



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

Case Reference : **MAN/00FD/HIN/2020/0002**

Property : **98 Digby Street, Scunthorpe DN15 7LU**

Appellant : **Mr Anthony Wheatley**

Respondent : **North Lincolnshire Council**

Type of Application : **Housing Act 2004 – Schedule 1,
Paragraph 10(1) – Improvement Notice**

Tribunal Members : : **Tribunal Judge Phillip Barber
Mr P Mountain**

Date of Decision : **27 November 2020**

DECISION AND REASONS

Decision

1. The Tribunal confirms the Improvement Notice dated 10 December 2019.

Reasons

2. Following a complaint to the Respondent about the condition of 98 Digby Street, DN15 7LU (“the property”) on the 29 July 2019, a visit was carried out by officers of the Respondent on the 09 August 2019. At that visit a number of defects were

identified including a missing external windowsill in the rear bedroom; rotting window frame; a leak in the bathroom and “bouncy” floorboards. Photographs were taken of the condition of the property and these can be seen in the Respondent’s bundle at TAB 1. A further, more extensive, visit was carried out by an Environmental Health Officer on the 13 August 2019 when several further issues were noted and scored using the HHSRS scoring system. The matrix can be seen at Tab 3 of the Respondent’s bundle and on the 18 October 2019, a schedule of works was sent to the landlord of the property (the Appellant), Mr Anthony Wheatley, at his address at Jedburgh, Church Street, Haxey, together with an informal requirement to complete the works within 28 days. A copy of that letter and schedule can be seen at Tab 4 of the Respondent’s bundle and included 3 category 1 hazards: excess cold; falling on stairs and structural collapse, and 7 category 2 hazards: damp and mould; electrical hazards; entry by intruders; falling between levels; collision and entrapment; personal hygiene and domestic hygiene.

3. There was no response to that letter and no works were carried out at the property and on the 18 November 2020, the Respondent started more formal procedures with a further visit to the property on the 26 November 2019, to which Mr Wheatley was invited. That letter can be seen at Tab 5.
4. At the re-inspection, to which Mr Wheatley did not attend, the Respondent determined that little in the way of works had been carried out at the property. Further photographs were taken as exhibited at Tab 6 of the Respondent’s bundle and on the 10 December 2019, Mr Wheatley was served with an Improvement Notice requiring commencement of the remedial action within 28 days and completion by the 10 February 2020. The Notice, together with the schedule of works and covering letter can be seen at Tab 7 of the Respondent’s bundle.
5. On the 06 January 2020, Mr Wheatley appealed the Improvement Notice to the Residential Property Tribunal. His grounds of appeal are set out in a note attached to the application form and amount to the following: (1) the tenants are in rent arrears and using the remedial works as a reason not to pay the rent; (2) the tenants have not complained to him about the state of the property; (3) the tenants have been aggressive and that after he received the October 2019 letter, he attended the property to carry out works but due to the tenant’s behaviour he and his contractors had to leave; and (4) the tenants will be leaving the property shortly and will probably “trash” the place. In those circumstances, it is argued, the Improvement Notice should be cancelled. In support of his grounds of appeal, Mr Wheatley reproduced various text message exchanges between himself and the tenant; a rent arrears schedule and a copy of the notice for possession under section 8 of the Housing Act 1988.
6. A Procedural Judge determined that this application was urgent and that an oral face to face hearing should be arranged. However, the Covid-19 Pandemic intervened making such a hearing impracticable until the 27 November 2020 by which time the tenants had, in fact, vacated the property voluntarily into alternative accommodation. A face to face hearing was, nevertheless felt appropriate by the Respondent and we convened a Tribunal on the 27 November 2020 at Lincoln Magistrates Court where we heard submissions from Ms Oliver for the Respondent and Mr Wheatley on his own behalf.

7. Mr Wheatley repeated his grounds for appealing the decision as set out in his appeal form adding that there was little point in maintaining the Notice as he was intending selling the property.
8. It is fair to say that Mr Wheatley did not oppose any of the items listed in the schedule to the Improvement Notice when asked about them and he agreed that they were necessary if the tenants were paying their rent and if they were still living there. His point was, therefore, that the tenants had prevented works being carried out and had now moved out leaving him with rent arrears. One addition at the hearing was that he made the claim that he had not received the 18 November 2019 letter inviting him to the inspection, but we thought nothing turned on this. He received the informal letter in October and chose to make no contact with the Respondent so we placed no weight on the claim.
9. Ms Oliver repeated the points in her witness statement but added that the appeal should be dismissed and the Improvement Notice maintained even if the property is to be sold. She told us that the property might be re-let and even if sold it should be sold subject to the Improvement Notice so any prospective landlord is aware of the requirements.
10. In arriving at its determination, the Tribunal took into account both of those submissions and thereafter conducted its own "re-hearing" of the issues on the basis of the submissions and documents in the bundles.

The Legislative Background

11. It is generally unnecessary for the Tribunal to rehearse the legislative background to this application as both parties to this appeal are fully conversant with the legislative provisions underpinning the Respondent's responsibility to access and assess properties in its administrative region for the purpose of health and safety in cases where it has reasonable cause to believe a hazard exists in relation to that property. The Respondent is a local housing authority and Mr Wheatley is an experienced, professional landlord.
12. Generally, Chapter 1 of Part 1 of the Housing Act 2004 (the "Act") established a scheme known as the Housing Health and Safety Rating System (HHSRS) against which a Local Authority is to consider the standard of amenities and accommodation present in privately rented properties. Section 3 of that Act places a responsibility on a local housing authority to review housing conditions in their district and to carry out inspections for the purposes of that responsibility. In the event that such an inspection identifies either a category 1 hazard, the housing authority must take appropriate action, which includes the service of an improvement notice under section 11 of the Act and a prohibition order under section 20. In relation to category 2 hazards, the local housing authority may serve an improvement notice.
13. Section 13 of the Act sets out the required contents of an improvement notice and we are satisfied that the improvement notice, the subject of this appeal, complies with the requirements of that section. Likewise, section 22 provides for the contents of a prohibition order and we are again satisfied that the subject prohibition order complies with the requirements of that section.

14. Part 3 of Schedule 1 to the Act provides that a person upon whom an improvement notice is served may appeal to the Tribunal and paragraph 15 of Schedule 1 provides that the appeal is to be by way of a re-hearing and under paragraph 16, the Tribunal may confirm, quash or vary the improvement notice.

On the issue of an Inspection

15. There was no need to inspect the property. The Covid-19 epidemic made such an inspection impracticable and we had a number of clear and detailed photographs in the bundle as to the issues at the property.

Our Findings of Fact

16. As mentioned we did not inspect the property but we felt able, to make our own findings of fact in relation to each of the hazards identified in the Improvement Notice on the basis of the submissions from the parties.
17. As mentioned above, both parties were in agreement that works were required at the property to reduce and prevent the various hazards identified in the improvement notice. No works have been carried out at the property and the property is now vacant. It is not on the market for sale, but it is Mr Wheatley's intention to sell the property in its current state.
18. No issue was taken with the effective service of a valid Improvement Notice and we find, in any event, that the notice was validly served and complies with all technical requirements in the Housing Act 2004.
19. It follows therefore that we can confirm the contents of Schedule 1 to the Improvement Notice as reproduced on pages 74 to 76 at Tab 7 f the Respondent's bundle. We find as fact, therefore that the following category 1 hazards existed at the property at the date of service of the Improvement Notice (10 December 2019) and continue to exist at the date of the hearing (27 November 2020): (for this purpose we reproduce a copy of Schedule 1 to the Improvement Notice as set out on pages 74 to 76 of the Respondent's bundle as Annex 1 to this Decision and Reasons).
20. We also considered the necessary works required in order to remedy the defects. The Respondent contends that the steps set out in Schedule 2 to the Notice are the necessary minimum steps to be taken to remove or reduce the hazards at the property. Mr Wheatley did not argue otherwise and utilising our own expertise on the issue we decided that we agreed with the Respondent. We therefore found as fact that in order to remedy the hazards at the property the following steps were necessary: (for this purpose we reproduce a copy of Schedule 2 to the Improvement Notice as set out on pages 77 to 79 of the Respondent's bundle as Annex 2 to this Decision and Reasons).
21. We reject entirely the Appellant's arguments as to why the works should not be necessary.
22. We reject the argument that as the tenants were in rent arrears and were to be evicted then the Improvement Notice should be cancelled. There is no link in our view between the existence of rent arrears and the presence of a hazard at the

property. Mr Wheatley has several remedies available to him in law for the recovery of rent (debt action and possession proceedings, for example) but refusing to carry out works to alleviate a risk to his tenants is not one of them.

23. We reject the claim that works were obstructed by the action of the tenants and as a result they should be unnecessary. As mentioned above, Mr Wheatley has produced copies of text messages to support this claim but we did not find that these text messages demonstrated anything other than a desperation on the part of his tenants to secure that works are carried out. It struck us as highly unlikely, having brought the matter to the attention of the Local Authority, that his tenants would then frustrate the commencement and carrying out of the works. In our view, we thought that Mr Wheatley was embellishing and in some respects, fabricating these allegations as a mechanism to avoid undertaking the works. Mr Wheatley is an experienced and should be a professional landlord with a desire to diligently maintain adequate and safe living accommodation for his tenants. However, he was unable to produce any correspondence to his tenants setting out the dates and times for work to be carried out or any other professional communication with his tenants as to what steps he proposed to take to reduce any inconvenience or danger to them during the works. Even if he did not generally work in such a way, we thought that if he were really faced with recalcitrant tenants, a letter to them might be the first thing he did or even contact the Respondent and ask them to intervene.
24. In any event, we prefer the evidence of the Respondent as set out in Ms Oliver's witness statement that she did not witness any hostile behaviour during the Respondent's visits to the property and find as fact that the tenants were not hostile so as to prevent works being carried out.
25. Finally, we reject the argument that as the property is now vacant the Improvement Notice should be quashed. As mentioned previously any reletting or sale of this property must be subject to the existence of an improvement notice so as to alert any prospective tenant or purchaser to the fact that necessary works are required to remove a number of serious hazards to health which exist at the property.
26. The appeal was therefore dismissed.

Signed 

Phillip Barber

Judge of the First-tier Tribunal

Date: 04 January 2021

Ref No: 011320

98 DIGBY STREET, SCUNTHORPE, NORTH LINCONSHIRE, DN15 7LU

SCHEDULE 1

CATEGORY 1 HAZARDS

Excess Cold

1. The radiators in the property are unable to be bled due to the bleed valves being heavily coated in paint.
2. There are gaps around the front door which allows cold air to blow into the property.
3. The rear door is ill fitting which also allows cold air to blow into the property.
4. The first floor bedroom window is single glazed with gaps in the frame.

Falling on Stairs etc

1. The treads on the stairs are varnished wood, which have poor friction quality (grip) which could cause a person to slip and fall on the stairs.

Structural Collapse and Falling elements

1. There are loose roof tiles on the front and rear of the property.
2. The window to the first floor rear bedroom is insecure and moves in the frame when touched. The ledge has already fallen away.
3. The rear garden gate is not fastened securely to the brick pillars.
4. The brick pillars show signs of excessive movement when the gate is opened.

CATEGORY 2 HAZARDS

Damp and Mould

1. The ill-fitting front door allows rain to penetrate underneath the door.
2. There are areas of damp in the first floor rear bedroom.
3. There are areas of mould in the ground floor wetroom.
4. There is water marks in the kitchen where water penetrates through the air vent and runs down the internal wall.
5. There are rotten skirting boards in several rooms throughout the property.

Electrical Hazards

1. The ceiling rose on the ground floor front room is displaced.
2. There is a lack of electrical sockets in the bedrooms.
3. The power to the ground floor shower unit tips out when the pull switch is turned on.
4. The light fitting in the ground floor bathroom is not correct for use in such a room

Entry by Intruders

1. The window in the ground floor wet room has a defective lock and can be easily opened from outside.

Falling between Levels

1. The first floor windows do not have restrictors fitted apart from the rear bedroom window.
2. The restrictors fitted to the first floor rear bedroom are not suitable in that they cannot be overridden by an adult in the case of a fire.

Personal Hygiene, Sanitation and Drainage

1. The bath panel is damaged in the first floor bathroom and cannot be effectively cleaned.

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Domestic Hygiene, Pests and Refuse

1. There is a deep crack running along the length of the wall in the kitchen which means that the wall may not be effectively cleaned.

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SCHEDULE 2

CATEGORY 1 HAZARDS

Excess Cold

1. Examine the radiators to ensure they are correctly provided, and carry out all necessary works of adjustment, maintenance, repair and renewal so as to leave in good working order and capable of maintaining a temperature of 18°C in the entrance hall and utility room and a temperature of 21°C in the kitchen/dining room with an external temperature of -1°C.
2. Carry out repairs as necessary to both the front and rear door frames. Make good any disturbed surfaces and leave the door so as to open and close properly and to be weathertight.
3. Overhaul the window frame to the first floor front bedroom window. Leave window so as to open and close smoothly and to be weathertight. Make good all disturbed surfaces and leave the window in sound condition and good working order.

Falling on Stairs etc

1. Carry out works on the treads of the stairs to provide a surface which offers better friction quality (grip) to those using the stairwell.

Structural Collapse and Falling elements

1. Re-fix all loose and slipped tiles and renew any missing and defective tiles. Leave in a sound and weatherproof condition making good all work disturbed.
2. The window to the first floor rear bedroom is insecure and moves in the frame when touched. The ledge has already fallen away.
3. Ensure the rear gates are securely anchored into the brick pillars in the rear garden and are able to be opened without dropping.
4. Carry out works to the brick pillars in the garden to ensure that they are secure and sound in construction. The pillars should not move when the gate is opened.

CATEGORY 2 HAZARDS

Damp and Mould

1. Carry out works as specified in Excess Cold 1.
2. Employ specialist damp proofing contractor or other competent person to identify all necessary remedial works to eradicate the problems associated with dampness in the property. Complete all works identified as necessary and remove the mould growth with fungicide capable of inhibiting further growth. Replace the skirting boards with new boards where necessary to match. Make good all disturbed surfaces and redecorate as required following treatment.

Electrical Hazards

3. Re-fix the insecure ceiling rose to the ground floor front room and make good any disturbed surfaces. On completion test and leave in proper working order.
2. Provide additional switched socket outlets with cabling in protective conduit in order to meet the standard of 4 sockets. On completion test and leave in proper working order.
3. Have a competent person examine and repair the defective shower and pull switch in the ground floor wetroom and make good any disturbed surfaces. On completion test and leave in proper working order.
4. Provide a light fitting, including a suitable enclosure, with the appropriate Ingress Protection (IP) rating for the bathroom.

Entry by Intruders

1. Replace the lock to the window in the ground floor wetroom to ensure it can be effectively secured.

Falling between Levels

1. Restrict the opening of the large openable windows on the first floor to a maximum of 100mm. The opening limiter should be easy to over-ride by an adult in the event of a fire.

Personal Hygiene, Sanitation and Drainage

1. Replaced the damaged panel to the bath in the first floor bathroom.

Domestic Hygiene, Pests and Refuse

1. Cut out the cracked brickwork and plasterboard to the kitchen wall and fill using a plasticised cement mortar of suitable mix. Make good all disturbed works and surfaces.