



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

Case reference	:	CAM/34UF/HNA/2020/0026
Property	:	5 Markham Close, Duston, Northampton NN5 6TW
Applicant	:	Miss Alle Sabboth
Respondent	:	Northampton Borough Council
Type of application	:	Appeal against a financial penalty Section 249A and Schedule 13A to the Housing Act 2004
Tribunal	:	Judge D Wyatt
Date of decision	:	13 October 2020

NOTICE OF DECISION TO STRIKE OUT A CASE

Decision

These proceedings are hereby struck out under rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “**2013 Rules**”).

Reasons for strike-out

1. On 20 August 2020, the tribunal received the application by the Applicant under paragraph 10 of Schedule 13A to the Housing Act 2004 (the “**Act**”) to appeal against a financial penalty imposed by the Respondent under section 249A of the Act. The application was held by the tribunal pending provision of a copy of the relevant final notice.
2. The relevant final notice is dated 22 January 2020 and imposes a financial penalty of £12,400 for an alleged offence under section 30 of the Act of failing to comply with an improvement notice. It is marked as having been sent to the Applicant by first class post on 22 January 2020.

3. There is no time limit in the Act (as amended) in respect of appeals against financial penalties. Rule 27 of the 2013 Rules applies where no time limit is prescribed. It states that the appeal application must be provided to the tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant. Rule 6 of the 2013 Rules allows the tribunal to extend the time for compliance, even if the application for an extension is not made until after the time limit has expired.
4. On initial review of the application, the tribunal noted that the deadline appeared to have expired on 19 February 2020, 28 days after the final notice was sent on 22 January 2020. The tribunal wrote to the parties to allow until 30 September 2020 for any application for an extension of time and any representations, so that the tribunal could then decide whether to strike out the application or allow it to proceed. The Applicant was directed to give full details of all the matters and evidence she relied upon, sending a copy to the Respondent.

Submissions

5. The Applicant did not expressly make an application for an extension of time, but I assume for present purposes that her e-mails in October 2020 (described below) can be treated as such application.
6. In her application form, she had said that she suffered from “*a few illnesses that make it difficult for me to act quickly*”, referring to acute rhinitis, chronic fatigue and depression, which she said were made worse by what she described as a long period of hostility from her tenant’s mother when seeking to carry out works at the Property. She said she was ill, her health had deteriorated, she received benefits and she was due to go into social care because of the chronic fatigue from which she suffered.
7. The tribunal received nothing from the Applicant by the deadline of 30 September 2020, despite sending a reminder. On Monday, 5 October 2020, the Applicant asked the tribunal to wait until Friday (i.e. 9 October 2020) for a letter from her psychiatrist, and provided a list of medications and notes apparently from her GP. No such letter arrived, but the list and notes indicate serious problems in the past and include four active problems, the most recent noted in the summer of 2019. They also indicate many different medications issued in the past and during the period from November 2019.
8. On 7 October 2020, the Applicant sent a further e-mail by way of further explanation, saying she had been very ill and suffering badly from suspected fibromyalgia and a bad reaction to some new medication for chronic fatigue.
9. Despite the directions, none of these documents were copied to the Respondent, so they could not normally have been taken into account. However, in view of my decision to strike out the application I am not, despite the lack of any application under rule 17 of the 2013 Rules,

requiring the details to be disclosed to the Respondent. Since the Applicant seems to be asking that the full details in the list and notes are not provided to the Applicant, I have given only a general outline in this decision, but I have considered them carefully.

10. On 30 September 2020, the Respondent made its submissions, copying these to the Applicant. It referred to the decision of the Upper Tribunal in Pearson v City of Bradford MDC [2019] UKUT 291 (LC), which confirms that the tribunal has an unfettered discretion to extend or shorten the time limit, so long as it does not exceed the bounds of a reasonable exercise of discretion. The Respondent argued that exceptionally good reasons would be needed for such a long delay in making the application, pointing out that:

- the appeal was not provided to the tribunal until 20 August 2020 and even then, was incomplete, without the requisite copy of the final notice;
- on 17 April 2020, the Applicant had replied to chasing correspondence from the Respondent by telephone and by e-mail, saying that she had not paid the financial penalty because of a bowel condition and ongoing medical issues (saying she had just come out of hospital, was going back into hospital and had Covid-19 symptoms) and was “*currently*” appealing to the tribunal, had collected the appeal form and would be sending it shortly;
- the final notice (which clearly sets out the 28-day period for payment of the penalty or appeal to the tribunal) was sent to the Applicant by first class post and by e-mail on 22 January 2020;
- the Applicant had made representations to the Respondent about the proposed penalty on 27 November 2019; and
- this had followed the notice of intent to impose the financial penalty (in the same amount, £12,400) which had been sent to the Applicant by first class post and by e-mail on 22 October 2019.

Conclusion

11. I have carefully considered the reasons given by the Applicant for the failure to apply in time, but I am not satisfied that these are good reasons for the entire period of delay in this case.

12. I bear in mind that the financial penalty is substantial and there is no time limit in the Act itself, leaving this regulated by the default time limit in the 2013 Rules. I prefer not to assess this by reference to exceptional reasons; the question is whether the Applicant had good reason(s) covering the period of just under seven months from 22 January 2020 until 20 August 2020. I do have sympathy for the conditions referred to by the Applicant, and they might well justify some delay, particularly if she was frequently in hospital and/or would

have needed to self-isolate (as she indicated to the Respondent in April 2020). However, she has produced no real evidence in relation to such matters, let alone any evidence to show that she was or became incapacitated or otherwise genuinely unable to make the appeal application at any point throughout such a long period of time. Further, she gave no indication even in April 2020 that she was unable to make the appeal – on the contrary, she told the Respondent that she had the application form and would be sending it shortly. She has not shown good reasons for the delay in this case, where the application was more than six months (from the deadline of 19 February until 20 August 2020, or later) out of time.

13. In the circumstances, I do not exercise my discretion to permit the application to proceed. Accordingly, the tribunal does not have jurisdiction in relation to the application and, under rule 9(2) of the 2013 Rules, I must strike it out.
14. A copy of this notice is sent to all parties.

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).