



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

Case Reference : CHI/45UH/HIN/2020/0014

Property : The Lodge
Park Crescent
Worthing
West Sussex
BN11 4AH

Applicant : Andrew Michael Clayton
Anthony Denis Clayton

Representative : Dean Wilson LLP

Respondent : Worthing Borough Council

Representative : In house

Type of Application : Appeal against service of Improvement
Notice pursuant to Housing Act 2004
Schedule 1, Paragraph 10(1)

Tribunal Member(s) : Tonia Clark (Judge)
Michael Ayres (Surveyor FRICS)
David Ashby (Building Surveyor FRICS)

**Date and Venue of
Hearing** : 8th December 2020

Date of Decision : 17th December 2020

DECISION

Decision of the tribunal:

1. The Tribunal concluded that the application to appeal the service of the Improvement Notice is dismissed.

The Application:

1. The application is dated 13th August 2020 in respect of an Improvement Notice served by the Respondents on 24th July 2020 and served upon the owner/landlords on 25th July 2020 in respect of the property at The Lodge, Park Crescent, Worthing, West Sussex. BN11 4AH (“the property”)
2. The application to be determined by the Tribunal is brought by Mr Andrew Clayton and Mr Anthony Clayton who are the owners/landlords of the property.
3. The property is described in the application as an end of terrace 2 storey, 1- bedroom house.
4. The tenant occupier is currently Mr Iain McPherson.
5. A determination is sought pursuant to the Housing Act 2004 Schedule 10 Paragraph 10(1)

Directions:

6. Directions were given on the 9th September 2020 and initially provided for a paper hearing unless any party objected.
7. A hearing was requested and this hearing has taken place remotely by way of a video hearing in light of the current pandemic.
8. The Directions included provision for witness statements to be provided in addition to any person who had signed the statements of case.
9. Duncan Wilks from Dean Wilson LLP is the solicitor acting on behalf of the Applicants and has signed both the application and the Statement of Case with a statement of truth on behalf of the Applicants. No other statements were provided on behalf of the Applicants but, upon enquiry by the Tribunal, no issue was taken about the lack of witness statements by the Respondents.

10. The only additional statement which the court had before it was that of Mr James Alexander Elliott and Mr Bruce Sean Reynolds on behalf of the Respondents. Mr Elliott is the Senior Environmental Health Officer. Mr Reynolds is the Housing Manager who attended the site inspection with Mr Elliott on 3rd July 2020.
11. A bundle has been prepared and pages references are the page numbers of that bundle which is before the Tribunal today.
12. In addition the Tribunal had the benefit of a supplemental bundle which is made up of correspondence that the landlords state identify the attempts for the Applicant landlords to gain access to inspect the property. It contains some correspondence from the tenant which the Tribunal noted.

The Background/Chronology

13. The property concerned has been occupied by the current tenant pursuant to a tenancy agreement dated 6.2.2013.
14. The Applicant landlord and the tenant had been in communication in late May 2020 concerning electrical issues in relation to the property which effected the heating and hot water. The boiler was not working.
15. As a result, the Applicant landlords arranged for the attendance of an electrician to carry out works at the property over a few days.
16. The electricians last day working at the property appears to have been on a day prior to 19th June 2020.
17. The Tribunal heard that on the last day when the electrician was working at the property Mr Andrew Clayton (one of the Applicants) had also attended the property and there had been a heated discussion with the tenant about arrears of rent and also the condition of the property.
18. The Tribunal was taken to an e mail at B61 of the bundle dated 19th June (a Friday) which refers to an attendance at the property by the electrician on the Tuesday. The Applicants case is that the electrician had been denied access to the property. The preceding Tuesday was the 18th June.

19. The Tribunal has therefore identified that the correct date was 18th June 2020 when the electrician attended to complete the works and was refused access by the tenant.
20. A further e mail was then sent on 1st July (at B62 of the bundle) by Mr Andrew Clayton asking for access in order to survey the property. It referred to a date for inspection of 10th July 2020.
21. On the same day the Respondents employee Mr Elliott (Senior Environmental Health Officer) wrote to the Applicants informing them that he intended to visit the property on 3rd July 2020 in order to carry out an inspection and assessment for the purpose of identifying any deficiencies at the property which may constitute a hazard as defined in the Housing Health and Safety Rating System (HHSRS). The letter is at B63 of the bundle.
22. An informal visit to the property had taken place by Mr Elliott on 1st July 2020.
23. The formal inspection by Mr Elliott took place on 3rd July 2020. Mr Bruce Reynolds, Private Sector Housing Manager, was also in attendance.
24. During the course of the inspection Mr Elliott and Mr Reynolds identified category 1 and category 2 hazards (pursuant to HHSRS) and as a result a section 11 Improvement notice was served under cover of a letter dated 24th July 2020, a copy of which is at B100.
25. The Improvement notice is at B101 – B108. It sets out 21 items categorised as either falling within category 1 or category 2 (of HHSRS).
26. The applicants issued a Notice of Appeal, which is the subject of this hearing. The grounds are set out at B17-B19 of the bundle.

The application

27. The grounds of the application are at B17 to B19.
28. The application raises a number of issues for the Tribunal to consider in their determination. The Tribunal took into account all the matters raised in the Application itself and by way of summary only the following matters were noted;

- The tenant had stopped paying the rent in May 2020 when state support had started being paid directly to the tenant rather than to the landlord.
- The property was kept in a filthy state and the tenant was in breach of the terms of the tenancy agreement
- The property was used to make “home movies”
- The landlord was attempting to gain access to carry out works
- The tenant was denying access on order for the landlord to carry out inspection/works
- The Housing Act does not apply to single dwellings.
- The property was in a good state of repair at the commencement of the tenancy
- The landlords had not been made aware of all the alleged deficiencies by the tenant
- Some damage had been caused by the tenant
- That some of the requirements in relation to fire risks was excessive
- The service of the Improvement notice was an incorrect procedure and was premature.
- A Hazard Awareness Notice or informal procedures had not been attempted prior to service of the Improvement Notice.

The lease:

29. The lease in relation to the property is at B148 – B163 of the bundle. Annexed to the copy lease is an inventory outlining the condition of the property and with photographs at the commencement of the tenancy.

The law:

The paragraph 1 Housing Act 2004 states that the Act provides a;

1. New system for assessing housing conditions and enforcing housing standards

(1) This Part provides—

(a) for a new system of assessing the condition of residential premises, and

(b) for that system to be used in the enforcement of housing standards in relation to such premises.

(2) The new system—

(a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and

(b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).

(3)The kinds of enforcement action which are to involve the use of the new system are—

(a)the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),

Paragraph 4 of the Housing Act 2004 provides that;

4. Inspections by local housing authorities to see whether category 1 or 2 hazards exist

(1)If a local housing authority consider—

(a)as a result of any matters of which they have become aware in carrying out their duty under section 3, or

(b)for any other reason,

that it would be appropriate for any residential premises in their district to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises, the authority must arrange for such an inspection to be carried out.

(2)If an official complaint about the condition of any residential premises in the district of a local housing authority is made to the proper officer of the authority, and the circumstances complained of indicate—

(a)that any category 1 or category 2 hazard may exist on those premises, or

(b)that an area in the district should be dealt with as a clearance area,

the proper officer must inspect the premises or area.

Section 11 of the Housing Act 2004 provides that;

11. Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1)If—

(a)the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

servicing an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2)An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

Section 12 of the Housing Act 2004 provides that;

12. Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

The Housing Health and Safety Rating System Enforcement Guidance provides guidance to local housing authorities and they are required to have regard to the guidance in the exercise of their duties and powers under Part 1 of the Housing Act 2004.

A copy of the Guidance is at B64-B99 of the bundle.

Schedule 10(1) of the Housing Act 2004 provides that;

The person on whom an improvement notice is served may appeal to [\[F1\]](#)the appropriate tribunal] against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

11. An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

12. An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2)The courses of action are—

(a)making a prohibition order under section 20 or 21 of this Act;

(b)serving a hazard awareness notice under section 28 or 29 of this Act; and

(c)making a demolition order under section 265 of the Housing Act 1985 (c. 68).

Inspection

30. The tribunal did not carry out an inspection. It was considered disproportionate and contrary to Tribunal guidelines in light of the current pandemic, but also unnecessary in this case.

The hearing:

31. The tribunal read and took into account the entire contents of the bundle and the supplemental bundle.

32. The court heard from Mr Wilks, solicitor for the applicant and from Mr Elliott for the respondent.

33. Mr Wilks identified those issues raised by the Applicants which they wish the Tribunal to consider.

34. Mr Wilks told the Tribunal that the Respondents had other alternatives available and that the Applicant landlords had not been able to gain access to the property and were still unable to do so and therefore could not comply with the Improvement Notice.

35. It was suggested that the tenant was acting deliberately in denying access in the hope of gaining an advantage in relation to rent arrears.

36. Mr Wilks also confirmed that the Applicants had a person ready to inspect the property and the electrician was able to complete the repairs immediately required in order to re-establish both heating and hot water in the property. However, Mr Wilks questioned the reasonableness of all the other items in the Improvement Notice.

37. This was considered a priority by the Tribunal irrespective of the outcome of this application and this was acknowledged on behalf of the landlords and had been throughout.

38. Mr Wilks told the Tribunal that the Applicants were neither irresponsible or negligent in this matter but were unable to progress matters due to the actions of the tenant. He also stated that the Applicants were concerned that the Improvement Notice might be regarded as a penalty.
39. The Tribunal then heard from Mr Elliott who confirmed his statement and was questioned by the Tribunal and by Mr Wilks.
40. Mr Elliott confirmed the contents of his statement. He stated that the service of the Improvement notice was not intended to and did not indicate that the identified deficiencies in the property were necessarily attributable to the landlord. Therefore any allegations of damage caused by the tenant did not effect the statutory provisions relating to service of the Improvement Notice.
41. Mr Elliott stated that it was the Respondents duty to formally inspect the property, the Respondents having received a formal complaint from the tenant.
42. Mr Elliott told the Tribunal that in most instances following a formal complaint and a formal inspection that identified "Category 1 hazards" falling within the definition contained in the legislation and guidance, the Respondents would then serve an Improvement Notice and that the prescribed actions do not specifically include informal action. On questioning by Mr Wilks, Mr Elliott said that "informal action is not a response" that was available to the Respondents.
43. Mr Elliott told the Tribunal that the Housing Act 2004 clearly sets out that the purpose of an Improvement Notice is that it sets out what needs to be done to make a property safe.
44. Mr Elliott referred to his understanding that the landlords might serve a section 8 notice upon the tenant, irrespective of the Improvement Notice.
45. He also told the Tribunal that an Improvement Notice provides the landlord with additional reasons to allow a Court to enforce access to do work that is essential for health and safety.
46. On further questioning by the Tribunal Mr Elliott confirmed that a computer programme is used to categorise hazards (the Northgate

System) which is cross checked by his experience. He also told the Tribunal that potential hazards must be considered with reference to the hypothetical “vulnerable” person who might be residing in a property.

47. The Tribunal questioned the items relating to the fitting of sprinklers and insulation to ascertain if these were reasonable. Mr Elliot provided answers to these questions that are in line with the guidance around fire safety and addressing excessive cold that is consistent with the Operating Guidance of the HHSRS as well as other fire safety guidance.

Determination

48. The Tribunal considered all the evidence that it had both read and heard and considered and applied the relevant law and guidance.
49. The Tribunal concluded that the application is dismissed on the basis that the respondents had correctly served the Improvement Notice.
50. The Tribunal concluded that the Improvement Notice was the appropriate action irrespective of whether it was the tenant who had caused or contributed to the 21 items raised as either category 1 or category 2 hazards.
51. The Tribunal also concluded that the apparent failure of the tenant to permit access was not a reason to allow the application and set aside the Improvement Notice.
52. The Tribunal noted that legislation relating to landlord and tenant issues around tenant damage and lack of access should be used to resolve these particular matters and therefore this was not a factor that was relevant to their determination of this application.
53. Aside from their formal determination the Tribunal noted that the imperative in this case is for the landlords to re-establish both hot water and heating in the property as soon as possible and the Tribunal hoped that the tenant will cooperate with allowing access for this specific purpose for this to be completed immediately.
54. The other remedial actions should be completed in accordance with the Improvement Notice, i.e. items 1 to 11 should be completed within a month and items 12 to 21 within 2 months of the date of this determination.

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.