FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/HIN/2018/0003**
Property	**:**	**22 Ennis Road, Plumstead, London SE18 2QT**
Applicant	**:**	**Mr Bharat Rabadia (freeholder)**
Representative	**:**	**Eaton Green Estate Agents**
Respondent	**:**	**London Borough of Greenwich**
Representative	**:**	**San Nyunt MCIEH, Senior Environmental Health Officer**
Interested persons	**:**	**Rose Akudo Okoh and Henry Amurukonye (tenants)**
Type of application	**:**	**Appeal in respect of an improvement notice**
Tribunal member(s)	**:**	**Judge Timothy Powell** **Mr Neil Martindale FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 June 2018**

DECISION

Summary of the tribunal's decisions

(1) Save as varied below, the tribunal confirms the improvement notice served by the respondent council on the applicant freeholder on 1 February 2018 and requires works, as varied, to be carried out within six weeks of the date of this decision; and

(2) In addition, the tribunal confirms the demand for payment of a charge for enforcement action in the sum of £461.11, also dated 1 February 2018, which sum should also be paid within six weeks of the date of this decision.

Background

1. On 19 February 2018, the tribunal received an appeal by the applicant freeholder against an improvement notice dated 1 February 2018, served upon him by the respondent council under section 12 of the Housing Act 2004. The notice was served in respect of five alleged Category 2 hazards at 22 Ennis Road, Plumstead, London SE18 2QT ("the property").

2. The tribunal issued directions on 22 February 2018 providing for a paper determination of the appeal in the week commencing 21 May 2018, unless an oral hearing was requested by either party. Neither party, nor the interested persons, being the tenants of the property, requested a hearing. The matter was therefore considered by the tribunal on the papers presented, namely bundles from the applicant, the respondent and the interested persons. No party requested an inspection and, in the light of the documentation provided, including colour photographs of conditions in the property, the tribunal did not consider that an inspection was necessary.

The facts

3. The current tenants of the property, Ms Rose Akudo Okoh and Mr Henry Amurukonye, moved into the property in about 2013, together with their four children (who are now aged between 7 and 18 years), though the tribunal was only provided with a copy of their most recent tenancy agreement, dated 27 September 2016. The tenancy was granted by the appellant, Mr Bharat Rabadia, and Mrs Disha Rabadia (presumed to be his wife), who together are the landlords of the property.

4. Shortly after moving into the property in 2013, the tenants realised that the premises were in a poor state of repair and gave notice to the landlords' agents. Their complaints related to problems with damp and mould in the property, water ingress into the living room, a lack of hot water in the wash hand basin of the bathroom, leaks from the kitchen waste pipe, the gas boiler breaking down regularly, perished plaster, a tripping electricity supply and pest infestation, amongst others. Despite complaints, the landlords took no effective action to remedy these problems.

5. In August and September 2017, the landlords procured a domestic electrical installation certificate and a gas safety check certificate in respect of the property, though the authenticity of the former was disputed by the tenants. On 7 November 2017, the tenants complained to the respondent council, which carried out an inspection on 14

November 2017 in accordance with the Health and Housing Safety Rating Scheme under the Housing Act 2004.

6. The inspection report produced by the council confirmed the state of disrepair of the property, identifying the following hazards: damp and mould, domestic hygiene, food safety, personal hygiene, falls on levels, electrical and structural collapse (the latter relating to the apparent weak condition of the living room ceiling due, it seems, to water penetration).

7. On 14 November 2017, the council gave the landlords informal notice to carry out remedial works by 13 December 2017. When the council inspected on 12 January 2018, three of the hazards identified had been removed leaving 12 outstanding. The Council extended the landlords' time for compliance to 23 January 2018, but a further inspection on that date indicated that the works had not been done.

8. On 1 February 2018, the council served the appellant with a formal improvement notice identifying five Category 2 hazards and specifying the works that were necessary to be carried out to remove the hazards, by 8 March 2018. In addition, the council served a demand for payment of its charge for taking enforcement action in the sum of £461.11.

9. In its statement of reasons for serving an improvement notice, the council stated, amongst other things, that:

> "It is considered that the service of an improvement notice is the most appropriate action to deal with the hazards at the premises, especially as prior notification has not resulted in the works being carried out. The hazards create a more serious situation. The works are necessary to mitigate the Category 2 hazards. They should not be left unresolved, as they present a significant risk of harm not only to the occupants but to any visitors …
>
> Service of a hazard awareness notice is not appropriate as it would not mitigate the hazards and there are significant hazards to the health and well-being of any person habiting this dwelling …
>
> Suspension of the notice is inappropriate because there are significant hazards to health in the dwelling."

10. Attempts were made in February and March for the landlords' contractors to attend the property and carry out works. On one occasion the contractors did not turn up at the property, on two occasions the appointments had to be postponed because the contractor had a family emergency and was in hospital. On another occasion, contractors attended the property but did no work. It does, however, appear that some electrical repair works were carried out on 27 April 2018.

11. In his appeal against improvement notice, the appellant appeared to accept that he would fix the electrical issue (whereby the circuit tripped every time the oven was used) "when the water from the bathroom leak

dries". With regard to damp and mould, the appellant claimed that this was the responsibility of the tenants, the property being overcrowded with furniture, boxes and belongings "that the tenants have hoarded". He claimed that air cannot circulate throughout the property due to the overcrowding of furniture and that, in any event, the tenants were responsible for any condensation in their tenancy agreement.

12. With regard to the kitchen area, the appellant once again blamed the tenants, saying that the ceiling was flaking due to heat and lack of ventilation. This was, he said, the responsibility of the tenants, as was their desire for a larger fridge/freezer. The broken toilet seat in the bathroom was also said to be the tenants' responsibility. The appellant also denied responsibility for the exposed metal carpet strips in the property, which he argued "are not broken due to wear and tear" and "again this is the responsibility of the tenants to fix."

13. The colour photographs of the property show: mould growth in the corners of several rooms, mostly at low-level, but also at high level on the walls; a poorly-placed electrical switch positioned under the kitchen sink; mould on window frames and windowsills; poorly-housed piping; a corroded bath panel and a broken kitchen worktop; mouse droppings; frayed carpets and exposed metal strips; and, externally, a sagging, lichen-covered porch roof and stained brickwork behind a rainwater downpipe.

The tribunal's decisions

14. The existence of the Category 2 hazards in Schedule 1 of the improvement notice are confirmed, but the tribunal has determined that certain works in Schedule 2, being the specification of works to be carried out, should be varied and the timescale for carrying out the works should also be varied, as set out below.

15. The hazard deficiencies and remedial actions identified in the improvement notice and the tribunal's reasons for its decision are set out below.

Hazard: electrical hazard - Category: 2

16. Schedule 1 of the improvement notice recorded that the electricity trips off when the cooker in the kitchen is turned on. The tribunal is satisfied that this is a Category 2 hazard and that it is the appellant's responsibility to remedy. However, the tribunal has decided to vary the works specified by the council in Schedule 2 to address this hazard, as follows (with deleted words crossed through and new words underlined):

> "Hire a qualified and competent electrician to investigate the cause of electricity tripping off when the oven is turned on ~~Carry out necessary remedial work specified in the reports~~ and make recommendations to prevent the fault from recurring. A copy of the investigation report ~~proof of completion of work and an electrical~~

~~certificate provided by an NICEIC registered electrician~~ shall be submitted to the officer dealing with this case, with a view to agreeing with the owner of the property what works are necessary and within which timescale."

17. The tribunal's reasons for reaching these conclusions and for varying the improvement notice are as follows.

18. Although there was no inventory or schedule of condition attached to the tenancy agreement in the papers, the tribunal infers that the cooker was originally provided by the landlords. As such, it forms part of the landlords' fixtures and fittings. By clause 24.9 of the tenancy agreement, it is the landlords' responsibility to ensure that all electrical appliances comply with relevant safety regulations. By clause 24.3 of the tenancy agreement, it is the landlords' responsibility to repair certain installations for the supply of electricity. There is no evidence what the fault is that creates this hazard: it may be an element in the electric cooker or it might have to do with the electricity circuits in the building. Either way, it is down to the appellant to investigate and resolve what is a clear hazard to the occupants.

19. The tribunal does not consider it reasonable for the appellant to wait any longer for water to dry out before undertaking any necessary work, given that he has been on notice of this problem since at least November 2017 (if not since 2014) and there has been more than sufficient time to deal with any water leakage and dampness in the area of the cooker. In any event, it would only take a few days for any residual water to dry out.

20. Having decided that the hazard is the landlords' responsibility to resolve, the tribunal accepts that it is reasonable to require them to hire a qualified and competent electrician to investigate the cause of electricity tripping. However, as the cause of the problem cannot be known and as this is rated as a Category 2 rather than a Category 1 hazard, the tribunal does not consider it reasonable for the landlord to be obliged to carry out whatever remedial work may be specified in a competent electrician's report, without the fault being found and reasonable (possibly alternative) remedies being considered.

21. For this reason, the tribunal has decided to limit the works to be carried out to the obtaining of a report and providing a copy to the council, so that further discussions can be had as to the extent of this problem and the necessary remedial works that are required. A view can then be taken as to what is necessary and within what timescale. If necessary, and if agreement cannot be reached between the parties, the council can serve a fresh improvement notice to deal with any residual electrical hazards.

Hazard: damp and mould - Category 2

22. Schedule 1 of the improvement notice identifies condensation mould affecting two bedrooms on the first floor of the property. The first affected bedroom is on the first floor right, mainly at the corners by the bed and the wardrobe. The second affected bedroom is on the first-floor front middle. The kitchen cupboards also have mould.

23. The tribunal is satisfied that this is a Category 2 hazard and that, quite probably, it will be the appellant's responsibility to remedy. However, the tribunal has decided to vary the works specified by the council in Schedule 2 to address this hazard, as follows (with deleted words crossed through and new words underlined):

> "Obtain a damp specialist report in connection with the presence of dampness to all the affected areas of the property including kitchen cupboards, identifying all potential causes of damp and making recommendations to remove and/or prevent recurrence of damp. ~~Carry out recommendations specified in the report to prevent damp from re-occurring~~. A copy of the investigation report and its recommendations shall be submitted to ~~this~~ the officer dealing with this case, before remedial work proceeds, with a view to agreeing what remedial works may be necessary and within what timescale."

24. The tribunal's reasons for reaching these conclusions and for varying the improvement notice are as follows.

25. Condensation dampness may be caused by a combination of factors, such as: excess moisture in the atmosphere, a lack of heating, inadequate insulation, a lack of ventilation and water ingress. The tribunal is satisfied that the property does suffer from condensation dampness and mould growth. However, the source and cause of such condensation dampness is unknown and is strongly disputed by the appellant. He alleges that the tenants fail to ventilate the property properly and hoard both furniture and boxes in the property, thereby preventing adequate circulation of air within the property, all of which cause condensation dampness on the walls.

26. It appears that the tenants have obtained an expert's report from a Mr Ian Lovatt, an independent environmental health consultant, but, unfortunately, this was not provided to the tribunal. Therefore, the probable cause of the condensation dampness is not known. Nevertheless, it is reasonable to require the appellant to deal with this hazard, if it is down to the condition of the property, rather than down to the way the property is used by the tenants. For this reason, it is it is reasonable for the council to require the appellant to obtain a damp specialist's report identifying the potential causes of dampness and making recommendations, but the current blanket requirement to carry out all recommendations (whatever they may be) is too broad, without a clearer picture of the cause or causes.

27. For this reason, a copy of the report should be provided to the council so that discussions can be had as to any further action that is necessary which, if it cannot be agreed between the parties, may be enforced by the council by means of a further improvement notice.

Hazard: food safety – Category 2

28. Schedule 1 of the improvement notice identifies problems with dry and peeling paint directly above the food preparation area in the kitchen and the inadequate size of fridge/freezer for the household.

29. The tribunal is satisfied that the dry and peeling paint is a Category 2 hazard and the appellant's responsibility; but it has insufficient information to reach a conclusion as to the size of the fridge/freezer. It therefore confirms the works required to address the first hazard namely, works numbered 1. and 2. in Schedule 2 (i.e. to deal with the dry and peeling paint and silicon sealing between the splashback tiles). However, it has insufficient information to reach a conclusion with regard to the fridge/freezer and therefore deletes the requirement to provide a fridge/freezer of adequate size suitable for the household.

30. The tribunal's reasons for reaching these conclusions are that the tenants have been in occupation since 2013 and that any deterioration to the ceiling must constitute "fair wear and tear", which is excluded from being the tenants' responsibility by clause 10.1 of the tenancy agreement. This is a very small job and the tribunal is surprised that the appellant is resisting doing this work.

31. However, with regard to the fridge/freezer, the tribunal has been provided with no information about the size of the current fridge/freezer or what size fridge/freezer would be considered to be adequate for the household. There is no photograph of the fridge/freezer in the papers and it appears from the appellant's application form that "the tenants have not requested a new fridge/ freezer." For this reason, the requirement to provide a new fridge/freezer is deleted from Schedule 2.

Hazard: personal hygiene, sanitation and drainage - Category 2

32. The hazard is the broken toilet seat to the WC pan in the bathroom. The tribunal is satisfied that this is a Category 2 hazard and confirms both that it is the appellant's responsibility to fix and that he should replace it.

33. The tribunal's reason for reaching this conclusion is that section 11 of the Landlord and Tenant Act 1985 and clause 24.3 of the tenancy agreement specify that the repair of certain installations for sanitation, including sanitary conveniences, are the landlord's responsibility. This is a small job. If the toilet seat was broken by the tenants, for which there is no evidence either way, in the tribunal's view this would fall within "fair wear and tear", which is not the tenants' responsibility under clause 10.1 of the tenancy agreement.

Hazard: falls on level surfaces - Category 2

34. This relates to the hazard of exposed metal carpet strips with sharp edges and studs on the floor by the entrance of every door.

35. The tribunal is satisfied that this is a Category 2 hazard and that the removal and refit or replacing of the metal carpet strips is the appellant's responsibility.

36. The reason for the tribunal's conclusion is that a photograph had been provided of an exposed metal strip and very frayed carpets at the entrance to one of the rooms. This is clearly a landlord's fixture and fitting. The metal strips should not cause a hazard and in so far as they have become in this condition since 2013 it is clearly "fair wear and tear", for which the tenants are not responsible under clause 10.1.

Timing of remedial action

37. The tribunal orders that the works still required to be done by the appellant under the improvement notice, as varied by this decision, should all be carried out within six weeks of the date of this decision.

38. Although small variations to the specification of works have been made, the hazards themselves have all been confirmed and the appellant has had ample opportunity to carry out investigations and put things right. It therefore follows that it is not appropriate to disturb the charge made by the council for payment for its enforcement action in the sum of £461.11, which sum must also be paid by the appellant to the council within six weeks of the date of this decision.

Name: Timothy Powell **Date:** 13 June 2018

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).