



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

Case reference : **LON/00AU/HNA/2019/0066**

Property : **15 North Road, London N7 9EY**

Appellant : **Harris Brown Estate Limited**

Respondent : **London Borough of Islington**

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

Tribunal : **Judge Lancelot Robson
Mr T Sennett FRICS
Mr A Ring**

**Date and venue of
Determination** : **2nd September 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **16th September 2019**

DETERMINATION

Decision

1. The decision of the Respondent (“the Council”) to impose a Financial Penalty of £4,000 against the Appellant is upheld.
2. The Tribunal made the other detailed decisions noted below.

Background

3. By Notice dated 9th May 2019 the Council decided to impose a financial penalty on the Appellant in the sum of £4,000. The reason for imposing the penalty is stated in the Notice as being that the Appellant has committed an offence under section 234 of the Housing Act 2004, namely, breach of Regulations 6 and 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 relating to 15 North Road (“the Property”), a House in Multiple Occupation (“HMO”). Regulation 6 requires a copy of the current electrical installation condition report to be submitted to the Council within 7 days of the request. The Appellant failed to do so. Regulation 7 requires the common parts of the HMO to be maintained in a safe and working condition. The front door of the Property was in a state of disrepair unable to open and close freely. On 6th June 2019, the Appellant appealed to this Tribunal. Directions for a determination on the papers were given on 14th June 2019. Neither party requested a hearing. The Respondent sent written submissions in support of its case in accordance with those directions. The Appellant failed to do so. The Tribunal considered its decision on 2nd September 2019.

Appellant’s case

4. As noted above, the Appellant made no submissions in support of its grounds of appeal as set out in the application. These were:
 - “a) There were two external doors at the property. The first external door (looking from the street) was difficult to open. The issue was reported to the owner by the Appellant when it was notified by the Council, and the owner went to remove the door as it was not needed. When asked by the Respondent at a meeting with the Council’s representative if this was OK, he was unable to give us an answer and said he needed to talk to his manager.
 - b) With the electrical issue, it was the Electricity Board that had to visit the property to rectify the issue on the electrical meter.
 - c) As the Council had confirmed that all remedial work had been carried out, the Appellant requested that the charge be scrapped or

reduced. Also the Appellant wished to know what scale the charge was based on.”

Respondent’s case

5. The Property initially came to the notice of the Council, as a possible unlicensed HMO. Mr Nicholas Whittingham, an Environmental Health Officer employed by the Council, and registered with the Environmental Health Registration Board, first visited on 3rd September 2018 and concluded that the Property was a licenseable HMO as it was occupied by seven people over three levels. (The relevant legislation changed on 31st October 2018, by removing the requirement for three levels, but that is not relevant to this case). On 11th September 2018, Mr Whittingham informed the owner, the tenants and Smart Rent that he intended to carry out a full inspection of the Property on 24th September 2018, which he duly did.
6. An HMO licence application was made relating to this property on 27th September 2018 as a result of the visit made by Mr Whittingham, on 24th September 2018. After considerable negotiation relating to a number of deficiencies (including the matters relating to the alleged offence) an HMO licence was issued in respect of the Property on 29th April 2019 for a period of five years. The licence was subject to several specific conditions relating to the number of people. On the grant of the licence, the Property was licensed for seven people as a shared house, but on the expiry of certain existing tenancies, the total number of licensed occupants would be reduced to five people in four households, due to the facilities available.
7. It is not disputed by the Appellant that the Property is a three-storey terraced house, comprising a Ground Floor rear room, two bedrooms on the First Floor, and two bedrooms on the Second Floor. A further room on the Second Floor was considered by the Council to be undersized for use as a bedroom. There are also shared kitchen and bathing/WC facilities.
8. The registered freehold owner of the Property is Amarjit Singh Gill. The Property is managed by Harris Brown Estate Limited. Harris Brown Estate Limited had allegedly sublet the Property to an entity called Smart Rent, (which the Tribunal notes had an address in the same road as the Appellant) and which granted licences to the occupants, however the HMO licence application was made by and granted to Harris Brown Estate Limited, represented by Mr Benjamin Sintim, a Director of the Appellant.
9. After the HMO Licence application was made, on 19th October 2018, the Council emailed the Appellant to confirm receipt of the application and was processing it. However Mr Whittingham informed the Appellant (addressed to Mr Sintim and Ms Kathy Moxam, an employee of the Appellant) that five items of disrepair (listed below) should be completed within one month of the date of that email:

- a) The external front door was broken and did not shut properly. It must not be operated by the use of a key from the inside.
- b) The inner entrance door was operated by the use of a key from the inside. There should not be any locks on the escape route that require a key to operate it if locked. Provide and fit a thumb lock to both doors.
- c) The ground floor common parts should be kept clear at all times and not used for storage. An alternative place for storage of bicycles must be found.
- d) There was a plug in the kitchen that was held together by packing tape. This was not acceptable and must be repaired.
- e) There must be a fire blanket securely fixed to the wall of the kitchen”.
10. On 20th November 2018, Mr Whittingham revisited the property with Mrs Moxam and found that none of the works notified above had been done. Mrs Moxam informed him that the work would be completed and an additional week was allowed, confirmed by email to Mrs Moxam on 21st November 2018. That email stated that if the works were not completed, a civil penalty notice would be issued.
11. On 1st February 2019 (in response to a reminder from the Respondent) the Appellant sent Mr Whittingham an email stating that the door had been fixed. Mr Whittingham visited and found that all the work except the door had been completed. The door was still being restricted by the threshold. The Appellant was formally notified by email dated 18th February 2019, setting out the breach of the Management Regulations. It was pointed out that the problem had first been notified to the Appellant by the Respondent in October 2018, and although attempts had been made to adjust it, it still remained in disrepair. Mr Whittingham allowed a further 11 days to repair the door and leave it in proper work in order. This email again highlighted that Mr Whittingham intended to serve a civil penalty notice if the repair was not carried out and in working order by 1st March 2019, when he intended to visit the property.
12. On 20th February 2019, Mr Whittingham received a call from Mrs Moxam stating that the landlord wanted to remove the door rather than replace it. In response, he emailed the Appellant confirming that the Management of Houses in Multiple Occupation Regulations required the door to be maintained in good working order.
13. On 25th February 2019, Mr Whittingham revisited the property after receiving a complaint regarding mice at the property. During that visit he discovered that the cover to the electrical main fuse to the property was missing and the wires were exposed. A further HMO Management Regulations letter was sent to the Appellant requiring a copy of an

electrical installation condition report within 7 days. (This item was not received until 29th March 2019).

14. On 21st March 2019, a notice of intention to impose a Financial Penalty (relating to the two matters the subject of this appeal) was sent by post and email to the Appellant. (Tribunal note: That notice referred to a figure of £5,000, which could be reduced to £4,000 if the contraventions were remedied by 23rd April 2019. Representations could be made by 18th April 2019 as to whether such a penalty should be imposed)
15. On 22nd March 2019, Mr Sintim telephoned asking to know how he could significantly reduce the amount of the penalty. Mr Whittingham advised that if the works were completed within 28 days the cost would be reduced by 20%, and an additional 20% if the final amount was paid by the date specified in the final notice.
16. On 25th March 2019, Mr Whittingham visited the property and found that the external front door had been removed from its hinges and left in the front garden of the property. The frame and hinges remained in place. Mr Whittingham considered that removing the door from its hinges did not constitute a repair.
17. On 27th March 2019, the Respondent received an email from the Appellant with attachments that had already been provided with the HMO application. There was also no text in the email. On 29th March 2019 an email included a copy of an Electrical Installation Certificate dated 6th October 2018.
18. On 29th March 2019, Mr Whittingham received a call from Mr Sintim stating that the owner wanted to remove the door. Mr Sintim was referred to the HMO Management Regulations, requiring the door to be in a safe and working condition.
19. On 2nd April 2019, the Respondent received an email from the Appellant stating that the electrical problem had been remedied.
20. On 29th April 2019, Mr Whittingham visited the property with Mr Sintim to audit the works completed. He found that the door was now on its hinges, but part of the UPVC threshold had been cut away. However, Mr Whittingham agreed that the door now opened and closed freely, although the work done was not ideal. Mr Sintim asked once more why the door could not be simply removed. It was explained that while there was also an internal door, the external door was on the escape route, and was required to be in working order. Mr Whittingham further confirmed that on the inspection on previous visits, he himself had become trapped between the two doors and had to use force to make the external door open. Later that day, Mr Sintim telephoned him to say that the owner still wished to remove the door altogether. Mr Whittingham informed him that the HMO Management Regulations required the door to be repaired. No further communication had been received from the Appellant prior to the issue

of the Final Notice on 9th May 2019. That notice stated that if the balance was paid by 7th June 2019 the penalty would be reduced to £3,000.

Relevant Law

21. Section 234 of the Housing Act 2004 provides:

“234 Management Regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for ensuring that, in respect of every house in multiple occupation of a description specified in the regulations-

- (a) there are in place satisfactory management arrangements; and
- (b) satisfactory standards of management are observed

(2) The regulations may, in particular-

(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness, and good order of the house and facilities and equipment in it;

(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

22. Section 249A of the 2004 Act allows a local authority to impose financial penalties for certain housing offences and provides as follows:

“(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)
- (b) section 72 (licensing of HMOs),
- (c) - (e)

(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) – (9)

23. Schedule 13A of the Act deals with the procedure for imposing financial penalties and appeals against financial penalties Paragraph 10 of that Schedule states:

- “(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.”

Decision and Reasons

Was an offence committed by the Appellant?

- 24. The Tribunal considered the submissions and evidence. It seemed clear from the factual evidence that an offence had been committed, which was not, in fact, disputed by the Appellant. No reasonable excuse within the terms of Subsection 234(4) of the 2004 Act was pleaded, nor seemed available on the facts found above. The Respondent had frequently tried to engage with the Appellant prior to issuing the notice, and the Appellant was in large measure, the author of its own misfortune. The Appellant's main concern appeared to be the level of the penalty.
- 25. The Tribunal thus decided that all the requirements for the offence are therefore met and the Respondent was entitled to impose a financial penalty under s.249A of the 2004 Act.

The amount of the penalty

- 26. The amount of the penalty is less than a sixth of the statutory maximum of £30,000. In reaching that figure the Respondent had used a matrix of factors derived from the relevant Government guidance, and Civil

penalties under the Housing and Planning Act 2016. The Tribunal considered that the Respondent's "Financial Penalty Charging Policy" dated August 2018 (also copied to the Appellant) appeared to be appropriate. The relevant section is as follows:

27. "Failure to comply with Management of Houses in Multiple Occupation (England) Regulations

Maximum Court fine that can be levied for failure to comply with each individual regulation - unlimited

In determining the level of a financial penalty, the Council will initially consider;

- a) the number and nature of the management regulations breached
- b) The nature and extent of deficiencies within each regulation

The offences have the potential to vary widely from case to case but, as a guide the minimum financial penalty is likely to be:

* Moderate Band 1 - (£1,000) for landlords controlling five or less dwellings or 1 or 2 mandatory HMOs, with no other relevant factors for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair

* Moderate Band 2 - (£5,000) where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property

* Serious Band 3 - (£10,000) for landlords controlling five or less dwellings or 1 or 2 HMOs with no other relevant factors for a failure to provide or maintain smoke alarms in working order, to maintain essential services to an HMO or to allow an HMO to fall into significant disrepair

* Severe Band 5 - (£20,000) for the same offences above by a landlord or agent controlling a significant property portfolio"

28. The Policy also set out seven factors affecting the level of Financial Penalty Imposed on Landlords and others:

1. Severity of the offence
2. Culpability and track record of the offender
3. The harm caused to the tenant
4. Punishment of the offender
5. Deter the offender from repeating the offence
6. Deter others from committing similar offences

7. Remove any financial benefit the offender may have obtained as a result of committing the offence.

29. The Tribunal also noted that the Policy referred to early payment discounts. This case fell within one of the specific illustrative examples quoted in the Policy which is as follows:

“The Council issues a Final Notice imposing a financial penalty of £4,000 [£5,000 with a 20% discount having been deducted due to compliance during the representation period]. In the event of the landlord paying within 28 days of the date of the Final Notice a further 20% discount is given so that the landlord makes a discounted payment of £3,000.”

30. The Tribunal noted that the Appellant was an agent purporting to have experience in the letting or management of property. The minimum penalty thus fell into Moderate Band 2 of the Policy. The Tribunal noted that the breaches related to safety matters, although they were remediable at modest cost. Applying the seven factors affecting the level of the penalty, the Tribunal noted that the offence was not particularly serious, no harm was pleaded relating to the tenants, and that the level of the penalty would normally have a deterrent effect on others. The Tribunal also noted that the Appellant had received rents for several months prior to the EHO’s visit and notices, and apparently still obtained at least some financial benefit from those rents during the period of non-compliance. It appeared that in this case the Respondent had originally levied the minimum penalty available under the Respondent’s Policy. (i.e. £5,000). To reduce that figure would appear to send an undesirable signal to others. The Tribunal further noted that the discount policies were spelt out clearly in both Notices, and that if the Appellant had failed to take advantage of them, it had created its own misfortune. The Tribunal thus decided that the level of the financial penalty imposed in this case was not unreasonable.

Tribunal Judge: Lancelot Robson Date: 16th September 2019

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.