



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

Case Reference	:	LON/00AU/HIN/2014/0036
Property	:	First Floor Flat, 152 Upper Street, London N1 1RA
Applicant	:	The Estate of Roy Jack Samuels and Daphne Golda Samuels, and Jeffrey Clive Samuels
Representative	:	Jeffrey Clive Samuels
Respondent	:	London Borough of Islington
Representative	:	In house
Type of Application	:	Appeal in respect of an Improvement Notice
Tribunal Members	:	Judge F Dickie Ms S Coughlin, MCIEH Ms S Wilby
Date and venue of Hearing	:	26 February 2015, 10 Alfred Place, London WC1E 7LR
Date of Decision	:	24 March 2015

DECISION

Decisions of the tribunal

- (1)** The appeal is dismissed
- (2)** The Improvement Notice is amended to require the works set out in the schedule to this decision.
- (3)** The tribunal declines to make an order reducing or quashing the charge of £570 made by the local authority in respect of its expenses.

Introduction

1. On 18 November 2014 the tribunal received an appeal under Schedule 1 of the Housing Act 2004 (“the Act” against an Improvement Notice dated 30 October 2014 served under Sections 11 and 12 of the Act in respect of the subject premises. The premises which are the subject of this application is a non self contained flat on the first floor of a four storey building with commercial premises on the ground floor.
2. The registered holders of the freehold interest in the building are Kenneth Samuels, Irene Samuels, Roy Jack Samuels and Daphne Golda Samuels. All are now deceased except Daphne Golda Samuels. Jeffrey Clive Samuels, the son of Kenneth and Irene, is the sole beneficiary of their estate. Jill Samuels is the daughter of Roy and Daphne. Daphne is the beneficiary of Roy's estate and Jill said she has power of attorney for her mother Daphne.
3. At the hearing, Mr Clive and Ms Jill Samuels represented the Appellants. The Respondent was represented by Ms Cafferkey of counsel.

Inspection

4. The tribunal inspected the premises before the hearing in the presence of Mr Jeffrey and Ms Jill Samuels, Mr Nicholas Whittingham (Senior Environmental Health Officer) and counsel for the Respondent, as well as the regulated occupational tenant Mr Dennett. That tenant is a pensioner who is diabetic and registered blind.
5. Access to the premises is via an alleyway to the left hand side of the adjoining building which runs behind the two buildings to the entrance door at the rear of no 152. An entrance lobby leads to stairs rising to the first floor. A large room to the front of the property is used as a study. The middle room has been subdivided to form a bathroom and two other areas used for storage. The rear room is a kitchen with a high level platform bed above, constructed on a wooden frame. There is a separate WC. The tribunal observed that there is a painted over window in the bathroom area, which is not shown in the plan produced by the Respondent in the bundle.

The Law

6. By Section 3(1) of the Act the local housing authority has a duty to keep the housing conditions in the area under review, with a view to identifying whether any action needs to be taken.
7. By Section 4(1), if it considers it would be appropriate for any residential premises in the area to be inspected with a view to

determining whether any category 1 or 2 hazard exists in those premises, the authority must arrange for an inspection to be carried out.

- 8.** A “Hazard” is defined by Section 2(1) as “any risk of harm to the health and safety of an actual or potential occupier of the 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).”
- 9.** A “Dwelling” is defined by Section 1(5) as “a building or part of a building occupied or intended to be occupied as a separate dwelling”.
- 10.** Inspections must comply with any relevant regulations: The relevant regulations are the Housing Health and Safety Rating System (England) Regulations SI 2005/3208.
- 11.** Where a local authority identifies a Category 1 hazard exists, it has a duty to take one of the courses of action provided in the Act. In respect of a Category 2 hazard, it has a power to take action.
- 12.** Section 49 of the Act empowers the local authority to make a reasonable charge in respect of their expenses in determining whether to serve an improvement notice, identifying any action to be specified in the notice and serving the notice.
- 13.** On an appeal under Schedule 1 of the Act, the tribunal pursuant to Paragraph 15 may confirm, quash or vary the improvement notice.

Background

- 14.** On 22 August 2014 the Council's Environmental Health Department received a complaint about poor housing conditions at the property from the Deaf/Blind Specialist Sensory Team for Housing and Social Services at Islington Council. An inspection by Environmental Health was carried out on 28 August 2014 and a number of health and safety hazards were identified.
- 15.** Assessment of the hazards was made under the Housing, Health and Safety Rating System (HHSRS) and a Category 1 hazard of Falls on Stairs and Steps was identified, as well as the following Category 2 hazards: Personal Hygiene, Food Safety, Falls on the Level, Falls between Levels and Damp and Mould.
- 16.** On 11 September 2014 the Council sent a hazard warning letter to the names of the people registered as the freeholders at the Land Registry.

On 17 October 2014 an Improvement Notice was served but subsequently revoked owing to an error as to the date that the works were due to be completed. A fresh Improvement Notice was served on 30 October 2014. The schedule of works required by that Notice is attached as a schedule to this decision (item 2.2 in the Notice having required the provision of a wash hand basin in the bathroom, but is amended by the tribunal as set out in paragraph 37 below).

- 17.** Mr Dennett expressed his concerns about the content of the works in the Notice in a letter:
 - (i) He very much wanted to retain the loft bed and considered it presented no risk to him as he had used it for very many years and was familiar with how safely to ascend and descend the ladder in spite of his blindness.
 - (ii) The cold water supply and drainage to the bath are defective;
 - (iii) The only complaint he had made to the Council had been regarding the disrepair to the toilet.
 - (iv) He had no desire for the bath to be reinstated as he was happy using the kitchen sink to strip wash.
- 18.** The Council agreed to waive the requirement to remove the loft bed, and to install a wash hand basin in the WC in addition to one in the bathroom.

Evidence and Submissions

- 19.** Mr Samuels complained that it was not reasonable for the Respondent to have served his aunt Daphne Samuels, a woman in her late eighties, with the letter of 11 September 2014 threatening a £5,000 fine and written in confrontational terms. He believed the letter made clear the Council had already decided to serve an Improvement Notice, and that it had been inappropriate for it to serve such a Notice rather than try to discuss and agree by negotiation the appropriate works to the property.
- 20.** Mr Samuels felt that a Hazard Awareness Notice would have been an appropriate step instead, but that the fact that the Council could not recover its costs of issuing such a Notice was likely to have affected its decision not to do so. Alternatively, he suggested that a Prohibition Notice would have been appropriate. He was unhappy that the inspection had taken place on 28 August without reasonable notice having been given. Mr Samuels produced evidence that he had a specific learning difficulty, and he considered that thought should have been given to this when the Council was writing letters to him.

- 21.** Ms Cafferkey emphasised that the guidance (at paragraph 2.8) advises that local authorities may feel that it is appropriate to prioritise complaints received, for example, from social services, and that it is good practice to carry out the inspection as soon as possible. She also observed that the guidance provides at Paragraph 2.19 that there may be circumstances where a local authority does not wish to delay taking enforcement action, such as when there is a “high risk to the health or safety of the occupants, and there are concerns over whether the landlord will cooperate. This may include cases where the HHSRS assessment reveals category 2 hazards and where the current occupants are vulnerable...”.
- 22.** Mr Samuels observed that the tenant used the property more as an office (for the storage in particular of a photographic library of the late photographer Jo Spence) than as a residence, and said that the required works would lead to disruption of the tenant's belongings and to him. Mr Samuels raised several objections to the hazard assessment and the content of the schedule of works in the Notice:
- (i) There was no indication what kind of hallway lighting would be suitable;
 - (ii) The tenant had made the bathroom dark himself by painting over the window;
 - (iii) A simple window vent or louvre would be sufficient rather than an electrically operated fan;
 - (iv) Mr Dennett himself had covered up the bath and painted over the window next to it;
 - (v) A wash hand basin was not necessary as there was a kitchen sink a few steps from the WC;
 - (vi) The tenant did not want much of the work done (other than the ground floor hall lighting and the toilet repair);
 - (vii) The electric light in the first floor hallway sheds down the stairs so that it is only the ground floor hallway which is in darkness (making the hazard one of a Fall on the Level not between Levels and therefore of a lower category);
- 23.** Ms Samuels agreed that the premises posed risks to this blind tenant, and she considered that the Council should accordingly rehouse him. Indeed, she had tried to assist with this by writing to the Council entreating them to do so. Mr Dennett was, apparently, offered a flat by or through the Council but this offer was subsequently withdrawn. He

was still waiting for an offer of alternative accommodation from a housing association.

- 24.** Mr Samuels explained that he expected to find it challenging to get a workman in the local area, which he did not know well, but confirmed that there was a planning application in existence for the ground floor commercial premises, in respect of which they had instructed an architect. He felt that getting a plumber to do a small job like repair a toilet was totally different. Both Mr and Ms Samuels, who travel a lot, said that it was difficult for them to instruct a contractor to do any work as they could not do so without the consent of the other. As a result of a meeting with him on 16 December on a without prejudice basis, Mr Whittingham considered that an agreement to carry out some work before the hearing had arisen, though Mr Samuels disputed that it had. He did not respond to subsequent correspondence from the Council as he considered it to be an abuse of process.
- 25.** Mr Samuels emphasised that in 2010 they had paid thousands of pounds to improve the building in response to a previous Improvement Notice served by the Council which had not required the installation of lighting to the ground floor entrance.
- 26.** Whilst Mr Whittingham said the cost of the works in the Improvement Notice would be just over £1,000, and the tribunal had no documentary support for this figure produced in accordance with the directions, it noted that the scope and cost of the works was modest. He conceded that if there was to be one basin only installed it would be better positioned in the WC and would be inconvenient for hand washing if sited in the bathroom given its distance from the toilet.
- 27.** Mr Samuels observed that there was no way that a lay person could know whether the Council had properly assessed, calculated and categorised the hazards identified. This is an expert tribunal, and it must be satisfied that such hazards exist and form its own judgment as to the appropriate scoring and categorisation.

Decision

- 28.** The tribunal observed that the letter of 11 September invited the recipient to contact to arrange a meeting. Its tone is appropriate given the seriousness of the conditions at the property and conveys in the correct tone the importance that appropriate works are carried out. The Council had a duty to take action when it identifies a Category 1 hazard and it cannot have been expected to know or investigate the age of the recipient or Mr Samuels' particular circumstances before writing.
- 29.** It seems clear to the tribunal that the Appellants could have sought to avoid the issue of an Improvement Notice if they had responded

promptly to the letter of 11 September and that the Council would, as Mr Whittingham said in evidence, have engaged with Mr and Ms Samuels if they had received a favourable response from them before deciding on any final action to be taken. More notice of the inspection would have been preferable but, (as discussed below) this has certainly caused no prejudice to the Appellants.

- 30.** As far as the HHSRS assessment is concerned, the tribunal finds nothing compelling to undermine the judgement of the environmental health officer. The likelihood of an occurrence and the range of probably harm outcomes is combined using a standard method to give a score in respect of each hazard. The assessment has been carried out in accordance with the principles in the Housing Health and Safety Rating System Operating Guidance (the official guidance document) and that the numerical values used for the likelihood of an occurrence and the harm outcomes are in line with the examples given in the guidance.
- 31.** The guidance provides with regards to a Category 1 hazard that “an improvement notice will be an appropriate means of mitigating hazards, where works of mitigation are practicable and occupants are vulnerable”. The tribunal is satisfied that an Improvement Notice was an entirely appropriate step in the current case and was not persuaded that the absence of the current works in the 2010 Improvement Notice presents a ground of appeal. There are clear hazards present and the occupant now has a visual impairment.
- 32.** The subject premises are indeed a dwelling and Mr Dennett's home. The tribunal rejects the suggestion that the works should not be ordered because the tenant does not want them. Every residential occupant is entitled to have basic services available for washing and sanitation. The tenant's explanation for having covered the bath was that the water heater had broken and there were problems with the plumbing. It would be wrong to predict how the tenant would use such services if they were again available, and the fact that he has made do without is no argument for continuing to withhold them. The kitchen sink does not provide adequate sanitation facilitation as it is used for food preparation. The WC is of adequate size to fit a wash hand basin, and a second one in the bathroom is not necessary. On the basis of its visit to the property the tribunal rejects the suggestion that the light at the top of the stairs is sufficient to prevent falls on them. Furthermore, the tribunal agrees with the observation of the Respondent any future care needs may be difficult to provide without appropriate washing and kitchen facilities.
- 33.** Mr and Ms Samuels clearly understand the risks posed to the tenant by the condition of the premises. In correspondence Ms Samuels remarked “[i]t is extremely likely that he may fall and suffer injury”. It was reasonably apparent to the local authority from the various written

responses from Mr and Ms Samuels that no remedial works would be carried out to the premises. The tribunal entirely disagrees with the contention for the Appellants that the local authority had taken a disproportionate approach. The first Improvement Notice was not issued until more than seven weeks after the inspection. This was easily sufficient time for the Appellants to have taken practical steps to ensure remedial works were carried out.

- 34.** It is clear to the tribunal from the evidence and submissions that the Appellants' interest in obtaining vacant possession of the premises has influenced their approach. The Tribunal does not consider that Mr Dennett's rehousing position is at a stage where it can reasonably be taken into account in deciding what steps to take under the Act. Given that when travelling they could have made themselves available by email, the tribunal sees no good reason why they have failed to carry out even the works which they agree are necessary.
- 35.** The tribunal found evasive and inadequate the explanations put forward by Mr and Ms Samuels for having failed to carry out any work at all on the premises since the Council's first inspection. This undermined entirely their suggestion that an Improvement Notice had been unnecessary and negotiation would have achieved an appropriate result. They had failed to carry out even minor items important for the health and safety of the tenant – such as securing a loose floorboard and repairing the toilet. The tribunal firmly rejects the suggestion that a Hazard Awareness Notice would have been appropriate for hazards of this seriousness requiring works on a relatively urgent basis. A prohibition notice is clearly not necessary or appropriate in the current case given the practicality, practicability and low cost of the necessary works.
- 36.** Whilst Mr and Mrs Samuels referred to the very low fair rent of £40 being paid for the flat, this rent does not relieve them of obligations to the tenant, and the landlord clearly receives a significant income from the commercial premises downstairs, in respect of which they are making an investment.

Order

- 37.** The appeal is dismissed and the Improvement Notice confirmed with one variation. It is varied only in that Item 2.2 on the schedule of works attached to this decision is amended to read “Provide and fit to the WC compartment a wash hand basin with a constant supply of hot and cold water”.
- 38.** The notice becomes operative at the end of the period for further appeal, if no such appeal is brought.

Costs

- 39.** Mr Samuels challenged the costs of £570 sought by the Council, which Ms Cafferkey said were standard costs for the service of an Improvement Notice (and a cap if work costing more than £570 had been carried out). The Council had not served a schedule of costs in accordance with the directions, but Mr Whittingham said he spend 10.5 hours by the time he issued the Improvement Notice - 8 hours deciding whether to service notices (including 3.5 hours for telephone calls, emails and inspection, but excluding a second visit to the property) and 2.5 hours drafting the notice. The hourly rate used by the Council was £54.81. Mr Samuels challenged the number of hours work that had been carried out in preparation of the notice,
- 40.** The tribunal considers the local authority's charge for expenses is reasonable and arises from the matters in respect of which it may charge under section 49(2). The tribunal dismisses the appeal against the charge of £570.

Name F. Dickie

Date: 24 March 2015

HOUSING HEALTH & SAFETY RATING SYSTEM (ENGLAND) REGS 2005
HOUSING ACT 2004 SECTION 11 12

SCHEDULE 2

(WORKS REQUIRED TO REDUCE THE HAZARD)

RE: First floor flat 152 Upper Street London N1 1RA

1. Hazard: Falls on the stairs

- 1.1 Provide an adequate level of artificial lighting to the ground floor entrance hallway within the property by the installation of switches and a light fitting properly connected to the electrical installation. Leave in proper working order and make good all areas disturbed. (All work to be carried out in accordance with the current I.E.E. Regulations).
- 1.2 Ensure the light fittings are able to be operated from the top and bottom of the staircase.

2. Hazard: Personal Hygiene

- 2.1 Overhaul the WC cistern flushing mechanism and leave in proper working order.
- 2.2 Provide and fit to the ^{WC}~~bathroom~~ compartment a wash hand basin with a constant supply of hot and cold water.
- 2.3 Supply and fit a new hot water heater of sufficient size for the provision of hot water to the flat. The hot water heater must allow sufficient hot water to all sinks and bath within the property.

3. Hazard: Falls on the level

- 3.1 Secure the loose floor boards in the first floor hallway with suitable sized screws.

4. Hazard: Falls associated with baths

- 4.1 Provide an adequate level of artificial lighting to the bathroom by the installation of a switch and lighting point, properly connected to the electrical installation. Leave in proper working order and make good all areas disturbed. (All work to be carried out in accordance with the current I.E.E. Regulations).

5. Hazard: Damp & Mould

- 5.1 Within the bathroom provide and fix a suitable system of mechanical ventilation to the external air. The unit must be capable of minimum extract capacity of 15 litres per second. The fan in the bathroom should be so arranged as to operate in conjunction with the artificial lighting with a 15 minutes overrun.
- 5.2 Make good all disturbed surfaces and leave in proper working order.
- 5.3 It is recommended that fans installed operate with low noise levels.