FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/HNA/2022/0032**
Property	**:**	**59a Hilda Road, London E16 4NQ**
Applicant	**:**	**Norman Sengooba**
Respondent	**:**	**London Borough of Newham**
Type of application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal members	**:**	**Judge Nicol** **Judge McKeown** **Mr A Lewicki BSc (Hons) FRICS CBuildE FCABE**
Date and venue of hearing	**:**	**31st January 2024** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**2nd February 2024**

DECISION

The Tribunal has decided to vary the penalty imposed on the Applicant by the Respondent so that the penalty is £10,000 instead of £15,000.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicant is the leaseholder of the subject property, a 2-bedroom ground floor flat. The local authority Respondent has sought to impose a financial penalty of £15,000 on the Applicant for allegedly failing to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 ("the 2004 Act").

2. The final penalty notice was served on 4th May 2022. The Applicant appealed to this Tribunal on 23rd May 2022.

3. The Applicant's appeal was heard by the Tribunal on 31st January 2024. The attendees were:

- The Applicant, representing himself
- Mr Nick Ham, counsel for the Respondent
- Ms Sylwia Olejnik-Antkowiak, Senior Environmental Health Officer

4. The Tribunal had the following documents, filed and served in accordance with the Tribunal's directions issued on 8th September 2023 and amended on 21st September 2023:

- Applicant's Bundle, 46 pages;
- Respondent's Bundle, 266 pages;
- The original application and the Tribunal's directions (neither were included in either party's bundle); and
- A one-page Summary from the Applicant of his arguments.

5. On 31st May 2012, the Applicant granted a tenancy of the subject property, through his agents Cephas Network, to Ms Jade Chesmin. She lived there with her partner and two children until recently. The papers included only one written renewal, dated 7th August 2014.

6. On 24th July 2012, the Applicant entered into an agreement with the Respondent in which the Respondent issued a Bond Certificate for a damage deposit guarantee to a value of up to 4 weeks' rent. The terms of the Bond included the following:

> 1.2 The Landlord agrees to provide the property in a good state of repair and decoration, ensuring that it has adequate amenities, meets all applicable Fire, Health and Safety, Planning requirements and other repair standards and continues to do so. A gas safety test certificate and an electrical report must be supplied.
>
> 1.3 The Landlord agrees to inspect the property every two months and keep records of the inspections made.
>
> 1.4 The Landlord agrees to notify Newham Council in writing of any liability, which may arise under this agreement, or any relevant changes in circumstances within 14 days of such liability coming to the attention of the Landlord.

7. On 20th June 2014, the Applicant's agents completed a written inventory of the contents of the property. It included a smoke alarm in the kitchen and noted that all the existing electrical sockets were in good condition.

8. On 2nd August 2018 the Respondent granted the Applicant a licence under their selective licensing scheme for rented properties, effective from 1st March 2018 for a term of 5 years. This was a renewal of a previous licence granted in around 2013. The Applicant has applied to

renew his licence again but the Respondent has yet to determine that application. The licence included the following terms:

(a) The maximum occupancy is 6 but the number of permitted households is one.
(b) The licence is subject to Conditions, number 3 of which required the Applicant to inform the Respondent's Property Licensing Team directly in writing or by email of any change in address, email or telephone number for himself and/or his agent.
(c) Condition 13 required the Applicant to "ensure that inspections of the property are carried out at least every six (6) months to identify any problems relating to the condition and management of the property. … The records of such inspections shall be kept for the duration of the licence. As a minimum requirement the records must contain a log of who carried out the inspection, date and time of inspection and issues found and action(s) taken."

9. In April 2021, the tenant Ms Chesmin completed one of the Respondent's disrepair referral forms. She complained that:

(a) The water was running brown and had been unusable since 20th April.
(b) There was damp in all the rooms apart from the children's bedroom.
(c) There were faulty sockets.
(d) The Respondent and his agents had not been to visit the property "in years".
(e) The last gas safety certificate was dated 2017.

10. Ms Chesmin's complaints came to the attention of Ms Olejnik-Antkowiak. She spoke to Bola from the Applicant's managing agent who said that remedial work would be arranged. A new boiler was installed within days (which presumably dealt with the brown water) but, on 17th May 2021, Ms Chesmin told Ms Olejnik-Antkowiak that the other items remained outstanding. Therefore, Ms Olejnik-Antkowiak arranged to inspect the property on 25th May 2021.

11. On her inspection, Ms Olejnik-Antkowiak found that the property was occupied by Ms Chesmin, her partner and their 2 children, aged 5 and 9. She noted a number of deficiencies:

(a) Lack of any mains wired interlinked fire detection in the ground floor hallway or a heat detector in the kitchen.
(b) Lack of a fire blanket in the kitchen.
(c) Only one double socket above work surface in the ground floor kitchen and therefore inadequate number of electrical socket outlets.
(d) Double socket to the right of the window in the living room was faulty.
(e) The socket located on the wall opposite the window in the living room was not working.
(f) There was only one single socket to the ground floor front bedroom and therefore inadequate number of electrical socket outlets.

(g) The high level wall mounted kitchen cabinet located as the first cabinet on the right hand side as you enter the kitchen was not securely fixed to the wall.

12. Ms Olejnik-Antkowiak then carried out an assessment under the Housing Health and Safety Rating System and identified hazards arising from the above deficiencies in 3 categories:

(a) Electrical Hazards
(b) Fire
(c) Structural collapse and falling elements.

13. By letter dated 1st June 2021 Ms Olejnik-Antkowiak notified the Applicant of her HHSRS assessment and warned that she would be serving an Improvement Notice requiring action to deal with the hazards she had identified. The letter also warned that the Respondent has the power to impose a financial penalty of up to £30,000 for failure to comply. The letter invited the Applicant to make representations but neither he nor his agents responded.

14. On 22nd June 2021 the Respondent served the Applicant with an Improvement Notice under section 12 of the 2004 Act. Schedule 1 re-listed the hazards and Schedule 2 set out the required remedial works. The attached notes informed the Applicant of his rights of appeal. He did not appeal. By section 15(6) of the 2004 Act, if no appeal is made against an improvement notice, that notice is final and conclusive as to matters which could have been raised on an appeal.

15. Ms Olejnik-Antkowiak tried phoning both the Applicant and his agents but could get no answer. Ms Chesmin sent an email on 4th September 2021 saying no works had been undertaken and that her electricity supplier, EDF, had raised concerns about the electrics at the property when they attended to install a smart meter.

16. Ms Olejnik-Antkowiak arranged another visit to the property on 29th September 2021 when she confirmed that none of the works had been carried out.

17. On 23rd February 2022 the Respondent served the Applicant with a Notice of Intent to issue a Financial Penalty in the amount of £15,000. The Applicant was invited to make representations.

18. By email dated 14th March 2022, the Applicant's agents said that "the notice" had been sent to "an old address" but that they had been relying on email communication. Nevertheless, they said work had been carried out and provided electrical and gas safety certificates. The only representation they made in respect of the financial penalty was an appeal to leniency on the basis that 2021 had been a difficult year due to COVID and "that reduced our visitation to property".

19. The Respondent had been sending their notices and correspondence to the address given for his licence, 62 Dukes Avenue, which Ms Olejnik-

Antkowiak's searches had shown was still owned by the Applicant. He did not dispute that he had been properly served but he did not explain how it was that the Notice of Intent came to his attention but the Improvement Notice did not, despite being served in the same way.

20. On 27th April 2022, Ms Olejnik-Antkowiak re-visited the property to check on the works. She was satisfied all the works had been carried out except to the insecure kitchen cabinet which gave rise to the "falling elements" hazard.

21. Ms Olejnik-Antkowiak had calculated the proposed penalty of £15,000 by reference to a matrix, recommended by Government guidance and standard to local authorities, in which a score of 1, 5, 10, 15 or 20 is given in each of four categories. She gave the Applicant the following scores:

(1) Deterrence & Prevention	5
(2) Removal of Financial Incentive	10
(3) Offence & History	1
(4) Harm to Tenants	10

22. The last category, Harm to Tenants, is given a double score in order to give it extra weight. Therefore, the total score given to the Applicant was 36. The Respondent's policy was that a score of between 31 and 40 incurred a penalty of £15,000.

23. Ms Olejnik-Antkowiak decided not to change the penalty from that sum. She regarded any problem with receipt of the notices to be the Applicant's own fault. More significantly, she had given the Applicant several opportunities to address the issues at the property and action was only taken when a substantial penalty was in view. Even then, one of the items had still not been addressed – while the insecure kitchen cabinet was not the most significant of the problems identified, it still had the potential for serious harm if the cabinet were to fall off the wall onto one of Ms Chesmin's children.

24. Therefore, the Respondent served the Final Penalty Notice on 4th May 2022 for £15,000.

25. The Applicant's Tribunal application gave the following objections to the penalty notice:

(a) His tenant, Ms Chesmin, was responsible for maintenance of the fire alarm under her tenancy.
(b) The property is not a house in multiple occupation and so does not require the integrated fire alarm system.
(c) Ms Chesmin was introduced by the Respondent and was covered by the aforementioned Bond. The faulty electrical sockets and the kitchen cabinet coming away from the wall were covered by the Bond.
(d) The electrical outlets met relevant safety standards and so could not be a hazard.
(e) The Applicant had to abide by the restrictions brought in by the COVID pandemic.

(f) The Applicant had carried out remedial work which exceeded the value of the bond before the financial penalty was imposed.

26. In his statement, he also relied on the following matters:

(a) According to the aforementioned inventory from 2014, there was a smoke alarm in the kitchen. For it to be found to be missing when Ms Olejnik-Antkowiak inspected in 2021 must mean that Ms Chesmin removed it.
(b) The type of smoke alarm and the absence of a fire blanket were not breaches of the Smoke and Carbon Monoxide Alarm Regulations.
(c) The insecure cabinet had "weighty appliances" on top, put there by Ms Chesmin.
(d) Works were carried out as soon as reasonably practicable.
(e) The Respondent was happy with the state of the property when issuing the Bond in 2014.

27. In his Summary of his arguments, the Applicant also alleged that the Respondent was biased and minded from the start to regard him as a rogue landlord.

28. The Tribunal rejects the Applicant's arguments. Most of them are, at best, arguments against the Improvement Notice itself but he has never attempted to appeal that, which means that the Notice is final and conclusive on such matters.

29. The Applicant's attempts to avert blame had little merit anyway:

(a) There is no evidence that Ms Chesmin did remove any smoke alarm or heat detector and she had no opportunity to respond to such allegations in these proceedings.
(b) Moreover, the Applicant had the opportunity to show that he or his agents had complied with the obligations for regular inspections but the complete absence of any such evidence, and Ms Chesmin's assertion in the disrepair referral form, suggest that none were ever carried out. If the Applicant never checks to find out what is happening in the property, he has no basis to blame any deficiencies on anyone but himself.
(c) He relied on the inventory and Bond but they happened 7 years previously and carried little weight in the absence of any property inspections.
(d) The COVID restrictions during 2020 and 2021 limited a landlord's ability to inspect and carry out works but did not prevent them altogether. It is lazy just to make a blanket assertion that COVID was a problem. The Applicant had no evidence that he or his agents attempted anything which was limited or thwarted by the COVID restrictions.
(e) In relation to the fire alarm, Ms Olejnik-Antkowiak explained that she was following, as per the Respondent's policy, the British Standard B58396 which applies to existing properties as well as new-build ones. This is the paradigm example of a matter which should have been pursued in an appeal against the Improvement Notice but, even then, the Applicant had no argument as to why the Respondent would be in error

in applying such standards if they wished to do so as part of their published licensing regime.

(f) In relation to the complaint about "heavy appliances" on the insecure kitchen cabinet. Ms Olejnik-Antkowiak's photos from her inspections showed an empty plastic filter jug, a lightweight kettle, a box containing flour or something similar and possibly one or two other food containers. They would not appear to be heavy and are the kind of things which any household could be expected to store inside or on top of a kitchen cabinet. It is entirely reasonable to expect a cabinet to be able to bear the weight of standard household items stored in a common or typical manner.

30. Having said all that, it is to the Applicant's credit that works were carried out. A new boiler was installed quickly on receipt of the first complaint. The Tribunal accepts that the Applicant was properly served with the notices but also that they did not come to his attention – it was his fault but the neglect was inadvertent. Most of the works were carried out after the Notice of Intent was received.

31. The appeal is a rehearing and the Tribunal needs to reach its own conclusion on the penalty and the amount of it. However, in doing so the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).

32. The Respondent's policy is in line with Government guidance and provides a careful balance, within the objectives of the legislation, between the various elements which make up the offences and their context. Considering all the circumstances of this case and the degree of the Applicant's culpability, the Tribunal is satisfied that it was appropriate to issue the penalty in accordance with that policy. It is beyond any doubt, let alone a reasonable one, that the Applicant committed the offence of failing to comply with the Improvement Notice.

33. However, looking carefully at the matrix, the Tribunal can see that the Respondent scored the Harm to Tenants according to the following description for which the score is 10:

> Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary

34. The Respondent conceded at the hearing that the fact that the Applicant had carried out the works, albeit belatedly, might be reflected in scoring the Harm to Tenants at 5, instead of 10, according to this description:

> Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.

35. This is a finely balanced judgment and it is no criticism of Ms Olejnik-Antkowiak or the Respondent that the Tribunal prefers the latter in this case. This reduces the total score from 36 to 26, putting it in the range of 21-30 for which the relevant fine is £10,000.

36. Therefore, the Penalty Notice is upheld but varied so that the penalty which the Applicant must pay to the Respondent is reduced from £15,000 to £10,000.

Name: Judge Nicol **Date:** 2nd 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).

Appendix of relevant legislation

Housing Act 2004

Section 30 Offence of failing to comply with improvement notice

(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.

(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);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 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.

Section 254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");
(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;
(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

SCHEDULE 13A

FINANCIAL PENALTIES UNDER SECTION 249A

6

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

10

(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.