



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

Case Reference : **MAN/00BN/HIN/2019/0030**

Property : **19, Barrow Hill Road,
Manchester M8 8DB**

Applicant : **Daniel Amber
Represented by his agent, Ben
Massey**

Respondent : **Manchester City Council
Represented by E Kay of counsel**

Type of Application : **Housing Act 2004 – Sections 40-45 and
Schedule 1 Paragraph 10 (1)**

Tribunal Members : **Mr J Rimmer
Mr J Faulkner**

Date of Decision : **28th September 2019**

Date of Determination : **9th October 2019**

DECISION

Order : The improvement notice in relation to 19, Barrow Hill Road, Manchester is varied as set out in paragraphs 26-28 herein.

A. Application.

1. The Appellant appeals under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice relating to the property at 19, Barrow Hill Road, Manchester 8. It relates to a number of issues identified by an officer of the Respondent, following an inspection of the property. The notice was served by Manchester City Council, the local housing authority (the Authority”). It is dated 14th February 2019 and is made under section 12 of the Act, requiring certain works to be carried out to that flats and common parts of the building in which they are situated to remedy hazards referred to in the Notice. The authority has a power to make such a notice in respect of category 2 hazards under the terms of that section. The Appeal against the notice lodged by the agents acting for the Appellant, Phillip James & Co, and is dated is dated 28th February 2019.
2. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and, although setting out certain specific grounds of appeal, they do not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting matters not previously considered, to allow the Tribunal to confirm, vary, or quash the Notice.
3. Directions as to the future conduct of the appeal was given by the Deputy Regional Valuer of the Tribunal and the matter then listed for the consideration of the Tribunal on 11th September 2019 with a hearing and inspection fixed for that date.
4. The Appellant is the freehold owner of 19, Barrow Hill Road. This was noted by the Tribunal during its inspection to be a modern terraced house in a row of similar properties, constructed of brick under a tiled roof and comprises an entrance to a common ground floor hallway from which access is gained to a ground floor living room, with kitchen beyond. A stairway leads to a first-floor landing, giving access to three bedrooms and bathroom/wc.
5. The Authority had been previously involved in an inspection of the property as a result of matters coming to its attention in relation to the occupation and condition of the premises and a number of hazards within the meaning of the Act were apparently identified.
6. The Authority was satisfied that within the building there existed category 2 hazards. They are identified in Schedule 1 of the notice and relate to a number of different hazard types. A copy of the notice is annexed to the application and a further copy id to be found in the Respondent’s bundle of documents.

- 7 There appeared to be one significant matter upon which the Tribunal noted there had been some agreement between the parties that assisted it to deal with outstanding issue, in that the extractor fan had been brought back into working condition.
- 8 The Tribunal records that it appreciates the position in which the Applicant found himself, where the need to comply with an improvement notice does not necessarily walk hand in hand with the efforts required to secure possession of the property. In respect of a tenant against whom proceedings were now pending. Conversely, the local authority's concern is with safety within the property and not the private issues between landlord and tenant.

B. Inspection

- 9 On the morning of 11th September 2019 the Tribunal inspected 19, barrow Hill Road. It was accompanied by a representative of the landlord's agent, Mr Massey, the officer of the Authority dealing with the matter, Miss Rauf, and her manager, together with the tenant. Insofar as it is necessary to record its general description, this is set out above. The Tribunal was therefore able to see those matters that remained outstanding between the parties:
 - (1) The carpet between the hallway and living room is frayed at the point where it joins its fixer.
 - (2) The light switches to the kitchen and lounge, on either side of the doorway between those rooms are damaged and the plastic surround to the switch mechanism is broken, leaving potential access to the wiring behind.
 - (3) There is a door handle mechanism that is defective.
 - (4) A kitchen cupboard door is missing from its fixings.
 - (5) The loft hatch is loose and badly fitting.
 - (6) There is extensive damp in the bathroom above the bath which now appears to have penetrated beneath the bath to the floor and then to the kitchen beneath.
 - (7) The seal to the bath is mouldy.
 - (8) The front bedroom door is missing.

C. The evidence

- 10 The Tribunal had the benefit of very extensive submissions made by the Authority in support of its case to justify the improvement notice, principally in the form of a statement from Miss Rauf. This provided a clear overview of the situation from the perspective of the Authority. conclusions drawn as to the necessity of an improvement notice.
- 11 On behalf of the Appellant, Mr Massey explained at some length the difficulties that had been encountered in relation to the activities of the occupier, and the financial constraints imposed by the present rental situation. They are set out initially in the original notice of appeal from Mr Massey and subsequently expanded upon in the statement of the Appellant's case.

- 12 With the assistance of Mr Kay and Mr Massey the Tribunal was able to consider at some length the issues that had been identified within the property and had led to the view being taken that an notice was appropriate, together with the reasons why that had been considered the appropriate action.
- 13 It appeared to be accepted on behalf of the Appellant that the issues identified, with the exception of the bathroom extractor fan, remained, but the problems, it was alleged, were caused by the way in which the tenant was occupying the property and the effect this was having upon the fabric of the building.
- 14 The Tribunal takes at face value the observations on behalf of the landlord that the property was in good condition when it was originally let and it would appear that the items of concern have arisen since then.
- 15 They nevertheless exist now and it is what the Tribunal sees now, rather, even, than what Miss Rauf saw on her earlier inspections that the Tribunal must consider. This is made somewhat easier by the acceptance by the Appellant of the issues and his view that he should not be responsible for them.
- 16 The Tribunal canvassed particularly with Mr Kay and Miss Rauf the extent to which she had considered a hazard awareness notice in respect of the identified issues. She had done so, but for reasons of speed and the anticipated views of both the landlord and the tenant in the absence of a notice she formed the view that one was appropriate
- 17 The Tribunal noted that the authority did not provide its hazard scores under the rating system to the Tribunal. This is becoming more common. The Tribunal appreciates that in the past it has been swamped, on occasion, with statistical data. The provision of some outline information does, however, inform the Tribunal of the manner of the decision-making process and how the determination was reached that category 2 hazards were present.

D. The Law

- 18 The law relating to the service and content of Improvement Notices as they relate to category 2 hazards is set out in Sections 12-13 Housing Act 2004 and appear below. If a category 2 hazard is identified, in the absence of any category 1 hazard, the authority may issue an improvement notice.
- 19 Improvement notices relating to category 2 hazards: power of authority to serve notice
 - (1) If—
 - (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

- (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an improvement notice under this section in respect of the hazard.
- (2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.
- (3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.
- (4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.
- (5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.
- (6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

20 Contents of improvement notices

- (1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.
- (2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
 - (a) whether the notice is served under section 11 or 12,
 - (b) the nature of the hazard and the residential premises on which it exists,
 - (c) the deficiency giving rise to the hazard,
 - (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
 - (e) the date when the remedial action is to be started (see subsection (3)), and
 - (f) the period within which the remedial action is to be completed or the Periods within which each part of it is to be completed.
- (3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
- (4) The notice must contain information about—
 - (a) the right of appeal against the decision under Part 3 of Schedule 1, and
 - (b) the period within which an appeal may be made.
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

E. Tribunal's Conclusions and Reasons

- 21 The Tribunal reminds itself that it is considering this matter by way of a rehearing and may, if there is such a situation, take into account any factors that have arisen since the notice was issued, or were not apparent to the parties at that time. This is of significance now that the extractor fan is working and can be excluded from the Tribunal's consideration.
- 22 It then takes the view that it must first make a reassessment of the hazards identified by the Authority upon its inspection and which led to the conclusion that hazards existed and the category into which they should be placed.
- 23 In this respect the Tribunal is in no doubt whatsoever that there are a number of category 2 hazards in relation to the property as identified by Miss Rauf. Some are of a relatively minor nature, both in relation to what risk there might be (the fraying carpet and the missing cupboard door) and would not, in the Tribunal's mind, generate a sufficient hazard score to suggest a notice would be appropriate and a discretion exercised to consider a lesser action.
- 24 The Tribunal does, however, have concerns as to the seriousness of the risk arising from the damp/mould in the bathroom, the electrical hazard presented by the defective light switches and the fire risk presented by the defective door handle mechanism, loft hatch and missing bedroom door.
- 25 They present as hazards in different ways. The problems in the bathroom present a continual risk, which will increase as the damp increases, whilst the electrical hazards and fire hazards represent a relatively low probability of injury within the near future, but the consequences and likely injury could be severe, or fatal.
- 26 **The Tribunal is therefore of the opinion that an improvement notice is required, but that it should be varied** to remove reference to the extractor fan within the Schedule.
- 27 The Tribunal has considered carefully whether it should amend the timescale set within which the notice should take effect following this determination. As the Tribunal understands it the work should begin within 10 days of the decision upon this appeal and be completed within 28 days. It has however taken into account the position between the Appellant and the tenant, to the extent that access should be available for work to be done.
- 28 **The Tribunal therefore varies the improvement notice as follows.**
- (1) **Item 4 in the Schedule is deleted**
- (2) **The work required shall commence within 28 days of the order of the Tribunal and shall be completed within 28 days thereafter.**

29 The Appellant is respectfully reminded of the power of the Magistrates' Court to order appropriate access should this need arise.

J R Rimmer

Tribunal Judge