FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/HIN/2014/0026** **LON/00AU/HPO/2014/0013**
Property	**:**	**7 Warley House, Mitchison Road, London N1 3NH**
Applicant	**:**	**Joanna May**
Representative	**:**	**Sue Harris Corporation Limited**
Respondent	**:**	**Islington Borough Council**
Representative	**:**	**James Sandham (Counsel)**
Type of Application	**:**	**Appeal in respect of an Improvement Notice and a Prohibition Order**
Tribunal Members	**:**	**Judge Robert Latham** **Hugh Geddes JP RIBA MRTPI** **Alan Ring**
Date and venue of hearing	**:**	**17 October 2014** **10 Alfred Place, London, WC1E 7LR**
Date of Decision	**:**	**17 October 2014.**

DECISION

(i) The Tribunal declines to permit the Applicant to withdraw her appeals.

(ii) The Tribunal allows both appeals and quashes both the Improvement Order and the Prohibition Order, both dated 5 June 2014.

(iii) The Tribunal determines that the Respondent shall pay the Applicant £310 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(iv) The Tribunal gives the Applicant permission to apply for her costs in respect of preparing her appeal pursuant to Regulation 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

The Application

1. On 5 June 2014, the Respondent served both an Improvement Notice and a Prohibition Order on the Applicant in respect of a dwelling at 7 Warley House. The Respondent had assessed Category 1 hazards in respect of excess cold and overcrowding and Category 2 hazards in respect of both fire precautions and damp & mould growth. The Improvement Notice required works to the automatic fire alarm and detection system; a survey of the existing central heating system with a view to upgrading it; washing down and treating mould affected areas; and works to the mechanical ventilation in the kitchen and bathroom. The Prohibition Order restricted the Applicant from using the dwelling for occupation by more than five persons. The Order was suspended until the current occupants vacate.

2. On 26 June 2014, the Applicant issued her application appealing against the said notices. The Applicant asserted that it was the Respondent who had placed a family of six in the dwelling. The Applicant had commissioned reports into the damp problem which had indicated that this was due to lack of ventilation by the Respondent's tenants. Further, the tenants were using the central heating incorrectly. The occupants were storing a "vast quantity of belongings" in the dwelling. The two main bedrooms were full of the tenant's belongings and were not accessible. On three occasions, the Applicant had fitted replacement smoke alarms. Apparently, these had been disconnected by the Respondent's tenants.

3. On 28 July, the Tribunal gave directions for the appeal. Both parties prepared for the appeal. The Applicant served a Bundle of some 116 pages, whilst the Respondent's Bundle extended to 153 pages. These Bundles were dispatched to the three members of the Tribunal in advance of the appeal hearing so that they could prepare for the appeal.

4. On 16 October, the day before the hearing, Sue Harris Corporation Ltd ("SHCL") notified the Tribunal that the Applicant wished to withdraw her appeal. SHCL stated that they had executed the works required by the Respondent. The Respondent notified the Tribunal that they were minded to revoke the Improvement Notice in the light of the works that had been executed. However, the Respondent were not minded to revoke the Prohibition Order. The Tribunal notified the parties that they should attend the hearing. SHCL subsequently notified the Tribunal that they would not be attending on behalf of the Applicant.

The Background

5. The dwelling is a four bedroom flat located on the ground and first floors of a six storey block. There are two double and two single bedrooms. The

smallest bedroom is only some 6.1 sq m. This block was constructed by the Respondent in the 1970s. This would have included a central heating system assessed as being suitable for the flat. The flat complied with the space standards of the time. These were somewhat higher for local authorities than for private developers.

6. The dwelling was subsequently acquired under the Right to Buy legislation. On 14 December 2004, the Applicant was registered as the lessee. The Respondent, as freeholder, retained responsibility for structural repairs. This lease was not included in the application bundle.

7. Since 2006, the Applicant has leased the property back to the Respondent for use as temporary accommodation for homeless families. This lease was not included in the Bundle. The dwelling was managed on behalf of the Applicant by SHCL. SHCL also act as agents for the Respondent.

8. On 20 September 2012, the Respondent let the dwelling to Mrs Gebrezighier and her family. The Applicant has provided us with a copy of the "Non-secure Tenancy Agreement" between the Respondent and Ms Gebrezighier. SHCL act as agent of the Respondent in managing the dwelling. By Clause 1, the tenant covenants to use the dwelling in a tenant-like manner. By Clause 2, SHCL on behalf of the Respondent covenant to keep the dwelling and its installations in repair and proper working order.

9. Mrs Gebrezighier's family consists of five children, now aged 21, 19, 17, 15 and 12. The Respondent was apparently satisfied that this four bedroom flat was suitable for this family of six. An Inventory shows that the dwelling was let with new carpets, furniture and cooking facilities. The smoke alarms were confirmed to be in order. It was noted that there was a fire blanket in the kitchen. The extract fan in the bathroom was found to be in proper working order.

10. It is apparent that conditions within the dwelling deteriorated. There is no evidence that this was due to the default of the Applicant. It was the responsibility of the Respondent, as landlord to Gebrezighier family, to ensure that their tenant complied with the conditions of her tenancy. It was the Respondent who had covenanted to keep the dwelling and its installations in repair and proper working order

11. The tenants complained about their living conditions. As a result, the Respondent's Environmental Health Department became involved. On 12 March, Jackie Day, an Environmental Health officer, inspected the dwelling. She formed the view that the dwelling was only suitable for a family of five. The Respondent no longer considered that the smaller bedroom was fit for sleeping accommodation, regardless of the age of the child. Ms Day considered that it was the Applicant who was responsible for the hazards which she had identified rather than either the occupants or the Respondent's Housing Department who had admitted the Gebrezighier family into occupation and who were their landlord. We find this approach most surprising.

12. The appropriate action to abate any health hazard was for the Respondent's Environmental Health Department to liaise with their Housing Department to identify a practical solution to the hazards that had been identified. If the Housing Department had been wrong to admit this family of six into occupation of this four bedroom flat, alternative accommodation should have been arranged for them. If the family had failed to comply with the terms of their tenancy agreement, alternative action may have been appropriate.

13. We were told that the Respondent's Homeless Persons Unit had rehoused the family some three weeks ago. The delays arose because there were rent arrears. That is not a matter for this Tribunal.

Our Decision

14. This Tribunal is seized with this appeal. We are satisfied that we should not give our consent to SHCL to withdraw this appeal on behalf of the Applicant. We are satisfied that the Respondent should not have served these notices on the Applicant. The Respondent should have ensured that this matter was resolved within the authority. It was not a dispute that should have troubled either the Applicant or the Tribunal.

15. Mr Sandham accepted that the Tribunal should quash the Prohibition Order and did not oppose the suggestion that the Respondent should reimburse the Applicant with her costs of this application. Were this Tribunal to have confirmed a Prohibition Order restricting this dwelling to the occupation of just five persons, it would have had significant implication as to how the Respondent manage the rest of their housing stock.

16. Mr Sandham opposed our suggestion that we should also quash the Improvement Notice. He suggested that Ms Day had had no option but to serve the Notice. Indeed, she had a duty to do so. The necessary work had now been done. To our surprise, given the circumstances under which these works have been necessitated, their cost appears to have been charged to the Applicants. The fact that the Respondent was now minded to revoke it, did not mean that it had not been properly served.

17. The Tribunal disagree. The mere fact that SHCL has felt compelled to carry out the works, does not mean that the Applicant was the person responsible for any hazard that was found to exist. The Environmental Health watch dog has bitten the wrong leg. Local authorities must recognise that they are corporate entities. If another council department does not act as it should, that is not a matter for this Tribunal. A co-ordinated corporate approach is the more important given the financial restraints under which public authorities are now compelled to operate.

18. Mr Sandham sought guidance as to how the Respondent authority should act in future. Rule 22(3) of the Tribunal Rules requires the consent of the Tribunal before an application can be withdrawn. The parties had not submitted a Consent Order disposing of this appeal. This appeal was listed

before the Tribunal who had pre-read the papers. We have sought to determine the appeals having regard both to the policy which underlies the Housing Act 2004 and the overriding objectives in the Tribunal Rules. These require us to deal with cases fairly and justly. This includes having regard to the resources of both the parties and the Tribunal. We must be astute to detect any abuse of power.

19. The Tribunal inquired who would be responsible for the cost of the works, since these arise from breaches of the tenancy agreement between the Respondent and the occupants. The party at fault should bear the cost.

20. Having regard to our assessment of the merits of these appeals, we are satisfied that it is only just and equitable that the Respondent should reimburse the Applicant with the costs of both appeals.

21. We also consider it appropriate to give her the opportunity to make an application for the costs which she has incurred in bringing this appeal, if she is minded to do so. We are satisfied that it is arguable that the Respondent have acted unreasonably in seeking to defend what, seems to us on the extensive papers before us, to be the indefensible.

22. If the Applicant is minded to make such an application, she is to notify the Tribunal by 31 October and provide written representations in support of her application. She must also provide a copy to the Respondent. The Respondent must file any written representations in response by 14 November and copy these to the Applicant. The Tribunal will determine the application on the papers.

Robert Latham
Tribunal Judge

17 October 2014