



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/45UH/HNA/2020/0016**

Property : **First Floor Flat,
155 South Street,
Lancing,
BN15 8BD**

**Applicant
Represented by** : **Richard Roy Munday
Michael Fullerton of counsel (Burnand
Brazier Malcolm Wilson)**

**Respondent
Represented by** : **Adur & Worthing District Councils
Beverley Rayner – solicitor employee**

Application : **Appeal against a Financial Penalty Order
(section 249A and paragraph 10 of Schedule
13A of the Housing Act 2004 (“the 2004 Act”))**

Application date : **1st December 2020**

Tribunal : **Judge Bruce Edgington
Bruce Bourne MRICS**

Date & place of hearing: **18th June 2021 as a video hearing
from Havant Justice Centre in view of
Covid pandemic restrictions**

DECISION

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1. The financial penalty dated 12th November 2020 imposed by the Respondent on the Applicant is hereby confirmed.

Reasons

Introduction

2. The Tribunal has been provided with an e-bundle with page numbers. As both parties have that, any reference to a page number in this decision will be from that bundle.
3. The Applicant has owned the freehold interest in 153-155 South Street, Lancing BN15 8BD for some 14 years and there is no mortgage registered against the title.

The ground floor consists of commercial premises and the Applicant has let a first floor flat to tenants on assured shorthold tenancies since 2007. A rather poor copy of the last such agreement is at pages 194 and 195 in the bundle as an exhibit to the statement of Cameron Goodrick. It does not appear to be dated but the 6 month term runs from 1st May 2021. The former tenant was said by the Applicant to be Jason Baker.

4. Jason Baker is said never to have moved into the property, but he moved his girlfriend Aaron Baker (no relative) in together with her child. The Applicant says that there were 3 children living there with Aaron Baker before she vacated on the 10th April 2021. In his oral evidence, the Applicant said that Mr. Goodrick and his girl friend moved in on the 19th April.
5. The Applicant then refers to an approach from Stephen Dommett, Senior Environmental Health Officer from the Respondent. This followed a complaint from Ms. Baker. He doesn't recall the date but Mr. Dommett's statement says it was in August 2018. Mr. Dommett inspected the property in the presence of the Applicant on the 25th September 2018. In summary, Mr. Dommett pointed out deficiencies at the property including a leaking roof.
6. There were subsequent communications which culminated with the service of an Improvement Notice on the 10th December 2019. The Applicant says that he received that notice which listed 14 items of work needed including 2 category 1 hazards, namely excess cold and fire hazards. 3 had to be completed by 10th April 2020 and the remainder by 10th February 2020.
7. There was no appeal against the Improvement Notice although there were representations from the Applicant concerning the time to undertake the works needing completion by 10th April in view of the Covid lockdown imposed on the 23rd March 2020. No extension of time was agreed. On the 26th May 2020, the Respondent wrote to the Applicant asking for an explanation as to why the works had not been finalised and explaining that one option open to the Respondent was to impose a financial penalty if there was no reasonable explanation for the delay in dealing with the improvements.
8. On the 28th May, the Applicant telephoned Mr. Dommett who explained that the conversation was under caution and that a record would be kept, which is at page 101 in the bundle. In essence, the Applicant explained that he had undertaken some work but the remainder was going to cost a great deal of money which he did not have. The figure just to deal with the water ingress i.e. the main category 1 hazard would be £15-20,000.00. The whole issue was causing him matrimonial problems and stress and he planned to just sell the property and the buyer would have to assume responsibility for the work. He was not doing any further work.
9. On the 18th June 2020, a Notice of Intention to impose a financial penalty was served with £11,250.00 being the amount of the proposed penalty. The financial penalty was confirmed in that sum and served on the 12th November 2020. It had been proposed to add another £1,000.00 due to what the Respondent

described as aggravating factors but this was removed due to the financial problems of and stress to the Applicant.

10. There are statements in the bundle from the Applicant and Mr. Dommett, the Respondent's Private Sector Housing Manager. Both parties have submitted statements of case. The Respondent's appears to have been prepared by their legal Department and the Applicant's has been prepared by solicitors. This is very helpful as they do encapsulate the cases of each party save for matters raised in additional written evidence presented to the Tribunal on the day of and the day before the hearing – see below.
11. The Respondent says that it has complied with the law and its guidance on the Civil Penalty process. It records that a letter was received from the Applicant's solicitors dated 10th July 2020 and received on the 21st July (page 121 in the bundle) stating that further work had been done to the property. As a result of that the Respondent inspected the property again on the 3rd August 2020 and found that only 1 of the 14 items of work required by the Improvement Notice had been fully carried out. There are photographs dated 3rd August 2020 at pages 132-142 in the bundle.
12. In answer to this, the Applicant's written statement of case in the bundle makes it clear that there is no dispute as to the law and Mr. Dommett's evidence is not contested. The points made by the Applicant are:
 - (a) The Respondent has not paid sufficient attention to the fact that an Energy Performance Certificate was obtained from surveyors in respect of work items 1 and 2 showing at least partial compliance
 - (b) The Respondent has taken no notice of the lockdown in March 2020. 3 items of work ordered by the Improvement Notice dated 10th December 2019 had to be undertaken by 10th April 2020 which meant that the last 3 weeks of the time allowed could not have been used.
 - (c) The Respondent has failed generally to give sufficient 'weight' to the work which has been undertaken by the Applicant.
13. Mr. D. Banfield FRICS made a directions order on the 30th December 2020 timetabling the case to the hearing. Unfortunately the hearing has delayed as a result of a request from the Applicant.

Inspection

14. As the Tribunal was supplied with some photographic evidence of the property, and no indication of any desire for an inspection has been received, there has been no such inspection.

The Law

15. The only relevant law at the moment is contained in Section 249A of the 2004 Act which was inserted by the **Housing and Planning Act 2016**. This states that one of the options available to a local housing authority when there has been a breach of section 30 of the 2004 Act i.e. an offence of failing to comply with an

Improvement Notice, is that a financial penalty can be imposed up to a maximum of £30,000.00 for each offence.

16. There are set procedures to be followed and the Applicant does not raise any specific technical issue relating to compliance with the procedures adopted by the Respondent or the technicalities as to how the penalty was calculated. He says that the Respondent has simply failed to recognise what he has actually done and/or the realities of his position.

The Hearing

17. Those attending the hearing were Mr. Fullerton for the Applicant and Ms. Rayner for the Respondent. The Applicant was present in the office of his solicitor Mr. Tim Deacon. Cameron Goodrick and the Applicant were witnesses for such Applicant and Stephen Dommatt gave evidence for the Respondent.
18. The Tribunal chair introduced himself and the Tribunal members. He then said that he had some questions to raise on the papers filed. He would do that and then ask the parties to put their cases and, finally, he would ask the other Tribunal member to ask any questions he had. That is in fact how the hearing was dealt with although, at the commencement, the Tribunal had to deal with 2 applications to admit late evidence.
19. The Applicant's new tenant, Cameron Goodrick had provided a written statement and some photographs the day before the hearing setting out the agreement he had reached with the Applicant namely that he was undertaking work to the property and the Applicant was meeting the cost of items bought and had agreed that no security deposit would be asked for and no rent was paid for the 1st month. Mr. Goodrick then said what he had done.
20. Having received this statement, the Respondent arranged for Mr. Dommatt and a colleague to inspect the property between 4.00pm and 5.00pm that day i.e. 17th June 2021. Mr. Goodrick was present. A statement was then prepared by the Respondent setting out its conclusions together with a number of additional photographs. These were sent to the Tribunal on the morning of the hearing.
21. Both advocates agreed that all this further evidence should be considered by the Tribunal which, accordingly, ordered that they be admitted and considered.
22. Mr. Goodrick gave evidence first. He confirmed that he was present when Mr. Dommatt and his colleague inspected. He did not challenge the statement of Mr. Dommatt or the notes of the inspection on the 17th June 2021, although he said that he had not actually seen the Improvement Notice.
23. Mr. Munday then gave evidence. He confirmed his statement. He said that Ms. Baker had moved out on the 10th April 2021 and the new lease with Mr. Goodrick and his girl friend was entered into on the 19th April 2021. He then set out a number of items he had paid for including a new boiler (£2,237), extractor fans (£728.64), a fuse box (£890), pipe boxing materials (£150) etc.

24. He explained how difficult it had been to get access to the property because the previous occupant was so difficult and he was clear that the work could not be done whilst she remained in occupation. In cross examination he said that he had not written any letters to her about this and had not asked his solicitors to do so. There was then some discussion about the Applicant's means. Various values of properties owned by the Applicant from selling agents on the internet were put to him. Mr. Fullerton interrupted this as there was no evidence of these before the Tribunal.
25. The Tribunal chair asked whether the 'Statement of Financial Means' at page 59 in the bundle included all his properties and assets. He said that it didn't. He was only setting out those assets which he considered were relevant to 153 and 155 South Street, Lancing. The chair then asked whether it was seriously being suggested that the Applicant did not have the means to do the work set out in the Improvement Notice. He said that he could have afforded to do everything although it would have been difficult.
26. Mr. Dommatt then gave evidence. He confirmed that his statement and notes from the inspections in August 2020 and 17th June 2021 had been accurate at the time of their creation. In particular, he said that out of the 14 items of work needed, only 4 had been fully carried out (items 3, 11, 12 and 14) and these did not include the category 1 hazards. He was questioned about the interview under caution on the 28th May 2020 of which the notes were in the bundle at page 101. Mr. Fullerton challenged the record by suggesting that the Applicant should have been told that this interview should have been conducted in the presence of his solicitor in view of his literacy problems i.e. it was not a proper interview under caution.
27. The Tribunal chair questioned Mr. Fullerton about this as there had been no suggestion beforehand about this interview record being challenged. He was reminded that it was not mentioned in the Applicant's solicitors' reply to the Respondent's statement of case. In view of the comment at the end of page 184 that "*the evidence of Steve Dommatt*" was not disputed, the interview record had been read and considered by the Tribunal members. If it was being suggested that this was not admissible evidence, this should have been said in advance.
28. The matter was not pursued and Mr. Dommatt was then challenged about a number of specific conclusions he had drawn from the evidence. It was suggested to him, for example, that he had been over zealous about the fire risks. It was put to him and again mentioned in summing up that contractors were charging much more than they had done at this time in view of the pandemic restrictions. The Tribunal was a little surprised at this suggestion as Mr. Fullerton had specifically stopped Ms. Rayner's questions about property values as there was no evidence of these. There was similarly no evidence of builders charging much more than usual at this time.

Discussion

29. In his statement to the Tribunal dated 22nd January 2021, the Applicant sets out that he is largely illiterate as he hardly ever attended school. He also had a

quadruple heart bypass in 2012 which went wrong although he does not say what the long term effect of that is save that he was clearly categorised as a particularly vulnerable person at the commencement of the Covid pandemic. The Respondent appears to have known about some or all of these problems from a relatively early stage and has taken them into account insofar as this affected what has happened.

30. In his Statement of Financial Means dated 21st January 2021 at page 59 in the bundle, the Applicant says that he has not been employed since 22nd August 2014 and is in receipt of benefits of £395 per month. He says that his rental income is £1,450.00 per month. His mortgage repayments are £759.00 per month and he has to pay £80 per month to travel to 'work', whatever that may be for an unemployed person. In these days of very low mortgage interest rates, a payment of £759.00 per month seems a very large amount. He said in evidence that the mortgage was on his residence of 119 West Way, Lancing BN15 8NA and the loan was for £190,000.
31. The Tribunal was not impressed with the Applicant's evidence about his means. The Statement of Financial Means he prepared seems clearly intended to give the impression that he has a very limited means. The Land Registry entries produced by the Respondent show that the Applicant owns properties at 151 South Street, 153-155 South Street and 180 South Street, Lancing. The only one with a mortgage is 151 South Street which has a mortgage with Lloyds Bank dated 23rd March 2016 i.e. almost 2 years after he said he became unemployed.
32. Looking at Google Earth, the Tribunal saw that the 2 shops on the ground floor of 153 and 155 South Street trade as YouFirst which advertises the sale of chairs on line and for delivery as well as in the shops. Mr. Goodrick said that he and his partner both work there. 180 South Street is occupied by Glamour Lengths which appears to be a ladies' hair salon and has been in existence since 2012. 151 South Street appears to be an occupied maisonette. Thus the Applicant appears to own 3 flats and a maisonette plus 3 commercial properties, some or all of which are presumably producing rents.
33. As a further part of its evidence, the Respondent has produced copies of objections made by the Applicant on the 24th July 2016 and the 2nd December 2016 (at pages 163 and 164 in the bundle) to a proposed development relating to 149 South Street in which he describes himself as being "*the freeholder of several properties in South Street. Both flats and shops*".
34. Further, a copy planning application made by the Applicant in 2003 has been produced (at pages 159-162 in the bundle) wherein he applies for planning permission to put 3 cars for sale on the forecourt of 157 South Street. This appears to have been refused. In such application the Applicant describes himself as being in business as "*Mr. Munday P.C.R.S. Motor Spares 157 South Street, Lancing - car sales and motor spares*". He also adds "*The car parking spaces belong to P.C.R.S.*".

35. It is true to say that the Applicant has undertaken some work. The problem is that he does not appear to have liaised with the Respondent as instructed. For example, the 1st task was to get a firm of surveyors to investigate the roof and walls and identify the causes of leaks, dampness. Also to look at work to improve the thermal efficiency following the complaint from Ms. Baker that she could never get the property up to a reasonable temperature. However, what he did was to obtain an Energy Performance Certificate on the 21st January 2020 which, whilst useful and seems to confirm, for example, that the radiators may have sufficient output, was not what the Improvement Notice said.
36. In any event, none of those suggested improvements appear to have been prepared for or undertaken before the Covid pandemic lockdown on the 23rd March. On the 16th March, non essential travel was discouraged and there may have been a problem about getting contractors to do work unless it was to deal with an emergency. At that time, of course, most of the items of work should have been finished or, at the very least, planned. Neither was the case.
37. According to the Institute for Government analysis website, people who could not work from home were able to return to work on the 10th May 2020 i.e. before the Applicant's telephone conversation with Mr. Dommett on the 28th May, which the Applicant, through his solicitors, said he did not dispute. At that time he just says that the main item of work to deal with the water ingress was just too expensive for him. He said that he was not going to do any more work and was just going to sell the flat. In other words, he was clearly not complying with and had no intention of complying with the majority of the work required by the Improvement Notice at that time.
38. He has now found tenants for whom the property is very convenient as they work on the ground floor. They are prepared to deal with much of the work required although even they have not been able to do all the work in the 2 months they have been there. Having said that, it is reasonable to just point out that the property was vacant for at least 9 days at that time and yet the Applicant appears to have done nothing to remove the category 1 hazards within that time.

The Amount of the Financial Penalty

39. As has been said, there is no dispute about the procedural and legal issues raised by the Respondent. In other words, it is not disputed that they have followed their guidance which they are required to do. The maximum amount would have been £30,000. The Tribunal considers that in view of the clear declaration from the Applicant that he was not going to do the work, apart from the minimal amount he had already done, then the figure of £11,250.00 is not going to be varied.

Conclusions

40. Taking all the evidence and submissions into account, the Tribunal concludes, on the particular facts of this case, and beyond a reasonable doubt, that the offence of failure to comply with the Improvement Notice has been committed and the amount of the penalty will not be interfered with.

41. The suggestion by the Applicant that he could not have the work done because of the failure of the tenant to allow him to do it is simply not good enough. The whole issue of category 1 hazards is set out in section 5 of the 2004 Act. This says that if a local authority finds that there is a category 1 hazard, it 'must' take appropriate enforcement action. In this case, until the Respondent is satisfied by receiving the expert evidence it has ordered the Applicant to provide, it is reasonable for it to assume that 2 category 1 hazards exist. There is no defence for a landlord to just say that the work cannot be done because the tenant is not co-operating.
42. The Applicant's evidence is that he arranged for Mills & Company, chartered surveyors to visit and inspect the property and that 2 builders inspected i.e. Mr. Sharp and Mr. Wolf. If the tenant had refused access then, as has been said, the court's assistance should have been sought. It was not until 20th November 2020 that possession orders could not be enforced as a result of the **Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2020** coming into effect.
43. The Tribunal also concludes that the only work which may have required vacant possession was for the internal layout to be changed, in which case the Applicant should have financed a temporary move to an hotel or other residence for the limited time needed for this work. There has been no suggestion whatsoever that this was offered.



.....
Judge Edgington
25th June 2021

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.