



First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2018/0013

Sitting in Chambers

Before

JUDGE CLAIRE TAYLOR

Between

ASAD KHAN

Appellant

and

DERBY CITY COUNCIL

Respondent

Decision

The Appeal is dismissed.

The Penalty Charge Notice dated 11 July 2017 in the sum of £3,000 is confirmed.

REASONS

Background

1. The Appellant is the landlord of residential premises at 15 Dover Street, Derby. The Respondent ("the Council") is the enforcement authority.
2. On 14 August, the Council wrote to the landlord following a complaint made about the property. (Page 30). The Housing Standards Officer, Mr Ziemacki, stated that:
 - a. He intended to carry out an inspection.
 - b. The property had previously been found to have major hazards.
 - c. The Council had received complaints concerning loud music. The noise team passed on concerns to the officer concerning the condition of the property. He had spoken to a neighbour who stated that the tenants had returned abroad and allowed youths to use the property in their absence. This had caused anti-social behaviour. And led to the Council becoming involved in the property again.
 - d. If category 1 hazards or high scoring category 2 hazards were found he would be under a duty to take formal enforcement action. In view of the history with the property, he would go straight to formal action if there were major problems.
3. On 19 September, the officer carried out an inspection of the property and found category 1 hazards including a non-functioning smoke alarm on the first floor. On 21 September, the Council served on the Appellant a Remedial Notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ('Regulations') requiring installation of smoke alarms on each storey of the property. As this notice was not complied with, the Council arranged for the fitting of an alarm on the first floor of the property on 1 November 2018.
4. On 5 December 2017 the Council served a Penalty Charge Notice in the sum of £3000. On the same day, the Appellant requested the charge be withdrawn on the basis his builder had installed an alarm on 12 October and invoiced him for this. He was asked to provide evidence to support this. On 12 December, the Appellant emailed. He stated that whilst he had provided his builder with two alarms, they had only fitted one - on the ground floor. They had confirmed to him by phone that they had forgotten to install the second alarm. He included receipts of 12 October 2017. (Pages 43-45) for various items including one smoke alarm and one carbon monoxide smoke alarm.
5. By his Notice of Appeal, the Appellant makes it clear that he does not dispute the failure to have a working smoke alarm on one storey of the accommodation. However, what he has written, he seems to submits that the Council's decision to impose a financial penalty was unreasonable and that the amount of the penalty is unreasonable. (Pages 7-9 of the papers).
6. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. I am satisfied that I may fairly make a decision on the basis of the papers before me.

The Legal Framework

7. Regulation 4 provides that the landlord of a relevant tenancy must ensure that there is a smoke alarm on each storey of residential accommodation.
8. Regulation 5 of the 2015 Regulations provides for a local authority with reasonable grounds to believe that a relevant landlord is in breach of regulation 4 to serve a Remedial Notice on that landlord.
9. Where a Remedial Notice is served, if the landlord does not take the action specified within the time specified (28 days) then Regulation 8 provides for a Penalty Charge Notice to be served. The penalty must not exceed £5,000. Regulation 10 provides for the local authority to review the penalty charge notice.
10. Regulation 11 provides a right of appeal to this Tribunal. The Tribunal may quash, confirm or vary the penalty. The permissible grounds for an appeal are that:
 - (a) The decision to confirm or vary the penalty charge notice was based on an error of fact;
 - (b) The decision was wrong in law;
 - (c) The amount of penalty charge is unreasonable;
 - (d) The decision was unreasonable for any other reason.
11. The burden of proof in the appeal rests with the Appellant. Any disputes of fact are to be determined on the balance of probabilities.

Submissions and Evidence

12. The Appellant states that:
 - a. He let out the property in good liveable condition with fitted smoke alarms. These were removed by the tenants with the base left intact.
 - b. The Council's Housing Standards Officer visited the property and gave a list of work to be done. He arranged for builders to complete all of the work. The Appellant informed the officer of having completed the work, who stated that he would visit and check it. He then found out that all the work had been done aside from one smoke alarm not being fitted. Without giving notice or telephoning, the officer went to the property without the Appellant's knowledge and fitted a smoke alarm that costed £12. The Council then sent a penalty charge for £3,000.
 - c. This was totally unreasonable and unacceptable. He had to pay fee of £100 for the appeal. He was provided with the wrong details for appealing. Sending the paperwork and making phone-calls caused mental distress.
 - d. The housing officer was not very cooperative and he had not been provided with terms of appeal.
13. The Council relies on a response, various statements and supporting evidence.
 - a. Mr Ziemacki explained his actions and lengthy involvement in this case:

- i. On 28 September, Mr Khan telephoned him and said that most of the urgent work had been done including replacing the alarm. Mr Ziemacki revisited the property on 25 October and found this not to be the case.
 - ii. On 1 November, the Council procured the fitting of a smoke alarm that cost £28.38. He then revisited the property to confirm its installation. On 5 December, the Appellant contacted the officer stating that the smoke alarm had been fitted on 12 October. This contradicted his statement of 28 September. On 12 December, Mr Khan emailed again saying that an alarm had been fitted on the ground floor but not the first floor. However, there had already been a smoke alarm on the ground floor.
- b. Mr Rylott, team leader for the Council, stated that under the Regulations, the Council could impose a penalty of up to £5,000. Regulation 13 required it to prepare and publish a statement of principles that it proposed to follow in determining the penalty amount. He had prepared a statement of principles and a report that was considered at a full Cabinet meeting on 7 September 2016. This had proposed that a first offence would attract a penalty charge of £3,000. Subsequent offences would each attract a penalty charge of £5,000 to deter non-compliance. The Cabinet minutes for the meeting approved the statement of principles which were published on the Council's website showing its approach to setting penalties. (See pages 67 to 80).
- c. Ms Whittaker of Legal Services for the Council gave a response that included:
 - i. The Council acted lawfully and reasonably in issuing and confirming the penalty charge notice for what they considered to be a serious breach of the remedial notice.
 - ii. A penalty charge of £3,000 was reasonable as proportionate to the nature of the contravention. The potential harmful consequences for occupants of not having an alarm on each storey of the property could be catastrophic.
 - iii. The penalty accorded with its published statement of principles.
 - iv. On 14 December 2017, the Council had reviewed its decision and confirmed the penalty charge. This was because the Appellant had failed to comply with the remedial notice and the amount of the penalty charge was in accordance with the published statement of principles. This statement showed the Respondent's view that the level of the penalty must be sufficient to deter private sector landlords from contravening the Regulations.
 - v. The explanatory memorandum accompanying the Regulations, made clear that they were intended to reduce the risk of injury or death caused by smoke (or carbon monoxide) alarms in the private rented sector. It explained that nearly 40% of fire-related deaths occurred in properties without a working smoke alarm.

vi. The Council had already acknowledged having sent incorrect details to the Appellant relating to how to lodge an appeal with. It had apologised and provided the correct details such that the Appellant was able to re-submit his appeal.

Conclusions

14. I am satisfied that the financial penalty was lawfully and reasonably imposed by the Council in this case for the serious breach of the Regulations which forms the subject matter of this appeal.
15. I am satisfied that the amount of financial penalty imposed by the Council was reasonable in all the circumstances. The amount of penalty is in accordance with the Council's published statement of principles.
16. The Appellant's explanations of the tenants having removed the alarm and the builder having failed to install it fail to recognise that he as landlord takes ultimate responsibility for compliance with the Regulations. The Council had warned him of the need to address the situation and made clear the importance of compliance. Within this context, the small cost of the alarm was not relevant. The Council went to much effort to ensure the safety of the property. The Council's statement of principles set out how it determined what should be the appropriate amount for the penalty for failure to comply. The Council's officer went to much effort to ensure compliance for the safety of the property. In the same way, the landlord should have checked the works after his builder had completed them, just as Mr Ziemacki did after the fitting on 1 November.
17. The Council has acknowledged providing the Appellant with the wrong details for the appeal. This is not a matter that would make the decision to penalise or amount unreasonable.
18. In short, I have not seen any reasons advanced by the Appellant that allow me to find in his favour. I prefer the submissions and evidence of the Council, which I adopt in their entirety.
19. Accordingly, the appeal is now dismissed and the Penalty Charge Notice is confirmed in the sum of £3,000.

Dated 7 October 2018

Promulgation Date 12 October 2018