FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32UF/HNA/2019/0122**
Property	**:**	**6 Gore Lane, Spalding, Lincolnshire, PE11 1BN**
Applicant	**:**	**Mervyn Henry Bull**
Respondent	**:**	**South Holland District Council**
Type of Application	**:**	**Appeal against a financial penalty under s.249A of the Housing Act 2004**
Tribunal Members	**:**	**Judge P Forster** **Mr P Mountain**

DECISION

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Decision

The tribunal confirms the financial penalty of £1,500.00 imposed on the applicant by the respondent.

Introduction

1. This is an appeal against a financial penalty imposed under s.249A of the Housing Act 2004 ("the Act"). The applicant is Mervyn Henry Bull who with Sinead Mary Bull are the registered proprietors of 6 Gore Lane, Spalding, Lincolnshire, PE11 1BN ("the property"). The respondent is South Holland District Council.

2. On 22 August 2019, the respondent served an improvement notice on the applicant under s.11(2) of the Act which identified three category 1 hazards existing on the premises and required specified works to be undertaken by not later than 19 December 2019, to be completed by 3 October 2019. The respondent inspected the property on 9 October 2019 and found that one of the three items, work to an upstairs bedroom window, remained outstanding. The respondent decided to issue a civil penalty for failure to comply with the improvement notice. A notice of intent to impose a financial penalty was issued on 11 October 2019. The proposed penalty was £1,500.00. The outstanding work was completed by 14 October 2019. The property was re-inspected on 22 October 2019 and the improvement notice was revoked because all of the identified hazards had been eliminated. The applicant made written representations on 21 October 2019 against the financial penalty, but the applicant decided to serve a final notice on 13 November 2019.

3. The tribunal issued directions on 28 January 2020. The appeal is to be decided on the basis of the written submissions and evidence submitted, as requested by both parties.

The applicant's case

4. The applicant is a private landlord who owns and rents out the property. Since he and his ex-wife bought the property it has had extensive remedial work done to it. The applicant does his best with the funds available to rectify issues that arise. The current tenants were made aware before signing the tenancy agreement that there is potential for some damp on certain walls during the winter months and there is a need to keep property ventilated.

5. With regard to the upstairs bedroom window, although the handles were damaged, the window could be securely closed and locked. The string tied around the handles was to stop the window swinging open when unlocked due to the lack of friction on the window hinges. There is no mention in the correspondence that passed between the applicant and the respondent about

the requirement to install a window opening limiter. It is not mentioned on the informal list of issues provided in February 2019. The applicant believes this is why he missed it off the official improvement notice. Either he mis-read it or more than likely thought it related to the damaged handles. The cost of the window opening limiter was only £9.59 had the applicant understood that it was an item listed on the improvement notice and more importantly the potential risk to life it poses, it would have definitely been fitted in a timely manner before the deadline on the improvement notice.

6. The applicant states that he is a law-abiding citizen with no criminal convictions. He mostly agrees with the respondent's statement. He expresses his appreciation for the extra time he was allowed by the respondent. Delays were often caused by him working away from home all over the UK. It also took time to get the required funds together with the more expensive improvements. Another reason for the delay was getting specialist trades to quote and complete the improvements that he could not do himself. He also experienced some difficulty getting access to the property.

7. The applicant has never contested any of the non-formal and informal improvements to the property and every item has been rectified. He admits that it was his error not completing the remaining item on the improvement notice. It was totally unintentional. As soon as the issue about the window was brought to his attention, he immediately ordered the part and it was fitted on 14 October 2019.

8. The financial penalty imposed is disproportionate. Although the applicant understands the potential risk to life but not having the limiter installed, there has been no injury to anyone residing at the property. The respondent could have cancelled penalty notice, as the applicant rectified the issue within a few days of notification.

<u>The respondent's case</u>

9. The respondent received a complaint from the tenants about the condition of the property and carried out an informal inspection on 20 February 2019. The property was occupied by a family of four, two adults and two young children. On 22 February 2019, the respondent sent an email to the applicant listing seven items of concern. One of those items was an upstairs bedroom window that could not be locked, allowing water ingress. The handle was damaged, and the tenants had tied string around it and stuck tape around the window to secure it as best they could. The window was not opened because of the risk of dismantling the temporary "seal" and making matters worse.

10. The respondent raised the disrepair to the window with the applicant on 4 April 2019 and gave him 7 days to rectify the problem along with all the remaining

defects. The applicant provided an update 14 April 2019 explaining that there was a delay because he was waiting for parts to repair the window. The respondent contacted the applicant on 26 April 2019 and received a reply on 3 May 2019 stating that he had not been able to get access to the property.

11. On 19 May 2019, the applicant informed the respondent that all the work had been completed including the bedroom window. The respondent carried out a formal inspection on 8 July 2019 and found that there were still a number of works outstanding. An improvement notice was served on the applicant on 22 August 2019. This was more than 6 months after the initial inspection. It was now possible to open the bedroom window but there were no safety limiters. There was an immediate danger to life given the low level windowsill and presence of children in the property. It was identified as a category 1 hazard and described in Schedule 1 of the notice as "22- falling between levels". The specification of works to be carried out in Schedule 2 stated "there must be appropriate safety catches and window limiters installed... to prevent a fall from the first floor compliant to current building regulations British standards".

12. On 1 October 2019, the applicant informed the respondent that there was only one remaining item outstanding, the safety limiters for the window. The deadline for all of the works to be completed was 3 October 2019. The applicant was given until 8 October 2019 to complete the works with a planned reinspection of the property on 9 October 2019. When the inspection took place, it was found that the upstairs bedroom window could be opened far beyond a safe level with no restrictors fitted to prevent a fall. The applicant was informed by email that day that he had not complied with the improvement notice. He replied, acknowledging that he had not installed the window restrictors.

13. The respondent decided to impose a civil penalty for the failure to comply with the improvement notice. Reference was made to the HCLG Guidance and the respondent's own enforcement policy to determine the appropriate level of fine. A notice of intent was served on the applicant dated 11 October 2019. The applicant informed the respondent on 16 October 2019 that the window restrictors had been fitted. The applicant made written representations on 21 October 2019 against the financial penalty. The improvement notice was revoked on 22 October 2019 following an inspection of the property. The respondent issued a final notice on 13 November 2019 imposing a penalty of £1,500.00.

14. The applicant's grounds of appeal state that he rectified the remaining item on the improvement notice in a "timely manner". Given the amount of informal and formal work undertaken by the respondent throughout the case and the extra time given to the applicant to complete the works, 8 months is not deemed a timely manner. The applicant also states that the penalty is "rather harsh" but

given the severity of the hazard, the age of the occupiers and the high potential for a fatal outcome, the respondent feels that the penalty is fair and will act as a deterrent to prevent repeat offences occurring.

Law and guidance

The power to impose financial penalties

15. Under s.249A of the Housing Act 2004 a 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'. This includes the offence under s.30 of failing to comply with an improvement notice. The amount of the penalty is determined by the local housing authority, but it may not exceed £30,000. Its imposition is an alternative to instituting criminal proceedings.

Relevant guidance

16. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis.

17. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: "Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending."

18. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:

    a. Severity of the offence.
    b. Culpability and track record of the offender.
    c. The harm caused to the tenant.
    d. Punishment of the offender.
    e. Deterrence of the offender from repeating the offence.
    f. Deterrence of others from committing similar offences.
    g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.

19. The respondent has adopted its own policy on financial penalties, the Private Sector Housing Enforcement Policy dated April 2019.

20. The appeal is by way of a re-hearing of the local housing authority's decision but may be determined by the tribunal having regard to matters of which the authority was unaware. The tribunal may confirm, vary or cancel the final notice. However, the tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Discussion and conclusions

21. The main issue in this case is the applicant's failure to install safety restrictors to one of the first floor bedroom windows. The respondent's informal list of defects emailed to the applicant on 22 February 2019 stated: "The upstairs bedroom window has a gap large enough for a finger to enter. I was informed by your tenant that this is causing rainwater to enter the bedroom. This must be rectified to prevent water ingress". Mr Settle, the respondent's housing officer, did not open the window for fear of displacing the tape and making matters worse. Therefore, it was not apparent that the window lacked a limiter and no reference was made to it. The direction was to repair the window to prevent the ingress of water. Mr Settle referred to the security of the windows and doors in his email of 4 April 2019. The applicant informed the respondent on 19 May 2019 that all the repairs had been completed. The bedroom window had been repaired but no limiter had been fixed because the applicant was not aware that he was required to do so.

22. The respondent did not inspect the property until 8 July 2019 when it was found that the bedroom window could be opened but there was no safety limiter. That posed a danger to life and constituted a category 1 hazard. Two other items of work had also not been completed and because of the delay since February 2019 the respondent issued the improvement notice on 22 August 2019. The notice expressly refers to the hazard of "falling between levels" and requires appropriate safety catches and window limiters to be installed. The tribunal accepts that until the improvement notice was served the applicant was not aware that he needed to install safety limiters. There can be no doubt that from the service of the notice the applicant knew that he was required to fix the devices. The limiters were not installed until 14 October 2019 after the extended deadline expired on 8 October 2019 and after note the notice of intent was issued on 11 October 2019.

23. The applicant admits that he did not complete all the works specified in the improvement notice by 3 October 2019. Based on the evidence and the applicant's admission, the tribunal is therefore satisfied beyond reasonable doubt, that his conduct amounted to a failure to comply with the notice under s.30 of the Act. The tribunal is satisfied that it was appropriate to impose a

financial penalty on the applicant rather than take criminal proceedings against him.

24. The tribunal must now determine the amount of the applicable financial penalty. This is done on the evidence and with particular regard to the seven factors specified in the HCLG Guidance. Account is taken of the respondent's policy document which is based on the HCLG Guidance. It correctly places particular emphasis on the assessment of the seriousness of the relevant conduct in terms of the harm, or potential harm, it caused and on the applicant's culpability.

25. The purpose of imposing a penalty is to protect the safety of residents in rented accommodation. The penalty aims to change the behaviour of the landlord, deter future non-compliance, and eliminate any financial gain associated with non-compliance. The penalty should be proportionate, giving consideration to seriousness, past performance and risk. The council should be reimbursed the costs incurred in the enforcement.

26. Looking at the documents the respondent has produced, it appears to have fixed the level of the penalty by reference to the table of penalties for specific offences in its Enforcement Policy. The penalty for non-compliance with an improvement notice is £500.00. To that is added a penalty determined by the impact scoring matrix. The respondent calculated a score of 80 which falls within the range of 60 to 80 for which a penalty of £1,000.00 is applicable. The cumulative total is £1,500.00.

27. Improvement notices are issued when an inspector is of the opinion that a person is not complying with health and safety legislation. They are used to ensure that statutory standards for health, safety and welfare are complied with. Failure to comply is a serious matter. In terms of financial penalties, the more serious the offence, the higher the penalty should be.

28. In the present case, the applicant was aware or should have been aware from August 2019 when the improvement notice was served that he needed to fit appropriate safety limiters to the first-floor bedroom window. He appears to have assumed that the improvement notice matched the informal list of defects he was given in February 2019. He did not take the trouble to read the notice carefully. The applicant was at fault and responsible for not fitting the limiters. Landlords are running a business and should be aware of their legal obligations. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations. There is no history of previous enforcement action against the applicant which is in his favour and acts to limit the amount of the financial penalty.

29. The harm or potential harm to a tenant is a very important factor when determining the level of the penalty. The greater the harm, the greater the penalty should be. The risk of serious injury and even of death to occupants of this property was high, particularly to the two young children.

30. A penalty should be set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of non-compliance. The imposition of a penalty is a punishment and is not a lessor option compared to prosecution.

31. The tribunal is confident that the applicant will be deterred from committing further offences. The penalty will also serve as a deterrent to other landlords. The penalty needs to be set a level that will act as a deterrent. The tribunal is satisfied in the present case, that the applicant has not benefited financially as a result of committing the offence.

32. The applicant while accepting that he failed to comply with the improvement notice does not directly address the calculation of the amount of the penalty. He simply says that £1,500.00 is disproportionate and harsh. He does not put forward an alternative figure.

33. The penalty imposed by the respondent is towards the lower end of the possible range. The maximum penalty that can be imposed is £30,000.00. The starting point of £500.00 for non-compliance with an improvement notice based on the failure to resolve one category 1 hazard is reasonable and proportionate. The tribunal's assessment of all the factors set out in the HCLG Guidance is in line with the respondent's calculation of points in accordance with the impact scoring matrix. The penalty of £1,500.00 is disproportionate to the cost of installing safety limiters but that is not the correct measure because it does not reflect the severity of the offence. On the evidence the tribunal finds that the penalty imposed by the respondent is proportionate and reasonable to the offence committed.

34. The tribunal confirms the financial penalty of £1,500.00 imposed on the applicant.

Judge P Forster
3 July 2020

RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.