



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

Case Reference : **MAN/ooDA/HNA/2023/0025**

Property : **52 Coldcotes Avenue, Leeds**

Applicant : **MOHAMMED AZAM**

Respondent : **LEEDS CITY COUNCIL**

Type of Application : **Appeal against Financial Penalty, paragraph 10, schedule 13A to the Housing Act 2004**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member J Jacobs**

Date of Decision : **14th January 2025**

DECISION

1. The financial penalty imposed by the Respondent on the Applicant on 30 January 2023 (and amended to £8,500 on 24 May 2024) is varied so as to apply a penalty of £2,500 payable by the Applicant.

REASONS

BACKGROUND

1. The Applicant was registered as the owner of 52 Coldcotes Avenue, Leeds in January 2004. The property has 4 bedrooms and a rear yard. Beyond a roadway to the rear is a further piece of ground available for use with the property. In or about 2011 he let the property to Marcela Zigova, who lived there with her partner Aitkila Malang. On an unknown subsequent date the Applicant instructed

Westgate Estate Agents (Leeds) Limited (“Westgate”) to manage the tenancy for him. The Tribunal was told that the Applicant has little spoken or written English, and that he does not easily read English.

2. On 6 January 2020 the Respondent included Coldcoates Avenue in a selective licensing area pursuant to section 80 of the Housing Act 2004 (“the Act”). The Applicant promptly applied for a licence under the scheme. The Respondent does not check the condition or occupation of a house prior to granting a licence to its landlord or manager. His application was not processed until 2021. The Respondent sent him a draft licence including standard conditions in March 2021, and a licence was issued to him subject to the same conditions on 10 May 2021.
3. The licence conditions contain no stipulations regarding the level of occupation at the property. They require the licence holder to obtain gas and electrical safety certificates and to supply them to the Respondent when requested. The licensee is further required, among other things, to install and maintain smoke and carbon monoxide alarms, to maintain the internal and (so far as practicable) the external parts of the property in good repair, to ensure that adequate waste bins are provided, and to maintain a policy for monitoring and recording any antisocial behaviour.

PROPERTY INSPECTIONS AND REPORTS

4. In June 2019 Mrs Brown, a schools attendance officer, visited the property and reported to the Respondent’s Housing Office that children were living in overcrowded conditions at the property, which she said was in a very poor condition. At that time it seems that Ms Zigova, her partner and 7 children were living there with her eldest son, his partner and their 2 children.
5. A report from the police dated 9 November 2020 described the property as being in a “very poor state”.
6. In July 2021 the Respondent received a report from a neighbour about the poor state of the property.

7. Ms Saul, a Housing Officer for the Respondent, emailed the Applicant on 10 August 2021 to notify him of the concerns that had been raised regarding the property. She reminded him of his obligation to maintain the property in good repair and otherwise to comply with the licence conditions.
8. Having notified the Applicant by email of her intention to inspect the property, Ms Saul visited it on 15 November 2021. She compiled a report setting out a number of defects and problems noted during her inspection, and sent it to the Applicant on 1st December 2021. On 2 December 2021 Mr Azam applied for Westgate to be added to the licence as property managers. The Respondent issued the revised licence on 7 November 2022.
9. Ms Saul reinspected the property on 23 December 2021. She noted items which still required repair or monitoring but confirmed in writing to Mr Hussain of Westgate that he had cooperated with her in arranging for repairs. She said "*The property is much improved. The tenants appear to be much happier and the house was a good deal warmer, cleaner and drier.....I appreciate that some issues have arisen from tenant damage or lifestyle and will do my best to reinforce the message that food waste needs to be contained so that the pest issues can be dealt with effectively.....I will contact you in the New Year to discuss the revised report.*"
10. In August and September 2022 the Respondent received reports from the police that the property was again in a state of disrepair, and was "filthy". The Respondent's Principal Housing Officer Mr Benson arranged to inspect the property with his colleague Mr Carr on 26 September. The photographs that were taken on that date and Mr Benson's report on the property disclose considerable disrepair, dirt, broken fittings, and deposits of rubbish both internally and externally. It was apparent that the licence conditions had not been met by the Applicant.

THE LAW

11. Section 249A of the Act enables a local housing authority to impose a financial penalty on managers of rented properties, where they are satisfied beyond reasonable doubt that an offence (such as breach of the licence conditions, section 95(2)) has been committed. The imposition of a fine is an alternative to

prosecution. The level of financial penalty must be calculated in accordance with the housing authority's published policy, which itself must comply with government guidelines. Schedule 13A to the Act governs the procedure for imposition of a financial penalty, and allows for an appeal to this Tribunal.

12. On appeal the Tribunal is to re-hear the Respondent's decision but may take into account matters of which the local authority was unaware when the financial penalty was calculated. The Tribunal may confirm, vary or cancel the notice (paragraph 9(4) of Schedule 13A). In reaching its decision, the Tribunal must generally assess the financial penalty in accordance with the policy of the local authority.
13. The overall intention of the powers given to local authorities to impose financial penalties under the Act is stated to be: (1) punishment of the offender (2) deterring the offender from re-offending (3) deterring others from committing similar offences and (4) removing any financial benefit obtained by the offender from committing the offence.

THE RESPONDENT'S FINANCIAL PENALTY CALCULATIONS

14. The financial penalty is calculated in accordance with a matrix, with a maximum penalty of £30,000 being reserved for the very worst cases. The Respondent's schedule of contraventions of the Applicant's licence listed 93 breaches. Initially the Respondent assessed the penalty to be paid by the Applicant at £25,000, on the basis that the level of his culpability was "high" and the level of harm caused by his offence was also "high". The Respondent added percentages for aggravating factors and reduced the penalty by percentages (in accordance with its policy) for mitigating factors. The resulting proposed penalty was £23,750.
15. On receipt of the proposal, Westgate made representations to the Respondent. As a result the penalty was reduced to £14,250 in January 2023.
16. On 22 February 2022 the Applicant appealed to the Tribunal against the level of the penalty. The Respondent, in an attempt to have the matter settled without the intervention of the Tribunal, reduced the penalty further on 24 May 2024 to £8,500. The reduction appears to have reflected in part the fact that (1)

overcrowding (to the extent that it had taken place) was not a breach of the licence conditions and (2) the Respondent had established gas and electrical safety certificates had been obtained and were in place at all relevant times. At this point the Applicant's culpability was assessed as "medium" and the level of harm caused or potentially caused was also reduced to "medium". The matrix gave a resulting figure of £10,000. 5% was added for a perceived lack of insight into the Applicant's failings, and 20% was deducted for (1) cooperation (2) addressing the issues at the property (3) lack of any previous conviction and (4) the damage caused by the tenants.

THE HEARING

17. The appeal was heard by video link. Mr Hussain of Westgate represented and spoke for the Applicant, who was unable to attend due to ill health and his poor grasp of English. The Applicant had not submitted any witness statement, but his written representations were taken by the Tribunal to be his evidence. Westgate had had management of the property at all material times and for the most part Mr Hussain was able to speak for Mr Azam. The Respondent was represented by Mr Rafferty of counsel. Mr Benson and Mr Carr were present to give evidence in line with their witness statements.
18. At the hearing Mr Hussain was at pains to stress that all the damage and dirt in the property had been caused by the tenant or her family. Subject to this, he confirmed that the Applicant was in breach of the licence conditions, albeit inadvertently. He told the Tribunal that the Applicant, on receipt of any correspondence, passed it either to his son or to Westgate for appropriate action. He said that Westgate had managed the property effectively so far as it was able to do so, but that the tenant had been determined to create such bad housing conditions as to result, so she thought, in her family being re-housed by the local authority.
19. The Applicant produced a statement signed by Ms Zigova which stated that she had been told by a housing officer that the best way to obtain council accommodation was to damage the property to the extent that it was no longer habitable, and that this is what she and her family had done.

20. The Respondent rejected Ms Zigova's statement. She did not attend to be cross-examined. Mr Benson and Mr Carr supplied witness statements explaining that they had visited Ms Zigova with an interpreter, her family support worker and a representative of Children's Services. During that visit, they said, Ms Zigova confirmed that she had signed the statement, which was written out for her by an unnamed third party. She does not read or write English. She told the 5 people visiting her that she had not intended to say that a housing officer advised her to mistreat the property, and that the only part of her statement that was true was the fact that her children had caused the damage.
21. In response to the Tribunal, Mr Benson said that it was normal for two housing officers to visit a property together for safeguarding reasons, and that was why Mr Carr had accompanied him. He denied that Ms Zigova may have felt intimidated or under pressure to withdraw her statement during that visit.
22. Counsel for the Respondent told the Tribunal that the Applicant was to blame for the very severe deterioration of the property between Ms Saul's December 2021 visit and the state it was found to be in in August and September 2022. Mr Benson's opinion was that in view of the history of the tenancy, it would have been necessary and appropriate for Westgate to have carried out weekly visits early in 2022 and subsequently to inspect regularly although less often if the tenant was maintaining reasonable standards. The Applicant's failure to arrange this, he said, led to the contraventions he had identified in his schedule.
23. In regard to the Applicant's obligation to manage and record instances of antisocial behaviour, Mr Hussain said that once Mr Azam was aware of the police involvement with the family, a section 8 notice of intention to obtain possession was served promptly on the tenant. There had been a delay while written evidence was sought from the police. Possession proceedings had been issued, but Mr Azam had not been able to afford legal representation and his case was not properly presented. The proceedings had stalled. Mr Hussain stressed that in this instance and generally Mr Azam had done his best to manage the situation in accordance with the Respondent's requirements. He also said that Mr Azam had been unwilling to issue possession proceedings against Ms Zigova until forced to do so, because he had not wished to make her family homeless.

24. Finally, Mr Hussain referred to a bank statement supplied by Mr Azam which showed a balance of £1,629 at July 2023. He said that Mr Azam has no other funds, and that he is currently unable to meet the mortgage repayments on his own house. He is being assisted financially by his family. Mr Hussain also pointed out that when he encountered problems with the County Court possession application, Mr Azam had sold 52 Coldcotes Avenue with the tenants in possession. After payment of mortgage debt and costs, he received proceeds of sale amounting to £2,398.38 in July 2023. He is not able to work due to his poor health.

DETERMINATION

25. The Tribunal finds that the selective licence conditions required Mr Azam to ensure that the property was maintained in reasonable order, and that he failed to do so. However the Tribunal rejects statements made on behalf of the Respondent during the hearing that the Applicant chose to let his property and therefore voluntarily entered into the licence obligations. Mr Azam owned and let the property for a number of years before the selective licence conditions were imposed on him. By then he was already attempting to manage, with the professional help of Westgate, the chaotic lifestyle of his tenant and consequent deterioration of his property.

26. The Tribunal finds that the Applicant's level of culpability was "low". It is reasonable to suppose that Ms Zigova would not have signed a formal statement unless she was aware of and approved its contents. She was likely to be worried by the visit of 5 officials, two of whom were keen to establish that no housing officer had told her to cause damage to the property. It is not necessary to assume that any housing officer gave Ms Zigova this advice in so many words. Any officer of any of the agencies having dealings with the family may have made a casual remark which led her to believe that she would not obtain housing from the local authority unless her living conditions deteriorated. The Respondent accepts that the damage to the property was caused by the tenant and the Tribunal finds that there was very little if anything that the Applicant could do in practice to prevent this.

27. The Tribunal assesses the level of harm as “medium”. Whoever caused the damage, Mr Benson’s photographs show that the property was in a dangerous condition for all the inhabitants and especially the children. Examples are: the missing stair banister; the missing balustrade on the first floor; the broken tiles and general filth in the kitchen and bathroom; the permanently open window through which a cable was brought into the house; and exposed electrical wiring.
28. On the basis of these assessments, the Respondent’s matrix gives a starting figure of £5,000. The Respondent’s policy provides for adjustment of 5% for each aggravating and mitigating factor. The Tribunal considers that there are no relevant aggravating factors and reduces the penalty by 50% for 10 mitigating factors, namely (1) cooperation with the Respondent (2) voluntary repair work (3) the poor health of the Applicant and Mr Hussain of Westgate which affected or delayed their responses during the relevant time (4) Mr Azam’s vulnerability in terms of his lack of English (5) his previous good character as a landlord and involvement of professional managing agents (6) the tenant having caused disrepair and the build-up of dirt in the property (7) the tenant having allowed an accumulation of rubbish externally (8) the tenant having caused the specific health hazards in the property (9) the fact that Mr Azam had no previous housing convictions, and (10) the fact that Mr Azam took steps to divest himself of the property within a reasonable time after it became clear that he was unable either to manage it effectively or to obtain a possession order.
29. This reduces the financial penalty to £2,500, which figure is substituted for the Respondent’s figure of £8,500.