



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

Case Reference : **CAM/00MG/HIN/2021/0010**

HMCTS : **Face to face**

Property : **44 Farrier Place, Downs Barn, Milton
Keynes MK14 7PL**

Applicant : **Ms Edwina Adul**
Representative : **Mr Eliakim Samal**

Respondents : **Milton Keynes Council**
Representative : **Ms Holly Newing of Counsel**

Type of Application : **An appeal of an Improvement Notice
(Schedule 1 Part 3 Housing Act 2004)**

Tribunal : **Judge JR Morris**
Mrs M Hardman FRICS, IRRV(Hons)

Date of Application : **10th November 2021**
Date of Directions : **14th January 2022**
Date of Hearing : **3rd May 2022**
Date of Decision : **12th May 2022**

DECISION & ORDER

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DECISION

1. The Tribunal make a **Consent Order** as follows

It is Agreed between the Parties that:

- a) The remedial works required by the Improvement Notices served on 27th October 2021 by the Respondent on the Applicant having been completed by the Applicant, the Respondent agrees to revoke the Improvement Notices subject to the adjustment of the door latch to the kitchen.

- c) Within 28 days of the Order the Applicant shall adjust the kitchen door latch to meet the standards required by the Improvement Notice dated 27th October 2021.
- b) Pursuant to section 49 of the Housing Act 2004, a fee of £100.00 should be payable by the Applicant to the Respondent for expenses relating to the enforcement action.

REASONS

Application

2. On 27th October 2021, the Respondent served two Improvement Notices on the Applicant pursuant to sections 11 and 12 of the Housing 2004 Act. The first (the First Notice) was in relation to a Category 1 Excess Cold Hazard pursuant to section 11 of the Housing 2004 Act. The second (the Second Notice) was in relation to a Category 2 Fire Hazard.
3. On 10th November 2021, the Applicant appealed to the Residential Property Tribunal. The Appeal was made within the 21 days of the service of the Improvement Notice and Directions were issued on the 14th January 2022.
4. The Appeal was heard on 3rd May 2022. Under paragraph 15 (3) of Schedule 1 of the Housing Act 2004 a tribunal may by order, confirm or vary an improvement notice.

The Law

5. The legislation relating to the issues raised is Part 1 Chapter 1 and Chapter 2 Housing Act 2004.

Inspection

16. An inspection was made by the Tribunal in the presence of the Applicant, Ms Edwina Adul and her representative Mr Eliakim Samal and Mr John Chilton, Private housing Sector Team Leader for the Respondent.
17. The Property is a two-storey end of terrace house constructed of brick under a pitched tile roof with timber single glazed front door and, on the day of the inspection, upvc framed windows with double glazed units.
18. The Property comprises an entrance hall from which rise stairs to the first floor. On the ground floor off the hallway is a cloakroom with w.c. and wash hand basin, a kitchen with a dining area and a room used as a bedroom. The door to the kitchen had intumescent strips and closed with a self-closing mechanism and appeared to provide half hour fire protection, however the latch needed adjustment to ensure the door

closed fully. The door to the bedroom had intumescent strips and closed fully with a self-closing mechanism and appeared to provide half hour fire protection. On the first floor off the landing there are three cupboards, one of which houses a gas fired boiler, there is a bathroom with w.c. and four bedrooms. The door to the boiler cupboard had intumescent strips and closed and appeared to provide half hour fire protection

19. There is a garden that is paved forming a yard at the rear, for which there is access via a lane at the back of the house. In the front there is hardstanding.
20. Space and water heating is by gas fired central heating system and the Property has mains gas, water electricity and drainage.

The Notices

21. The Tribunal was provided with copies of the Improvement Notices served under Section 11 and 12 Housing Act 2004 being appealed. Both Notices were issued on 27th October 2021.
22. The ***First Improvement Notice*** stated that the Respondent considered that Category 1 Excess Cold Hazard existed on residential premises, namely the Property.
23. The Deficiency giving rise to the hazard was (Schedule 1):

The windows at the property are wooden single glazed and have degraded beyond repair. There are loose panes of glass, large holes and gaps between the frames and the glass, allowing cold air to enter unchecked, the kitchen window is nailed shut due to the degradation of the frame, the first floor front bedroom window cannot be opened, there are loose and damaged window handles throughout, the kitchen window has a cracked pane of glass. There are large gaps evident around the frame of the kitchen window where the window has warped in the frame. The windows are not weathertight. The first floor bathroom appears to be the only window frame which is Upvc. There is mould growth throughout on all the frames. Cold air can enter unchecked throughout the property and the tenants advised that it is very cold in the winter.

24. Remedial Action/work to be undertaken (Schedule 2):

Replace all wood framed single glazed windows. Ensure that all windows are weather tight and can be opened, closed and secured with an appropriate handle with no gaps to allow draughts. All glass panes must be secure in the frames. First floor windows must be fitted with window restrictors. The work was to begin no later than 26th November 2021 and completed by 21st January 2022.

25. The ***Second Improvement Notice*** stated that the Respondent considered that Category 2 Electrical Hazard existed on residential premises, namely the Property.
26. The Deficiency giving rise to the hazard was (Schedule 1):
- The ground floor front bedroom fire door does not close fully and is ill fitting in the frame. There is no self-closer fitted to the kitchen fire door. The first floor boiler cupboard [is] not fitted with a fire door.
27. Remedial Action/works required to be taken (Schedule 2):
- Refit the ground floor front bedroom fire door and ensure that the door closes fully with a self-closing mechanism to provide a half hour escape route. Fit a self-closer to the kitchen door. Replace the first floor boiler cupboard door with a half hour fire door fitted with intumescent strips. The work was to begin no later than 26th November 2021 and completed by 21st January 2022.
28. A ***Statement of Reasons*** stated that an Improvement Notice was considered to be the most appropriate course of action because the Property is already occupied by up to 5 persons and the hazard affects every window in the property except for the first-floor bathroom window which appears to have been upgraded to upvc some time ago, a Prohibition Notice would not be appropriate in this instance as it would prevent use of the Property. A Suspended Notice would not be appropriate as the Property is already occupied by tenants and the hazards are directly affecting them. The hazards do not present an imminent risk of serious harm to the health and safety of any of the occupiers of the premises therefore the service of an Emergency Prohibition Order or undertaking Emergency Remedial Action is not considered the most appropriate course of action. The owner or responsible party have not taken responsibility for the repairs to date so a Hazard Awareness Notice would not be appropriate as the occupiers are being exposed to the hazard and need direct action to remove the hazard. An Improvement Notice would allow work to be undertaken to remove or reduce the hazards at the property and allow the retention of 5 units of accommodation. Therefore, an Improvement Notice is the most appropriate course of action and the other options can be discounted.

Demand Notice

29. The Respondent served a Demand Notice under section 49 of the Housing Act 2004, dated 27th October 2021, to recover expenses relating to enforcement action namely serving an Improvement Notice in the sum of £324.00 incurred in:
- Determining to serve the Notice
 - Identifying any action to be specified in the notice
 - Serving the Notice.

Service on the Applicant

30. The Land Registry Entry BM157665 for the Property showed that since 5th July 2004 the registered freehold proprietor of the Property had been Yetunde Moronke Abiola (a copy was provided). The Applicant had said that the Property was held in trust for Ms Abiola and that the Applicant was the person managing or having control of the Property and that a Housing in Multiple Occupation Licence had been granted to her by the Respondent on 15th November 2021 and came in force on 13th December 2021 (a copy was provided). The Applicant was therefore the person upon whom the above Notices were served.

Hearing

31. The Hearing was attended by the Applicant, Ms Edwina Adul, and her representative Mr Eliakim Samal. For the Respondent it was attended by Ms Holly Newing of Counsel, Ms Lynn Inggs, Private Sector Housing Officer (the Housing Officer) and Ms Florence Milner, Private Sector Housing Assistant and Mr John Chilton, Private housing Sector Team Leader for the Respondent and Lucy Tucker, Toni Gibbons, Danny Morris and Carolyn Green Officers of the Respondent observing proceedings.

Submissions

32. From the written and oral statements by and on behalf of the Applicant the Tribunal noted that the Applicant was aggrieved that the Respondent had served the Improvement Notices. The Applicant said that it was always intended to replace the windows and had already carried out extensive works itemised by the Respondent in an email dated 9th June 2021 after the inspection on 8th June 2021, It was felt that the Officers had been abrasive and the action was highhanded and pre-emptive. It was also said that the occupiers had been happy with the condition of the Property taking into account the payments by the occupiers which were below market rent.
33. The Tribunal stated that it in respect of an Appeal against the issuing of an Improvement Notice it could only consider whether the correct procedure had been followed, the deficiencies correctly identified, the remedial action appropriate and the reasons justified. Central government had by the Housing Act 2004 tasked the local authorities with ensuring housing was safe and healthy. Standards had changed and conditions that might have been considered reasonable in the past were no longer acceptable. The Housing Health and Safety Rating System sought to provide an objective standard which was applied irrespective of what an occupier may be satisfied with.
34. The Tribunal stated that on its inspection it had found that, apart from the need to adjust the latch on the door to the kitchen and dining area,

the Improvement notices had been complied with. Mr Chilton who had been present at the Inspection agreed.

35. Mr Chilton, as Team Leader said that the Respondent was prepared to revoke the improvement notice following the adjustment to the kitchen door latch.
36. Ms Newing said that the remedial works required by the Improvement Notices served on 27th October 2021 by the Respondent on the Applicant having been completed, except the adjustment of a door latch, by the Applicant the Respondent would agree to revoke the Improvement notices subject to the latch being adjusted.
37. Therefore, the only issue outstanding was the Demand Notice under section 49 of the Housing Act 2004, dated 27th October 2021, to recover expenses relating to enforcement action namely serving an Improvement Notice in the sum of £324.00 incurred in:
 - Determining to serve the Notice
 - Identifying any action to be specified in the notice
 - Serving the Notice.
38. The work having been carried out and in order to bring matters to a close, Ms Newing said that the Respondent was prepared to make some concessions with regard to the £324.00 fee.
39. Following a short adjournment, the parties agreed that pursuant to section 49 of the Housing Act 2004, a fee of £100.00 should be payable by the Applicant to the Respondent for expenses relating to the enforcement action.

Decision

40. The Tribunal decided to make a consent order giving effect to the parties' agreement as follows:
 - a) The remedial works required by the Improvement Notices served on 27th October 2021 by the Respondent on the Applicant having been completed by the Applicant, the Respondent agrees to revoke the Improvement Notices subject to the adjustment of the door latch to the kitchen.
 - c) Within 28 days of the Order the Applicant shall adjust the kitchen door latch to meet the standards required by the Improvement Notice dated 27th October 2021.
 - b) Pursuant to section 49 of the Housing Act 2004, a fee of £100.00 should be payable by the Applicant to the Respondent for expenses relating to the enforcement action.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
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 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.