



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

Case Reference	: MAN/ooDA/HNA/2022/0099
Property	: 48 St Martin's Gardens, Leeds, LS7 3LE
Applicant and Appellant Represented by	: Mrs Kosovka Mijakovac Ms Dionne Salmon (Beechwood Solicitors)
Respondent Represented by	: Leeds City Council Ms Hayley Lloyd-Henry, principal legal officer
Counsel	: Chris Rafferty
Type of Application	: Appeal Against a Financial Penalty, section 30, 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004.
Tribunal Members	: Judge C. P. Tonge, LLB, BA. Mrs S. A. Kendall, BSc, MRICS
Date of Decision	: 17 November 2023

DECISION

© CROWN COPYRIGHT 2023

Application and Background

1. Mrs Kosovka Mijakovac has been, at all times relevant to this case, the freeholder of 48 St Martin's Gardens, Leeds, LS7 3LE "the property". By an application, dated 8 December 2022, the Applicant appeals against the issue of a financial penalty of £8,250 imposed by Leeds City Council "the Respondent", for the offence of failing to comply with an improvement notice, under sections 30, 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004, "the Act".
2. At all times relevant to this case the property has been occupied by one rent paying tenant Vasile Dumitru, renting the whole the property.
3. The property is a semi-detached three bedrooomed brick built house with a tiled roof. The Respondent received information from the police that several of the properties owned by the Applicant had been linked to the growing of cannabis. The Respondent made checks and ascertained that the Applicant was renting out this property and receiving housing allowance benefit payments of £161.54 per week on behalf of the tenant of the property (SC44).
4. Principal Housing Officer Stephen Clarke, " Officer Clarke", employed by the Respondent, conducted a land registry search, and saw that the Applicant is the freeholder of the property.
5. Officer Clarke is authorised to conduct all inspections and investigations that are relevant to this case.
6. It is clear to the Tribunal that the property had not in fact been used to grow cannabis, this information is only now mentioned as the reason why this investigation was commenced.
7. On 20 January 2022 Officer Clarke served the Applicant with a written notice of his intention to carry out a formal inspection of the property on 28 January 2022.
8. On 28 January 2022 Officer Clarke visited the property and conducted an inspection. The Applicant met Officer Clarke at the inspection but declined the officer's request that she accompany him throughout the inspection. The Applicant preferring to remain outside the property. The officer found that there were hazards contrary to the Housing Health and Safety Rating System (England) Regulations 2005 and Operating Guidance, at the property that required remedial action. Photographs SC11 to SC20 were taken of the hazards. Risk rating calculations are exhibited at SC21 to SC25. The hazards were:

- Damp and mould, a category 2 hazard, with 5 individual faults contributing to that hazard.
- Excess cold, a category 1 hazard, with 4 individual faults contributing to that hazard.
- Falls between levels, a category 2 hazard, with 1 individual fault contributing to that hazard.
- Electrical hazards, a category 2 hazard, with 1 individual fault contributing to that hazard.
- Risk of collision and entrapment, a category 2 hazard, with 5 individual faults contributing to that hazard.

9. On 3 February 2022, an improvement notice was served upon the Applicant, requiring remedial action to be completed by 14 April 2022. The letter accompanying the improvement notice stated that if any further time was needed to complete the remedial action, then Officer Clarke should be contacted (SC26 to SC30).

10. On 17 February 2022 Officer Clarke did receive a letter from the Applicant questioning the charge being levied for preparation and service of the improvement notice. The letter did not request additional time for the remedial action to be completed (SC31). No other communications were received from the Applicant prior to the expiration of the time permitted for remedial action to be completed, namely, 14 April 2022.

11. There has been no appeal against this improvement notice.

12. On 19 April 2022 Officer Clarke called the Applicant and spoke to her. The Applicant indicated, amongst other things, that the tenant was away from the property for 3 weeks. As a result of this conversation Officer Clarke spoke to a gentleman called Ali who had been employed by the Applicant to carry out the remedial works at the property. Mr Ali indicated that he had been ill with Covid during some of the period in which the remedial action should have been completed. Mr Ali asked for a further two weeks to complete the remedial works. Officer Clarke agreed to give a further three weeks for the remedial action to be completed, to 10 May 2022. Officer Clarke asked that he be informed when the remedial work had been completed.

13. The extended period for the remedial action expired without the Applicant or Mr Ali contacting Officer Clarke and so on 12 May 2022 Officer Clarke called at the property for an informal visit. By chance Officer Clarke met the Applicant on the footpath outside the property. The Applicant stated that the tenant might still be away from the property and that she did not have a key for the property. Officer Clarke asked the Applicant to call him during the following week.

14. Officer Clarke waited for the Applicant to call him, but no such call was received. On 24 May 2022, Officer Clarke received a letter from the Applicant which indicated that the tenant was out of the country in Romania and might not return (SC32).
15. Officer Clarke then received a screen shot of a boarding pass for the return flight of the tenant to Liverpool airport, for a flight on 18 May 2022, establishing that the tenant had been back at the property since that date.
16. On 21 June 2022 a further notice was served relating to another inspection to take place on 28 June 2022, Officer Clarke adding that the services of a lock smith would be used to gain access if necessary (SC34 to SC36).
17. On 28 June 2022 Officer Clarke inspected the property in the presence of Mr Ali. The tenant had returned to the property. Officer Clarke noted that the remedial work had not been completed fully. There were still 4 items of remedial work that were outstanding, the improvement notice required the remedial action to be completed by 14 April 2022 and the extension of that period was to 10 May 2022, so it was clear that the improvement notice had not been complied with. Photographs were taken of the items of remedial action that had not been rectified (SC37 to SC40) and a defects matrix completed by the officer (SC53).
18. On 11 July 2022, Officer Clarke sent a letter to the Applicant, inviting her to attend an interview to be taken under caution in compliance the Police and Criminal Evidence Act. Mr Ali then contacted Officer Clarke to indicate that the remedial work had been completed and asking that Officer Clarke make a further inspection of the property.
19. On 25 July 2022, Officer Clarke made a further inspection of the property to find that the remedial work had been completed.
20. On 26 July 2022 the Applicant was interviewed under caution by officer Clarke and two other officers. The interview has been transcribed (SC42). The Applicant agreed that she is a professional landlord of a substantial number of properties, the specific number not being stated, but Exhibit SC50 lists 11 properties in the Leeds area of which she is freeholder or joint freeholder. She has managed the property for 8 years. She stated that this tenant does not allow her to have access to the property when he is not there and had changed the door locks so that she no longer had a key. The last time she had carried out works at the property was in compliance with enforcement action by the Respondent (Principal Housing Officer Murray in February 2017(SC65). After service of the improvement notice she had informed the tenant and instructed Mr Ali to carry out the work.
21. Officer Clarke determined that the Applicant had committed the offence of failure to comply with an improvement notice under section 30 of the

Housing Act 2004. He considered whether prosecution or a civil penalty was appropriate and determined that this matter could be dealt with as a civil penalty (SC55).

22. Officer Clarke then considered the Respondent's Civil Penalty Policy "the policy" (SC63), determining that the level of culpability is high because the Applicant is a professional landlord with more than 5 properties to let. The level of harm was low as there was only 1 category one and 4 category two hazards. As such the policy states that the appropriate civil penalty is £7500 (SC63, page 190). The Officer was of the opinion that there are 5 aggravating features and 3 mitigating features, the policy ascribing a 5% value to each (SC63, page 192) resulting in an increase of the civil penalty to £8,250.
23. A Notice of Intention to Impose a Financial Penalty of £8,250, dated 28 September 2022, was served on the Applicant by sending it via first class post on that day.
24. The Applicant made representations (SC48, page 149). These are summarised as; the Applicant asked Mr Ali to commence work immediately after the improvement notice was received, but the tenant asked Mr Ali to stop work whilst he had a visitor. Work commenced again, but Mr Ali contracted Covid, causing a two week delay. Work commenced again, but the tenant went to Romania and the Applicant did not have a key for the property and had been told by the tenant that she could not enter the property in his absence. The Applicant asked the Respondent to reconsider its decision.
25. Officer Clarke considered these representations but decided that they were insufficient to change the decision to impose a civil financial penalty, or to cause him to change the level of that penalty.
26. A Final Notice of the Imposition of a Financial Penalty of £8,250, dated 1 December 2022, along with an invoice for payment and details of how to appeal against the notice were served on the Applicant, by sending via first class post (SC57 to SC59).
27. By an application, dated 8 December 2022, the Applicant seeks to appeal against the Final Notice of the Imposition of a Financial Penalty of £8,250.
28. Directions were issued, that have eventually been complied with.
29. There is no need for the Tribunal to inspect the property.
30. The case was listed to be dealt with by this Tribunal on 17 November 2023.

31. Both parties have served a bundle of evidence, that is paginated and indexed. The Applicant's bundle being 21 pages, the Respondent's bundle being 261 pages. There is a third bundle that is neither paginated or indexed and contains all the papers (sometimes more than once) served in the case, being 831 pages.
32. The Tribunal will refer to written evidence where appropriate.

The hearing

33. The hearing was held on the Tribunal's video platform, commencing at 11 am on Friday 17 November 2023. Persons present were the Applicant and a solicitor representing the Applicant, Ms Dionne Salmon. Officer Clarke attended on behalf of the Respondent and also as a witness in the case. The Respondent was represented by its Principle Legal Officer, Ms Hayley Lloyd-Henry and Counsel, Mr Chris Rafferty.
34. The Tribunal made it clear that there cannot now be an appeal against the improvement notice, the time to raise such an appeal has already expired. The Applicant agreed, stated that the appeal was against the decision to impose a financial penalty and or against the level of that penalty.
35. Officer Clarke was called to give evidence and his evidence was not challenged by the Applicant. The evidence confirmed by Officer Clark is as it appears in paragraphs 1 to 26 above.
36. Officer Clarke gave additional detail as to the matters taken into consideration in fixing the level of the financial penalty.
37. In relation to the decision that culpability was high he had taken account of the fact that the Applicant is a professional landlord with at least 11 properties let out by her (SC50). This had been confirmed by the Applicant in the interview under caution. The Applicant has a history of prior enforcement action being taken against her in relation to the properties that she lets out (SC65, SC66 and SC67). In relation to harm being assessed as low it was agreed between the parties that no complaint was made relating to that part of the assessment. The policy had been followed and the resulting civil penalty starting point was £7,500. This takes into account the need to deter offenders, having a real economic impact upon them. These calculations were made on the civil penalty spread sheet (SC56).
38. The Officer, following the policy, then considered the question as to whether or not there were any aggravating features and determined that there are 5 such features, and these are:

- The offence was committed with a view to financial gain by continuing to take rent for the use of a property that was substandard. When Mr Ali became ill the Applicant should have instructed another contractor. The Applicant should have gained access to the property for remedial work to be completed within the time limit permitted.
- Obstructing the investigation. The Applicant failed to keep in contact with Officer Clarke or his department, largely ignoring Mr Clarke's requests and arrangements.
- The Applicant has a history of letting properties that have been substandard and have required enforcement action, only then engaging in repairs.
- The Applicant has a history of poor management practices resulting in properties managed by the Applicant being of a poor standard.
- The Applicant has a lack of insight into her failings, apparently failing to understand her legal duties as a professional landlord.

Following the policy each aggravating feature leads to a 5% increase in the financial penalty.

39. The Officer then considered mitigating features and determined that there are 3 and these are:

- The tenant has some responsibility for the offence, asking Mr Ali to stop the work on one occasion and purporting to refuse to allow work to be done when he was out of the country. Further, the tenant had requested that works stop for a week whilst he had a visitor.
- The Applicant has no prior convictions for housing matters.
- The Applicant has accepted responsibility for the offence.

Following the policy each mitigating feature decreases the financial penalty by 5%.

40. The Officer was questioned by the Tribunal, its members seeking to ensure that there could be no question of the same issues being taken into account more than once. Officer Clarke explained that he had to follow the statutory framework involved in this case and the Respondent's policy. The matters referred to had all been taken into consideration at the correct point in the process and the result was a civil penalty of £8,250. There were no other factors present in this case that could change the level of the civil penalty.

41. The Applicant was then called to give evidence and confirmed the content of the representations made to the Respondent and the witness statement in the Applicant's bundle (pages 18 to 20).

42. The Applicant had instructed Mr Ali as soon as she received the improvement notice. Mr Ali had started work but was then asked to stop for a week when the tenant had visitors. Mr Ali had recommenced work but had then been ill for 2 weeks with Covid. The tenant had then gone to Romania and she was forbidden to enter the tenant's property whilst he was away. The work had all been done and although she did not challenge responsibility for failing to comply with the improvement notice she hoped that this Tribunal would either waive the financial penalty or reduce it due to the circumstances, suggesting that it was largely the fault of her tenant that the remedial work had not been completed on time.

43. The Applicant's witness statement also suggested that she cannot afford to pay the civil penalty. This was the first time that this has been raised and no details were given to support this assertion. The assertion should have been supported with full financial disclosure, including business accounts, bank statements for her business as a landlord, private bank account statements and a schedule of incomings and outgoings, served in advance of the hearing. This would have enabled the Respondent to consider this issue prior to the hearing. The Tribunal will not consider the issue of hardship any further.

44. The Applicant sought to persuade the Tribunal to waive the financial penalty or reduce it.

45. The Applicant was cross examined.

46. The Applicant agreed that she was required by the improvement notice to complete the remedial action by 14 April 2022. She stated that she could not do so because the tenant would not let her into the property, whilst the tenant was in Romania.

47. The Applicant agreed that on 19 April 2022, after the time limit imposed for the completion of remedial works in the improvement notice had expired, the Applicant and Mr Ali had asked for a further 2 weeks to complete the remedial works. Officer Clarke had agreed to extend the time limit by an extra week to 10 May 2022, but the work was still not done. The Applicant continued to lay the blame for this with the tenant.

48. The Applicant agreed that she was an experienced landlord, but she could not properly explain why she had not contacted Officer Clarke to ask for more time to complete the remedial action, referring back to the telephone calls on 19 April 2022, which had already been dealt with.

49. It was put to the Applicant that she should have had a key so that emergency repairs could be done under the terms of the lease, not needing the tenant's permission, or make an application to the County Court to order that entry be granted. The Applicant did not appear to accept these

propositions continuing to state that it was the tenant's fault that the work had not been completed within the time limit imposed, she was simply hoping that he would return to the property in time for the work to be done.

50. Under cross examination the Applicant suggested that the tenant had left the country a second time during May 2022. This had not been mentioned prior to this.
51. The Tribunal pointed out that the evidence from the tenant (defence bundle, page 21) only mentions one absence from the property commencing on 14 April 2022 (ending 18 May 2022 according to the boarding pass referred to above). The Applicant maintained that the tenant had gone away a second time. In any event because, of the timeline involved, a second absence of the tenant after 18 May 2022 would not assist the Applicant because the offence of failure to comply with an improvement notice had already been committed by 10 May 2022.
52. The Tribunal referred both parties to the case of *Sheffield City Council v Hussain [2020] UKUT 292 (LC)*. In that case the Upper Tribunal made it clear that the level of the civil financial penalty had to be established as of the date of the offence being committed and then allowing for any mitigating or aggravating features that might exist. Further, if the First-Tier Tribunal considered remedial works as a mitigating factor, the most important fact is that they are undertaken under compulsion. The landlord is doing no more than what he is legally required to do so that the level of mitigation is small. This Tribunal is bound to follow prior decisions of the Upper Tribunal. The Applicant chose not to make any submissions relating to this case.

The Law

The Housing Act 2004

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.

Paragraph 10 of schedule 13A

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.

Section 263. Meaning of “person having control” and “person managing” etc.

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

Deliberations

53. The Tribunal first considers whether the Respondent has satisfied the Tribunal beyond any reasonable doubt that the Applicant has committed the offence of failure to comply with an improvement notice, contrary to section 30 of the Act.

54. There has not been any appeal against the issue of the improvement notice. The improvement notice is a valid notice, served in accordance with the Act.

55. The improvement notice requires that remedial works be completed by 14 April 2022. The remedial works were not completed by that date.

56. After the expiration of the time limit of 14 April 2022 Officer Clarke extended the time limit for the remedial action to be completed to 10 May 2022. The remedial works were not completed by that date.

57. Officer Clarke inspected the property on 28 June 2022 and some of the remedial action required to be carried out by the improvement notice had still not been completed.

58. It was not until Officer Clarke made a further inspection on 25 July 2022 that the Respondent was satisfied that the remedial works had been completed.

59. The Applicant seeks to blame the tenant for this inability to complete the remedial works within any time limit set by the Respondent. This is not a defence to the offence.

60. A strict reading of section 30(2)(a) and section 13(2)(f) of the Act makes it clear that in this case the remedial work should have been completed by 14 April 2022. However, since Officer Clarke granted an extension to the Applicant of the time limit for completion of the remedial works to 10 May 2022, the Tribunal determines that it is satisfied beyond any reasonable doubt that by that date the Applicant had committed this offence.

61. The Tribunal has considered the decision of Officer Clarke to use the civil financial penalty procedure (section 294A of the Act) instead of a criminal prosecution and approves of that decision.

62. The Tribunal now considers the defence case in more detail.

63. The Applicant seeks to blame her tenant for causing her to be unable to carry out the remedial works in the permitted period of time. The Tribunal notes that the improvement notice was served on the Applicant on 3 February 2022 and she was permitted until 24 April 2022 to complete the remedial works. The tenant did not go to Romania until the last day of this 10 week period. The Tribunal determines that the absence of the tenant had no effect on the Applicant's inability to complete the remedial works during this period.

64. The Applicant sought to adduce evidence during cross examination that the tenant had left the property for a second time after 18 May 2022. The Tribunal takes into account that this had not been stated prior to cross examination, it is not supported by the Applicant's witness, the tenant, and that because the offence of failure to comply with an improvement notice had already been committed by 10 May 2022, it would not assist the Applicant in that regard. The Tribunal rejects this evidence.

65. The Tribunal notes that on 19 April 2022, because of the proactive involvement of Officer Clarke, a further extension of the time in which the remedial works could be completed was granted to 10 May 2022. The Applicant and Mr Ali had asked for two weeks, but they were given three. The Tribunal is curious as to why two weeks extra was requested at a time

when the Tenant was away from the property in Romania and the Applicant did not know when he was going to return. Further, when the tenant did not return, the Applicant should have contacted Officer Clarke to ask for more time to complete the remedial works (which may or may not have been granted) and she did not do so.

66. The Tribunal also points out that the absence of a tenant should never prevent remedial works required because of an improvement notice from being carried out by the landlord. In such circumstances the landlord is being compelled to comply and must either enter with a key under the terms of the lease or authorisation of a County Court. In any event the Applicant should not have permitted the tenant to change the door locks without providing the landlord with a key.
67. Nevertheless the Tribunal agrees that there is some mitigation because the tenant asked that work stop during a visitor staying at the property for a week and he was away from the property from 14 April 2022 to 18 May 2022. The oral evidence given by the Applicant under cross examination that the tenant was away from the property for a second time in May 2022, does not fit with the rest of the defence case and is not supported by the tenant. The Tribunal does not accept this part of the Applicant's case.
68. Mr Ali was ill with Covid for 2 weeks. The Tribunal determines that another contractor could have been instructed. This is not mitigation.
69. The Tribunal determines that the procedure required by the Act has been followed. The notice of intention to impose a financial penalty is a valid notice, properly served on the Applicant.
70. The Tribunal agrees with Officer Clarke that the representations given by the Applicant in response to the notice in paragraph 69, should not have reduced the level of the civil penalty.
71. The Tribunal determines that the final notice of a financial penalty is a valid notice, properly served on the Applicant.
72. The Tribunal tested the evidence given by Officer Clarke during the hearing, asking him questions relating to the civil penalty imposed.
73. The Tribunal has considered the aggravating features as found by Officer Clarke and agrees that all of them are present in this case. Further the Tribunal has considered the mitigating features as found by Officer Clarke and agrees that all of them are present in this case. The Tribunal notes that the policy ascribes a 5% effect on the civil financial penalty, for each such factor.

74. Further, the Tribunal has carefully considered the policy and the way that officer Clarke has followed the policy in determination of the correct level of the civil penalty.
75. The Tribunal is satisfied that Officer Clarke, on behalf of the Respondent has followed the policy and the Tribunal agrees that the civil penalty remain at £8250.
76. The Tribunal determines that the financial penalty of £8,250 is fair and just. The Tribunal confirms the final notice and the penalty of £8,250.

The Decision

77. The Tribunal Decides that it is satisfied beyond any reasonable doubt that the Applicant was in control of the property during the period relevant to this case and has committed the offence of failing to comply with the improvement notice, contrary to section 30 of the Housing Act 2004.
78. The Tribunal confirms the final notice of the imposition of a financial penalty in this case and the penalty of £8,250.
79. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to the parties in which to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for the appeal, the paragraph numbers of the Decision appealed against, the particulars of such grounds and the result that the appellant seeks as a result of raising the appeal.

Judge C. P. Tonge

12 January 2024