



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

**Case Reference** : **BIR/00FK/HIN/2019/0027**

**Property** : **77 Goodale Street, Derby, DE23 8QF**

**Applicant** : **Mr Jaswinder Singh Khatkar**

**Respondent** : **Derby City Council**

**Type of Application** : **Improvement Notice. Schedule 1, Paragraph 10, The Housing Act 2004.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA.  
Mr R.Chumley-Roberts, MCIEH, JP.**

**Date of Decision** : **6<sup>th</sup> May 2020**

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**DECISION**

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## **Application and Background**

1. The Applicant Mr Jaswinder Singh Khatkar is a joint owner of 77 Goodale Street, Derby, DE23 8QF “the property”, the other joint owner being his wife Mrs Harmeet Kaur Khatkar. The property is subject to an assured shorthold tenancy agreement signed on 6 September 2019 and commencing on 11 September 2019, Mr Eryk Eugeniusz Przeradowski being the tenant.
2. At the commencement of the tenancy, the tenant was complaining about the central heating and hot water boiler not working properly and insecurity of the rear external door. It is evident from WhatsApp messages that a plumber attended at the property on 17 September 2019, but was unable to gain entry. The Tenant contacted employees of the Respondent on 11 November 2019, regarding potential hazards at the property.
3. On 21 November 2019 Amy Broster, an Environmental Health Officer, served on the Applicant and his wife, by separate copies to each, a Requisition for Information Notice under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 requiring information about the ownership of the property and the tenancy. In addition, letters were also served informing the owners that an inspection of the property would take place on 26 November 2019. These were served by first class post. The inspection took place as per the notification. The Applicant and his wife did not provide the information that had been requested.
4. On 3 December 2019 the Respondent issued improvement notices in respect of the property. On the same date Amy Broster served these notices upon the Applicant and his wife, by visiting their home address and posting them through the letter box. There is an issue as to the service of the improvement notice upon Mrs Harmeet Kaur Khatkar. The improvement notice indicates that the Respondent had ascertained that there were 3 category 1 hazards and 8 category 2 hazards at the property. The Tribunal will deal with each alleged hazard later in this decision.
5. By an application dated 19 December 2019, the Applicant landlord seeks to appeal to this Tribunal under paragraph 10 of Schedule 1 of the Housing Act 2004 "the Act" for a determination as to whether or not the Tribunal will quash, or vary the improvement notice. The Applicant submits that all hazards have been remedied.
6. The application was copied to the Respondent by the Tribunal. In reply the Respondent gave notice to the Tribunal stating that it intended to oppose the Applicant's appeal.

7. Directions were issued on 13 January 2020, indicating that since the Applicant had not requested an oral hearing, the case would be dealt with without such a hearing, unless either party requested that one should be held. Neither party requested a hearing. Written evidence has been served in the form of an indexed and paginated bundle of 372 pages on behalf of the Respondent and a bundle served by the Applicant.
8. An inspection was to take place before the Tribunal met to determine the issues in the case. However, due to the onset of the C19 pandemic further Directions were issued on 26 March 2020, cancelling the inspection, but providing for the Tribunal members to drive past the property, if that was considered to be necessary, to look at the front of the property. The Directions gave permission for further photographic evidence to be served by either party, by 20 April 2020.
9. The Applicant served an additional bundle of photographs pursuant to the later Directions.

## **The Law**

### **The Housing Act 2004**

#### **CHAPTER 2 IMPROVEMENT NOTICES, PROHIBITION ORDERS AND HAZARD AWARENESS NOTICES *Improvement notices***

#### **Section 11 Improvement notices relating to category 1 hazards: duty of authority to serve notice**

- (1) If-
  - (a) the local housing authority are satisfied that a category 1 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,serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
- (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 subsections (3) to (5) and section 13.
- (3) The notice may require remedial action to be taken in relation to the following premises-
  - (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

- (b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
- (c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

- (4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied-
  - (a) that the deficiency from which the hazard arises is situated there, and
  - (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
- (5) The remedial action required to be taken by the notice-
  - (a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
  - (b) may extend beyond such action.
- (6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
- (7) The operation of an improvement notice under this section may be suspended in accordance with section 14.
- (8) In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

### **Section 12 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.

**SCHEDULE 1, PART 3**  
**APPEALS RELATING TO IMPROVEMENT NOTICES**  
**Appeal against improvement notice**

**Para 10**

- (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.
- (2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

**Para 14**

- (1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.
- (2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.
- (3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

**Para 15**

- (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.
- (2) The appeal-
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may by order confirm, quash or vary the improvement notice.
- (4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

**Written Submissions****The Applicant**

10. A brief summary of the Applicant's relevant submissions follow.
11. The Applicant accepts that an improvement notice was issued in 2015 in respect of the same property, with similar hazards to the hazards in the present case. Further, the Applicant accepts that on 6 February 2020 he was convicted of 11 offences of breaching an improvement notice, in respect of other properties, but states that this is subject to appeal. The Applicant submits that contrary to the picture being painted by the Respondent, the Applicant is a good and responsive landlord.
12. The Applicant submits that he did not know that an inspection was to take place on 26 November 2019. Letters posted to him and his wife did not arrive.
13. Further, the Applicant states that his wife did not receive a copy of the improvement notice on 3 December 2019. Only the improvement notice addressed to him was hand delivered on that date to their home. He suggests that Amy Broster is lying about hand delivery of his wife's copy of the improvement notice. Further, he suggests that his management agent should also have been considered as being an interested party. That failure to serve an improvement notice on both of these persons makes the notice invalid and it should therefore be quashed.
14. Further, the Applicant submits that the property was managed for him by his management agent, Steadwall Properties Limited. It was let by them, the tenancy agreement being signed by them on his behalf and that he was not aware of any complaints about the boiler or back door when the property was let.
15. The Applicant contends that it was wrong of the Respondent to issue an improvement notice on 3 December 2019. Officer Broster should have attempted informal rectification of these hazards before issue of an

improvement notice. The Applicant contends that he would have complied with informal rectification of the hazards and as such a formal notice was not necessary.

16. The Applicant contends that all hazards have been rectified. The Applicant submits a quantity of photographs in his original bundle to support this contention. These are supported further by the bundle received by the Tribunal on 20 April 2020, showing additional views of electrical fixings.

## **The Respondent**

17. A brief summary of the Respondent's submissions follow.
18. Following a complaint by the tenant at the property, Amy Broster investigated the complaint. Officer Broster ascertained the identity of the joint owners of the property, served notifications upon them as to the date and time of the inspection and then carried out an inspection at the property.
19. During the inspection Officer Broster ascertained that there were hazards at the property, these will be dealt with in full later in this decision.
20. Officer Broster decided that the appropriate course of conduct to take in view of the prior improvement notice being issued to this property and the same landlord was to issue another improvement notice.
21. An improvement notice was issued on 3 December 2019, served personally by her putting copies of the notice in to the letter box of the joint owners on that same day.
22. On 3 February 2020 there was a follow up inspection when it was clear that some work had been done to remedy the hazards.
23. Officer Broster has noticed that in relation to the alleged category 2 hazard of damp and mould, the alleged deficiencies have been omitted from the improvement notice. Officer Broster submits that the Tribunal should delete the incorrect deficiencies in the improvement notice and suggests a form of words that does reflect the deficiencies that the officer found.

## Determination

24. On Friday 24 April 2020 the Tribunal briefly met by remote conferencing and considered the question as to whether or not to conduct a drive by inspection of the front of the property. There are no issues to be decided that relate to the front of the property. The Tribunal decided that it is not necessary for the members to travel to Derby to conduct a drive past inspection.
25. At 10am on Monday 27 April 2020 the Tribunal met by remote conferencing to decide the issues in this case.
26. The property is a two storey, pre-1920 end of terrace, single family dwelling having a ground floor, first floor and basement. It has brick walls and a slate tiled pitched roof, with a small ground floor extension at the rear. Double glazed windows are provided throughout the building with gas fired central heating to most rooms, excluding the kitchen. The ground floor has two reception rooms, kitchen and bathroom. Steps in a stairwell lead down from the middle living room to the basement with stairs at the same location up to the first floor three bedrooms and toilet.
27. The first issue to be determined is whether or not this improvement notice is valid. The Applicant contends that it is not valid because he submits that a copy was not served upon his wife who is a joint owner of the property and a copy was not served upon his management agent and that both these people have a relevant interest in the property pursuant to paragraph 5 of schedule 1 of the Act. As such this omission, in his submission, renders the notice invalid in its entirety.
28. The Tribunal accepts that if there was a person who falls within the definition of a person having a relevant interest pursuant to paragraph 5 of schedule 1 of the Act, failure to serve a copy of the improvement notice on that person would invalidate the improvement notice.
29. The Tribunal considers paragraph 5 of schedule 1 of the Act and determines that the definition of a relevant interest as provided by sub paragraph 2 does not include a management agent. The definition includes "freeholder, mortgagee or lessee". There is no breach of this paragraph in failure to serve a copy of the improvement notice on the management agent. However, there would be a breach of this paragraph if the Applicants wife had not been served with a copy of the improvement notice
30. The Tribunal notes that there is clear undisputed evidence that a copy of the improvement notice was served upon the mortgagee.



31. The Applicant accepts that Officer Broster put a copy of the notice through his letter box, addressed to him, as she contends, but suggests that Officer Broster did not also put a copy of the notice through the same letter box at the same time addresses to the Applicants wife. He suggests that his evidence is supported by the fact that there is a photograph of the envelope addressed to him , but no photograph of the envelope addressed to his wife.
32. Officer Broster deals with service of the improvement notice on these two joint owners by stating that she had two envelopes each containing a copy of the improvement notice, one addressed to the Applicant and one addressed to Mrs Harmeet Kaur Khatkar, the Applicants wife. Officer Broster exhibits a photograph of the first envelope, but not the second. She took these to the address at which both husband and wife live, this is supported by photographic evidence. Ms Broster put both improvement notices through the letter box. This is supported by two certificates of service, one for each joint owner.
33. The Tribunal accepts Officer Broster's evidence on this point. There is proper service of a copy of the improvement notice on both joint owners. As such the improvement notice is valid.
34. The Tribunal now considers whether informal action should have been taken to rectify these hazards. The Tribunal notes that it is agreed evidence that an improvement notice was issued to the same address and same landlord, dealing with similar hazards, in 2015. Considering this alone, the Tribunal determines that it was not improper or unreasonable to move straight to the issue of an improvement notice in this case.
35. The Tribunal will now consider each hazard in turn and in doing so will consider the evidence as submitted by the parties, including photographs.
36. **Category 1 hazard, Entry by Intruders** (Respondent's bundle, page 196) and remedial action (Respondent's bundle, page 199). The deficiencies giving rise to the hazard are firstly, that the rear external kitchen door was insecure on 26 November 2019, the lock did not work and the door could only be partially secured by two sliding barrel bolts at the top and bottom of the inside of the door. Secondly, a fence panel was missing from the garden fence.
37. It is uncontested evidence that a replacement rear external kitchen door was fitted on 16 January 2020 and the Respondent requests that this hazard be revoked, Ms Broster having seen this newly fitted door during her second inspection on 3 February 2020. The Tribunal determines that this hazard will be deleted from the improvement notice.

38. **Category 1 hazard, Fire** (Respondent's bundle, page 196) and remedial action (Respondent's bundle, pages 199 and 200). There are 6 deficiencies listed as giving rise to the hazard as seen on 26 November 2019. These are summarised as:

- Lack of smoke and heat alarms
- Missing doors in various rooms
- Damaged door in the middle bedroom
- Absence of a fire blanket in the kitchen
- lack of electrical sockets to both ground floor reception rooms and the middle and rear bedrooms
- Combi-boiler not working correctly and the absence of a gas safety certificate

39. The Applicant has fitted two battery powered stand alone smoke detectors and suggests that this remedies the first deficiency listed above. The Tribunal does not agree with the Applicant. The remedy sought by the Respondent is the fitting of hard wired smoke alarms with a heat detector in the kitchen (these being an interlinked system conforming to BS5839-6: Grade D1 Category LD2). The Tribunal considers the advice at paragraph 22.14 of the LACORS, Housing -Fire Safety Guidance (approved by the Chief Fire Officers Association) and notes that this guidance also recommends an interlinked fire detection system for this type of property. The Tribunal therefore determines that only a system as described by the Respondent will suffice to remedy this deficiency.

40. The Tribunal accepts the photographic evidence submitted by the Applicant that where there were missing doors or a damaged door as seen by Officer Broster, on 26 November 2019 there are now undamaged doors. The Tribunal also accepts photographic proof of the presence of a fire blanket in the kitchen. However, there is no way from the photographs to ascertain whether or not these doors are a good close fit in their frames as required by the remedial action. These are not fire doors but are required to slow down the spread of fire and smoke throughout the property in the event of a fire and as such the Tribunal agrees with the Respondent that doors fitted should be a good fit, hence reducing the amount of air that is able to pass between a closed door and the frame of the door. The Tribunal therefore determines that the fitting of doors to the door frames specified does not remedy this deficiency, without it being evident that the newly fitted doors are a good fit into the frames.

41. The Tribunal therefore determines that the second, third and fourth deficiencies should be deleted from the improvement notice, but that the two deficiencies relating to doors be replaced by a newly drafted deficiency.
42. It is evident from the Applicant's photographs submitted on 20 April 2020 that there is still a lack of electrical sockets in four rooms. The Tribunal determines that this deficiency still requires to be remedied in accordance with the improvement notice. The Respondent has determined, in accordance with official guidance from the Electrical Contractors Association (Respondent's bundle, page 165), a minimum number of sockets should be provided in each of these four rooms to prevent overloading of the sockets and reduce the need for electric cables, these are:
- Ground floor living room, 3 double sockets (there are currently 2 double sockets).
  - Ground floor middle living room, 3 double sockets (there are currently 2 double sockets).
  - First floor middle bedroom, 2 double sockets (there is currently 1 double socket and 1 single socket).
  - First floor rear bedroom, 2 double sockets (there is currently 1 double socket).
43. With regard to the last deficiency it is now common ground that the combi-boiler has been repaired and a gas safe certificate has been produced, dated 23 September 2019. This deficiency should be deleted from the improvement notice.
44. As a result of the remedial action already taken by the Applicant, the Tribunal determines that this fire hazard is now a category 2 hazard.
45. In the list of deficiencies giving rise to the fire hazard the following must be done. The first deficiency is to remain, but the first line will be amended by adding three words to it so that the first line will now read "There are no hard wired, interlinked smoke or heat alarms fitted to the property". The fifth deficiency is to remain as currently drafted. The remaining deficiencies are to be deleted. Add a third deficiency, "Doors have been fitted or repaired since the inspection on 26 November 2019, namely doors to the kitchen, stairs, first floor rear bedroom, cellar and first floor middle bedroom. There is a risk that these doors may not be a good fit into the frames".
46. The remedial action required, currently drafted as 3 on Schedule 1(b) and having 5 bullet points should remain as it is.

47. The remedial action required, currently drafted as 4 on Schedule 1(b) but without any bullet points should remain, but the first sentence shall be modified to read, " Provide and fit sound, substantial, well-constructed, closefitting conventional doors to the kitchen, stairs, first floor rear bedroom, cellar and first floor middle bedroom".
48. The remaining two items or remedial action are to be deleted.
49. **Category 1 hazard, Excess cold** (Respondent's bundle, page 197) and remedial action (Respondent's bundle, page 200). There are two deficiencies, that there is no space heater in the kitchen and the fact that the kitchen window does not lock.
50. The Tribunal agrees with the Respondent that on 26 November 2019 there was no fixed space heating appliance/facility in the kitchen. The Tribunal refers to the improvement notice issued in 2015 that deals with the same hazard (Respondent's bundle, page 179). It is reasonable, on the balance of probability, to assume that the same central heating system was in place in 2015. There was then an inspection of the kitchen which did not find that there was a deficiency in the absence of a space heater in the kitchen. This reveals a different approach being taken in two inspections of the same kitchen.
51. In any event the Applicant's photographs establish that there is now an enteric heater fitted to the kitchen wall. The Tribunal determines that this is sufficient to remedy this deficiency.
52. It appears to the Tribunal that the defective kitchen window is still defective, but the Tribunal determines that this on its own is insufficient to establish that there is a hazard of excess cold. The Tribunal determines that this hazard must be deleted.
53. **Category 2 hazard : Damp and mould** (Respondent's bundle, page 202) and remedial action (Respondent's bundle, page 206). Officer Broster accepts that an error was made in describing the deficiencies in this hazard and asks the Tribunal to remedy this defect in the improvement notice (Respondent's bundle, page 28 and 40).
54. The Tribunal considers section 13(2)(c) of the Act. This is a mandatory requirement that the improvement notice specify the deficiency and this has not been done. The Tribunal determines that this hazard must be deleted from the improvement notice.

55. **Category 2 hazard : Uncombusted fuel gas** (Respondent's bundle, page 202) and remedial action (Respondent's bundle, page 206). The single deficiency is that there is no gas safety certificate and such a certificate has been exhibited in the Applicant's bundle. The Tribunal determines that this is sufficient to remedy this deficiency and this hazard should be deleted from the improvement notice.
56. **Category 2 hazard : Domestic hygiene, pests and refuse** (Respondent's bundle, page 202) and remedial action (Respondent's bundle, page 206 to 207). There are three deficiencies, a hole in the concrete surrounding a drain cover, a hole in exterior bathroom wall and a tile missing in the kitchen wall and disrepair of the skirting board in a bedroom. These defects could permit pests to enter and move about the property. The Tribunal notes that in a WhatsApp message on 13 December 2019 the tenant of the property is seen to be referring to an infestation of mice.
57. The Applicant has produced photographs that establish that all these defects except for the missing tile in the kitchen have been remedied in a manner accepted by the Tribunal. The Tribunal determines that the remaining defect is insufficient to amount to a hazard of domestic hygiene, pests and refuse. This hazard must be deleted.
58. **Category 2 hazard : Personal hygiene, sanitation and drainage** (Respondent's bundle, page 203) and remedial action (Respondent's bundle, page 207). There are four deficiencies giving rise to this hazard, a defective door frame to the bathroom, tiles missing around the bath, a faulty light in the bathroom and a problem with the hot water supply to the bath.
59. The Applicant has produced photographic evidence to establish that the first three deficiencies have been dealt with to the satisfaction of the Tribunal. A new door frame has been fitted, tiles fixed and a new light fitted. For this reason these deficiencies should be deleted from the improvement notice.
60. The fourth deficiency as described in the improvement notice is not exactly the same as the defect found and described by Officer Broster during her inspection of the property (Paragraph 33, Respondent's bundle, page 7). Further, the remedial action to be taken does not require any remedy to be undertaken to put this alleged defect right. The Tribunal is, however, aware that the hot water boiler has been repaired. Looking at this deficiency in the round the Tribunal determines that it is fair and just to order that it be deleted from the improvement notice.

61. As such the hazard of personal hygiene, sanitation and drainage is to be deleted from the improvement notice.
62. **Category 2 hazard : Falling on stairs etc.** (Respondent's bundle, page 203) and remedial action (Respondent's bundle, page 207 to 208). There are three deficiencies, that there is no nosing on the second step going down into the cellar, that there is no electric light in the area of the steps going to the cellar and that the step from the living room to the kitchen is loose.
63. The Applicant has provided photographs that show that a nosing has been fitted to the tread on the cellar steps and that a new threshold has been fitted to the top of the step between the living room and the kitchen, secured with three screws. The Tribunal determines that this is adequate to remedy these two deficiencies and they are to be deleted from the improvement notice.
64. There is no evidence to suggest that the second deficiency has been dealt with. The Tribunal considers the absence of adequate electric lighting to the cellar steps to be a category 2 hazard, but determines (without the benefit of an inspection) that the provision of one electric light fitting will be sufficient to remedy the defect. The Tribunal therefore determines that the deficiency in respect of the absence of adequate lighting to these steps will remain as currently drafted. The remedy currently detailed at 13 in Schedule 2(b) (Respondent's bundle, page 207) first paragraph should be altered to read, "Install a lighting point over the steps to the cellar". The second paragraph should be altered to read, "Adapt and extend existing installation in suitable cable, observing the need for RCD protection on the cable if not mechanically protected, surface mounted or fitted at a depth of greater than 50mm. Provide, fix and connect a new light fitting, suitable for its location over the cellar steps. Connect the light fitting to a switch at the top of the steps. Test and leave in proper working order". The remainder of the paragraphs within this section (remedial actions 13) are to remain as currently drafted.
65. **Category 2 hazard : Falling between levels.** (Respondent's bundle, page 203) and remedial action (Respondent's bundle, page 208). The deficiency is the absence of restrictors on two bedroom windows. The Applicant has provided photographs that establish that these have now been fitted to the satisfaction of the Tribunal. This defect is to be deleted from the improvement notice.

66. **Category 2 hazard : Electrical hazards** (Respondent's bundle, page 203) and remedial action (Respondent's bundle, page 208 to 210). There are five deficiencies, a faulty light in the bathroom, lack of electrical sockets in the rooms already referred to as a deficiency in the hazard of fire (paragraphs 38 and 41, above) ring main cable being exposed above the kitchen door, a poorly fitted ceiling light rose in the front living room and a loose electric socket in the kitchen.
67. The Applicant has provided photographs that establish to the satisfaction of the Tribunal that he has remedied four of these five deficiencies. As such these deficiencies will be deleted from the improvement notice. The only remaining defect is that currently drafted as the second deficiency, that there are not enough electric sockets provided in four rooms. However, these are the same rooms and the same defect as are detailed in the fire hazard, dealt with in detail in paragraph 42, above. The Tribunal determines that when this defect is the only one that could remain as a deficiency in this hazard, it is unnecessary and unreasonable to repeat the same defect again in this, a further hazard. It is therefore fair and just to delete the whole of this hazard from the improvement notice.
68. **Category 2 hazard : Structural collapse and falling elements** (Respondent's bundle, page 204) and remedial action (Respondent's bundle, page 210). There are two deficiencies, a shelving unit that is not properly fixed to the wall in the living room and a radiator that is not properly fixed to the wall in the rear bedroom.
69. The Applicant has provided a photograph that proves that the shelving unit has been fixed to the wall. The Tribunal is satisfied that this is an adequate remedy to this defect.
70. The Respondent has provided a photograph of the radiator in question ( Respondent's bundle, page 287). In that photograph the radiator appears to be in the process of being used by the tenant as a place from which to hang a clothes dryer. As such, on the balance of probability, the Tribunal determines that this defect has been caused by the tenant. The Tribunal notes that the Applicant, on the eighth page of his statement deals with this issue, indicating that the clothes dryer had caused the radiator to come off its fixings and that the Applicant has put the radiator back onto its fixings. The Tribunal notes that paragraph 2.35 of the Housing Health and Safety Rating System, Operating Guidance, excludes a hazard caused by a tenant. In any event the Tribunal accepts the evidence of the Applicant that he has remedied this deficiency. As such the Tribunal determines that this defect should be deleted from the improvement notice.

71. The Tribunal determines that as a result of work done to the property since the inspection on 26 November 2019 and a defect in the drafting of the improvement notice, nine of the eleven hazards must be deleted from the improvement notice. Of the two hazards that remain, they are a category 2 hazard of fire, with three deficiencies (paragraphs 38 to 48, above) and a category 2 hazard of falling on stairs with one deficiency (paragraphs 62 to 64, above).
72. The Tribunal determines that the date on which remedial action for these two hazards should be started is 56 days from the date that the Decision is sent to the parties. This is a long period of time to give opportunity for the C19 pandemic to resolve. The remedial action should be completed within 28 days thereafter.

### **Decision**

73. The Tribunal decides that this a properly issued and valid improvement notice.
74. For the reasons stated above the Tribunal decides that it will vary the improvement notice pursuant to paragraph 15(3) of Part 3 of Schedule 1 of the Housing Act 2004, to delete nine of the hazards from the improvement notice. The improvement notice will now consist of two category 2 hazards, they are a category 2 hazard of fire, with three deficiencies (paragraphs 38 to 48, above) and a category 2 hazard of falling on stairs with one deficiency (paragraphs 62 to 64, above).
75. The Tribunal decides that the date on which remedial action for these two hazards should be started is 56 days from the date that the Decision is sent to the parties. This is a long period of time to give opportunity for the C19 pandemic to resolve. The remedial action should be completed within 28 days thereafter.
76. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal to that Tribunal must first ask for permission to appeal from this Tribunal by delivering to this Tribunal, within 28 days of the Decision being sent to them, a document setting out the grounds for the appeal, particulars of each ground and the result that the party seeks to achieve by making the appeal.

Judge C. P. Tonge

Date 6<sup>th</sup> May 2020