

## FIRST TIER PROPERTY CHAMBER DECISION



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

Case Reference : CHI/43UE/HNA/2024/0006

Property : 7 Lincoln Close, Tilgate,  
Crawley, RH10 5ET

Applicant : Martin New

Respondent : Crawley Borough Council

Representative : Mr. Robert Herrod  
Counsel

Type of Application : Appeal under Paragraph 10  
of Schedule 13A of the  
Housing Act 2004, against a  
Financial Penalty imposed  
under Section 249A of the  
2004 Act.

Tribunal : Judge T. Hingston  
C Davies FRICS  
: T. Wong

Date of Decision : 29<sup>th</sup> November 2024

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DECISION

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## DECISION OF THE TRIBUNAL: -

1. The Applicant seeks a reduction of the Financial Penalty of £5,100, which was imposed upon him on the 5<sup>th</sup> of January 2024 for Failure to comply with an Improvement Notice.

The Tribunal determines that the Financial Penalty was too high in all the circumstances of this case, and accordingly it is varied and reduced from £5,100 to £3,000 for the reasons as set out below.

## BACKGROUND AND CHRONOLOGY

2. The property is a two-storey mid-terrace 3-bedroom house in a residential area. The Applicant Mr. New has owned it since 2012, when he inherited it from his father, and the house has been let to tenants ever since.

3. In June 2019 new tenants Mr. Ziani and Ms. Laposi moved in with their children. As of 1<sup>st</sup> of March 2021 a 12-month Assured Shorthold tenancy agreement was in place, which ended on the 28<sup>th</sup> of February 2022. The rent of £1,175 was payable on the first day of each month and the letting agents were Cubitt and West.

4. Mr. Ziani and Ms. Laposi separated in May 2022, but Ms. Laposi remained living in the property with her 3 sons.

5. Despite the tenancy ending at the end of February 2022, by July 2022 Ms. Laposi had not moved out and Mr. New served a Section 21 Notice to Quit. His interest-only mortgage agreement was due to end shortly and he wanted to sell the property.

6. In December 2022 Ms. Laposi remained in residence, and she complained to the agents that the gas boiler was not working properly.

7. On the 22<sup>nd</sup> of December 2022 Ms. Laposi contacted the Private Sector Housing Service at Crawley Borough Council and stated that she had had no heating since the beginning of December.

8. During a telephone call on the 23<sup>rd</sup> of December the agents assured the Council that they were aware of the boiler issues and that the matter would be resolved over the Christmas period.

9. On the 30<sup>th</sup> of December the agents emailed Crawley Borough Housing Manager Mr. Chris Modder saying that a quotation for a complete boiler replacement had been provided to the landlord but:-

*'Due to the Tenant failing to vacate, the sale of the property was unable to go ahead and the Landlords have received many unexpected charges, which has put them into a position of financial difficulty....'*

10. The agents provided electric heaters to the tenant (which were paid for by Mr. New) in the interim.

11. On the 4<sup>th</sup> of January 2023, as the heating had apparently not been fixed, Mr. Modder issued a Notice Requiring Entry. This Notice informed Mr. New that there would be an inspection on the 19<sup>th</sup> of January, and advised him that formal action would follow if the boiler had not been repaired by that date.

12. On the 11<sup>th</sup> of January a gas engineer was engaged to try and fix the boiler.

13. On the 19<sup>th</sup> of January Mr. Modder attended to inspect the house as arranged, but he was unable to gain access because the tenant failed to keep the appointment. A new date for inspection was scheduled for the 30<sup>th</sup> of January.

14. The heating engineer attended the property twice, on the 20<sup>th</sup> and the 27<sup>th</sup> of January, but he was unable to resolve the problems. It was said that some of the requisite parts were unobtainable because the boiler was 20 or 30 years old.

15. At some point during the relevant period (exact date not given in evidence) the landlord Mr. New had obtained a Possession Order from the court, requiring the tenant to vacate by the 27<sup>th</sup> of January 2023. However, Ms. Laposi remained in residence and lodged an appeal against the Order.

16. Mr. Modder finally carried out a full inspection of the property on the 30<sup>th</sup> of January. He identified the following: -

One Category 1 Excess Cold hazard due to the broken boiler, and three Category 2 hazards:-

Damp and Mould,

Entry by Intruder (due to a missing fence panel) and

Structural Collapse (regarding the shed in the back garden).

17. On the 9<sup>th</sup> of February 2023 Mr. Modder visited the property again: the boiler was still not working and the other items also remained outstanding.

18. An Improvement Notice was issued on the 16<sup>th</sup> of February 2023 in respect of the hazards as identified above. The notice specified that all works must start by the 18<sup>th</sup> of March 2023, and the boiler must be replaced by the 24.03.2023. The other works, to the damp and mould, the fence and the shed, were to be completed by 31\*.04.2023. (Note: this was apparently a misprint. The date should have been the 31<sup>st</sup> of March, but the actual date recorded on the Notice [Page 68 of the bundle] was the 31<sup>st</sup> of April.)

19. Mr. New did not lodge a formal appeal against the Improvement Notice, but he emailed Mr. Modder on the 14<sup>th</sup> of March 2023, explaining his dire financial position as a result of the tenant's refusal to move out, which had made it impossible for him to pay for a boiler replacement. He also asked the Council to re-house Ms. Laposi and resolve the difficulties.

20. On the 17<sup>th</sup> of March 2023 Mr. Modder replied, stating that he sympathised with the Applicant's position but that his financial situation was not a matter for consideration in terms of his legal responsibilities under relevant landlord and tenant law and the Housing Act 2004. Mr. Modder did, however state that the Council would soon be able to offer alternative accommodation to the tenant.

21. On the 13<sup>th</sup> of April 2023 Mr. Modder inspected the property again and took photographs, which showed that none of the required remedial works had yet been carried out. He emailed the Applicant and the agents and re-sent a copy of the Improvement Notice, to which he received no reply.

22. On the 13<sup>th</sup> of May 2023 the tenant vacated the property.

23. Mr. Modder called the agents on the 5<sup>th</sup> of July 2023, and they confirmed that the Property was empty and the Applicant was carrying out works in preparation for sale. On the same day, Mr. Modder sent an email to the Applicant asking for an update regarding the remedial works, but he did not receive any reply.

24. On the 21<sup>st</sup> of September 2023 Mr. Modder discovered that the property had been sold at auction, subject to contract. The sale was finally completed in November 2023.

25. On the 9<sup>th</sup> of October 2023 Mr. Modder sent a 'Notice of Consideration of Proceedings' form (by post and email) to the Applicant, asking for him to respond under caution to the allegation of failing to comply with the improvement notice, and seeking information on what works had commenced and/or been completed. He received no reply.

26. A Notice of Intent to Impose a financial penalty, in the sum of £6,900\*, was sent to the Applicant on the 7<sup>th</sup> of November 2023.

(Note: The figure was incorrectly given as £6,900 in this document [Page 129 of the bundle], but this was a misprint and the total amount calculated was in fact £6,600.)

27. On the 2<sup>nd</sup> of December 2023 the Applicant submitted representations in reply to the proposed financial penalty, seeking a reduction in the amount.

28. The matter was referred to the Head of Strategic Housing, Diana Maughan, who decided that the penalty could be reduced to £5,100 because of the mitigation put forward by the Applicant, in particular his financial situation: '*...but only as it related to his failure to comply with the remedial action relating to the boiler.*'

29. On the 5<sup>th</sup> of January 2024 the Final Penalty Notice was issued, requiring Mr. New to pay the following amounts for failing to comply with the Improvement Notice: -

£3,500 in respect of the boiler

£1,000 in respect of the damp and mould

£300 in respect of the disrepair to the fence, and

£300 in respect of the disrepair to the shed.

Total £5,100.

30. On the 25<sup>th</sup> of January 2024, Mr. New emailed the Council housing team, stating that he was making an application to the Tribunal appealing against the final penalty.

31. The final Application was in fact dated the 6<sup>th</sup> of March 2024, but it was filed on the 14<sup>th</sup> of March 2024.

32. Directions were issued by the Tribunal and the matter was set down for hearing on the 19<sup>th</sup> of November 2024.

### PRELIMINARY ISSUE – APPEAL OUT OF TIME

33. The Tribunal Procedure Rules 2013 (Rule 27) require a notice of application to be provided within 28 days of the decision which gave rise to the appeal.

34. Mr. Herrod, on behalf of the Respondent Council, drew the Tribunal's attention to the fact that the Final Notice of Financial Penalty in this case was dated the 5<sup>th</sup> of January 2024, but Mr. New's Application was not received until the 14<sup>th</sup> of March 2024, well outside the 28 day period.

35. It was submitted that this procedural non-compliance was 'serious and significant' and that there was no good reason given for the delay, so the Tribunal should refuse to grant an extension of time and dismiss the appeal.

36. Mr. New, for his part, gave evidence that he had attempted to send his appeal application to the Tribunal on the 24<sup>th</sup> of January 2024, within 28 days of the Final Penalty Notice. However, he was advised by Tribunal staff (by email of the 23<sup>rd</sup> of February) that he needed to complete and submit his appeal in the correct form, which he duly did on 14<sup>th</sup> March.

### Ruling on the Preliminary issue: -

37. In the light of the evidence from the Applicant (which was consistent with his email to the Respondent Council on the 25<sup>th</sup> of January, making them aware of his appeal), the Tribunal found that the Applicant had registered his objection in time, and the technical flaw in the precise form of his documentation did not amount to a 'serious and significant' breach of the rules.

38. There was no evidence of any prejudice or disadvantage to the Respondents as a result of the delay, and in the circumstances it was determined that an extension of time for the appeal could properly be allowed under Rule 6 of the Tribunal Procedure Rules and the appeal could go ahead. The Tribunal bore in mind the overriding objective as set out in Rule 3: which is to deal with cases justly and fairly.

### RELEVANT LAW

39. See Appendix.

### HEARING

40. The hearing was held at Havant Justice Centre on the 19<sup>th</sup> of November 2024, with the Tribunal sitting in person and the parties appearing by video link.

### APPLICANT'S CASE

41. The Applicant's case was set out in his Application, in his Statement dated 20<sup>th</sup> October 2024 with its supporting documents, and in oral evidence and submissions during the hearing.

42. Firstly, Mr. New did not dispute that he had failed to comply with the Improvement Notice, and thus he accepted that he had committed an offence under Section 30 of the Housing Act 2004.

43. Secondly, it was not suggested that there was a 'reasonable excuse' for the failure, which could have given rise to a statutory defence under Section 30(4) of the Act: Mr. New simply put forward personal mitigation and sought a reduction in the amount of the financial penalty.

44. In relation to the particular 'hazards' identified by Mr. Modder, Mr. New made the following comments:

(i) Boiler.

Mr. New stated that he had used his best efforts to get the boiler fixed during December 2022 and January 2023. He exhibited a number of emails which he had sent to the agents, chasing them to resolve the problem [Pages 21 – 29 of the bundle].

On the 8<sup>th</sup> of December he had given the go-ahead for a £200 visit, which was intended to include the provision of a gas safety certificate, but it gradually became apparent that the boiler was beyond repair. He drew the Tribunal's attention to an invoice for £564.00 from the engineer [Page 22] which he had paid for several unsuccessful visits.

In terms of harm to the tenant, Mr. New acknowledged that the tenant was without full central heating for a period of time and he stated that he regretted that, but he had to prioritise paying the mortgages on this property and on his own home and at that time he simply could not afford the £2,000 required to replace the boiler with a new one. He approved and paid for heaters for the tenant instead.

As there was no rent paid in December his financial situation was even worse, and his efforts to sell the house were obstructed by Ms. Laposi who refused to allow viewings. Only when the tenant eventually vacated the property did a gas engineer agree to fit a new boiler, on the understanding that he would be paid out of the proceeds from the imminent house sale. Prior to that they refused to undertake the works because there was no guarantee that Mr. New would be able to pay them if the house sale did not go through.

When asked whether there was an immersion heater to provide hot water for the tenant, Mr. New stated that there was another boiler upstairs, which he assumed supplied hot water.

There is no mention in the Council documents of any issue with the hot water.

ii) Damp and mould

In his statement dated 20<sup>th</sup> October 2024 Mr. New said that he did not find any evidence of damp and mould when he gained access to the property. In evidence at the hearing, he confirmed that no structural or remedial works were required to the fabric

or walls, but the bathroom extractor fan was either broken or had not been used properly and that could have given rise to condensation. The internal walls were just cleaned and repainted, for 'cosmetic' purposes only, before the house was sold.

### iii) Fence

In his statement Mr. New suggested that the single fence panel only needed to be 'put back in place'. He clarified that there was limited access to the garden of 7 Lincoln Close by potential intruders because the gardens were 'landlocked' and could only be entered via the adjoining properties.

### Shed

Mr. New denied that the shed was at risk of 'structural collapse'. Whilst he conceded that one window was broken and some of the timber boards on the outside had slipped (as per Mr. Modder's photographs), he stated that the roof and walls were sound and the interior was dry enough for it to be used as a storage facility for various items, many of which had been left in there by Ms. Laposi when she departed. When he and his son eventually removed the shed before the house was sold, he said that the structure was so robust that it had been hard work and took them two days to dismantle it.

45. In terms of mitigating circumstances, Mr. New explained that the following factors had impacted on his financial situation and had made it extremely difficult for him to comply with the requirements of the Improvement Notice.

i) Mortgage payments: Mr. New's interest-only mortgage deal ended in December 2022, so until the house was finally sold in October 2023 he was paying over double the original amount by way of monthly payments. By the time of the sale he was paying £971.93 per month [Page 34 of the bundle] instead of the original £231.

ii) Only one rental property: Mr. New gave evidence that Lincoln Close was the only property that he owned apart from his private residence.

iii)) Delay in sale: Capital Gains tax payable upon sale of the property was much greater because of the decrease in allowances during the period when he was unable to sell the house: from £12,300 in 2022 to £6,000 in 2023.

iv) Arrears of rent: Mr. New stated that the rent started to fall into arrears in the latter part of 2022, and from December onwards it was not paid at all. He had to claim on his insurance policy, which paid the rent in arrears rather than at the beginning of each month.

v) Decrease in value of the property: Mr. New gave evidence that he had sold the house at auction at less than its full market value, because he needed a quick sale to repay some of the debts. He also stated that house prices had dropped during the intervening year (2022-2023).

vi) Increased borrowing: Mr. New stated that he had been obliged to borrow money in order to pay his expenses, and had therefore incurred numerous debts with banks, HMRC and credit card companies. In respect of the HMRC matter, Mr. New gave

evidence that he owed HMRC £18,000. They had sold their old home (Adelphi Close) for £625,000 and purchased for £622,000: there was a lot of stamp duty to pay. He produced documentation as evidence of the debts [Pages 33 – 49], and listed the amounts which he had to pay out of the sale proceeds from Lincoln Close, including Capital Gains Tax of £23,000, stamp duty of £20,000, a mortgage debt of £5 – 6,000, and several thousand pounds on Council Tax, loans and credit cards.

vii) Tenant's disrepair: Mr. New stated that during Ms. Laposi's occupancy the house had not been properly looked after. Amongst other things a dishwasher had been incorrectly plumbed in and he had been obliged to pay for repairs - both to the subject property and to the house next door - as a result of leaks.

The property was generally in a very poor state when the tenant finally vacated. The carpets were stained, there was a flea infestation, kitchen cupboards were broken, and the tenant had erected unauthorised partitions and structures in the living room and next to the shed in the garden. Many items of furniture and rubbish were left behind and had to be disposed of. The 'Schedule of damages' is at Page 32 of the bundle.

As a result, Mr. New incurred the following costs before he could refurbish the property and put it on the market:-

Cleaning - £530 +VAT

Rubbish removal - £295 + VAT [P. 31]

viii) Legal advice re Possession: Mr. New said that he had been obliged to take legal advice and incur further costs in trying to progress the Possession proceedings against the tenant.

ix) Redundancy and the need to establish a new business: Mr. New stated that he had been made redundant during Covid in 2021 and he had started a new business, which required him to make an initial investment by selling his home and purchasing suitable premises. He also needed to sell Lincoln Close in order to raise funds.

The new business involved printing and embroidering school uniforms and similar items.

x) Lack of financial benefit from the offence: From December 2022 onwards the rent was not being paid, so Mr. New was deriving no financial benefit from his failure to comply with the Improvement Notice.

Even when the rent *was* being paid, out of the £1,175, approximately £900 was going on the mortgage payments, £140 on management fees, £50 on insurance and any residue on bank charges to pay off debts, so there was no profit from the letting.

xi) Track record: Mr New gave evidence that previously he had been an 'exemplary' landlord who had a good relationship with his tenants. He had always carried out repairs and improvements promptly when required, and had spent a considerable amount on electrical works and replacement of guttering and kitchen appliances etc.

All regulatory checks had been carried out correctly when due, and there had been no criticisms of his management in the past.

46. As for his failure to respond to communications from the Council, Mr. New acknowledged that he should have done better but reiterated that he was dealing with so much pressure at that time in respect of debts, legal proceedings, insurance and other matters that he was overwhelmed.



47. In summary, Mr. New accepted the need to penalise landlords who failed to comply with their obligations, and conceded that he could have done more by way of cooperating with the Council. However, he asked the Tribunal to take account of the fact that he was doing his best but was really struggling and having a difficult time keeping everything going: he described it as a 'traumatic period'. He had been suffering from stress and anxiety and felt that he had been punished enough financially without having to pay such a substantial penalty as well.

## RESPONDENT'S CASE

48. The Respondent's case was put forward in their Skeleton Argument dated the 14<sup>th</sup> of November 2024, in the statements of Mr. Modder and Ms. Maugham (with supporting documentation and exhibits), and in oral evidence and submissions at the hearing.

49. Mr. Modder gave evidence of the chronology of events as set out above, and he confirmed the details of the Improvement Notice and the required remedial actions as follows: -

(a) Remedial action 1: supply and fit a new gas boiler to replace the existing boiler. (b) Remedial action 2: all surfaces within the property affected by condensation and mould were to be cleaned using a proprietary mould treatment and repainted.

(c) Remedial action 3: supply and fit a new timber fence panel to replace the missing one.

(d) Remedial action 4: the dilapidated back garden shed was to be emptied of all items and then carefully dismantled and cleared safely away.

50. On behalf of the Council it was submitted that the actions as above could have been required to be completed within a shorter period, but due to an error the date for completion of the Category 2 works was '31<sup>st</sup> April 2023'.

51. Mr. Modder confirmed that on the 17<sup>th</sup> of March 2023 he emailed the landlord's agents and told them that the Tenant had been offered alternative accommodation by the Respondent Council and would be moving out of the Property in due course.

52. At Paragraph 19 of his statement [Page 54] Mr. Modder states as follows: -

*'It was and still is my understanding that the Applicant did not carry out any work in compliance with the Improvement Notice between my visit to the Property on 13th April and the tenant vacating the Property on 13.05.2023.'*

53. Effectively, it was alleged that Mr. New committed the offence of 'failing to comply with the Improvement Notice' during the period from the dates set for completion of works and the date when the tenant vacated the property, i.e. 13<sup>th</sup> May 2023.

The Respondent conceded that the period of the actual offending was short, but it was emphasised that the tenant was without a full heating system for several months, during the coldest time of year.

54. As for the specific items in the Improvement Notice Schedule, Mr. Modder drew the Tribunal's attention to the photographs taken on 13<sup>th</sup> of April 2023. His comments on the identified hazards are summarised as follows: -

#### Boiler

As per the chronology above, Mr. Modder conceded that the landlord had made some efforts to get the boiler repaired, but he failed to replace it with a new one when required to do so by the Improvement Notice.

#### Damp and mould

Mr. Modder drew the Tribunal's attention to the photographs at Pages 80 – 85, and stated that the mould shown in those pictures was in the bathroom and back bedroom. He described the issue as '*...mould in isolated spots*' in the property, and clarified that the missing paint on the bathroom ceiling had resulted from the tenant trying to clean off the mould.

#### Fence

A new timber fence panel should be fitted in order to minimise the risk of entry by intruders.

#### Shed

The garden shed was described as 'dilapidated' and classified as at risk of 'structural collapse'. The Schedule of remedial works required it to be emptied, carefully dismantled and safely cleared away.

55. In response to Mr. New's representations to the Council and to the Tribunal, Mr. Modder [at Page 56] stated that he understood that the 'end of tenancy' costs, which had been incurred after the tenant vacated the property, were recovered from Let Alliance (the insurers) under the Nil Deposit agreement signed by the Tenant at the start of the tenancy. He said that there was no amount included for outstanding rent at the end of the tenancy.

56. Mr. Modder observed that there was little or no evidence of Mr. New's current financial situation, and he referred to the Applicant's ownership of the other property at Adelphi Close, Maidenbower, Crawley. It was suggested that Mr. New should have monies available to him after the sale of Lincoln Close.

5. In terms of the amount of the final penalty, Ms. Maughan gave evidence as to how the figure was calculated, with reference to the applicable local and national policy documents.

#### 57. Aggravating and Mitigating factors

As to aggravating and mitigating factors, Ms. Maughan stated that she considered the significant impact of the cold on the health of the tenant(s) as an aggravating factor. In mitigation she had taken account of Mr. New's lack of previous offences, the number of Category 1 hazards, and the length of time of the events.

58. In referring to Mr. New's financial difficulties and the fact that he had served a Section 21 Notice to Quit, Ms. Maughan gave evidence that these were not in

themselves factors that completely mitigated the offence. However, account had been taken of them in reducing the level of the financial penalty.

59. The Tribunal was referred to the Council's Policy document [at Page 123 onwards] on appropriateness and calculation of financial penalties. With reference to the 'Scoring matrix' [at Page 125] it was submitted that the failure to comply with an Improvement Notice, for a landlord with 5 or fewer properties, was regarded as a '*serious matter*', categorised as a '*minimum Band 3 offence*' with a starting point of £10,000 penalty.

60. Ms. Maughan confirmed that the boiler was the main issue, and the other items needed remedying but did not carry the same level of risk of harm to the tenant.

61. It was said that the penalty was intended to punish the landlord for his failure to act, and for his failure to cooperate fully with the Respondent's investigations. It would also remove any financial benefit which Mr. New may have obtained as a result of the offence, and should deter others from committing similar offences.

62. Mr Herrod, on behalf of the Respondent Council, criticised the Applicant for not providing a full breakdown of his assets/income and debts/expenditure, and pointed out that there was no evidence as to the financial position of his wife.

63. It was argued that, given the limited evidence of financial hardship from the Applicant, his circumstances had already been sufficiently taken into account in reducing the penalty from its original figure.

64. In summary, Mr. Herrod submitted on behalf of the Respondent Council that the Tribunal should find that the financial penalty had been set at an appropriate level and dismiss the appeal.

## FINDINGS AND DETERMINATION

65. Under Paragraph 13 of Schedule 13A of the Housing Act 2004 (see Appendix of Relevant Law hereafter) the appeal is a re-hearing of the local authority decision. The Tribunal may confirm, vary, or cancel the Final Notice of Financial Penalty.

66. The Tribunal had regard to the Department of Communities and Local Government Guidance as to Civil Penalties (under the Housing and Planning Act 2016) and the '*Crawley Borough Council - The use of civil penalties and rent repayment orders under the Housing Act 2004*' document, which is exhibited by Ms. Maughan at Page 123 of the bundle.

67. In accordance with the guidance, the Tribunal proceeded to consider the following questions : -

A. Is the Tribunal satisfied beyond reasonable doubt that Mr. New had committed a relevant housing offence?

68. Mr. New accepted that he had committed a relevant housing offence for the purposes of these proceedings.

69. No defence of 'reasonable excuse' for the failure to comply with the Improvement Notice was put forward.

B. Has the Respondent followed all correct Procedures?

70. There was no dispute that the Council had complied with all the procedural requirements in respect of the Improvement Notice and the imposition of a civil penalty.

71. The parties were agreed that a financial penalty of some kind was appropriate and justified.

C. Amount of the Financial Penalty

72. If it has been determined that the use of a civil penalty is appropriate, section 3.5 of "Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities" sets out factors that should be considered in setting the amount of the penalty:-

- Severity of the offence.
- Culpability and track record of the offender.
- Harm caused to the tenant.
- Punishment of the offender.
- Deterring the offender from repeating the offence.
- Deterring others from committing similar offences.
- Removing any financial benefit the offender may have obtained as a result of committing the offence.

73. The Crawley Borough Council policy, at Point 3.2 [Page 125 of the bundle] states as follows:-

*'In determining the level of a civil penalty, officers are to have regard to the matrix set out ... below, which is to be read in conjunction with the associated guidance .... The matrix is intended to provide an indicative scale under the various offence categories, with the final level of the civil penalty being adjusted in each case to take into account other relevant or aggravating factors. '*

74. The Scoring Matrix sets out a table of proposed penalties as follows, according to the severity of the offence:-

Band 1 - Moderate	£0 - £4,999
Band 2 - Moderate	£5,000 - £9,999
Band 3 - Serious	£10,000 - £14,999
Band 4 - Serious	£15,000 - £19,999
Band 5 - Severe	£20,000 - £24,999
Band 6 - Severe	£25,000 - £30,000

Factors considered in setting the amount of the penalty:-

Severity of the offence

75. The Tribunal made findings as follows in respect of the different elements of the offence.

(i) Excess cold

Firstly, in terms of the actual period of offending, it is conceded that the period was relatively short. The Improvement Notice gave the landlord until the 24<sup>th</sup> of March 2023 to replace the boiler, and the evidence was that it was dealt with after the tenant moved out on the 13<sup>th</sup> of May 2023: a period of 7 weeks. (In respect of the other works, the Notice gave the landlord until April 31<sup>st</sup> to complete them, so the period of offending was even shorter – 13 days).

Although the Respondents refer to the fact that the tenants were without heating during the coldest months of the year as an aggravating factor [Page 144], there was no 'offending' during this period. During the preceding weeks and months it is accepted by all concerned that Mr. New had made efforts (and incurred considerable expense) in trying to resolve the boiler issues and comply with his obligations as landlord, but these efforts were unsuccessful.

Whilst the absence of proper heating is accepted as a 'Category 1 hazard' and it is clearly a serious matter, the Tribunal is tasked with considering the offence of 'Breach of an Improvement Notice', with particular reference to the nature and extent of the breach.

This is not a case where a landlord wilfully ignored the Notice and allowed the situation to persist for many months without taking any action, and therefore the offence is not at the most serious end of the spectrum with regard to the 'Scoring matrix' above.

In the circumstances the Tribunal found that the appropriate category in this case (where there are unusual circumstances and the owner has only one letting property) should be 'Band 2, 'moderate', with a starting point of £5,000. That figure should be further reduced because of the mitigation put forward by Mr. New.

(ii) Damp and mould

There is no evidence that the property suffered from any kind of penetrating damp, despite the Council documentation stating [Page 144] that there was '*...damp and mould.*' The Tribunal found that the mould shown in the photographs was probably caused by condensation due to a lack of adequate ventilation, and it was noted that the bathroom extractor fan was found to have been either broken or not used properly. In the circumstances the Tribunal found that a failure to remedy this problem was a Band 1 'moderate' offence on the Scoring matrix as above, with a starting point for financial penalty of £0.00 and a range up to £4,999.

(iii) Entry by intruder – fence

The Tribunal found that the risk of entry by intruders was lessened by the fact that the garden of 7 Lincoln Close was landlocked by other properties. There was only the possibility of entry by persons from one other, adjacent garden, and therefore the risk was at the lower end of the scale.

It was not accepted that the fencing could simply be put back in place (as Mr. New suggested): the photographs appear to show that the panel was badly damaged. The starting point for a financial penalty would therefore be in Band 1, 'moderate': financial penalty of £0.00, with a range up to £4,999. The Tribunal found that Mr. New could have dealt with the repair sooner than he did and without significant expenditure.

(iv) Structural collapse - shed

The Tribunal accepted Mr. New's direct evidence that the structure and roof of the shed were actually sound, and it was not at risk of collapse. Accordingly the severity of this item was only 'moderate', and the starting point was also Band 1, £0.00, with a range up to £4,999. The Tribunal found that Mr. New could have dealt with the repair sooner than he did and without significant expenditure.

Culpability and track record of the offender

76. The Respondent conceded that Mr. New had no previous history of offending.

77. In the light of the evidence of Mr. New's frequent 'chasing' emails to the agents on the subject of the heating, and the history of engineer's visits and invoices for boiler works, the Tribunal found that his actions during December and January were reasonable and responsible.

78. The Tribunal found that Mr. New was an honest and credible witness, and it was accepted that, once it became apparent that a completely new boiler was required (at a cost of £2,000) he was simply unable to fund it because of his financial commitments at that time. The Tribunal accepted the evidence that there was a need to prioritise mortgage payments and that the cost of the replacement boiler was eventually offset against the proceeds of sale on a 'credit' basis when the sale was imminent. The Tribunal further accepted that Mr. New was suffering from severe stress and anxiety throughout the relevant period, and that this explained some of his failures to communicate with the Council, especially in the months after the tenant had vacated.

79. The Tribunal found that Mr. New's financial situation had worsened dramatically as a result of the tenant's continuing occupation after the tenancy had come to an end, because of his inability to sell the house as planned and because of changes to the Capital Gains Tax and stamp duty provisions, as well as a drop in the price of housing. Although in theory the property could have been sold with a sitting tenant, in practice the evidence was that Ms. Laposi refused to allow access for viewings, and the landlord could not finance the necessary repairs until he had a definite sale in sight.

80. Whilst the tenant had a right to remain in residence and the landlord had a continuing obligation to maintain the accommodation, Mr. New's inability to replace the boiler was due to circumstances beyond his control.

81. Uncontested evidence was given that Mr. New had always been a conscientious and considerate landlord in the past. It was accepted that he took his responsibilities seriously and looked after the property to the best of his ability, and in the current situation, when the heating problem became apparent he had approved and paid for the purchase of alternative means of heating for the tenant.

82. There was unchallenged evidence before the Tribunal that the tenant had caused damage and disrepair to the property, had carried out unauthorised alterations, obstructed the house sale, and left belongings which had to be cleared out after her departure. All of these actions had resulted in further expense for the landlord and were taken into account by way of mitigation.

83. It was accepted by all concerned that Mr. New did not have a portfolio of rental properties and was not an experienced property manager. Although the Notice of Intention states incorrectly [Page 144] that he '*...bought Lincoln Close in 2012...*', the evidence was that Mr. New had inherited the house when his father died, and he told the Tribunal that he had regarded it as his 'pension'.

84. In all the circumstances of this case, the Tribunal therefore found that Mr. New had no 'track record' of offending and his culpability was low.

#### Harm to the Tenant

85. Although there was no evidence of actual harm to the tenant, the Tribunal found that the risk of harm was significant because of the lack of central heating. There appeared to have been a working hot water system throughout the relevant period, and fortunately some form of alternative heating was provided, but it was said that the alternatives were expensive to run.

#### Punishment of the offender

86. The Tribunal did not find that there was a great need to punish the offender with a substantial penalty in this case, because his failure to comply with the Notice was not due to any negligence, deliberate avoidance or direct fault on his part. Although the difficulties experienced by the Applicant were not said to amount to a 'reasonable excuse' for not carrying out the works, the Tribunal found that they amounted to significant mitigation.

#### Deterring the offender from committing further offences

87. The Tribunal was satisfied that the problems encountered by Mr. New in the course of this matter were enough to deter him from owning and letting a property ever again, and he said as much in evidence. Accordingly there was no need to deter him from committing further offences in the future.

#### Deterring others from committing similar offences

88. There was no evidence that other persons were aware of the circumstances of this case, or that there was a particular potential to deter others from committing similar offences.

#### Removing financial benefit obtained as a result of the offending

89. The Tribunal accepted Mr. New's evidence of outgoings which were set off against the rent from Lincoln Close during the period from December 2022 onwards, and the evidence that the rental payments at that time were financed by his own insurance policy.

91. The evidence during the hearing was that the boiler replacement was paid for on 'credit' against the proceeds of sale from the property, and the Tribunal found that any financial benefit as a result of the offending was minimal, if it existed at all.

92. The Tribunal did not accept (as suggested in the reasons for the Notice of Intent, at Page 142) that the Applicant had benefited financially from the increase in value of the property as a result of doing the works after the tenant had left. The increase in value would have been the same regardless of when the works had been done.

## CONCLUSION

In the light of the above findings, the Tribunal determined that the severity of the offence in this case was moderate, and the Applicant's culpability was low. The Tribunal was not satisfied that, in reaching the figure for the financial penalty as contained in the Final Notice, the Respondent had taken sufficient account of all the mitigating factors.

The Appeal is therefore allowed, and the Financial Penalty is reduced to £3,000, calculated as follows:-

- (1) Failing to comply with Remedial Action 1 between 25.03.23 - 13.05.23 (heating) £2,700
  - (2) Failing to comply with Remedial Action 2 between 01.05.23 - 13.05.23 (mould) £100
  - (3) Failing to comply with Remedial Action 3 between 01.05.23 - 13.05.23: (fence) £100
  - (4) Failing to comply with Remedial Action 4 between 01.05.23 - 13.05.23: (shed) £100
- TOTAL £3,000

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.