First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/00KG/HMC/2017/0001**
Property	**:**	**8 Benson Road, Grays, RM17 6OL**
Proposed Appellant	**:**	**Rachel Reid**
Proposed Respondent	**:**	**Kulwinder Kaur**
Application	**:**	**For permission to appeal an order refusing to make a Rent Repayment Order against the Respondent for failing to comply with an Improvement Notice – Section 43 of the Housing and Planning Act 2016 ("the 2016 Act")**
Date of Application	**:**	**12th April 2019 (rec'd 17th April 2019)**
Tribunal	**:**	**Bruce Edgington (lawyer chair) Mary Hardman FRICS IRRV (Hons)**

DECISION

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1. The tribunal has considered the Proposed Appellant's request for permission to appeal dated 12th April 2019 and determines that:

    a. it will not review its decision; and

    b. permission be refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Proposed Appellant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and be received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Reasons

3. This application is for permission to appeal a decision of this Tribunal which was dated 19th March 2019 and sent to the parties on the 20th March 2019. According to rule 26 of the Tribunal's procedural rules, any application to this Tribunal must be signed. This application is not signed but the Tribunal will exercise its general case management powers under rule 6 to allow the application to be made.

4. The Proposed Appellant now says that the 'first' Improvement Notice was served on the 31st May 2016 and she adds that a 'second' varied Improvement Notice was served on the 20th February 2017. She says that copies of both were included in the evidence. In fact, there was no 'second' Improvement Notice. The Notice served on or about the 20th February 2017 simply varied the original Notice by extending the time for compliance until 20th May 2017.

5. The Tribunal does have some sympathy with the Proposed Appellant because of the complex way that the provisions for Rent Repayment Orders ("RROs") are set out in the 2016 Act. In this case, for example, the provisions of section 41 of the 2016 Act make it clear that the applications for RROs can only be made if "*the offence was committed in the period of 12 months ending with the day on which the application is made*".

6. The Proposed Appellant says that the offence was committed because the Improvement Notice said that the work to the property had to be commenced by 29th June 2016 and completed within 1 month. She says that this was never complied with. Thus, on her case, the offence was committed in June 2016 and the application for the RRO was received by the Tribunal on the 22nd December 2017 i.e. well outside the 12-month period.

7. The Tribunal had taken the view that as the conviction in respect of the varied Improvement Notice recorded the breach of the varied Notice as being within the 12-month period, the original application would be interpreted as being within such 12-month time limit. However, as no rent was paid during the period of the offence giving rise to that conviction, no RRO could be made (section 44 of the 2016 Act).

8. The application for permission to appeal argues, in effect, that as the offence continued from June 2016 until after December 2016, it was 'committed' within 12 months of the original application. The problem with this is that the Tribunal must be satisfied "*beyond reasonable doubt*", i.e. the criminal standard of proof, that the offence was committed within the 12-month period.

9. In this case, the Improvement Notice involved work being undertaken to what appears to be every room in the property (including a new bath) plus the staircase and the exterior. According to section 30 of the **Housing Act 2004**, it is a defence to the offence of failing to comply with an Improvement Notice if there was a reasonable excuse for such failure.

10. The Tribunal has absolutely no evidence as to why the local authority took no action if and when the original Notice was not complied with save for a comment in the letter written by Thurrock Council to the Tribunal dated 15th March 2019 which said "*The improvement notice was varied on 20th April 2018. The effect of the variation was that the property was not to be let to a new tenant once Ms. Reid vacated until all works were completed...*". The letter then went on to suggest that a new tenant was let into occupation but "*no legal action was taken by the Council for this offence*".

11. In the Tribunal's experience, it is common for landlords to say, in effect, that they cannot undertake work to a property which is subject to an Improvement Notice requiring a wide range of work to be carried out until the property is empty. From the evidence considered by the Tribunal, and, in particular, the letter of the 15th March 2019, it seems likely that Thurrock Council accepted such an argument in this case as the property continued to be occupied by the Proposed Appellant. Thus, in view of section 30 of the **Housing Act 2004**, the Tribunal could not be sure, to the criminal standard, that the offence was actually committed in the period prior to 20th May 2017.

12. In those circumstances, the Tribunal considers that there is little prospect of an appeal, based on the evidence available, succeeding and this application is therefore refused.

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Bruce Edgington
19th April 2019