



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

Case Reference : BIR/00CU/HNA/2021/0001

Property : 82A Stafford Street, Willenhall, West Midlands, WV13 1RT

Applicant : Mr Rana Ranwal

Representative : Mr Amandeep Dhingra

Respondent : Walsall Council

Representative : Mr Tamuka Maswera of Walsall Council

Type of Application : Appeal against Walsall Council financial penalty of £4,000 under the Housing Act 2004 and Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr D. Lavender

Date and Venue of Hearing : Online video Hearing 16th June 2021

Date of Decision : 16th June 2021

Date decision issued : 17th August 2021

DECISION

Covid 19 Pandemic: Description of Hearing

- 1 This case has been heard by remote video hearing to which the parties consented. A face to face hearing was impractical due to Covid restrictions and the issues could be determined by remote hearing. The tribunal was referred to bundles submitted by the parties that were read in advance.

DECISION

- 2 The tribunal finds the Applicant had a reasonable excuse for non-compliance with the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 under section 234(4) of the Housing Act 2004, and cancels the final Notice issued by the Respondent dated 26th January 2021.

REASONS

Introduction

- 3 The case relates to a House in Multiple Occupation ('HMO') at 82A Stafford Street, Willenhall, West Midlands which had been granted a one-year HMO licence on 19 August 2019 that expired 18 August 2020.
- 4 The Applicant failed to apply for a new licence by 19 August 2020 as a result of which the Respondent inspected the property and found breaches of management regulations. The Respondent subsequently issued a civil penalty notice of £12,500 which was later reduced to £5,000 and again to £4,000 after allowing a 10% reduction for the Applicant's admission of guilt and further 10% for mitigating circumstances. The Respondent offered a further reduction of 25% for prompt payment that reduced the overall charge to £3,000 which was paid by the Applicant on 3 February 2021.
- 5 However, the Applicant considered the procedure unreasonable and appealed to the tribunal against the Respondent's decision to impose financial penalties.
- 6 The tribunal has re-heard the case based on the Respondent's policy for financial penalties taking account of the oral and written submissions by the parties and finds as follows.

The Law

- 7 The relevant law is contained in The Housing Act 2004 ('the Act') and the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ('the Regulations'). There are extensive provisions relating to houses in multiple occupation ('HMOs') but the key provisions are briefly:
 - 8 Section 234 Management regulations in respect of HMOs
This provides for the appropriate national authority to make regulations imposing a duty on the person managing an HMO in respect of repair, maintenance, cleanliness and good order of a house and its facilities. Failure to comply with the regulations is an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale.
 - 9 Crucially, s.234(4) provides a defence if a person managing property can show that they had a 'reasonable excuse' for non-compliance with the regulations.

- 10 The Regulations
The regulations contain a comprehensive list of requirements for managing and maintaining HMO property. In this case, the Respondent identified breaches of:
- | | |
|--------------|---|
| Regulation 3 | Duty of manager to provide information to occupier |
| Regulation 4 | Duty of Manager to take safety measures |
| Regulation 5 | Duty of Manager to maintain water supply and drainage |
| Regulation 7 | Duty of Manager to maintain common parts, fixtures, fittings and appliances and |
| Regulation 8 | Duty of Manager to maintain living accommodation |
- 11 The detail of the breaches need not be set out in this Decision as they were accepted by the Applicant as valid at the date of the Respondent's notice.
- 12 Section 263 Meaning of 'person having control' and 'person managing'
A 'person having control' is defined by s.263(1) and may be either a managing agent or owner, since it covers a party receiving rent for the premises.
- 13 However, the definition of a 'person managing' in s.263(3) is narrower and defined as 'the person who, being an *owner or lessee ... receives rents ...*' This is relevant because the 2007 Regulations described above only apply to a person managing property under the definition in s.263 who can only be a landlord, not an independent managing agent since they would be neither an owner nor lessee. Any action for breaches of the regulations can therefore only be brought against an owner or lessee, not a managing agent. In this case, this means Mr Ranwal, not Lettings and More.
- 14 Section 249A Financial Penalties for certain housing offences in England
As an alternative to criminal proceedings, a local authority can impose a financial penalty on a party for various offences under the Act. By s.249A (2) (e), this includes breaches of s. 234 and the 2007 Regulations for HMOs. This is the procedure applied by the Respondent in this case.
- 15 Schedule 13A to the Act
This sets out the procedure to be followed when applying a financial penalty.
- 16 Section 10 provides that a party served with a penalty Notice may appeal to the First-tier Tribunal against either the decision to apply a penalty or the amount, and any appeal is to be by way of re-hearing of the local authority's decision.

Timetable of Events

- 17 The key dates are:
- | | |
|----------------|--|
| Oct. 2019 | Applicant diagnosed with medical condition, lung disease. |
| 8.7.20-18.8.20 | Numerous emails sent to agent in relation to renewal of HMO Licence. |
| 18.8.20 | Local Authority contact Mr Ranwal confirming that an HMO licence renewal had not been made. |
| 19.8.20 | Date for required renewal of HMO licence. |
| 28.9.20 | Respondent writes to Applicant requesting licence application. |
| 12.10.20 | Respondent's deadline to Applicant to apply for HMO licence renewal. |
| 15.10.12 | Applicant pays electrical contractor £2,000 advance payment. |
| 20.10.20 | Respondent re-inspects. |
| 5.11.20 | Respondent issues Notice of Intent to fine Applicant £12,500, identifying several breaches of the regulations. |
| 22.12.20 | Applicant admits breach of regulations and undertakes not to repeat breach in future. |

- 21.1.21 Respondent Enforcement Panel chair issues email to Panel members summarising meeting on 20.1.21 where fine reduced to £4,000.
- 26.1.21 Respondent issues Final Notice to Applicant, fining £4,000 with offer to reduce to £3,000 for prompt payment.
- 2.2.21 Respondent confirms Applicant has completed all required work.
- 3.2.21 Applicant pays £3,000 demanded.
- 16.2.21 Applicant appeals to First-tier tribunal.

Agreed Facts

- 18 The parties had helpfully agreed the following points prior to the hearing:
- 1 The property is an HMO.
 - 2 There had been breaches of the Regulations.
 - 3 This was the first breach of Regulations by the Applicant, i.e. first offence.
 - 4 The Respondent issued a Final Notice imposing a penalty of £4,000 on 26 January 2021 which was reduced to £3,000 for payment within 14 days.
 - 5 The Applicant paid the £3,000 on 3rd February 2021.
 - 6 All works necessary for compliance with the Notice had been completed by 2 February 2021.

Submissions

- 19 Applicant
Mr Dhingra for the landlord explained that the Applicant had been seriously ill from October 2019 to early 2021. He had initially been hospitalised and received chemotherapy and when Covid restrictions were introduced on 23 March 2020 he had to follow Government advice and stay at home as a shielding person, to avoid the risk of catching coronavirus. Various supporting medical records were provided.
- 20 He had previously held an HMO licence and had been actively involved in the property's management while at work as his office opposite the subject house, but during his illness he relied substantially on his appointed managing agent, a firm trading as 'Letting and More'.
- 21 The local authority recognised the managing agents and wrote to them directly on at least two occasions asking them to renew the HMO licence. However, the first the Applicant knew there was a problem was when he received correspondence from the Authority on 18 August, the day before the previous licence expired.
- 22 The Authority were in communication with the managing agent on at least two further occasions, 24 August and 11 September, to request additional information. It therefore seemed ambiguous to the Applicant that while the Authority were chasing the agent direct to renew the licence and recognised their status, they chased the Applicant for compliance with their schedule of work.
- 23 The Applicant advised that the Respondent inspected the property on 20 October 2020 and as soon as he became aware of the remedial action required, he arranged for it to be carried out.
- 24 He relied on his agent to manage the property for him but had been let down and had done everything in his power to comply with the regulations.

- 25 He did not feel the authority had fully appreciated the extent of his medical condition which he regarded as a mitigating circumstance, and asked the tribunal to cancel the Final Notice on the ground that his medical condition was a 'reasonable excuse' for non-compliance within the ambit of s.234(4) of the Act.
- 26 Respondent
Mr T. Maswera B.Sc. MCIEH is a Housing Standards Officer employed by Walsall Metropolitan District Council and a member of the Chartered Institute of Environmental Health.
- 27 He submitted that there had been breaches of the regulations that had not been denied.
- 28 He considered that as some of the breaches related to fire regulations, they presented a medium to high risk to the occupants of the house.
- 29 The Council accepted that the agent was responsible for the lack of Licence application but the authority had been unable to hold the agent liable for breaches of the regulations as they could not be considered to be the person Managing the HMO as they were neither an owner nor lessee.
- 30 Mr Maswera accepted that this was the Applicant's first breach of the regulations.
- 31 He explained that the Council had a policy in place for financial penalties that had been followed. His submission included not only the Government Guidance to local authorities for the imposition of fines but also Walsall Council's policy which included a specific schedule of fines and that the fines imposed in this case were in line with the approved policy.
- 32 The authority had initially imposed a penalty of £12,500 comprising £7,500 for lack of an HMO licence and £1,000 for each of the five breaches identified in paragraph 10 above.
- 33 However, the Council had cancelled the £7,500 penalty for the lack of Licence application as it accepted that this was due to the agent's deficiencies rather than the Applicant's, which reduced the fine to £5,000.
- 34 This had been reduced by 10% to reflect the Applicant's admission of guilt and a further 10% due to the mitigating circumstances of the Applicant's medical condition as a shielding person during the pandemic. The penalty had been further reduced by 25% for prompt payment within 14 days which the landlord had accepted. The net penalty was therefore £3,000.
- 35 Ultimately, it was the landlord's duty to maintain the house in line with the relevant Management Regulations which could not be delegated to an agent.
- 36 Mr Maswera explained that the Act imposed an absolute duty on the Council to maintain standards and action had to be taken to deter other landlords from breaching the regulations.
- 37 Accordingly, he submitted that the £3,000 penalty should be confirmed.

Decision

- 38 The tribunal would like to thank the parties for their assistance and detailed submissions in both oral and written evidence.
- 39 In reaching its decision, the tribunal is satisfied beyond reasonable doubt that the relevant housing offences under HMO Regulations have been committed.
- 40 However, the tribunal is duty bound to consider on the balance of probability whether the Applicant has a defence of reasonable excuse for non-compliance, as set out in section 234(4) of the Act.
- 41 The Applicant provided a copy of his medical records confirming that he had been seriously ill and the Government's Covid restrictions from 23 March 2020 provided extraordinary circumstances which required him to 'shield'.
- 42 This not contested by the Authority and as such it would have been against Government guidance as well as placing the Applicant at risk, had he been directly involved in attending the property.
- 43 The Applicant during this period had employed the service of a reputable managing agent (Letting and More) to fully manage the property on his behalf.
- 44 Of particular relevance is the written decision of the Independent Chair of Housing Enforcement dated 21st January 2021, which conformed that:
- 'The failure to licence** – it was agreed by the panel that the evidence provided by Mr Ranwal showed that he had taken the necessary steps to secure the licence and followed the advice of his agent. Mr Ranwal was not considered to be liable for this offence and this element of the fine was dropped.'
- 'Management Regulations breaches** – The panel considered that even though the agent would appear to be liable, they were neither the owner or lessee of the property and so liability under the law ultimately remains with Mr Ranwal, as the owner of the property.'
- 45 Consequently, having regard to Covid restrictions which prevented the Applicant from physically attending the property and having employed the services of a reputable managing agent (Letting and More) to fully manage the property on his behalf, the tribunal considers that on the balance of probability the defence of reasonable excuse for non-compliance as set out in section 234(4) of the Act is made out and finds accordingly.
- 46 The tribunal therefore quashes the Respondent's Final Notice and cancels the fine.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.