



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

Case Reference	: CHI/24UH/HIN/2019/0009
Property	: Flat 1, Thames Court, Crombie Close, Waterlooville, Hampshire, PO9 3NG
Applicant	: Santina Wood
Representative	:
Respondent	: Havant Borough Council
Representative	:
Type of Application	: Appeal in respect of an improvement notice
Tribunal Members	: Judge N Jutton and Mr Peter Turner- Powell FRICS
Date and Venue of Hearing	: 22 October 2019 Court 3. Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL
Date of Decision	: 24 October 2019

DECISION

1 **Background**

2 The Applicant is the landlord of a residential ground floor one-bedroom flat known as Flat 1, Thames Court, Crombie Close, Waterlooville, Hampshire, PO8 8NG (the Property).

3 Following an inspection of the Property the Respondent served on the Applicant an Improvement Notice pursuant to Sections 11 and 12 of The Housing Act 2004 (the Act) dated 23 April 2019. The Improvement Notice provided that the Respondent had identified Category 1 and Category 2 hazards at the Property. The Category 1 hazards were excess cold at the Property. The Category 2 hazards were electrical hazards and damp and mould at the Property.

4 The Applicant appeals against the Improvement Notice pursuant to paragraph 10(1) of Schedule 1 of the Act.

5 The appeal was received by the Tribunal on 20 May 2019 and was therefore out of time. The Tribunal however was satisfied that there was good reason to extend the time limit for the appeal. Directions were made by the Tribunal on 16 July 2019.

6 **Documents**

7 There was before the Tribunal a bundle of papers which comprised the Applicant's application, the Directions, a copy of the Improvement Notice, the Applicant's Statement of Case, the Respondent's Statement of Case which included witness statements made by Mandy Patterson and Sarah James both Private Sector Housing Officers with the Respondent, the Respondent's HHSRS scoring sheet, a number of photographs taken on behalf of the Respondent and the Applicant's reply. In addition further supplementary information was produced by the Respondent comprising a letter to the Applicant from the Respondent dated 1 October 2019 and an incident report produced by Hampshire Fire and Rescue Service following a fire at the property on 16 September 2019.

8 **The Inspection**

9 The Tribunal inspected the Property on the morning of the 22 October 2019. Present at the inspection were Ms Santina Wood the Applicant, Mr Mark Sherrell a friend of the Applicant's, Mandy Patterson (Private Sector Housing Officer), Sarah James (Environmental Health Technician) and Sam Ings (Private Sector Housing Manager) from Havant Borough Council and the tenant at the property Miss Peat. The Property is a one-bedroom ground floor flat in a three-storey block of residential flats which appears to have

been built in the 1970s. There was no fixed heating system in the Property. There were a couple of portable heaters. There appeared to be evidence of damp or historic damp in the area of the plug socket below the sink. There was evidence of historic ingress of damp to the ceiling in the bathroom and mould in the same area. There was no light working in the bathroom. The Tribunal was shown the wall mounted heater in the bathroom and the extractor fan. There seemed to be little ventilation to the Property. At the time of inspection the Property was warm.

10 **The Law**

- 11 Part 1 of the Act provides for a system of assessing the condition of residential premises, and the way in which this is to be used in enforcing housing standards. It provides for a Housing Health and Safety Rating System (HHSRS) which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.
- 12 Local Authorities apply HHSRS to assess the condition of residential property in their areas. HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.
- 13 Section 2(1) of the Act defines hazard as “*any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)*”.
- 14 Section 2(3) provides “*regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur*”.
- 15 Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005.
- 16 Under Section 5 of the Act if a Local Authority considers that a Category 1 hazard exists on any residential premises, it must take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. If two or more courses of action are available the Local Authority must take the course which it considers to be the most appropriate. An Improvement Notice is included in the type of enforcement action that a Local Authority may take following identification of a Category 1 hazard.

- 17 Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include in Section 7(2) service of an Improvement Notice.
- 18 Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.
- 19 Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Categories 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person on whom it is served to take such remedial action in respect of the hazard as specified in the Notice.
- 20 Section 11(8) defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard, and contains similar provisions to that in Section 11.
- 21 An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act.
- 22 The Appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority is unaware. The Tribunal may confirm, quash or vary the Improvement Notice. The function of the Tribunal on an Appeal against an Improvement Notice is not restricted to review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.
- 23 **The Hearing**
- 24 The Tribunal explained to the Parties that the Applicant's appeal was by way of a re-hearing before the Tribunal.
- 25 The Respondent's representatives explained there had been a previous Improvement Notice served in respect of the property in 2015 which identified substantially the same hazards as that contained in the improvement notice dated the 23 April 2019 which is the subject of the appeal. That following a change in tenants that previous notice had been revoked and the current notice subsequently served. It was served following

a complaint received from the current tenant and an inspection carried out by the Respondent on 4 April 2019.

- 26 The Improvement Notice identified the following hazards:
- 27 **Excess cold.** That there was no fixed heating in the property and that the fixed electric wall heater in the bathroom was giving off a pungent smell when switched on. The notice stated that lack of appropriate heating was giving rise to damp and mould. This was identified by the Respondent as a Category 1 hazard. The remedial action required by the notice was to provide a central heating system in the form of a permanent fixed installation. That subject to the type of heating system to be agreed with the council before installation.
- 28 **Electrical hazards.** The notice identified the following electrical hazards:
- i) The light fitting in the bathroom was not working and was not sealed. The bathroom has no natural light and therefore there was no light to the bathroom at all.
 - ii) The extractor fan in the bathroom was not working. It was the only form of ventilation to the bathroom.
 - iii) That the electrical socket under the kitchen sink was located too close to the water inlet pipework. There was a risk of a leak and potential electrocution.
 - iv) The electrical wall fan heater in the bathroom was giving off a pungent smell and was reported to be sparking.
- 29 The Improvement Notice required a full electrical test be carried out and that a report be produced in the form of an Electrical Installation Condition Report to include a Condition Report Inspection Schedule. That to be provided to the Respondent. That all repair or renewal work identified by the report be carried out.
- 30 That the extractor fan in the bathroom be replaced by a dual speed fan to have a continuous background mode and boost mode controlled by a humidstat set to operate the fan when the rate of humidity reached 65% at a temperature of 20 degrees centigrade. The notice required the Applicant to provide the Respondent on completion of the installation with a copy of an electrical test certificate authorised by a member of the NICEIC.

- 31 That a new sealed light fitting be provided and fitted to the bathroom ceiling.
- 32 That the electrical socket under the kitchen sink unit be removed and the area made good and for the socket to be relocated in a more suitable position for the washing machine and to be a minimum of 300mm away from the cooker hob or sink unit.
- 33 These were identified by the Respondent as Category 2 hazards.
- 34 **Damp and Mould.** The Notice stated that because of the lack of heating and inadequate mechanical ventilation there was mould present in the bathroom, lounge, kitchen and bedroom. That at the time of the inspection there was a damp reading of 100% detected in the kitchen wall adjoining the bathroom beneath the sink unit. Again reference was made to the extractor fan in the bathroom not working. This was identified by the Respondent as a Category 2 hazard.
- 35 The remedial action required by the notice was for the Applicant to employ a building contractor to investigate and report upon the cause of the damp and the mould growth under the kitchen sink. To provide a copy of that report to the Respondent and to carry out all works recommended. Further to clean off the mould from the affected areas in all rooms. To apply inhibitor to affected surfaces and to redecorate.
- 36 The Respondent considered that the service of an Improvement Notice was the most appropriate and proportionate enforcement action for it to take.
- 37 At the hearing at the request of the Tribunal Mr Ings explained the process employed by the Respondent by reference to HHSRS scoring sheets which were exhibited to the statement of Mandy Patterson, the Respondent's Private Sector Housing Officer. Mr Ings explained that the Respondent used a risk assessment template into which was fed data from the national operating guidance. Information was then entered in relation to defects identified at the property and their anticipated potential impact on the assumption that the occupier was a member of a vulnerable group. So that ultimately the information thereby obtained and processed addressed the likelihood of an issue occurring and the potential of harm from it.
- 38 In answer to a question from the Tribunal Mr Ings accepted that nonetheless the process was not an exact science. That ultimately the assessment was based upon a series of value judgements by the Respondent's officers.
- 39 The Respondent accepted that the damp problems at the property could possibly be addressed by resolving the heating issue and the installation of an extractor fan in the bathroom. It was the Respondent's case that the heating

system in the property should be a fixed heating system consistent with the guidance. The Respondent's concern with portable heaters were that they constituted a trip hazard, could be removed from the property and were comparatively inefficient in terms of performance and cost of use.

- 40 It was contended on behalf of the Respondent that the mould in the bathroom was caused by condensation. It was understood that there had been an historic leak from the property above but that the area now appeared to be dry so it was assumed that the cause of the leak had been resolved. There remained concern however that there was a problem with damp ingress in the area of the sink. In answer to a query from the Tribunal that that damp problem may have potentially have been resolved by the works of repair carried out by a firm of builders H Monfared (Builders) Limited in April 2019 (there was a letter and invoice produced by the Applicant in the last two pages of the hearing bundle) Mr Ings confirmed that might be the case and he reasonably offered to revisit the property to take further damp readings. Mr Ings said on behalf of the Respondent that it was appreciated that the Applicant faced some practical difficulties with her tenant. That however it was submitted that the Improvement Notice was about the property and not the particular tenant in occupation at the time. Mr Ings volunteered that the processes operated by the various departments of the Respondent were not perhaps as 'linked' as they might be. He agreed with a suggestion from the Tribunal that when the Respondent were placing tenants in private residential properties in an ideal world it would be helpful if it inspect the property prior to the placement so as to identify any potential hazards before the tenancy began.
- 41 The Applicant's case is that essentially the problems at the property can be laid at the door of her tenant. That she had done all that she reasonably could over time to address the concerns of the tenant as regards heating at the property. That the tenant kept changing her mind as to what she required. The tenant would move heaters around the property or even remove them from the property altogether. That historically there had been storage heaters in the property but the previous tenant had removed them. That the tenant had resisted the installation of heaters fixed to the wall because she didn't wish to move her furniture. The Applicant said that she couldn't dictate to the tenant what items of heating the tenant should have in the property whether those constituted a trip hazard or not. She didn't understand the reference to the property being cold in that it was always warm when she visited and sometimes excessively so. In her Statement of Case she refers to the property as always being "*like a sauna*". That as such it was the tenant's lifestyle in her opinion which was the most likely cause of damp and mould.

- 42 The Applicant said that there had historically been a leak from the flat above into the bathroom but she understood that had been resolved because the area where the leak manifested itself appeared to have dried out.
- 43 As to the electrical hazards identified in the Improvement Notice the Applicant says that the bathroom light had previously been working but the tenant had taken out the starting motor. That the extractor fan did work but the tenant didn't like the noise and had therefore disengaged the power supply. As to the heater in the bathroom there was nothing to suggest it wasn't working and if there was a smell from it that was probably caused by dust.
- 44 At the hearing the Applicant repeated her view that the difficulty she faced at the property in carrying out works to address hazards or alleged hazards was the tenant. If the tenant were gone, she said, then she would carry out all of the proposed works 'instantly'. As to the proposal in the Improvement Notice that she employ a building contractor to investigate the damp and mould she said that she couldn't see the need. She believed that the historic ingress of damp in the bathroom and under the sink in the kitchen had been resolved.

45 **The Tribunal's Decision**

46 **Excess Cold**

- 47 This was identified in the Improvement Notice by the Respondent as a Category 1 hazard. Whilst acknowledging that the application of the HHSRS scoring system utilised by the Respondent is far from perfect and that such process has its limitations the Tribunal is satisfied from the evidence before it that the scoring process was reasonably and logically applied by the Respondent (which evidence was not disputed by the Applicant) and that the Respondent was correct to identify the lack of an appropriate heating system at the property as a Category 1 hazard. It is a hazard that could have a detrimental effect on a person from a vulnerable age group or suffering from health issues occupying the Property.

- 48 The Tribunal is satisfied that the remedial action required by the Respondent set out in the Improvement Notice is reasonable, save that what is required at the property is a permanent fixed installation heating system which may not necessarily be a 'central' heating system. Further, the Tribunal was told that there was no gas supply to the property. The Tribunal therefore varies the first sentence of the remedial action required to read: *"Provide a heating system in the form of a permanent fixed installation fuelled by electricity or solid fuel"*.

49 **Electrical Hazards**

- 50 On the basis of the evidence before it and for the reasons stated the Tribunal is satisfied that the Respondent has correctly identified the electrical hazards and categorised them as Category 2 hazards. The Applicant was unable to say at the hearing when she last had an electrical test carried out at the property. Given the nature of the hazards and the age of the property the Tribunal agrees with the remedial action required by the Improvement Notice that the Applicant carry out a full electrical test and provide the Respondent with a copy of the Electrical Installation Condition Report to include the Condition Report Inspection Schedule. That thereafter the Applicant repair or renew as necessary all fittings and wirings as required by the report and schedule.
- 51 The fact that the extractor fan in the bathroom is not working (for whatever reason) is undoubtedly a significant contributor to damp in the Property. The extractor fan inspected by the Tribunal appears to be old. The Tribunal agrees with the remedial action proposed by the Respondent's Improvement Notice that it be replaced by a dual speed fan compliant with the provisions set out in the notice.
- 52 There is currently no lighting whether natural or artificial to the bathroom at all. For whatever reason the artificial lighting is not working. The Tribunal agrees with the proposed remedial action that the Applicant provide and fit a new sealed light fitting to the bathroom ceiling.
- 53 As to the removal of the electrical socket from underneath the kitchen sink the Tribunal varies the remedial action required by the Improvement Notice to provide that the electrical socket under the kitchen sink need only be removed and relocated if the electrical report referred to at paragraph 50 above so advises or recommends.
- 54 **Damp and Mould**
- 55 On the basis of the evidence before it and for the reasons stated the Tribunal is satisfied that the Improvement Notice correctly identifies damp and mould at the property as Category 2 hazards. The Tribunal notes Mr Ings' offer to re-inspect and to take fresh readings in respect of the damp below the kitchen sink. The Tribunal agrees with the proposed remedial action that the Applicant employ a building contractor to investigate and report, to provide a copy to the Respondent and to carry out the work recommended by the report.
- 56 As to the mould the Tribunal confirms the remedial action required by the Improvement Notice that the Applicant must clean off the mould from the affected areas, apply an inhibitor to the affected surfaces and re-decorate leaving the areas in a sound condition.

- 57 The Tribunal has given careful consideration in relation to all of the hazards identified as to whether an Improvement Notice is the most appropriate enforcement action to take.
- 58 Section 5(2) of the Act identifies 7 types of enforcement action. None of the hazards represent imminent danger to health and safety of the occupant which rules out the options of emergency remedial action and an emergency prohibition order. Patently the condition of the property, and the obvious fact that it is a ground floor flat in a block of flats, rule out the radical options of demolition or clearance. The choice is therefore between a Hazard Awareness Notice, an Improvement Notice (with the possibility of suspending the Improvement Notice) and a Prohibition Order.
- 59 The Tribunal does not consider that a Hazard Awareness Notice would have been appropriate in respect of the hazards covered by the Improvement Notice. A Hazard Awareness Notice advises the owner of the property of the existence of a hazard and the deficiency causing it. It requires no action to remedy the deficiency on the part of the owner. In the view of the Tribunal, not least given the risk of harm and health represented by the hazards identified, a Hazard Awareness Notice would not be appropriate. The hazards require remedying. There is no suggestion by either party that the Improvements Notice be suspended nor does the Tribunal think it would be appropriate to do so.
- 60 This is not a case in the view of the Tribunal in which the hazards identified could be properly or appropriately addressed by the service of a Prohibition Order. Accordingly the Tribunal is satisfied that the service of an Improvement Notice is the most appropriate form of enforcement action to take in respect of the hazards identified at the property.
- 61 The Improvement Notice provided that the remedial works be started no later than 21 May 2019 (being 28 days after service) and completed by 22 July 2019. The Tribunal varies the Improvement Notice in respect of the timescale for the works to be carried out so they must be started no later than 28 November 2019 and must be completed no later than 20 February 2020 (allowance being made for the difficulty in instructing contractors during the Christmas and New Year period).
- 62 **Summary of Tribunal's Decision**
- 63 The Tribunal confirms the issue of the Improvement Notice dated 23 April 2019 subject to the following variations:

- i. That the first sentence of the remedial action to be carried out in relation to excess cold read: *“Provide a heating system in the form of a permanent fixed installation fuelled by electricity or solid fuel”*.
- ii. That the Applicant will remove and relocate the electrical socket from under the kitchen sink as provided for in the Improvement Notice, only if the electrical installation condition report that she is required to commission under the terms of the Improvement Notice so provides.
- iii. That the remedial work required by the Improvement Notice, as varied, will start no later than 28 November 2019 and be completed by 20 February 2020.

Dated this 24th day of October 2019

Judge N Jutton

Appeals

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.