



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

**Case Reference** : **LON/00AT/HIV/2018/0001**

**Property** : **70 Watermill Way Feltham  
Middlesex**

**Applicant** : **Ms Tina Westfield**

**Representative** : **Mr Joshua Dubin Counsel**

**Respondent** : **London Borough of Hounslow**

**Representative** : **Mr Sukh Bains  
Housing Enforcement Officer with  
the Respondent**

**Type of Application** : **Appeal in respect of an  
Improvement Notice**

**Tribunal Members** : **Judge Carr  
Mr Sennett MA FCIEH**

**Date and venue of  
Hearing** : **24<sup>th</sup> May 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **30<sup>th</sup> May 2018**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines to quash the improvement notice served by the Respondent upon the Applicant and substitute the notice with a Hazard Awareness Notice
- (2) The Hazard Awareness Notice should identify the hazard as damp and mould in the back bedroom of the property.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision

## **The application**

1. The Appellant has appealed under paragraph 10 of Schedule 11 of the Housing Act 2004 against the improvement notice served by the Respondent in connection with 70 Watermill Way, Feltham Middlesex TW13 5NR.
2. The improvement notice is dated 20<sup>th</sup> February 2018. The appeal was received by the Tribunal on 13<sup>th</sup> March 2018.
3. Directions were issued on 20<sup>th</sup> March 2018 which identified the issues which would be considered by the Tribunal and set out a timetable culminating in a hearing of this matter on 24<sup>th</sup> May 2018.

## **The hearing**

4. The Appellant appeared and gave evidence and was represented by Mr Dubin of Counsel. The Respondent was represented by Mr Sukh Bains, a Housing Enforcement Officer with the Respondent. Ms Pat Gilmore, Mr Bains' manager, was also in attendance and addressed the tribunal.

## **The background**

5. The property which is the subject of this application is a two bedroomed ground floor flat built during the 1970s.
6. Photographs of the flat were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

## **The issues**

7. The directions had indicated that the tribunal would consider the following matters:
  - (i) Has the council gone through the necessary steps prior to the issue of the improvement notice?
  - (ii) Do the hazards identified by the council exist and if so what category of hazard are they?
  - (iii) Should the council have taken enforcement action, and if so what action is appropriate
  - (iv) If an improvement notice is the correct action, should the terms be varied
  - (v) If the works in the schedule are found to require vacant possession would a prohibition order be more appropriate?
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Pre-issue procedures**

9. No issues were raised in connection with the pre-issue procedure and therefore the tribunal is not required to make a determination on this issue.

### **The existence of hazards and their categorization**

10. The tribunal asked Mr Bains to explain the current state of the property, including the works that had been carried out since the service of the notice. It then asked the Appellant to explain what further works, if any she intended to carry out.
11. Mr Bains gave evidence to the effect that as a result of works carried out and undertakings made in connection with the replacement of the front entrance door and closing large gaps between the patio door frame and floor in the living room there was no longer a category 1 hazard of excess cold in the property. The undertaking to replace the front entrance door also eliminated the category 2 hazard of collision and entrapment.
12. The Appellant informed Mr Bains and the Tribunal that she had complied with the manufacturer's advice in connection with enclosing the boiler within a cupboard that has a locking mechanism to ensure regulatory compliance. This work had been completed on 18<sup>th</sup> May

2018. The Respondent, on the basis that the Appellant provided evidence from the contractor that this work had been carried out, agreed that there was no longer a Category 2 electrical hazard as a result of the boiler being in close proximity to the bath.

13. The Respondent also agreed, subject to evidence being provided by a suitably qualified gas installation engineer that the gas fire had been disconnected, that there was no longer a category 2 hazard, carbon monoxide and fuel combustion products.
14. Following the discussion of works carried out, and agreement to provide necessary supporting evidence, it was apparent the Respondent required the Applicant to take action only in connection with the category 2 hazard, damp and mould.
15. Schedule 2 of the Improvement Notice required the following action to address the hazard of damp and mould:-
  - (i) Please instruct a suitably qualified, independent building surveyor to establish the cause of mould in the back bedroom, and offer suitable solutions, to rectify the mould in the back bedroom. Please provide a comprehensive report detailing the findings regarding the mould. The report should include thorough detail of the adequacy of the heating, ventilation and insulation for the property.
  - (ii) Remove all the mould affect areas in Bedroom 2, using appropriate methods and chemicals such as an anti-fungal wash, and allow affected areas to dry
  - (iii) Remove the mould stains using an appropriate paint and allow to dry. Cover mould affected areas using an anti-mould paint and allow to dry.
16. The Appellant stated that this was not the first time mould had been found in the property. It had been reported by the tenants in 2014 -15. At that time Richmond Housing Partnership had sent its surveyor who concluded that the mould had been caused by condensation due to the tenants not providing adequate ventilation. They had at that time recommended that the tenants should open all of the windows daily, particularly in the bedroom, and not over-fill wardrobes or leave damp clothing in the wardrobes. The tenants were also advised to heat all rooms daily and invest in a dehumidifier. It was also advised by the surveyor that the tenants had blocked the airbricks and he recommended that these should be unblocked. He advised that the mould should be treated with neat bleach and painted with a special

anti-mould paint. The Applicant ensured that all the recommendations were carried out immediately.

17. Once the Improvement Notice was served the Applicant informed the Tribunal that she had asked the freeholder, Richmond Housing Partnership to attend the property once more and advise on the cause of the mould. When the surveyor attended in 2018 he was unable to identify any reason for the mould or even to locate the problem. He agreed to instruct a damp expert to attend. The damp expert did attend and provided a report which shows that there was a very minor area of mould present in the bedroom within the wardrobe. He noted that the mould had been removed by the tenants.
18. The surveyor recommended removing the plastic bags that the tenants had placed over the wardrobe and uncovering the air bricks which they had blocked again to allow fresh air to flow freely. He also recommended providing ventilation by keeping the windows ajar, and if mould appeared on any surfaces, it should be washed off with a bleach/water mix.
19. The Appellant therefore argued that there was no need for an improvement notice to be issued in connection with the damp and mould hazard. She had done everything that she could to eliminate the problem, and the onus now lay with the tenants.
20. The Respondent disagreed. Mr Bains remained concerned with the extent of the mould and damp in the bedroom which he said he could smell in the air. He did not consider that the bedroom was fit to be slept in because of the damp spores in the room. He did not consider that leaving windows ajar was appropriate as this would make it difficult to heat the flat.
21. Whilst he was not able to say what was causing the problem, he remained convinced of the necessity of the landlord obtaining a full surveyor's report in connection with the cause of the mould and potential remedial action. He did not consider, and the tribunal agreed, that the freeholder's surveyor was independent. Nor did he consider that the damp expert had the necessary expertise to advise on the causes of the problem. In Mr Bains opinion, although the mould was classified as a category 2 hazard, it posed a serious health risk and he told the tribunal that one of the tenant's children had been hospitalised due to breathing difficulties.
22. In his opinion the hazard continued to exist and an Improvement Notice was necessary in order to ensure that the problem was investigated and possible remedial action identified.

23. The Tribunal asked the Applicant what action she would take if a Hazard Awareness notice was substituted for an Improvement Notice. She said that she would remove the wardrobe, and paint the walls again with anti-mould paint. Mr Dubin pointed out that if a Hazard Awareness Notice was substituted for the Improvement Notice the local authority could monitor the situation, and if it deteriorated it could take further action.

### **The tribunal's decision**

24. The tribunal determines to quash the Improvement Notice and replace it with a Hazard Awareness Notice which identifies only the hazard of damp and mould.

### **Reasons for the tribunal's decision**

25. The Applicant has carried out the works necessary to eliminate the hazard of excess cold, and this is agreed by the Respondent. The Respondent also agrees that the hazards of collision and entrapment, electrical hazards and Carbon Monoxide and Fuel Combustion Products no longer exist at the property.
26. Whilst the hazard of damp and mould still exists, the Respondent has categorised it as a Category 2 hazard and has actually assessed the risk of harm as low.
27. The Applicant has indicated that she will take further steps in connection with the problem if a Hazard Awareness Notice is served, and that she fully accepts that the Respondent will continue to monitor the situation.
28. In these circumstances, the tribunal does not consider that it is proportionate or necessary to uphold an Improvement Notice requiring the action requested by the Respondent.
29. A Hazard Awareness Notice is a sufficient response to the hazard which remains in the property.

**Name:** Judge Carr

**Date:** 30<sup>th</sup> May 2018

