FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBB/HNA/2020/0050**
Property	**:**	**565 Romford Road, London, E7 8AE**
Appellant	**:**	**Flavio Garcia**
Representative	**:**	**In person**
Respondent	**:**	**The Mayor and Burgesses of the London Borough of Newham**
Representative	:	**Ms Zang**
Type of Application	**:**	**Appeal against a financial penalty notice**
Tribunal Member	**:**	**Judge Jim Shepherd** **Sue Coughlin MCIEH**
Date of Decision	**:**	**17 August 2021**

DECISION

1. In this case the Appellant is appealing two financial penalties imposed by the Respondent council ("The Respondents"). The penalty notices concern 565 Romford Road, Forest Gate, London E7 8AE ("The premises"). The premises are a three storey mid-terrace house, comprising eight to ten bedrooms, three bathrooms and two kitchens.

2. The Respondents served the Appellant with Notices of Intent to Issue a Financial Penalty on 20th December 2019. The freehold owner of the premises is NSL Properties Limited which is owned by Mr Nishaan Singh. Mr Singh let the Property to Mr Flavio Garcia, the Appellant pursuant to an Assured Shorthold Tenancy dated 1 January 2018.

3. On 19 December 2019, the Respondent visited the premises following a complaint by one of the tenants at the premises. She reported that she lived at the Property with other non-related occupants. She also stated that her landlord was threatening to evict her from the premises and that the gas had been cut off.

4. At the premises the Respondents determined that the premises met the standard test set out in section 254(2) of the Housing Act 2004 and was therefore operating as an unlicensed HMO. There were four separate households in occupation. The Respondent also identified numerous breaches of section 234(3) of the Housing Act 2004 and the Management of Houses in Multiple Occupation (England) Regulations 2006/372 ("2006 Regulations"). In particular, there was no working fire alarm, there was no hot water or heating, and the gas cookers were defunct and the occupants were therefore using portable hot plates. The Property also suffered from leaks and mould growth.

5. On 20 December 2019, the Respondents served two Notices of Intention to Issue a Financial Penalty on the Appellant in the amount of £25,000 for breaching Regulation 4(2) of the 2006 Regulations, regarding failure to maintain the fire alarm system, and £25,000 for breaching Regulation 7(2)(f) of the 2006 Regulations, regarding the poor condition of the shared kitchen.

6. In response to the notices the Appellant's solicitor said that he was a resident and not a manager of the premises and that he did not understand the HMO licensing rules or the terms of his tenancy agreement since he was not fluent in English. He also stated that he had sub-let the Property at the request of Mr Singh as he was having difficulties with affording his monthly rent. On 18 February 2020 Newham responded to these representations but decided that there was no reason to reduce the proposed penalties.

7. On 25 February 2020, the final Financial Penalty Notices were sent to the Appellant in the amount of £25,000 each. These are the penalties challenged by the Appellant.

The law

8. s. 249A of the Housing Act 2004 states the following:

(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) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding

notice), or

(e) section 234 (management regulations in respect of HMOs).

9. Section 234 of the HA 2004 states the following:

(1) The appropriate national authority may by regulations make provision for the purpose of 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.

10. Section 263 defines a "person managing" a property as follows:

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement (whether in

pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

The appeal

11. In support of his appeal the Appellant submitted a witness statement dated 21st May 2021. He says that his accountant told him to set up a company called Flavio Costa Property Ltd to assist with his work as a bricklayer. He says he needed accommodation and made an arrangement with a Mr Jay from Knightsbridge whereby he was let the premises on the condition that he sublet the other rooms. He says the freeholder Nishaan Singh knew of this arrangement and accepted this. He says that the freeholder was responsible for having the correct license and properly equipping the HMO. He says that Knightsbridge Estates were the agents and he was not involved in the management of the premises. Finally of relevance is the Appellant's claim that the financial penalty (in fact penalties) are "exorbitant and vastly in excess, unreasonable and unfair".

12. Attached to the Appellant's witness statement is a tenancy agreement dated 1st January 2018 between him and the freeholder Nishaan Singh. The tenancy prohibits subletting without consent.

13. In essence therefore the Appellant does not dispute the liability *per se* but says that he should not be the liable party. He says in his verbal evidence that he lived in the property for the first year of the tenancy, subletting rooms to cousins, friends and workmates. When he moved out of the property there were 5 households living there.

14. At this stage it is appropriate to record the evidence of the freeholder, Nishaan Singh, who made two witness statements and appeared at the Tribunal to give oral evidence. He says that he fell out with the agent, Knightsbridge and went to the premises which he found to be sublet. He went to the Appellant's office and confronted him and was told that the Appellant's cousin was subletting the premises. Mr Singh commenced proceedings to recover possession and later recovered possession.

15. Mr Mishkin, an officer of the Respondents gave evidence that the Appellant had been running other subletting schemes in Newham and indeed had Financial Penalty Notices in similar circumstances to the present case. The Appellant had also been entered on the London Rogue Landlord Database by Newham in respect of another property at 2 Sprowston Road, E7. He maintained therefore that the Appellant was in fact a property manager. He and his company were registered, at various times, for council tax at 19 properties. Mr Mishkin challenged the Appellant's claim that he was in financial difficulties pointing to the fact that his company had made substantial payments to himself.

16. Ms Zang appeared on behalf of the Respondents and the Appellant represented himself. The Appellant's live evidence was unimpressive. He couldn't remember details of his case and appeared to be supplementing his evidence as he went along. He wanted to blame everyone but himself, including the freeholder and the agents who he said were responsible for the setting up and management of the HMO. In cross examination Ms Zang managed to establish that the Appellant had been involved with multiple properties since at least 2001. She also created considerable doubt about whether the Appellant had ever lived at the premises. Indeed, it was her case that the premises were in fact part of a portfolio of properties run by the Appellant who was a professional landlord, operating under at least 2

company names, who had already committed offences similar to the present ones.

Determination

17. The Tribunal was shocked to note that in the present case the Appellant had sublet the premises before he had even signed the tenancy. This strongly suggests a clear motive. The Appellant's account in the face of this sort of evidence simply does not hold water. He clearly was not living at the premises and never intended to live there. On the contrary the evidence confirms he was managing the premises and was therefore the person responsible under the Act for ensuring the property complied with the regulations and was properly licensed. He did neither.

18. The Appellant has a modus operandi of managing properties, obtaining financial gain but at the same time seeking to avoid any of the responsibilities that go with that. The only reason that the freeholder was alerted to the subletting in the present case was that the Appellant had not paid his rent. He clearly was not even passing over rent that he had obtained from his sub tenants who were living at the premises without the freeholder's permission.

19. The Appellant is responsible for serious breaches of the clear provisions in relation to HMOs contained in the Housing Act 2004. This was clear from the cogent evidence of Mr Mishkin. The Appellant is a property manager with a portfolio of properties from which he likely makes considerable financial gain and yet seeks to avoid the costs associated with proper management. This is reprehensible conduct which benefits only one person – the Appellant. He is very much a "rogue landlord" who has thus far managed to avoid significant penalties. The Tribunal does not believe the Appellant's pleas of poverty. Mr Mishkin explained in detail the assessment of the penalty imposed by the

Respondents. Mr Garcia's only challenge to this was that he felt that the level of fine was unfair in the light of a previous fine of only £2500 for a similar offence. We consider that the level of fine in this case must reflect the seriousness of the offences, the Applicant's history of offending and that a high penalty is necessary to stop repeat offending by this Applicant, as well as acting as a deterrent to other landlords in the borough who are operating under a similar business model. For these reasons we consider that £25,000 is an appropriate penalty for each of these offences.

20. The Tribunal have no hesitation in dismissing this appeal against both liability and penalty. The Appellant would be well advised to comply with his responsibilities in the future because the penalties imposed are bound to increase.

Judge Shepherd

17th August 2021

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.