FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HNA/2019/0188**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**51 Regents Park Road, NW1 8XD**
Applicant	**:**	**JONATHAN MARTIN BUCKNALL**
Representative	**:**	
Respondent	**:**	**LONDON BOROUGH OF CAMDEN**
Representative	**:**	**Mr E Sarkis (Legal Department)**
Type of application	**:**	**Appeal against a Financial Penalty, pursuant to section 249A of, and Schedule 13A to, the Housing Act 2004**
Tribunal members	**:**	**JUDGE SHAW** **Mr. C. GOWMAN MCIEH**
Venue	**:**	**VIDEO HEARING**
Date of decision	**:**	**20th January 2021**

DECISION

© CROWN COPYRIGHT

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPEREMOTE . A face-to-face hearing was not held because of the Covid-19Pandemic, and all parties were agreeable to a remote hearing. It was practicable to resolve all issues with a remote hearing. The documents referred to by the Tribunal are in 2 bundles, submitted by the parties respectively. The contents of all documents have been carefully considered by the tribunal.

Introduction

1. This case involves an appeal by Jonathan Martin Bucknall ("the Applicant") against a financial penalty imposed upon him, in the sum of £3000, by the London Borough of Camden ("the Respondent"). Notice of Intent to Impose a Financial Penalty was served on 1st October 2019, and the Final Notice was served on 12th November 2019. The penalty was in respect of a failure, over a fairly protracted period, to comply with a condition contained within an HMO Licence granted by the Respondent on 5th November 2018. The condition was that the Applicant should supply a satisfactory Electrical Installation Condition Report ("EICR") in respect of 51 Regents Park Road, NW1 8XD ("the Property"). Although the Application was brought by the Applicant alone, notices were served both on him, and his company J. Bucknall Limited (the registered proprietor of the Property), in identical terms, and the penalties were the same. The Applicant had not joined his company as a party to this Application, but with the consent of all parties, and with a view to achieving finality, the appeal was treated by the Tribunal to be both in respect of the penalty of £3,000 against the Applicant, and the further £3,000 against the company, totalling £6,000.

2. There was no dispute on the part of the Applicant that the Property required a licence, that it was appropriate to imply the condition in respect of the EICR, and that there had been a breach of the condition, by the failure to supply the Certificate. It was agreed by all parties that the sole issue for the Tribunal to determine was whether the Applicant had a "*reasonable excuse"* for the purposes of section 72 of the Housing Act

2004, for not having provide the Certificate in the time stipulated. If such an excuse were made out, it would provide a complete defence, and no penalty would be appropriate – which was indeed what was argued for by the Applicant in respect of himself and his company.

3. A remote hearing conducted by video took place on 18th January 2021, attended by the Applicant, for himself and his company, and Mr. E Sarkis, a solicitor within the Legal Department of the Respondent. Mr Sarkis relied on the statement of, and called oral evidence from, Ms S Suarez, a qualified Environmental Health Officer, working within the Respondent's Enforcement Team.

4. The Tribunal proposes to summarise the case for both parties, and then to give its Decision.

5. <u>The Respondent's Case</u>

With the consent of the parties, the Tribunal heard the Respondent's case first, both because the burden falls on the Respondent to make out the offence, and because the Applicant was appearing in person, and indicated that he would find it helpful to hear at the outset and with precision, the way the case was put against him, and to which he could then respond.

6. The Respondent's case was given with great clarity by Ms Suarez, both in the form of her Witness Statement at pages 5-20 of the Respondent's documents, and in oral evidence before the Tribunal. She told the Tribunal that no application for an HMO had been initiated by the Applicant, and that it was only after enforcement measures had been threatened, that on 13th April 2018, the application was made. The Applicant omitted to supply an EICR, one of the required documents, with his application. In e-mails in June 2018, the Applicant explained that his electrician was "*off sick"* and that there had been some delays in obtaining access. He said that the certification would be supplied "*as soon as available."*

7. Before that had happened, the company issued an appeal to this Tribunal in respect of some of the fire safety work which had also been required by the Respondent. That appeal was dismissed by a Decision dated 1st April 2019, ratifying the Respondents requirements in their entirety. Ms Suarez told the Tribunal that whilst the appeal was pending, she effectively *"froze"* enforcement of the condition concerning the EICR, until the outcome of the appeal – which as it transpired was very nearly a year later. During the whole of that time, the Applicant had not supplied the Certificate. The Respondent granted the HMO on 5th November 2018, but subject to the condition to supply the Certificate within a month.

8. Ms Suarez ran that month from the date of dismissal of the appeal, and expected to receive the Certificate on 1st May 2019. She then took the Tribunal through a series of e-mail exchanges between herself and the Applicant, in which she presses for supply of the EICR, and the Applicant gives assurances which do not materialise in production of the certification. Ultimately, she felt she had no option but to serve the Notice of Intention on 1st October 2019 (which still produced no Certificate) and then the Final Notice imposing the penalties on 12th November 2019. Ironically, the very next day, the Applicant produced the Certificate, which Ms Suarez very candidly told the Tribunal, gave her pause for thought. However, given that this Certificate related to the common parts of the Property, and to potentially unsafe electrical wiring, and further given that the Certificate had been outstanding for so very long, she did not feel that she could withdraw the Notice.

9. Ms Suarez explained to the Tribunal how she had fixed the level of the penalties by reference to both Government and internal council criteria. She explained further how she had placed the offence within the matrix

devised by the Respondent, all of which seemed to the Tribunal perfectly rational and reasonable. Indeed, the quantum of the penalties was not seriously challenged by the Applicant (had it been, the challenge would likely have been rejected by the Tribunal). His objection was to any penalty at all, arguing that the offence had not been committed because he had the necessary statutory "*reasonable excuse.*"

10. The Applicant's Case

Unfortunately, notwithstanding the Tribunal's Directions, the Applicant had prepared no Witness Statement nor Statement of Case. He had however, prepared a bundle of documents, and the Tribunal heard oral evidence from him which was consistent with much of what he had put in his e-mail correspondence with Ms Suarez. He explained that the reason why there had been the protracted delays in complying with condition, was that he had engaged his nephew, Jan, to complete the necessary electrical work. However, Jan had become unwell and suffered from depression. This was apparently the case as early as 5th June 2018, because there is an e-mail of that date in the bundle from the Applicant, putting that forward as the reason for the delay.

11. In the rest of his evidence, he expanded upon how he had been put in a predicament by Jan's indisposition. The Applicant's brother (Jan's father) had taken ill, and died within a month of diagnosis. Jan had fallen into depression, but the Applicant had been reluctant to take him off this job, because he wanted to support his nephew in his time of trouble. Jan improved but then relapsed (and has since improved). Initially when he, the Applicant, had tried to engage an alternative electrician of whom he had experience, he was told that it would not be possible to take over a job started by another electrician, and so he, the Applicant, was caught betwixt and between. Eventually the alternative electrician company did take over the job, which was done without complication. It was the illness of his nephew and the initial declining of the job by the replacement electricians,

which constituted the Applicant's defence of "*reasonable excuse*" and which he commended to the Tribunal.

Analysis of the Tribunal and Decision

12. The Tribunal is in no doubt that the defence of "*reasonable excuse*" cannot avail the Applicant in this case, and that this appeal and application must be dismissed. This process started in April 2018 and was not completed until November 2019, a period of one year, seven months. During the greater part of this time, the Property was functioning in the common parts with out-dated and non-compliant old wiring. The Applicant's sympathy for, and support for his nephew, was humane and understandable, but in the view of the Tribunal, should not have come at the cost of carrying out the works, supplying the certificate, and satisfying the condition set out in the Notice. If an alternative electrician was reluctant to take on the started job (as to which there was no independent or corroborative evidence) then another should have been immediately engaged. The time period of over a year and a half, before the electric wiring and installation in the common parts of the Property were made safe in accordance with modern standards, was altogether too long, and fully justified the imposition of the Penalty and its quantum.

Conclusion

23. For the reasons indicated above, the Tribunal is satisfied that the Respondent properly applied the considerations contained in its Matrix, reaching reasonable conclusions thereon, and imposed appropriate penalties upon the Applicant and his company. The Tribunal endorses its Decision, and dismisses this appeal. No order for costs was sought by the Respondent, and none is made.

JUDGE SHAW **20th January 2021**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).