



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

Case Reference : **LON/00AZ/HIN/2014/0028**

Property : **214, Meadowview Road, London
SE6 3NH**

Applicant : **Mr M S R Horbaki**

Representative : **Apex Law LLP**

Respondent : **London Borough of Lewisham**

Representative : **Mr A Lidinson Technical Officer
Environmental Health Residential
for the Borough**

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

Tribunal Members : **Tribunal Judge Dutton
Mr L Jarero BSc FRICS**

Date of Decision : **15th October 2014**

**Date and venue of
Determination** : **15th October 2014 at 10 Alfred
Place, London WC1E 7LR**

DECISION

DECISION

The Tribunal determines that the appeal against the Improvement Notice dated 10th July 2014 in respect of 214 Meadowview Road, London SE6 3NH (the Property) is upheld to the extent that the Tribunal varies the operative date by which the remedial action required by the Notice is to be commenced to 28th November 2014 for the reasons set out below

REASONS

BACKGROUND

1. On 10th July 2014 the London Borough of Lewisham served on the Applicant Mr Horbaki, an Improvement Notice (the Notice) under section 11 and 12 of the Housing Act 2004 (the Act). The Notice is dated 10th July 2014 and set out in the schedule attached the works that were thought necessary, which included both category 1 and 2 hazards.
2. On 12th August 2014 the Tribunal received an application for appeal under Schedule 1 para 10(1) of the Act by Mr Horbaki. Directions were issued on 22nd August 2014 scheduling the matter to be dealt with as a paper determination during the week commencing 13th October 2014. No application was made for a hearing.
3. On 4th September 2014 Apex Law LLP, acting for Mr Horbaki wrote to the Tribunal giving details of the Tenant and informing the Tribunal that an application for possession of the Property had been made to the Bromley County Court, listed for 23rd September 2014. It was expected that an order for possession would be made. They indicated that they would keep the Tribunal informed. No other documents have been lodged with the tribunal by Mr Horbaki or on his behalf.
4. On 29th September 2014 the Respondent Borough lodged a small bundle of papers with the Tribunal. This included their reasons for opposing the appeal, to which we will return, a witness statement by Mr Lidison, correspondence, both letters and email, the HHSRS score and the Notice.
5. An email from Apex Law dated 28th July 2014 says, in part, as follows: *"I am instructed to discuss this with you if it would be mutually beneficial. The main issue as far as my client is concerned is that the Tenant refuses to have a proper dialogue with him. He is prepared to sort out any issues that arise but cannot do so without proper access".* The email goes on to say *"For your information I have been instructed to commence proceedings against Ms Agayere"*
6. A later email, again from Apex Law to Mr Lidison dated 23rd September 2014 confirms that on 23rd September 2014 possession of the Property was granted to Mr Horbaki with a requirement for the tenant (Ms Agayere) to vacate by 7th October 2014.
7. In the reasons for opposing the appeal Mr Lidison says: *"Whilst I am not in a position to formally suspend the notice I am, now that I have all the information, willing to hold off any enforcement until free access can be provided. This is now likely to be when the tenant is*

evicted and the property becomes vacant as the Landlord, apparently, has an eviction order due to expire in the near future”.

FINDINGS

8. The matter came before us on 15th October 2014 for determination. Although Mr Horbaki has taken no part in these proceedings we do have correspondence from his solicitors confirming the possession action at the County Court at Woolwich (presumably transferred from Bromley) and the fact that a possession order has been made. It is a pity that they did not confirm this position directly with us. We are willing to rely on the correspondence from Apex Law as evidencing this fact.
9. Even allowing for the vagaries of the timescales upon which the bailiffs may attend to enforce the possession order it seems to us that within a short period of time Mr Horbaki should have vacant possession of the Property. His application, whilst suggesting that the freeholder may have responsibility for the flooring issue does not deny that works are required, a position supported by his solicitors communication with the Borough of 28th July 2014.
10. In those circumstances we find that justice can be done in this matter by varying the terms of the Notice to allow Mr Horbaki until 28th November 2014 to complete the works, or more likely obtain vacant possession. If he has not obtained possession of the Property, he will need to liaise with the Respondent to explore the possibility of a further suspension of the Notice, or get on and undertake the works.
11. Accordingly our order is that the terms of the Notice be varied as provided for above.

Tribunal Judge Andrew Dutton

15th October 2014