



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

Case reference : **LON/00BH/HIN/2018/0014**

Property : **56 Borwick Ave,
London E17 6RA**

Applicant : **Ms P Joseph**

Respondent : **London Borough of Waltham Forest**

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

Tribunal : **Judge Nicol
Mr TW Sennett MA FCIEH**

**Date and Venue of
Hearing** : **23rd November 2018
10 Alfred Place, London WC1E 7LR**

DECISION

The Improvement Notice dated 18th July 2018 is confirmed, subject to the removal of paragraph 1 of Schedule Two relating to pest control treatment.

Reasons

1. The Applicant lets the subject property to two tenants, one on the ground floor and the other on the first floor.
2. The current tenant of the upper floor, Mr Thura Lin, has been there about 6 years. He moved in as a single man but now has a partner and two young children. On 30th April 2018 he complained to the Respondent about the condition of the property.
3. On 2nd May 2018 the Respondent wrote to 3R Lettings who they understood to be managing the property. Mr Lemas, the Applicant's son who represented her at the hearing before the Tribunal, said he had found out there were two agencies by that name and the Respondent had written to the wrong one. In any event, those agents responded that they did not manage the property.

4. By letter dated 24th May 2018, the Respondent's officer, Ms Rubina Ali, informed the Applicant that she intended to inspect the property on 1st June 2018. She did so and carried out an assessment under the Health and Housing Safety Rating System. She identified a number of category 2 hazards:

Domestic Hygiene, Pests and Refuse

- 1) Severe Cockroach infestation throughout the property.
- 2) Internal disrepair to walls in kitchen, especially behind the kitchen base unit and washing machine.
- 3) Defective water seals to kitchen sink.

Food Safety

- 4) Inadequate provision of food preparation work surface and food storage facilities in the kitchen.
- 5) Inadequate siting of kitchen wall units located above a gas fire cooker.
- 6) Inside of wall and base units in kitchen are in poor rotten condition.
- 7) Disrepair to floor of kitchen.
- 8) Worn sealant around kitchen sink and surrounding worktop causing water ingress and deterioration of worktop.

Personal Hygiene, Sanitation and Drainage

- 9) Disrepair to bathtub in bathroom, with poor installation of bath panel, and worn sealant around bathtub.
- 10) Broken tiles in bathroom above bathtub.

Damp and Mould Growth

- 11) Large damp stains on bathroom ceiling and walls.
- 12) Black mould growth around bathtub and between bathroom tiles above the bathtub.
- 13) Worn sealant around kitchen sink and surrounding worktop causing water ingress and deterioration of worktop.

5. Ms Ali wrote to the Applicant on 5th June 2018 asking her particularly to deal with the cockroach infestation. On a date unknown but around this time and possibly in response to this letter, the Applicant applied to the Respondent for a licence under their Additional Licensing scheme adopted in 2015. This has yet to progress because the parties are in dispute over whether the property has two self-contained flats or is one property in multiple occupation. In any event, the property is unlicensed and there is no realistic prospect of its becoming licensed at any time in the near future.
6. On 18th July 2018 the Respondent served on the Applicant an Improvement Notice setting out in Schedule Two 13 paragraphs of

works required to address the hazards identified by Ms Ali. The Applicant has appealed the Notice to this Tribunal and the costs of £500 demanded by the Respondent in relation to the Notice.

7. The Applicant's case, as presented to the Tribunal by Mr Lemas, contained a number of points. The first was that Ms Ali had not provided any witness statement or photos and was not present at the hearing for cross-examination. This is certainly a defect in the Respondent's case. Ms Ali no longer works for them but they know where she is now working. Even if her current employment made it difficult for her to attend the hearing, there appears no reason why she could not have provided a statement. Further, the only other inspection of the property from the Respondent was by another Licensing Enforcement Officer, Ms Galia Stefanova, on 21st September 2018. Mr Lemas provided an email dated 19th October 2018 from her confirming that the upper flat was free of cockroaches but she also did not provide a statement.
8. Mr Lemas submitted that these matters meant he had no case to answer. That is not correct. The evidence of the hazards at the property from Ms Ali's HHSRS assessment is hearsay but that does not mean it is excluded. It is unfortunately common that the Tribunal has to deal with less than perfect evidence. Findings are reached by looking at all the evidence and seeing what it shows on the balance of probabilities.
9. The Applicant had not indicated prior to the hearing that she challenged Ms Ali's assessment that the hazards existed. However, at the hearing Mr Lemas asserted that the sealant around the bathtub was in perfect condition and that there were no broken tiles above the bathtub. He pointed to photos which showed some of the tiles and they were not broken. He asserted that his evidence should be preferred to Ms Ali's because he was present before the Tribunal and had brought photographic evidence.
10. However, the Tribunal must look at all the evidence. It would have been a simple matter for Mr Lemas to have taken photos of all the bathroom tiles or of the bath sealant. He chose not to do so. On the other hand, Ms Ali is a professional who has no reason to lie or mislead.
11. Mr Lemas also submitted that the condition of the property was caused by Mr Lin and his family. He said that the property was only meant for a single person, although he did not produce any copy of Mr Lin's tenancy agreement in support of his assertion. However, he has known that Mr Lin's family was living with him for at least four years since that is the age of the elder child. He has only in the last 3 weeks issued possession proceedings but they are doomed to failure because they rely on a section 21 notice issued while the property was unlicensed (see section 98 of the Housing Act 2004).
12. Mr Lemas provided photos showing the family's washing drying in the bathroom and said this "proved" that the damp and mould was their

fault. Quite apart from the fact that this is only normal and expected usage of the flat which any reasonable manager should take account of, some photos of drying washing on one or two occasions is not “proof” of anything. Of course, such activities would increase moisture levels in the relevant room but the evidence goes no further than that.

13. Mr Lemas blamed the state of the kitchen walls and flooring on his tenant’s alleged failure to carry out proper cleaning. He refused to accept that the lack of adequate food preparation surfaces would contribute. He also showed a photo showing a severely scuffed floor with a metal strip covering a joint between two parts of the floor covering but refused to accept that there would be any difficulty in cleaning such a floor.
14. Mr Lemas accepted that a kitchen unit should not be located immediately above the gas cooker but said that it had stayed there because that is what Mr Lin wanted.
15. While the Respondent could have presented better evidence, the Tribunal is satisfied that Ms Ali’s assessment was correct, that the hazards exist and that they need to be addressed.
16. Mr Lemas asserted that it was pointless to carry out the works set out in the Improvement Notice because he intended to obtain vacant possession and then refurbish the upper flat and convert the loft. However, as already noted, vacant possession is not in sight. Further, Mr Lemas presented no evidence as to the alleged refurbishment and conversion works. As matters stand, Mr Lin and his family are living with a number of hazards and likely to have to do so for some considerable time unless the Applicant is obliged to address them.
17. The Respondent conceded that the cockroach problem no longer exists and that this element can now be removed from the Improvement Notice. Otherwise, the Tribunal is satisfied that it should be confirmed.
18. Further, since the Notice was justifiably and properly served, it is appropriate that the Applicant pay the Respondent’s costs of £500.

Name: NK Nicol

Date: 23rd November 2018

Appendix of relevant legislation

Housing Act 2004

1 New system for assessing housing conditions and enforcing housing standards

- (1) This Part provides–
 - (a) for a new system of assessing the condition of residential premises, and
 - (b) for that system to be used in the enforcement of housing standards in relation to such premises.
- (2) The new system–
 - (a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and
 - (b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).
- (3) The kinds of enforcement action which are to involve the use of the new system are–
 - (a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),
 - (b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and
 - (c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).
- (4) In this Part “residential premises” means–
 - (a) a dwelling;
 - (b) an HMO;
 - (c) unoccupied HMO accommodation;
 - (d) any common parts of a building containing one or more flats.

- (5) In this Part–

“building containing one or more flats” does not include an HMO;

“common parts”, in relation to a building containing one or more flats, includes–

- (a) the structure and exterior of the building, and
- (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;

“flat” means a separate set of premises (whether or not on the same floor)–

- (a) which forms part of a building,
- (b) which is constructed or adapted for use for the purposes of a dwelling, and
- (c) either the whole or a material part of which lies above or below some other part of the building;

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).

(7) The following indicates how this Part applies to flats–

- (a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and
- (b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).

(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

2 Meaning of “category 1 hazard” and “category 2 hazard”

(1) In this Act–

“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)–

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section—

“building” includes part of a building;

“harm” includes temporary harm.

(5) In this Act “health” includes mental health.

7 Category 2 hazards: powers to take enforcement action

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.

(2) The provisions are—

(a) section 12 (power to serve an improvement notice),

(b) section 21 (power to make a prohibition order),

(c) section 29 (power to serve a hazard awareness notice),

(d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and

(e) section 289(2ZB) of that Act (power to make a slum clearance declaration).

(3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—

(a) the same kind of action again, or

(b) a different kind of enforcement action,

in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.

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.

13 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.

15 Operation of improvement notices

(1) This section deals with the time when an improvement notice becomes operative.

(2) The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule).

(3) The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals).

(4) If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends.

This is subject to subsection (5).

(5) If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends).

(6) If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.

18 Service of improvement notices etc. and related appeals

Schedule 1 (which deals with the service of improvement notices, and notices relating to their revocation or variation, and with related appeals) has effect.

PART 3

APPEALS RELATING TO IMPROVEMENT NOTICES

Appeal against improvement notice

10

(1) The person on whom an improvement notice is served may appeal to the appropriate 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).

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(1) This paragraph applies to an appeal to the appropriate 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.