



Neutral citation number: [2023] UKFTT 850 (GRC)

Case Reference: PR/2023/0021

**First-tier Tribunal
General Regulatory Chamber
[Professional Regulation]**

**Heard: by determination on the papers
Heard on: 13 October 2023
Decision given on: 16 October 2023**

Before

TRIBUNAL JUDGE Alison McKenna

Between

CAVENDISH LETTINGS LIMITED

Appellant

and

NOTTINGHAM CITY COUNCIL

Respondent

DECISION

This appeal is dismissed. The Financial Penalty is affirmed.

REASONS

Background

1. This appeal concerns a financial penalty imposed on Cavendish Lettings Limited by the Respondent in relation to Apartment 2, Enfield House, 18 Low Pavement, Nottingham, NG1 7DG. It was served under regulation 38 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('The Regulations') for breaches of regulation 23 (letting a sub-standard property) and 37(4)(a) (failure to comply with a compliance notice).
2. The penalty was dated 1 February 2023, and was for £3,600 in total. It was reduced to £3420 on review. The Appellant asks for it to be quashed.
3. The Appellant also received a publication penalty under regulation 39, but this is not mentioned in the grounds of appeal, so I understand it not to be disputed.

The Law

4. The Regulations provide as follows:

Penalty notices

38.(1) *An enforcement authority may, on or after 1st April 2018, serve a notice on L (a “penalty notice”) in any case where it is satisfied that L is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of the following—*

(a) regulation 23,

(b) regulation 27,

(c) regulation 37(4)(a),

imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty, in accordance with this Chapter.

(2) A penalty notice must—

(a) specify the provision of these Regulations which the enforcement authority believes L has breached,

(b) give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach,

(c) specify—

(i) any action the enforcement authority requires L to take to remedy the breach,

(ii) the period within which such action must be taken,

(d) specify—

(i) the amount of any financial penalty imposed and, where applicable, how it has been calculated,

(ii) whether the publication penalty has been imposed,

(e) require L to pay any financial penalty within a period specified in the notice,

(f) specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made,

(g) state the effect of regulations 42 to 45, and

(h) specify—

(i) the name and address of the person to whom a notice requesting a review in accordance with regulation 42 may be sent (and to whom any representations relating to the review must be addressed), and

(ii) the period within which such a notice may be sent.

(3) Each of the periods specified under paragraph (2)(c) and (e) must not be less than one month, beginning on the day on which the penalty notice is served.

(4) Where L fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2)(c), the enforcement authority may issue a further penalty notice.

Appeals

43. *If, after a review, a penalty notice is confirmed by the enforcement authority, L may appeal to the First-tier Tribunal on the grounds that—*

(a) the issue of the penalty notice was based on an error of fact,

(b) the issue of the penalty notice was based on an error of law,

(c) the penalty notice does not comply with a requirement imposed by these Regulations, or

(d) in the circumstances of the case it was inappropriate for the penalty notice to be served on L.

Effect and determination of Appeal

44.—(1) *The bringing of an appeal suspends the penalty notice being appealed taking effect, pending determination or withdrawal of the appeal.*

(2) The First-tier Tribunal may—

(a) quash the penalty notice, or

(b) affirm the penalty notice, whether in its original form or with such modification as it sees fit.

(3) If the penalty notice is quashed, the enforcement authority must repay any amount paid as a financial penalty in pursuance of the notice.

5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of this Chamber's Procedure Rules.
6. The Tribunal considered an agreed bundle of evidence comprising pages 1 to 74.

Submissions and Evidence

7. The Notice of Appeal dated 19 April 2023 is in the name of Mr and Mrs Sahin, who I understand to be the owners of the property. However, this is said to be 'care of Cavendish Residential'. The statutory right of appeal in fact rests with Cavendish Lettings Limited as the legal person upon whom the financial penalty was served and so I treat this as an appeal made by Cavendish Lettings Limited.
8. The Notice of Appeal relies on grounds that the imposition of the Penalty Notice was inappropriate and unfair because the Appellant has shown a willingness to comply with the Regulations and had undertaken improvement works. The Appellant apologises for not updating the Respondent sufficiently regularly. It is not disputed that the specified breaches occurred nor that the calculation of the penalty was made in accordance with the Respondent's policy.
9. The Respondent's Response dated 17 July 2023 states that it took into account the improvement works carried out in calculating the penalty but that the property was nevertheless let whilst it had a sub-standard energy performance certificate and the

submissions made by the Appellant do not justify the quashing of the penalty. It is further noted that the Appellant admits it had not responded to a compliance notice.

10. The Appellant's Reply dated 28 July 2023 states that it wishes the Tribunal to consider the fairness of the penalty, which is submitted to be disproportionate.
11. The Respondent filed a witness statement from Mark Thomas, its Regulatory Compliance Officer, dated 24 August 2023. His evidence is that the property was let without the relevant EPC certificate in force and without any exemption. Further, that following a lengthy engagement with the Appellant which commenced in November 2021, it was decided to take enforcement action in August 2022. As the compliance notice was not complied with, a financial penalty was imposed in accordance with the Respondent's policy. This was reduced after considering representations about the works carried out.
12. The Appellant did not file any evidence and I understand that it accepts the evidence of Mr. Thomas as it has not sought to challenge it.

Conclusion

13. I note that the Appellant has not disputed the facts relied upon by the Respondent.
14. The Appellant's case relies on an argument that the penalty is not fair in all the circumstances.
15. Having regard to the statutory provisions, I conclude that the Appellant's appeal relies on regulation 43 (d), that in all the circumstances it was inappropriate for the penalty to be served on the Appellant.
16. Having considered the parties arguments carefully, I am not persuaded that the Appellant has shown this to be the case. The facts are admitted, and they include a lengthy period of non-compliance plus the failure to provide the information required by the compliance notice. The Appellant has now taken steps to bring the property into conformity with the EPC requirements and its improvements to the property have been acknowledged in a reduction of the financial penalty, but the Appellant has not persuaded me that the penalty should be quashed in its entirety.
17. In all the circumstances, I now dismiss this appeal and affirm the penalty notice dated 1 February 2023.

Signed: Judge Alison McKenna

Date: 13 October 2023