



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

Case Reference : **LON/00BK/HIN/2013/0023**

Property : **Flat 4, 38 Gloucester Terrace London
W2 3DA**

Applicant : **Mrs Katia Gorensandu**

Representative : **None**

Respondent : **The City of Westminster**

Representative : **Mr George Woodhead of Counsel**

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

Tribunal Members : **Dr Helen Carr
Ms Susan Coughlin
Mrs Lucy West**

**Date and venue of
Hearing** : **6th January 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **20th February 2014**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines to vary the improvement notice served by the Respondent upon the Applicant.
- (2) The terms of the varied improvement notice are set out in Appendix 1 of this decision.
- (3) The Tribunal orders that the Appellant reimburses the Respondent £250 towards the costs of the proceedings
- (4) 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 Flat 4, 38 Gloucester Terrace London W2 3DA.
2. The improvement notice is dated 25th September 2013. The appeal was received by the Tribunal on 17th October 2013.
3. A directions hearing was held on 8th November 2013 which identified the issues which would be considered by the Tribunal and set out a timetable culminating in a hearing of this matter on 6th January 2014.

The hearing

4. The Appellant appeared in person and the Respondent was represented by Mr George Woodhead of Counsel. Ms Natasha Davies and Mr Martin Turner, both Environmental Health Officers with the Respondent, were in attendance.
5. Immediately prior to the hearing the Appellant applied for the appeal to be adjourned on the grounds that she was involved in other court proceedings and did not have sufficient time to prepare for the hearing. The Respondent was prepared to agree to the adjournment request on the basis that it would enable the parties to meet at the property to discuss and possibly resolve the issues between them.
6. The Tribunal considered the application carefully. It refused the application on the grounds that
 - (i) The Appellant had had sufficient time to prepare for the hearing. It was her appeal and she had a responsibility to ensure it progressed at a reasonable pace and in accordance with the directions
 - (ii) It was unclear what a meeting at the property would achieve

- (iii) It was in the public interest that the hearing went ahead. It was important to make a decision in connection with the property for the benefit of the parties, the current tenant and any future occupiers.
 - (iv) Considerable public monies are invested in organising tribunal hearings and therefore adjournments should be avoided if at all possible.
7. The Tribunal offered the parties a brief adjournment to see if they were able to resolve the issues without its intervention. After 15 minutes the parties informed the Tribunal that they were not able to resolve the issues between them and the hearing proceeded.

The background

8. The property which is the subject of this application is a studio flat on the ground floor of a converted Victorian property.
9. 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

10. 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 take into account the lack of gas supply to the building in determining remedial actions?
 - (iv) Should the council have taken enforcement action, and if so what action is appropriate
 - (v) If an improvement notice is the correct action, should the terms be varied
 - (vi) If the works in the schedule are found to require vacant possession would a prohibition order be more appropriate?
11. The Appellant wished the Tribunal to consider the behaviour of the tenant as she alleged that he was responsible for the condition of the flat. She also

wished the Tribunal to consider the arrears of Housing Benefit which she alleged she was owed by the council.

12. Further the Appellant was aggrieved that she had not benefitted from financial incentives to let properties to homeless people. She wanted the council to carry out the works to the flat and then either charge them to the property or take the responsibility for the costs as she considered it was their responsibility that the flat was in its current condition. She explained that she had let to someone who was homeless on the basis that the property would be returned to her in the condition in which it had originally been let.
13. She was also concerned that if she carried out the works then the council would find fault with them and insist she did them again. This would not happen if the council carried out the works for itself.
14. The Tribunal explained that while it understood her concerns these matters were not relevant to the appeal before it.
15. 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

16. Ms Davies gave evidence that the appropriate notices were served. The Appellant agreed that she had received the requisite notices.

The tribunal's decision

17. The tribunal determines that necessary notices were served.

Reasons for the tribunal's decision

18. There is no dispute between the parties on this point.

The existence of hazards and their categorization

19. Ms Davies gave evidence in connection with her identification of hazards and her calculations under the HHSRS. Following discussions with the Tribunal she agreed that the absence of hot water and the difficulties in using the hot water taps should have been assessed under personal hygiene rather than risk to the water supply. The Respondent therefore agreed to vary Schedule 1 of the improvement notice accordingly.
20. The Appellant did not challenge the existence of hazards or their categorization.

The tribunal's decision

21. The tribunal determines to vary Schedule 1 of the Improvement notice as agreed with the Respondent. Other than that variation it confirms the identification and classification of hazards within the flat as set out in the Improvement notice.

Reasons for the tribunal's decision

22. The Appellant did not challenge the existence and categorization of hazards. The Respondent agreed to vary the notice following discussions with the Tribunal.

The lack of gas supply to the building

23. The Appellant explained that it was not possible to install a gas central heating system as required by the Improvement notice as there was no current gas supply to the building. She suggested that a portable electric oil filled radiator was sufficient.
24. The Respondent agreed that in these circumstances it was inappropriate to require the Appellant to provide a gas fired central heating system. Ms Davies suggested that a full electric heating system should be provided using off peak storage heaters. She explained that a portable radiator was not sufficient to deal with the hazard of excess cold. In response to questions from the Tribunal she explained that this was an expensive and inefficient method of heating.
25. As a gas central heating system was no longer required the Respondent considered that the appropriate course of action is to vary the notice additionally to require installation of a dual immersion hot water cylinder in order to provide hot water to the flat.

The tribunal's decision

26. The tribunal determines to vary Schedule 2 of the Improvement notice to require the provision of a full electric heating system as set out in the varied notice together with a dual immersion high performance hot water cylinder as set out in the varied notice.

Reasons for the tribunal's decision

27. The tribunal accepted the argument of the Appellant that she should not be required to install a gas supply to the building. It accepted the evidence of the Respondent that a portable electric radiator was not sufficient to respond to the hazard and that an off peak electric storage heating system was necessary to effectively heat the premises together with the provision of a dual immersion hot water cylinder so that the occupier had the benefit of hot water.

The need for enforcement action

28. Ms Davies gave evidence that she had considered the full range of possible orders and that an improvement notice was the best means of achieving the council's objective. She had taken into account the fact that the tenant had some options to stay elsewhere whilst the work was being carried out and therefore did not consider a prohibition order to be appropriate.
29. The Appellant considered that there was no need for enforcement action. She was evicting the tenant, and she could not do the works until he was out of the property as he was very aggressive towards her. She did not suggest an alternative order.

The tribunal's decision

30. The tribunal agreed that an improvement order was the appropriate course of action in the particular circumstances of the case.

Reasons for the tribunal's decision

31. The council could not take no enforcement action as the Appellant suggested as there were category 1 hazards in the property. The Appellant did not suggest any alternative order. The council had thought carefully about the possible orders and reached a sensible and reasoned decision to issue an improvement notice.

Other matters

32. The tribunal spent some time clarifying for the benefit of the Appellant what the Respondent was requiring. For the purposes of clarity it suggested, and the Respondent agreed, to varying the requirement in connection with the smoke alarm to include the words 'optical type'.
33. The Appellant was very concerned that the Respondent was requiring works to commence with 28 days and be completed within 3 months. She considered that 12 months was necessary for the works to be carried out.
34. The Respondent considered that the works needed to be commenced and completed as soon as possible.

The decision of the tribunal

35. The tribunal determined to uphold the time scale required by the Respondent.

Reasons for the tribunal's decision

36. The tribunal thought very carefully about the timescale that should be required for the works. It reached its determination taking into account the need for the works to be completed as soon as possible for the benefit of the

tenant, and in the case of the fire separation works for the safety of the other occupiers of the house. It noted that the Appellant insisted that she would very soon obtain an order for possession. However she did not currently have such an order, and the tribunal had to make its decision on the basis of the evidence before it, which was that the tenant continued to be in occupation.

Costs.

37. The Respondent had served a notice under s.49 of the Housing Act 2004 requiring costs of £150 in connection with its issue of the improvement notice. It also asked for its costs in connection with the hearing of the matter. It considered that the hearing could have been avoided if the Appellant had attended meetings with the Respondent to discuss the works. The Respondent did not produce a schedule of its costs.

The tribunal's decision

38. The tribunal has jurisdiction in relation to the s.49 notice where it allows an appeal against the underlying notice. Although Mrs Gorensandu has succeeded in altering one item of the schedule relating to the type of heating system the Tribunal does not consider that it is appropriate to make any alteration to the charge imposed by the Respondent.
39. The tribunal determines to award the Respondent £250 in connection with the costs of the case.

Reasons for the tribunal's decision

40. The tribunal considers that the Appellant could have achieved what she achieved during the hearing through discussions with the Respondent. There was little of legal substance to the case, and, although the directions had been drafted in order to enable the Appellant to focus on the key issues, there was very little evidence that she had done so.
41. Instead she was focused on the behaviour of the tenant and her desire to evict him, and the unfairness of the Housing Benefit system. This meant that most of her arguments were irrelevant to the issues at hand.

Name: Helen Carr

Date: 20th February 2014

**CITY OF WESTMINSTER
HOUSING ACT 2004: SECTION 11 and 12
SCHEDULES referred to in the Improvement Notice dated: 25th September 2013**

Premises: Flat 4, 38 Gloucester Terrace, London W2 3DA

SCHEDULE 1

The nature of the hazard(s) and the deficiencies giving rise to the hazard(s)

Action to be taken for the following hazard(s) under Section 11:

Excess Cold

-Absence of fixed heating

Personal Hygiene, Sanitation and Drainage

- Absence of hot water and the hot water taps are very difficult to open.
- The shower door does not close properly.
- The bathroom door does not close properly.

Entry by Intruder

-The main entrance door does not close properly.

Action to be taken for the following hazard(s) under Section 12:

Fire Safety

- Absence of a mains-powered fire alarm in the open plan living-room, kitchen/bedroom area.
- Dead lock to the main entrance door.
- There is a hole in the ceiling in the hallway and in the wall in the kitchen therefore inadequate fire separation between dwellings.
- Absence of fire blanket.

Electrical Safety

- The consumer unit is out-dated and difficult to reach.
- Isolator switch is detached from the wall.
- Some of the wiring in the kitchen is loose and not boxed in/trunked.
- The light in the kitchen is not working.

Falls on the level

-The flooring between the bathroom and hallway is not level.

Falls on the stairs

-There is an inadequate hand-rail to the stair-case.

Falls between levels

-The window does not open and close properly.
-The window opens more than 100mm and there is the risk of a fall resulting in severe injury, because it opens out into a light well area, at basement level.

Food Safety

-The oven/cooker is detached from the wall and unusable.
-The flooring is not waterproof and impervious.

SCHEDULE 2

Schedule of works to be carried out

Excess Cold

Design and install a full electric heating system for the dwelling using off peak storage heaters. The system shall be capable of maintaining the following internal temperatures when the external temperature is -1°C :

Bedroom/Living room	21
Bathroom	22
Elsewhere	18

The system shall include the following:

The living room shall be provided with a fan assisted combination storage heater with thermostatically controlled top up convector heater.

The bedroom/living-room with a design heat-loss of 600w or over shall be provided with storage heaters.

All storage heaters shall have automatic charge control and a thermostatically controlled damper outlet.

For sizing and positioning of storage heaters regard shall be had to the method set out in DOM 8: Guide to the Design of Electric Space Heating Systems, The Electrical Heating and Ventilation Association, 2006. In particular the system shall be designed so that 90% of the annual heat requirement is available at the off peak rate.

All works to comply with the latest edition of the IEE Regulations and Part P of the current Building Regulations.

Personal Hygiene, Sanitation and Drainage

Supply and fit a dual immersion high performance hot water cylinder with factory-applied insulation, sufficient to comply with current Building Regulations. The cylinder may be either vented or unvented as appropriate.

For one or two person households a capacity of 144 litre should be used, for larger households the capacity shall be 210 litres.

The system shall be fitted with a time switch with a one hour on-peak boost facility.

All works to comply with the latest edition of the IEE Regulations and Parts P and L of the current Building Regulations

Overhaul the bathroom entrance door so that it opens and closes freely.

Overhaul the shower door so that it opens and closes properly.

Taps

Overhaul the taps in the flat so that they open and close freely.

Entry by Intruder

Ease or re-hang the ill-fitting entrance door to the flat, on sound butts securely fixed so that the door will open and close freely. Leave in a satisfactory working order.

Fire Safety

Fire Detection

Provide within the flat and in accordance with the attached plan, smoke detection in the form of a self-contained, smoke alarm complying with British Standard 5446 and operated directly from mains supply electricity, wired through the local lighting circuit to the letting. The alarm to be provided with a back-up battery capable of operating the alarm in the event of a power failure.

Automatic detection must be installed within the bedroom/living-room area in the form of a smoke alarm as indicated by the symbol (SA) on the attached plan. Please note the advice of BS5839 Part 6 to install an **Optical type** smoke detector.

Notes:

[i] Where payment or credit key meters have been fitted, a separate independent power supply circuit must be provided in order to ensure that these systems/equipment will continue to function independently.

[ii] Attention is drawn to the continuing obligation to maintain this equipment under the provisions of The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006 No. 372). It is therefore recommended that adequate arrangements for periodic servicing, in accordance with the manufacturer's instructions, be arranged (with a competent contractor) at the time of initial installation.

Entrance Lock

Replace the existing "dead lock" to the flat entrance door with a fastening which can be readily operated from the inside of the premises without the use of a key.

Fire Blanket

Provide within the kitchen, and marked upon the attached plan, a fire blanket, complying with BS EN 1869:1997 installed in accordance with British Standard 5306 : Part 8 : 2000 Fire extinguishing installations & equipment on premises, selection & installation of portable fire extinguishers: Code of Practice, such that the base of the fire blanket is approximately 1.5m above floor level and the carrying handle or release tab of the extinguisher is approximately 1m above floor level. As an alternative to a 2.0 kg carbon dioxide extinguisher an appliance conforming to BS EN Part 1 : 1996, having a rating of 34B is acceptable.

Fire Separation

Examine the ceiling in the hallway, and wall in the kitchen. Carry out such works as are necessary in order to achieve half-hour fire resistance in accordance with the conditions of test specified within British Standard 476, Parts 20 - 23.

Note: Existing partitions and ceilings are deemed to be acceptable if constructed of sound lath and plaster.

Electrical Safety

Thoroughly overhaul the electrical supply system, replacing or repairing as necessary any defective wiring, fuses, power points, light-fitting switches or other fittings. Test and leave in a safe and satisfactory working order. All new work must comply with the current edition of the I.E.E. Regulations.

Falls on the level

Overhaul the flooring in the bathroom and hallway so that it is level.

Falls on the stairs

Provide an adequate handrail to the staircase in the flat.

Falls between levels

Overhaul the window in the flat so that it opens and closes freely. Provide a suitable lock and window restrictors.

Please note: The restrictors may be overridden by an adult.

Food Safety

Provide and install within the kitchen, a gas or electrical cooking appliance with an oven, grill, and two hobs.

The appliance is to be properly and safely fitted.

Note: All works involving gas appliances must be carried out by a registered GAS SAFE contractor or British Gas fitter in accordance with the Gas Safety [Installations and Use] Regulations. All electrical works to be in accordance with standards required by the Regulations of the Electrical Equipment of Building (current edition) issued by the Institution of Electrical Engineers.

Take up and remove from site the defective floor covering to the kitchen and renew with good quality linoleum properly fitted, and leave in a clean and safe condition.

Management of the works

Workmanship

All of the above requirements are to be met in a proper workmanlike manner using materials which conform to appropriate British Standard wherever possible, and complying with all relevant standards and codes of practice, including current Building Regulations.

All works to electrical and gas installations must be carried out in accordance with the requirements of London Electricity, the current edition of the Institute of Electrical Engineers Regulations and by the current Gas Safety [Installations & Use] Regulations.

Where the tenants may remain in occupation during the works, every care is to be taken to minimise inconvenience to them, and in particular, works are to be so arranged that suitable sanitary, washing and cooking facilities are reasonably available at all times. Care must also be taken to leave the halls, landings and staircases free of all obstructions at the end of each day.

The provisions of all relevant Acts, Bye-laws, Regulations or any other legislation are to be complied with and this specification should not be taken to relieve the person responsible from obtaining any prior approvals for any works where necessary.

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