



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

**Case Reference** : **BIR/00CQ/HIN/2019/0004**

**Property** : **70 Wyley Road, Radford, Coventry,  
CV6 1NY**

**Applicant** : **Mr Justin Daniel**

**Respondent** : **Coventry City Council**

**Type of Application** : **An appeal against an Improvement Notice  
under paragraph 10 (1) of Schedule 1 to  
the Housing Act 2004**

**Tribunal Members** : **Judge M K Gandham  
Mr R Chumley-Roberts MCIEH, JP**

**Date and venue of  
Hearing** : **Paper Determination**

**Date of Decision** : **16 December 2019**

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**DECISION**

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## **Decision**

1. The Tribunal determines that the Improvement Notice and the Demand for Payment, both dated 14<sup>th</sup> March 2019, are quashed.
2. The Tribunal order, under Rule 13 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that Coventry City Council ('the Respondent') reimburse Mr Justin Daniel ('the Applicant') the whole of the tribunal application fee, being the sum of £100.

## **Reasons for Decision**

### **Introduction**

3. On 9<sup>th</sup> April 2019, the First-tier Tribunal (Property Chamber) received an application from the Applicant for an appeal under Paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act'). The appeal related to an Improvement Notice dated 14<sup>th</sup> March 2019 ('the Notice'), served upon him by the Respondent relating to the property known as 70 Wyley Road, Radford, Coventry, CV6 1NY ('the Property'), of which the Applicant is the freeholder. The Applicant also requested the reimbursement of his tribunal application fee.
4. The Notice was served on the Applicant on 14<sup>th</sup> March 2019 and detailed, in the Schedule to the Notice, various defects at the Property. These defects were categorised as category 1 and 2 hazards in respect of Excess Cold, Damp and Mould Growth, Personal Hygiene, Sanitation and Drainage and Falls on the Level. The Notice did not specify which of the hazards were categorised as category 1 and which were categorised as category 2. The Respondent served, with the Notice, a Statement of Reasons as to why the decision to take enforcement action had been taken. A Demand for Payment was also sent to the Applicant on 14<sup>th</sup> March 2019, demanding a sum of £368.90, in respect of the Respondent's costs for serving the Notice.
5. The Respondent provided a Statement of Case and bundle on 7<sup>th</sup> May 2019 and a Statement of Case and bundle setting out the Applicant's case was received by the Tribunal on 7<sup>th</sup> June 2019.
6. Neither party requested an oral hearing.

### **The Law**

7. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System (the 'HHSRS') replaces the system imposed by the Housing Act 1985, which was based upon the concept of unfitness. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two

factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as 'category 1 hazards' and those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards'.

8. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5 (1) of the Act to take appropriate enforcement action. Section 5 (2) sets out the courses of action (which include the serving of an improvement notice) which may constitute appropriate enforcement action.
9. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an improvement notice is one of the types of enforcement action which may be taken.
10. Section 9 of the Act requires the local housing authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued 'Housing Health and Safety Rating System – Operating Guidance' ('Operating Guidance') which deals with the assessment and scoring of HHSRS hazards. At the same time the Secretary of State also issued 'Housing Health and Safety Rating System – Enforcement Guidance' ('Enforcement Guidance'), which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary powers under section 7 of the Act.
11. The person upon whom an improvement notice is served may appeal to a First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act; and the Tribunal may confirm, quash or vary the notice.

## **Inspection**

12. The Tribunal inspected the Property on 14<sup>th</sup> November 2019. The Applicant was present and the Respondent was represented by Mr Ames-Rook (a Housing Enforcement Officer) and Mr Adrian Chowns (a Property Licencing Manager), both of whom were employed by the Respondent.
13. The Property is a small, two-storey terraced house situated on Wyley Road, in an area of similar properties. It has solid brick walls and a pitched, tiled roof. The Property fronts directly on to Wyley Road and has a small rear garden.
14. The front door of the Property leads to a hallway from where the lounge and kitchen are accessed. To the rear of the kitchen there is a single skin, brick built, extension which gives access to the rear garden. Stairs from the hallway lead to the first floor, which comprises a small landing with two double bedrooms – one to the front and the other to the rear of the Property. The Property is double-glazed and has the benefit of central heating.

15. The Tribunal inspected the boiler, which was located in the loft and was easily accessible as a loft ladder was in situ. There was 100mm of roof space insulation and sprayed insulation between the rafters.
16. The boiler was a Vaillant ecoTEC pro combination boiler, which appeared to be no more than three years old. It was suitable for the type of accommodation and appeared to be in good working order. The controls for the heating and water were located in the kitchen, were easily accessible by a tenant and, again, appeared to be working. The radiators were also equipped with thermostatic radiator valves.
17. In the rear extension, which was being used as a utility room, the pipework appeared to be sound and the Applicant confirmed that the overflow led to the rear garden. The Tribunal did not note any missing spindles to the staircase.
18. Some works had been carried out to the Property since the Notice had been issued. New flooring had been laid in the kitchen and some cupboards had been repaired. In the bathroom, the Applicant confirmed that he had replaced the vinyl flooring, toilet, sink and bath and carried out some tiling. The Applicant also confirmed that he had cleaned the walls and ceilings, removing the previous mould, although some mould was visible around the bathroom window and in the rear bedroom. The Applicant confirmed that he had made no alterations or repairs to the boiler since the Notice had been issued.

## **Submissions**

### ***The Applicant's submissions***

19. The Applicant submitted that the Notice served was invalid, as the contents were incorrect and the specification of works to be carried out were unreasonable. In addition, he stated that insufficient time had been given for him to carry out any works – the Notice being sent by second-class post and referring to the works having to be completed within 1 day after the 28 day service period had expired.
20. The Applicant referred to mistakes in the Notice (such as the number of bedrooms at the Property) and stated that the description of the deficiencies was vague and did not define which hazard fell under which category. He further stated that the specification of work did not correlate to the hazards specified (the specification of works referred to the cooker and kitchen cupboards, which were not detailed as hazards in Schedule 1) and that the works required in Schedule 2 were disproportionate to the hazards identified.
21. In relation to *Excess Cold*, the Applicant submitted that the central heating system was in good working order. He stated that the previous tenant could control the heating and hot water and that she had not mentioned any fault in the system to him. He stated that the boiler had, previously, been inspected in May 2018 and he produced a copy of the latest Gas Safety Record, dated 15<sup>th</sup> April 2019, confirming that the boiler was safe to use. In addition, the Applicant queried how the Respondent could justify a need for him to repair or replace the boiler, having not physically inspected it to see if it was working.

22. Regarding the *Damp and Mould*, the Applicant acknowledged that there had been mould at the Property but was not aware of any damp and queried how this had been identified. He stated that he had instructed a professional inspection to be carried out in 2018 by Dampco and provided a copy of their letter, dated 21<sup>st</sup> May 2018, confirming that the mould was caused by condensation. He stated that this was through lack of ventilation by the previous tenant.
23. In relation to the *Personal Hygiene, Sanitation and drainage*, the Applicant stated that this issue had been resolved prior to the Notice being issued and provided a copy of Homserve's Job Completion Report dated 25<sup>th</sup> February 2019. This report confirmed that the kitchen drain in the utility had been blocked and, consequently, had flooded the back yard. The engineer had cleared the gully using rods and referred to the cause of the problem as being a "*major misuse of grease*".
24. The Applicant stated that the previous tenant had been in substantial arrears and had allowed the Property to get in to a state of disrepair. He submitted that the Respondent could have served a hazard awareness notice, rather than an improvement notice, had they believed that the hazards existed. He would then not have incurred the Demand for Payment, as he was already suffering hardship due to the previous tenant's substantial rent arrears.
25. Finally, the Applicant stated that he wanted his application fee to be refunded by the Respondent. The Applicant referred to the fact that the Respondent would not otherwise revoke the Notice until he had completed the works specified which, he submitted, were not required.

### ***The Respondent's submissions***

26. Mr Ames-Rock confirmed that, on 19<sup>th</sup> February 2019, the Respondent had received a complaint from a tenant regarding disrepair at the Property. The tenant was advised to put her concerns in writing to the Applicant which, he stated, she did on 21<sup>st</sup> February 2019.
27. Mr Ames-Rock stated that the Respondent had contacted the Applicant on 27<sup>th</sup> February 2019 to discuss the issues at the Property and was informed that these had been resolved; however, the tenant had contacted the Respondent, on 4<sup>th</sup> March 2019, stating that the required repairs had not been carried out.
28. On 6<sup>th</sup> March 2019, the Respondent wrote to the Applicant detailing their intention to carry out an inspection and this was carried out by Mr Ames-Rock on 13<sup>th</sup> March 2019. An assessment of the hazards was then completed, which the Respondent stated identified a number of category 1 and category 2 hazards at the Property.
29. The Inspection Details provided by the Respondent in their bundle referred to: Excess Cold (calculated as a Band A hazard) as the tenant had reported that she had no heating or hot water; Falls on the Level (calculated as a band E hazard) in relation to a trip hazard in the middle of the kitchen flooring; Personal Hygiene (calculated as a Band J hazard) relating to grey water discharging in to the garden and Damp and Mould Growth (calculated as a Band J hazard) referring to damp mould throughout the Property.

30. Mr Ames-Rock stated that, under the Act, the Respondent must take appropriate enforcement action if it considers a category 1 hazard exists and provides the Respondent with a power to take enforcement action where it considers a category 2 hazard exists. Accordingly, the Respondent served an improvement notice on 14<sup>th</sup> March 2019. The Notice confirmed that the Respondent did not consider it necessary to serve a prohibition notice but that, as the Applicant was aware of the hazards, a hazard awareness notice was not appropriate.
31. The Respondent stated that, under section 16(1) of the Act, the Respondent must revoke an improvement notice if they are satisfied that the requirements of a notice have been complied with. In order to ascertain whether the works had been completed, the Respondent tried to re-inspect the Property in August 2019, but the Applicant failed to facilitate access.
32. The Respondent maintained that it was correct in serving the Notice.

### **The Tribunal's Deliberations**

33. The Tribunal considered all of the evidence submitted by the parties written and summarised above.

### ***The Improvement Notice***

34. In relation to the typographical errors in the Notice, the Tribunal considers these simple mistakes, which would not invalidate the Notice; however, the Tribunal does consider that the notice period to carry out remedial action – 1 day – was too short and unreasonable. In addition, the Tribunal considers it unreasonable for the Respondent to include various works in Schedule 2 – replacing the cooker, repairing broken cupboards, replacing missing spindles to the handrail and repairing the leaking toilet – which were not related to the hazards identified in Schedule 1.
35. In relation to the deficiencies detailed in Schedule 1, the Tribunal was astounded that the Respondent had identified a hazard of *Excess Cold*, in relation to the lack of a constant supply of heating and hot water to the Property, based simply on a tenant's assertion of this fact, without having carried out an inspection of the boiler. The boiler was in working order at the time of the Tribunal's inspection and the Applicant had provided a copy of a Gas Safety Record, carried out the month after the Respondent's inspection, confirming that the boiler was safe. Although the boiler was located in the loft, it was easily accessible, and the control for the heating and hot water was located in the kitchen, so a tenant would have control over the same. In addition, the Property was adequately insulated and benefited from double glazing. Although an appeal to the Tribunal is by way of a rehearing, but may be determined having regard to matters of which the local authority was unaware, in this case the Tribunal is not satisfied that, at the time the Notice was issued, there was any fault in the heating system or that any Excess Cold hazard existed. The Tribunal notes that this hazard was classed as falling within Band A and was the only hazard that could be classified as a category 1 hazard.

36. In relation to *Damp and Mould*, the Tribunal notes that the Applicant had cleared the majority of the mould by the time of the Tribunal's inspection. The Tribunal also notes the Applicant's submissions and evidence regarding this to have been caused by condensation, due to actions of the previous tenant, rather than by any damp located at the Property. The hazard had been calculated as a Band J hazard by the Respondent and, as such, the Tribunal considers that it was unnecessary for the Respondent to have taken any action in relation to the same.
37. In relation to *Personal Hygiene*, the Tribunal is satisfied that the evidence provided by the Applicant indicates that the issue with the blocked drain in the utility had been resolved prior to the Respondent's inspection and service of the Notice. The Tribunal is also satisfied that, based on the evidence, the problem had been caused by the actions of the previous tenant. The Tribunal considers it reasonable that any overflow from the gully in the utility, drains to the rear garden, as the alternative could lead to a flooding in the utility area. The Tribunal saw no evidence that any pipework required repairing.
38. Regarding *Falls on the Level*, the Applicant had laid new flooring in the kitchen prior to the Tribunal's inspection. The Tribunal notes that this hazard was calculated by the Respondent as a Band E hazard and, again, the Tribunal does not consider that this would warrant the issuing of an improvement notice.
39. As such, the Tribunal determines that the Notice and the Demand for Payment be quashed.

### ***Application under Rule 13***

40. The Tribunal, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, "*may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party...*" In this matter, the Applicant paid an application fee of £100.
41. The Tribunal notes that the Respondent had intimated that it would only consider revoking the Notice if the works specified in the Notice were completed. The Applicant contended that some of the works detailed in the Notice were not required and, as detailed above, the Tribunal agreed.
42. The Tribunal considers that the Respondent was unreasonable in issuing the Notice for the reasons detailed above. In addition, the Tribunal considers that the Applicant was left with no choice but to make an application to the Tribunal, as the alternative would have been for him to have had to carry out a great deal of works that were not required and still be liable for the Demand for Payment.
43. As such, the Tribunal considers that it should exercise its discretion and orders that the Respondent reimburse to the Applicant the whole of the application fee, being a sum of £100.

### **Appeal**

44. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the

parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham