



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

**Case reference** : **LON/00BB/HNA/2018/0041**

**Property** : **38 Marlborough Road, Forest Gate,  
London E7 8HB**

**Applicant** : **Jehan Khan**

**Respondent** : **London Borough of Newham**

**Type of application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A to the  
Housing Act 2004**

**Tribunal** : **Judge Nicol  
Ms S Coughlin MCIEH  
Mr P Clabburn**

**Date and venue of  
hearing** : **1<sup>st</sup> November 2018  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **1<sup>st</sup> November 2018**

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**DECISION**

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On 11<sup>th</sup> July 2018 the Respondent issued a Financial Penalty Notice against the Applicant under section 249A of the Housing Act 2004 requiring him to pay £2,500. The Applicant appealed against the Notice under Schedule 13A of the Act but the Tribunal has decided to dismiss the appeal.

**Reasons**

1. The subject property is owned by Mr Chandrakant Limani and Mrs Mina Limani. Mr Limani held a licence for use of the property as an HMO but it was due to expire in December 2017. He applied in time to renew the licence but omitted to pay the relevant fee. Ms Amanda Amafor, a Principal Environmental Health Officer with the Respondent's licensing enforcement team, was delegated to inspect the property to see whether it was still occupied as an HMO and whether an offence was being committed given that it was unlicensed.

2. Ms Amafor inspected the property on 4<sup>th</sup> April 2018 at 7:15am. She found that there were five rooms, all of which were occupied:
  - Ms Harpeet Kaur Ahluwalia shared the first floor front room with her partner, Mr Khurram Shahzed.
  - Mr Kuldipkumar Soni occupied the first floor rear room.
  - Mrs Teresa Owusu occupied the first floor back addition room.
  - Ms Helen Dawson occupied the ground floor rear room.
  - Mr Chirag Patel occupied the ground floor front room with his wife, Mrs Rashmika Patel and their child, Vavivan.
3. After her inspection Ms Amafor found out about Mr Limani's application and he paid the outstanding fee within hours of her speaking to him. In the circumstances, she decided to take no further action against Mr Limani.
4. However, Ms Amafor did identify a number of breaches of the Houses in Multiple Occupation (England) Regulations 2006:
  - Under reg.4 the manager of the property must ensure any fire equipment and alarms are maintained. As shown in photos taken by Ms Amafor, the mains linked smoke detectors were not working in the ground floor landing, the ground floor rear and front rooms, the kitchen, the first floor landing and the first floor front and back addition rooms. The Tribunal was concerned that this was particularly serious, given the safety implications for the residents who included a child.
  - Under reg.7 the manager must maintain the common parts. However, sealant to the shower in one of the bathrooms was mouldy and worn, the bulb was missing to the first floor landing light fitting and there were numerous household items stored in the rear garden.
  - Under reg.8 the manager must maintain the internal structure and fixtures/fittings. There was damp and mould in the ground floor front room due to a leak from the first floor en suite shower room and the extractor fan in the first floor front en suite shower room was very dirty.
5. Ms Amafor identified that the Applicant managed the property as agent for Mr Limani. On 18<sup>th</sup> May 2018 she sent him a letter setting out the aforementioned issues and warning that the Respondent intended to issue a Financial Penalty Notice against him on the basis that the breaches of the HMO Regulations meant that he had committed an offence under section 234 of the Housing Act 2004.
6. The Applicant is an experienced property manager and manages a significant number of properties in the Respondent's district and in the neighbouring London Boroughs of Waltham Forest and Redbridge. On receiving Ms Amafor's letter, the Applicant appears to have followed his usual practice and what he understood to be standard local authority practice by phoning Ms Amafor and promising to undertake whatever remedial action was necessary to address the identified issues.

7. Ms Amafor explained to the Tribunal that the Applicant's promise to remedy the problems was irrelevant to the issue of a Financial Penalty Notice. The relevant offence had already been committed. It was for the property manager to address issues which they were expected to be able to do since it was a condition of the HMO licence that the property should be inspected at least every three months. The Applicant neither could nor should wait to be prompted by the Respondent to comply with his existing duties.
8. Therefore, on 29<sup>th</sup> May 2018 Ms Amafor issued the requisite notice of intention to issue a financial penalty of £2,500. The notice set out the Applicant's right to make representations regarding the notice.
9. The Applicant says he sent two emails to Ms Amafor. The first one, dated 1<sup>st</sup> June 2018 was a follow-up to his previous phone message, reiterating that, in response to the letter of 18<sup>th</sup> May 2018, the Applicant had arranged for the issues to be addressed. The second email, dated 15<sup>th</sup> June 2018, stated that the issues had been addressed. Both emails invited Ms Amafor to re-attend the property to check what had been done. Neither email proffered any other grounds as to why a financial penalty should not be imposed or, if it was, what the amount of it should be.
10. Ms Amafor did not receive either email and so did not respond to them. She told the Tribunal she would not have taken up the invitation to attend the property because the Respondent did not have the resources to allow her to spend that amount of time on a case such as this.
11. The Applicant says he and a colleague each phoned Ms Amafor once to chase a response to the emails. Otherwise, he made no further efforts to ensure that the Respondent knew what he wanted to say in response to the notice of intention.
12. The Applicant told the Tribunal that there was another reason why a financial penalty should not be imposed, namely that the issues identified by Ms Amafor were actually recent and he had addressed them within a reasonable period of time. To the extent that the time taken was longer than might be expected, he said it was difficult to gain entry into the tenants' individual rooms and this limited his ability to investigate or resolve the leak and any defective smoke alarms in those rooms. Further, he said that the items in the garden had only been there a matter of days, having been left by a tenant who had only just moved out.
13. However, the evidence before the Tribunal did not support the Applicant's case. According to a check sheet enclosed with the Applicant's bundle of documents, the property had been inspected on 22<sup>nd</sup> March and 20<sup>th</sup> April 2018. The Applicant said that the inspections would have been carried out by his colleague, Mr Asim Ali, although no evidence was presented from him. Most of the issues identified by Ms Amafor, particularly the defective smoke alarms in the common parts, should have been seen on one of those dates at the latest but, on the

Applicant's own case, they had not been remedied by 1<sup>st</sup> June 2018, a minimum of 6 weeks later rather than the mere days which the Applicant had asserted. While difficulties with accessing tenants' rooms are capable of explaining why, for example, the dirty extractor fan was not addressed or some of the delay in dealing with the leak, the Applicant presented no evidence of this beyond mere assertion.

14. Further, Ms Amafor's photos showing the water damage from the leak and the state of the furnishings left in the garden suggested that these issues had existed for longer than the Applicant would allow.
15. On 11<sup>th</sup> July Ms Amafor issued the Financial Penalty Notice. The Tribunal is concerned that she regarded the Respondent's policy at this point as inflexible so that she felt obliged to issue the Notice but is also satisfied that the lack of appreciation of the extent of her discretion is not relevant in this case to the outcome.
16. There is no dispute between the parties that the issues identified by Ms Amafor existed at the time of her inspection. The Tribunal is satisfied that the Applicant did not have a reasonable excuse for that state of affairs, with the possible exception of the dirty extractor fan. Therefore, the relevant offence was committed and a financial penalty is appropriate.
17. The amount of the penalty is relatively modest compared to the statutory maximum of £30,000. Ms Amafor used a matrix of factors derived from the relevant Government guidance, *Civil penalties under the Housing and Planning Act 2016*, which gave credit for the fact that the Applicant had not been subject to previous enforcement action and could be expected to address the identified issues in due course. The Applicant eschewed any challenge to the amount of the fine but asserted that the Respondent's actions had been hasty and heavy-handed. The Tribunal, however, is satisfied that a financial penalty of £2,500 is proportionate to the circumstances of the Applicant's offence.

**Name:** NK Nicol

**Date:** 1<sup>st</sup> November 2018