to be licensed.

48. The only ground of appeal in the application form sent to the tribunal was that because the Applicant was a tenant of the Property he was not responsible for applying for or obtaining an HMO licence or for dealing with fire safety defects. The offence under section 72(1) of the Act is committed by a "*person*" having control of or "*managing*" an HMO which is required to be licensed. The offence under section 234(3) is committed by failure to comply with the Regulations to the extent that they impose duties on the "*person managing*" an HMO. The case outlined for the Applicant at the hearing was that a tenant cannot be the "*person managing*" for the purposes of the relevant offences; only the landlord could be responsible.

49. As noted at the hearing, the meaning of "*person managing*" for these purposes is defined by section 263(3) of the Act. That is, in relation to premises, the person who, being an owner or "*lessee*" of the premises, receives (whether directly or through an agent or trustee) rents or other payments from, in the case of an HMO, persons who are in occupation as tenants or licensees of parts of the premises (and includes, where those rents or other payments are received through another person as agent or trustee, that other person). The Applicant was a lessee (in the Act, "*lease*" and "*tenancy*" have the same meaning, and "*lessor*" and "*lessee*" are to be construed accordingly; s.262(1) and (3) respectively) and apparently had control of who occupied the Property.

50. Miss Rakhimjonova emphasised that the Applicant's evidence was that he had made no profit, collecting rent from the other occupiers and paying the £800 rent himself to the landlord under his tenancy agreement, benefitting himself only by living at the Property. She argued that was not sufficient to satisfy s.263(3). Even assuming the Applicant's evidence about this is true, it is difficult to see why he cannot be a "*person managing*", as a lessee who apparently received rent payments from tenants/licensees (or as a person receiving those payments for the landlord).

51. Accordingly, I am not satisfied that the case outlined for the Applicant is strong. If these appeals are allowed to proceed, the Applicant might of course be able to make a case on a wide range of matters based on evidence not available at this stage. If I should consider whether any strong case has not yet been expressed but is apparent from the material provided, I would note the following matters.

52. The Applicant might make a case that he had a reasonable excuse defence in relation to the licensing penalty (s.72(5)) and perhaps the larger penalty concerning the Regulations (s.234(4)). He may have been subletting/sharing the Property in the same way for years. Although the Regulations may have applied throughout, the Property (as a two-storey house) would not have become licensable until 1 October 2018, when the Order came into force. The Upper Tribunal has observed that it is not impossible for ignorance to provide a reasonable excuse, depending on the circumstances. It may not matter whether the Applicant was benefitting from the arrangement. He might argue that he relied on the terms of the previous tenancy agreement(s) and be able to show that the tenancy agreement limiting him to family members was backdated by the landlord and not signed until the month after the alleged offences. Evidence about the tenancy agreement and the Applicant's circumstances, experience and understanding was either absent or too thin to seek to assess at this case management stage whether he has a strong case about this; I assume he might have.

53. The Applicant might well have a strong case that the penalties should be significantly reduced to reflect his circumstances and culpability, where matters such as those mentioned above may provide substantial mitigation if they are not a defence. It might also be relevant to take into account the penalties imposed on the landlord in assessing what, if any, penalties should be imposed on the Applicant. Again, this might depend in part on whatever findings were made about the tenancy agreement which the Applicant says was backdated.

Conclusion

54. Miss Rakhimjonova invited me to extend time, pointing out that the Applicant should have a fair chance to present his case in full. Given the Respondent's position, the potential for a strong case (at least for reduction of the penalties) and particularly because the penalties are substantial relative to the circumstances described by the Applicant at the hearing (as noted above), it is tempting to simply extend time.

55. However, all this is outweighed by the unacceptable delay in this case. As noted in Haziri at [28], a delay of 10 days in doing something which is required to be done in 28 days is capable of being regarded as significant. Given the exceptional factors of the pandemic lockdowns, the apparent circumstances of the Applicant, the need for interpreters and the lack of legal advice/representation until December 2020/ January 2021, together with the Applicant's evidence that he may then have been away on holiday until March 2021 and the other factors noted above, I might have extended time if the application had been made even as late as the summer of 2021.

56. In my assessment, no good reasons have been given to justify the delay of a further year in seeking to appeal to the tribunal. The Applicant had a fair chance to appeal and present his case within a reasonable time,

but did not do so. I consider that it would not be in accordance with the overriding objective to extend time for these reasons alone.

57. Further, the Applicant failed to co-operate with the Respondent. He made no representations in response to the notices of intent and did not contact them to ask for more time. He did react to letters from enforcement agents by taking legal advice, but even with legal advice he did not respond to their e-mail in January 2021 until July 2022, despite further letters from enforcement agents in the interim.

58. Further, the Applicant failed to co-operate with the tribunal. The early representations sent to the tribunal (noted on the first page of this decision) do not seem adequately to explain the background and it appears the first of them was not copied to the Respondent, but I disregard those matters because Dr Van Dellen was not at the hearing and there may be an explanation. The Applicant produced only a brief witness statement in response to the directions from the UT, without answering their question, leading to the further directions for a face to face preliminary issue hearing with an interpreter. I bear in mind that the Applicant might not be able to procure very active assistance and of course the tribunals expect to use an appropriate share of resources to help parties to participate effectively in proceedings. Even so, if adequate effort had been put into producing the Applicant's evidence following the UT directions or my directions, I might in October or December 2023 have given directions for a later rolled-up hearing to deal with all potential issues. The Applicant did not comply with my directions, delivering a late bundle. That was rather limited, containing copies of the few new copy documents referred to in the witness statement, no additional witness statement and no explanation of whatever submissions might be made about these, only a copy of the skeleton argument from the UT appeal. Moreover, as noted above at [40], the Applicant then gave untruthful evidence at the hearing about matters apparently intended to convince me that he did not receive the final notices and/or that I should extend time because he was a tenant complying with the terms of his tenancy agreement.

59. In my assessment, it would not be fair or just to extend the time limit to 20 July 2022. Whether I assess this purely by reference to the overriding objective or by following the approach in Denton v T H White Limited [2004] EWCA Civ 906, the result is the same. By reference to Denton, the failure to comply was very serious, there are no good reasons for the default since about March-June 2021 at the latest and it would not be just to extend the time limit by more than a further year to 20 July 2022 in all the circumstances, including the need for litigation, including statutory appeals, to be conducted efficiently and the need to enforce compliance with the Rules.

60. Accordingly, I refuse to further consider the applications. It seems from the approach described in Haziri and the explanation in the UT decision that the effect of my refusal to extend time is that no appeals have been admitted (or, as Dr Van Dellen submitted at paragraph [32]

of his skeleton argument to the UT, that the appeals are automatically dismissed). Miss Rakhimjonova agreed that, if that is wrong or my refusal does not otherwise determine these proceedings (if, say, the application after the time limit is an irregularity under rule 8), I have the power to take action under rule 8 and/or strike out under rule 9(3)(b), 9(3)(d) and/or 9(2)(a). Naturally, her submissions in relation to the proposed striking out were in substance the same as those seeking extension of the time limit for appealing to the tribunal.

61. For the reasons given above I do not consider it just to take any action under Rule 8 other than exercising any power under Rule 9. I consider that, for the reasons given above: (1) the Applicant has failed to co-operate with the tribunal such that the tribunal cannot deal with these proceedings fairly and justly; and (2) these proceedings are an abuse of the process of the tribunal and/or the tribunal does not have jurisdiction in relation to these proceedings, being attempts to appeal to the tribunal long after the time limit for any such appeal without good reasons. Accordingly, if and to the extent that my refusal to extend time does not determine and dispose of these proceedings, I strike them out under Rule 9(3)(b), 9(3)(d) and/or 9(2)(a).

Name: Judge David Wyatt **Date:** 29 February 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).