



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

**Case Reference** : CHI/00MR/HIN/2019/0008

**Property** : First Floor Flat, 165 Fawcett Road,  
Southsea, Hampshire PO4 0DH

**Applicant** : Grant Murphy

**Representative** :

**Respondent** : Portsmouth City Council

**Representative** :

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

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Directions** : 28 August 2019

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DECISION

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**Summary Decision**

**The Tribunal determines that the Improvement Notice dated 12 April 2019 was properly made and that the charge of £587 is duly payable.**

## **Background**

1. The Tribunal has an appeal against an Improvement Notice issued by Portsmouth City Council (“the Council”) under Section 11 of the Housing Act 2004 (“the Act”) and dated 12 April 2019.
2. The Improvement Notice referred to category 2 hazards existing on the premises. The Statement of reasons stated that the Notice was suspended until the end of the existing tenancy and the covering letter indicated that under Section 49 of the Housing Act 2004 a fee of £587.00 would be invoiced once the appeal date expires. [211-215]
3. Directions were made on 5 June 2019 setting out a timetable for the exchange of documents leading to a determination without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a part objected in writing. No objection has been received and the application is therefore determined on the papers received.
4. The following references to page numbers are shown as [x]

## **Representations**

### **Applicant**

5. In his witness statement [61] the Applicant refers to an HHSRS inspection undertaken on 8 March 2018 and the subject of a letter from Michael Conway of the Respondent’s office dated 12 March 2018 [70]. Various amicable and helpful exchanges followed between them and the problem at this point and hereafter was the readiness of the Tenants to allow access.
6. None of the deficiencies listed in the March report were listed in the October report [81] the author of which (Ms Tanner) may have been unaware of the earlier report and his struggles to comply.
7. Mr Conway’s letter of 12 March 2018 refers to enforcement action “if an agreement cannot be reached through negotiation, or contact is not made, it is council policy to consider enforcement action”. None was taken and he cannot understand why it should be on this occasion.
8. Only two issues remained after the October and April reports neither of which needed immediate action as evidenced by the requirement that the notice required them to be completed “within one month of the end of the current tenancy”
9. There was no charge for the March 2018 notice when matters were far more onerous, and he expected that the same situation would apply in April 2019 for the lesser matters highlighted.

10. At paragraph 14 of his statement the Applicant says that his appeal is “against the demand for payment of £587 enforcement action on this occasion when not done in the past and when I have done my best to satisfy all of the deficiencies that have arisen”

## **Respondent**

11. In the Respondent’s statement of reasons for opposing the application[113] it is stated that concerns regarding the condition of the flat were received on 1 October 2018 following which an HHSRS inspection was carried out on 5 October and a work schedule sent to the Applicant on 18 October 2018.[121-130]
12. Following a meeting at the property on 15 November 2018 at which the provision of security lighting was disputed a Housing Standards Officer sent a letter dated the same day to the Applicant confirming that works to the kitchen flooring could be undertaken as part of his planned programme of improvements, that the tenant had arranged the repair to the leak to the boiler, that she would try to find out the ownership of land in relation to uneven paving slabs and that the timescales previously provided were agreed but would now begin from the date of the letter.
13. On 6 March 2019 the Applicant confirmed that work was complete and the property was re-inspected on 2 April 2019 when it was found that certain works in the shower room were outstanding. Hardboard now covered the hole in the kitchen floor and the tenant said that he had paid for boiler repairs.
14. During the inspection the tenant said he was unhappy with the workmanship of the repairs and would not allow the Applicant’s workmen access.
15. The outstanding repairs identified on 2 April 2019 and included in the work schedule of 18 October 2018 were;
- Sealing shower room floor 1 month
  - Adjustment of shower screen door 1 month
  - Instructing competent person re shower room light 3 months
  - Hardboard in kitchen (not included in work sch. N/A
16. Given the timescales confirmed on 15 November 2018 more than reasonable time was given and the Applicant had not indicated that there was any difficulty in meeting the time scale.
17. The Respondent goes on to refer to the history of the Council’s involvement with the property dating back to 2015 when an HHSRS inspection was carried out [157] leading to a demand for payment of charge for certain enforcement action dated 17 July 2015 [171]

18. In March 2018 a Service Request was received regarding a collapse of a section of kitchen ceiling and other deficiencies following which a Works schedule was sent on 12 March 2018 [183]. Due to difficulties over access and contacting the previous tenant the case was closed on 4 June 2018.
19. Decisions on each case are taken by the case officer concerned after consideration of the case as a whole and in view of the historic involvement the same action would not necessarily be taken as in previous cases.
20. The decision to serve the Improvement Notice was on the grounds that;
  - Adequate time had been given to complete all works
  - The current case is not the first time the Local Authority has had to take action
  - Repairs to the kitchen floor presented further hazards
  - The Tenant would not give access and the hazards were Category 2 the Notice was suspended until he vacated
21. Following service of the Notice the Applicant questioned why it was suspended and that the Tenant had not indicated he was to vacate. In response it was stated that if the Tenant was happy for the works to be completed the Notice could be revoked.
22. S.49 Housing Act 2004 provides the power to charge for certain enforcement action and contrary to the Applicant's statement the standard covering letters sent in March 2018 [183] and October 2018 [131] referred to a charge of £587 being made and reference to a fee is also referred to in the Power of Entry Notice[143].
23. A copy of the standard fees table provided shows the cost of serving an improvement notice as £587 [271] and the matrix at [253] lists the individual actions taken.
24. In summary;
  - Sufficient time has been afforded.
  - Mr Murphy said works completed when they had not been addressed
  - If the Tenant was happy with the tenancy why haven't the works been completed?
  - The Improvement is for Category 2 Hazards and has been suspended until the end of the current tenancy. This is however the third time since 2015 that complaints have been received and the Applicant is an experienced landlord and should be aware of his responsibilities.
  - Sufficient warning was given that enforcement action would attract a fee.

## DECISION

25. This is an appeal against the charge of £587.00 made for taking enforcement action in respect of an Improvement Notice dated 12 April 2019. Mr Murphy does not dispute the works referred to in the Notice but considers them to be less serious than in the previous occasion when a charge was not made. Although somewhat unclear in the Application I am also taking Mr Murphy's appeal to be in respect of the taking of enforcement action as well as the fee subsequently charged. [62, para 10]
26. For the Respondent Ms Tanner says that there is a history of repair issues going back to 2015, warning of potential costs and enough time for compliance had been given and in determining what action is necessary, each case is considered by the Officer concerned on its individual merits.
27. Since 2015 three work schedules have been issued followed in two instances with an Improvement Notice. The March 2018 schedule was not followed up due to access and communication difficulties. A charge was made for the 2015 Notice.
28. Following Mr Murphy's confirmation that the works listed in the October work schedule had been completed a further inspection was undertaken on 2 April 2019 when it was discovered that there were outstanding items. In view of this it was decided to issue an Improvement Notice which, due to the access difficulties was suspended until after the tenancy ceased.
29. Mr Murphy does not dispute that he confirmed on 6 March 2019 that the schedule of works had been completed. Subsequent inspection however found this not to be the case. In these circumstances I consider that it was a reasonable response for the outstanding items to be the subject of an Enforcement Notice.
30. Turning now to whether it was also appropriate to make a charge I am satisfied that sufficient warning was given in the Local Authority's correspondence [184 and 133] that a charge of £587 would be made if a formal notice was issued. Mr Murphy should have been aware of the possibility of such an outcome from his experience of the 2015 action when a charge of £363 was made [171]
- 31. In view of the above the Tribunal determines that the Improvement Notice dated 12 April 2019 was properly made and that the charge of £587 is duly payable.**

D Banfield FRICS  
28 August 2019

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.