



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

Case Reference : **MAN/30UH/HNA/2022/0053**

Property : **28, Broadway, Lancaster LA1 2BU**

Applicants : **Hugh Fury (represented by Miss S Ava, solicitor)**

Respondent : **Lancaster City Council (represented by Mr J Lally of Counsel)**

Type of Application : **Appeal against a financial penalty imposed under Section 249A & Schedule 13A Housing Act 2004**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **7th July 2024**

DECISION

A. Preliminary

1. This matter relates to a financial penalty imposed upon the Applicant by the Respondent, the local housing authority for the local authority area within which 28, Broadway, Lancaster is situated.
2. The financial penalty in question relates to an improvement notice served by the Respondent in respect which the Respondent found subsequent non-compliance on the part of the Applicant and determined that an offence had been committed, that of failing to comply with an improvement notice, sufficient for it to consider it appropriate to impose a financial penalty permitted under the Housing and Planning Act 2016.
3. The improvement notice specifying the required works is dated 8th October 2021 and required works to be commenced by 4th November 2021, some to be completed by 2nd December and the remainder by 30th December. The date stated in the improvement notice for its commencement is 4th November 2021.
4. The Respondent in due course satisfied itself that those works had not been carried out at all, or if carried out, not to an acceptable standard. It therefore determined that the offence of failing to comply with the notice was committed on 3rd December 2021. That offence is created by Section 30 Housing Act 2004. Thereafter it went through the processes required to determine a financial penalty and made a final order on 15th June 2022 in an amount of £10,000.00.
5. The Applicant appealed to the Tribunal against both the imposition of the penalty and the amount thereof in the appropriate form. The grounds upon which the appeal was based, as set out in the application form, were:
 - (1) The tenant occupying the property refused to allow safe access to the premises either for the Applicant, or his agents.
 - (2) The tenant indicated that he would refuse access to the premises for any work to be carried out.
 - (3) The property was in a reasonable state of repair and condition at the inception of the tenant's occupation.
6. In the witness statement of the Applicant that was later provided those grounds were expanded to include:
 - (4) Non-receipt of various items of correspondence relating to the works required, failure to comply with the improvement notice, and the consideration of the imposition of a financial penalty (paragraphs 14-18 of the statement)
 - (5) The general character and activities of the tenant being such that they would suggest that he would be unreliable, both in relation to enabling

work to be done and in relation to the quality of his evidence to the Tribunal (paragraphs 5-13).

7. Once the tenant had left the premises work had taken place and there was no complaint from the new occupier.
8. A further witness statement was supplied from the mother of the Applicant, Violet Fury, detailing the manner in which rent would be paid by attendance at an address at 179, Main Street, Lancaster and the lack of any communications received by her from the Respondent. Other statements were received from neighbours in Broadway relating to activities alleged to be carried on by the tenant, Mr Perry at the property.
9. On its part, the Respondent provided a number of statements from its officers detailing the history of the matter so far as it was concerned and setting out those steps that it had considered appropriate, from its attention being drawn initially to the state and condition of the premises, through the making of the improvement notice and then dealing with what it saw as the non-compliance thereto.
10. The tenant, Mr Perry also provided a detailed statement setting out his perceptions of the landlord and tenant relationship, his concerns in relation to the property, his manner of engagement with the Applicant and Mrs Fury.

Hearing and evidence

11. Having received from the parties their respective bundles of documents, this matter was set down by the tribunal office for hearing on 12th May 2023 but on the morning of the hearing the Applicant was unable to attend for reasons of a personal and distressing nature. The Tribunal considered it appropriate to postpone the hearing until another day.
12. In due course it was able to reconvene at Lancaster magistrates' Court on 1st August 2023 and proceeded to hear at length about the matter. The Tribunal took the view that as a re-hearing of the case against the Applicant it was for the Respondent to seek to establish its case that the Applicant had committed a relevant offence and that the burden of proof required for that was the criminal burden.
13. The Tribunal heard first from Mr Perry. He gave his evidence clearly and convincingly. The Tribunal certainly did not get the impression that he was the blackguard painted by the Applicant in his witness statement. His recollections appeared completely consistent with the period of time that had now elapsed since his occupation of 28, Broadway. A number of matters were put to him on behalf of the Applicant:

- He gave an entirely plausible explanation of a recorded conversation with Mrs Fury, contextualising a conversation that related to the hope that accommodation would be found for him by the local authority.
- He strenuously denied the allegations of criminal wrongdoing at the property, with particular reference to the growing or supplying of cannabis.
- He confirmed that he found the Applicant intimidating during their interactions.
- He had not caused any damage to the property that might have led the council to its views as to its state and condition.
- He had not entered into any form of agreement with the Applicant, or any member of his family, concerning occupation at a low(er) rent in return for accepting repairing obligations.
- He confirmed his account of incidents that he felt amounted to intimidation by the Applicant and/or members of his family.

14. The principal professional witness for the Applicant was Laura Drury, an Environmental Health Officer employed by the Council, who provided a number of statements detailing at length the investigations conducted by her, in the company of other colleagues, from time to time. They also provided supporting statements. Mrs Drury made reference to the continuing state and condition of the premises and the lack of progress she perceived in relation to work, or engagement on the part of the Applicant with the process of raising the standard of accommodation at the property. Like Mr Perry, she was a convincing witness and the Tribunal is sure, from the evidence she provided, that the property was in urgent need of work to eliminate a number of identified hazards and that work was only partially and belatedly in 2023 carried out.

15. Mrs Drury, together with her line manager Fiona MacLeod dealt with a particular issue in relation to the improvement notice which, referred to the Applicant living at an address with a postcode beginning with an erroneous MG identification, but was otherwise correct. This had apparently been enclosed with a covering letter correctly addressed to a correct NG (Nottingham) postcode.

16. The Applicant also gave evidence to the Tribunal in support of his application. He was far from convincing, contrasting greatly with Mr Perry in the presentation of an account of the relationship with his tenant. The Tribunal noted further that:

- (1) Although he claimed to have heard nothing directly from the Respondent in relation to work required, he had nonetheless become aware, in a manner about which he was not now sure, that some work was apparently required.

- (2) He could not account for the fact that he had received no correspondence at his home address from the Council, there were apparently no other difficulties with his post.
- (3) He suggested he was not really the person responsible for letting/managing the property, but conceded he was named as landlord on the rent book.
- (4) He accepted he was responsible for attempting an unlawful eviction of Mr Perry, but this was part of a joint plot to secure alternative accommodation.
- (5) He was unable to offer a cogent explanation to the Tribunal when asked why, when he suggested the property had been given to him by his father, Land registry entries suggested a price of £50,000.00 had been paid.
- (6) He did not recognise any inconsistency between a rent book entry of a rent of £440.00 per month and his suggestion of a lower rent in return for repairs by the tenant.
- (7) He was adamant that neither he, nor his mother had intimidated Mr Perry in any way.

17. The Tribunal became concerned that the behaviour of the Applicant, as the hearing progressed, was becoming a cause for concern in relation to increasing agitation and uncertainty as to the nature of the enquiries being made. After seeking the views of the respective representatives present the Tribunal considered it appropriate to adjourn the hearing to ascertain if there were any issues that the Tribunal might need to be aware of in relation to the Applicant that might explain his presentation to the Tribunal, or his apparent conduct during the period when the improvement notice was being considered, issued and acted upon by the Respondent.

18. It was entirely understandable that a very considerable time then elapsed, during which many efforts and exercises were undertaken by the Applicant's solicitor, before the Tribunal was able to be informed that there was no evidence that could be brought before the Tribunal to assist in relation to those enquiries it had set in motion.

19. Eventually, the hearing was re-opened on 28th March 2024. There was no attendance by the Applicant and no cogent explanation for his absence could be provided.

20. Miss Ava indicated to the Tribunal that she perceived herself now to be in a position of some professional embarrassment, without a client, continuing instructions, or an explanation for absence. The Tribunal having in its possession the previous written submissions on the issues of liability and, if appropriate, penalty, indicated that if she felt it appropriate to withdraw, it was not minded to disagree.

- 21 Thereafter, on behalf of the Respondent, Mr Lally indicated that he had no further observations to add to those made previously and contained in the several statements provided on the Respondents part.
- 22 During the course of its deliberations the Tribunal noted that no issue was taken in relation to the improvement notice itself and that it was dated 8th October 2021 and required work to commence by 4th November 2021, that being a date purporting to be 28 days after the date of the notice, but in fact being 27 days after.
- 23 The Tribunal therefore invited comment from the parties' representatives upon that issue. The Respondent's observations were that the notice had not been appealed in the manner provided for and although the period of notice was foreshortened the time specified for work to be done had far exceeded that stipulated in the notice and had never been completed.
- 24 The Applicant's representative appeared to be without specific instructions from the Applicant within the time stipulated by the Tribunal for views, but adopted that the position that the notice appeared to be defective and should be re-issued.

Determination

- 25 The Tribunal is not concerned with any issue as to whether the service of an improvement notice was an appropriate response to the situation that the Respondent's officers found at 28, Broadway. There has been no appeal against the notice and it has been regarded by the parties as taking effect upon the date stated therein.
- 26 The Tribunal is concerned, however, that what amounts to criminal liability is premised upon a notice which on the face of it defective, there being a requirement for work to commence within 27 days, rather than 28 days.
- 27 Paragraph 4 of the notice effectively continues to perpetuate that error in timescale by requiring works to be completed with either four-week, or eight-week timescale of the stated date of 4th November.
- 28 The Tribunal is entirely satisfied on the evidence provided to it, principally that of Mrs Drury, that the notice was served correctly upon the Applicant, and that very little, if anything, had been done by the Applicant to remedy the hazards identified in the notice prior to the Respondent considering the imposition of a financial penalty, or indeed at any time thereafter.
- 29 The Tribunal will be frank in its view that the conduct of the Applicant in relation to the remedying of the hazards identified in the notice has been

wholly reprehensible and his evidence to the Tribunal has been highly questionable.

- 30 It is left, therefore, to consider whether a finding of criminal conduct, albeit in the form of a financial penalty in civil proceedings, may be founded on the basis of an improvement notice that is defective upon its face. If the Tribunal decides that it cannot, then the Applicant enjoys a completely unmeritorious victory.
- 31 This Tribunal is compelled to take the view that a finding of criminal conduct should not, in the circumstances that pertain here, be founded upon a notice that is, upon its face, defective. Neither party appears to have noted the error, nor did the Tribunal until late on, and the case has proceeded without any notice being taken of the problem. It is nevertheless there and has never been remedied. The Tribunal does not accept the view that because there was no appeal against the notice the error in relation to the date cannot now be recognised.
- 32 It is of the view that with considerable misgivings it is obliged to find in favour of the Applicant that he has not failed to comply with an improvement notice. He has failed to comply with one that is defective. That cannot form a basis for a financial penalty.

J R RIMMER (Tribunal Judge)

7th July 2024.

