



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

Case Reference : CHI/29UN/HER/2021/0001

Property : Flat 5, 2-8 Athelston Road, Margate, CT9
2BD

Applicant : Pedram Tamiz

Representative : Stokoe Partnership Solicitors

Respondent : Thanet District Council

Representative :

Type of Application : An Appeal against the Notice of Emergency
Remedial Action - Section 45 – Housing
Act 2004

Tribunal : Judge Tildesley OBE

Date of Hearing : 17 December 2021
Havant Justice Centre
Parties joined by CVP

Date of Decision : Announced at the hearing
23 December 2021

DECISION

**TYPOGRAPHICAL ERROR CORRECTED UNDER RULE 50 OF
TRIBUNAL PROCEDURE RULES 2013 BY ADDING “facilities could
be safely accessed” TO [6].**

Dated 3 February 2022

Background

1. On 13 October 2021 the Applicant appealed against a Notice of Emergency Remedial Action dated 20 September 2021 in respect of the property.
2. The property is a ground floor flat within a block located in a high crime area. On 13 September 2021 Mr Nicholas Bray of Thanet District Council (“the Council”) inspected the property and found that Category 1 hazards existed at the property, namely: ‘Entry by Intruders’, and ‘Falls on Level Surfaces’. Mr Bray was of the opinion that these hazards posed an imminent risk of serious harm to the health or safety of the occupiers.
3. The conditions of the property were that the flat entrance door had no working security lock or latch, and could be pushed open. Furthermore, the main door to the building opening onto the street did not have a secure lock or latch and could also be pushed open. Athelstan Road is in a high crime rate area with 325 crimes reported in July 2021 within half a mile of the centre of CT9 2BF.
4. Further the bathroom floor of the property was so damaged that there was no stable floor surface on which to walk. Therefore the occupants, which included two children, had to balance on joists and broken sections of flooring when using the WC and bath.
5. The Council contacted the Applicant the day after the inspection and advised of the imminent risk. The Council discussed the situation with the Applicant by telephone on 15 September 2021. The Council was not convinced that the works would be completed on an urgent basis.
6. On 16 September 2021 the Council arranged for emergency remedial action to be taken. This involved fitting a night latch to the front door of the property so that it could be securely closed, and laying a new section of wooden flooring such that the bathroom **facilities could be safely accessed**.
7. On 20 September 2021 the Council served the Notice of Remedial Action in relation to this case. As required by Schedule 1 of the Housing Act 2004 the Notice was served on the licence holder for the property, Mr Pedram Tamiz, of White Cottage, Flint Lane, Lenham, Maidstone, Kent ME17 2EN.
8. The Applicant’s grounds of appeal were that the works carried out by the Council were insufficient and that more extensive works should be carried out.
9. The Tribunal identified that the Applicant had not explained clearly the grounds for appealing the Notice of Remedial Action. The Appeal did not address the grounds for making a Notice of Remedial Action under Sections 40 – 42 and Section 45 of the Housing Act 2004.

10. A case management hearing was held on 16 November 2021. Mr James Achillea, solicitor attended for the Applicant. Mr Stephen O'Shea, Senior Housing Improvement Officer, appeared for the Council.
11. The purpose of the case management hearing was to decide whether the Tribunal had jurisdiction to hear the appeal. The Tribunal indicated that it would consider striking out the Appeal if it concluded it had no reasonable prospect of success.
12. The Tribunal after hearing from the Applicant's representative about its concerns the Tribunal decided to give the Applicant an opportunity to present a revised statement of case. A hearing was fixed for the 17 December 2021 at 10.00am.
13. The Tribunal directed the Applicant to pay the hearing fee of £200 by no later than 10 December 2021
14. Also, the Applicant was directed by 3 December 2021 to provide the following:
 - A signed and dated statement with a statement of truth (i.e. "I believe that the facts stated in this witness statement are true") which sets out each aspect of its case
 - Copies of all relevant documents relied upon
 - Any witness statements (see below)
 - A copy of the application form
 - A copy of the Notice of Emergency Action
15. The Council was given the right of reply by 10 December 2021.
16. On 1 December 2021 the Applicant supplied a statement of case of one and half pages with no attachments. The statement of case did not put forward any grounds that related to the Notice of Remedial Action. The Applicant failed to pay the hearing fee of £200.
17. The Council complied with the direction to supply its statement of case by 10 December 2021.
18. On 15 December 2021 the Applicant applied to adjourn the hearing on 17 December 2021 because he was unable to obtain witness statements from key witnesses. The Applicant said that the current increase of Covid-19 infection rates and lockdown had made this more difficult. The Applicant indicated that he wished to call a builder and other factual witnesses. The Council objected to the adjournment. The Tribunal refused the adjournment and pointed out that the Applicant had not paid the hearing fee. The Applicant then sought to withdraw the Appeal. The Tribunal advised the Applicant that he would have to complete the requisite form.

19. On 16 December 2021 the Applicant completed the application to withdraw form and said that his bail conditions prevented him from gathering the necessary evidence to challenge the Notice of Remedial Action. The Applicant also raised various matters in the application which in the Tribunal's view cast doubt on the genuineness of his application to withdraw.
20. The Tribunal ascertained that the bail conditions were imposed on 11 November 2021.
21. The Tribunal indicated that it did not consent to the withdrawal and that the hearing would go ahead on the 17 December 2021. The Tribunal also stated that it might consider making an unreasonable costs order against the Applicant.

Hearing on 17 December 2021

22. The Applicant attended in person. Mr O'Shea represented the Council with Mr Bray in attendance.
23. The Tribunal informed the Applicant that it was considering striking out the Appeal on three grounds and invited his representations.

No reasonable prospect of the Appeal succeeding

24. The Tribunal explained to the Applicant that his grounds of appeal and statement of case did not address the conditions for imposing the Notice of Remedial Action, namely whether there were category one hazards at the property which posed an imminent risk of serious harm. At the hearing the Applicant made no mention of the conditions for imposing the Notice. Instead he argued that the tenant had vandalised the property and was no longer there, and that the works required to the property were more extensive. Mr O'Shea said that the Council was satisfied that the tenant and her children were living at the property.

Failure to Comply with Directions

25. The Tribunal pointed out to the Applicant that he had failed to attach a variety of documents to his statement of case and had not paid the hearing fee. The Applicant blamed the Council for not supplying the documents. Mr O'Shea said that the Applicant and his solicitors had not contacted the Council for documents. The Applicant gave no explanation for the failure to pay the hearing fee.

Failure to be Transparent in his dealings with the Tribunal

26. The Tribunal asked the Applicant why he did not inform the Tribunal about his conditions of bail at the last hearing on the 16 November 2021 when the Tribunal made directions in respect of the exchange of evidence. The Tribunal also queried why his solicitors did not mention the bail conditions when they applied for an adjournment on 15

December 2021. The Applicant responded to the effect that he had not given any thought at the time about the bail conditions and he had not asked his solicitors to mention them in the adjournment application.

Decision

27. The Tribunal was satisfied that the three grounds were made out and struck out the Appeal under rules 9(2)(b) and 9(2)(e) of the Tribunal Procedures Rules 2013. The Tribunal announced its decision at the hearing.
28. The Council applied for an unreasonable costs order in the sum of £579.47 which represented the time spent by Mr O'Shea and Mr Bray in preparing the case. The Tribunal is minded to make the Order but decided to give the Applicant the opportunity to make representations in writing which must be received by the Tribunal by no later than 12 midday on 7 January 2022. If no representations are received the Tribunal will make the Order. If representations are received the Tribunal will publish its decision on costs within 21 days.

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 application by email to rpsouthern@justice.gov.uk.
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.