



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

Case reference : **CAM/00KG/HIN/2021/0009**
HMCTS Code : **P: PAPERREMOTE**

Property : **84 Peartree Close, South
Ockendon, Essex RM15 6PU**

Applicant : **Paul Newson**

Respondent : **Thurrock Council**

Representative : **Christopher Cooper, Principal
Environmental Health Officer**

Type of application : **Appeal against an Improvement
Notice and expenses**

Tribunal member(s) : **Judge Wayte**

Date of decision : **14 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. A face-to-face hearing was not held because no-one requested one and all issues could be determined in a remote hearing on paper. I received a hearing bundle prepared by Thurrock Council and also considered the lease of the property and email correspondence referred to in the decision.

The tribunal determines that:

(1)The Improvement Notice is quashed.

(2)The charge for the Notice is also quashed.

Application

1. This is an appeal against the decision of the Council to issue an improvement notice, pursuant to paragraph 10 of Schedule 1 to the Housing Act 2004 and the decision to charge £514 expenses for issuing the notice (subsequently reduced to £466 by Mr Cooper).
2. The appeal was dated 24 August 2021 and directions were issued on 29 October 2021. In his application, Mr Newson indicated that he intended to do the works and therefore his case was mainly in relation to expenses: due to the council sending the initial correspondence to an out of date address, he was given no opportunity to agree the works before the notice was issued. With that in mind, a paper determination was proposed on or after 10 January 2022, assuming no request was made for a hearing beforehand.
3. On 13 December 2021 the respondent emailed the tribunal to confirm that all of the works required under the notice had been completed, apart from the replacement windows which were waiting approval by the Home Ownership Team. Once the new windows had been fitted, the notice would be revoked, although the respondent was still seeking payment of their expenses. After further correspondence and no sign of action by the Home Ownership Team I gave the parties until 14 March 2022 to respond to my proposal to quash the notice for the reasons set out below. The council appeared to accept that proposal and confirmed on 9 March 2022 that the Home Ownership had finally given their approval to Mr Newson or would do the work themselves if he preferred.

Background

4. The Property is a first-floor purpose built one bedroom flat, purchased from Thurrock Council under the right to buy. The applicant bought the remainder of the lease in 2007.
5. On 7 December 2020 the Private Sector Housing Team received an email from the tenant Ms Belinda Muma concerning her living conditions, in particular she complained of damp and mould growth around the windows.
6. On 13 January 2021 a council employee spoke to the tenant who had been living at the property for approximately one year, having been placed there by the council as temporary accommodation. She only knew her landlord as "Paul" but provided his telephone number. Due to the Covid-19 pandemic all non - urgent inspections were suspended but on 14 January 2021 a letter was sent to the agents, Northwood UK Limited, outlining the defects reported by the tenant. That letter requested full details of the owner but no response was received.

7. On 12 April 2021 inspections resumed and the case was allocated to Christopher Cooper. He obtained Office Copy Entries (OCE) of the leasehold title and wrote to the property, agent and the leaseholder at the address on the Land Register, dating back to the time of purchase in 2007.
8. Mr Cooper inspected the premises on 13 May 2021, neither the landlord or the managing agent attended. On gaining entry, he identified a surface water leak from the balcony of the flat above, dampness to the external wall to the kitchen and potential issues with the main soil stack. The windows were single glazed and generally ill-fitting. There appeared to be two heating systems: gas central heating and electric storage heaters, with both faulty. On 14 May 2021 he alerted the council's repairs team to the downpipe and potentially blocked soil pipe.
9. Mr Cooper carried out a Housing Health and Safety Rating System (HHSRS) Assessment following his inspection which identified one category 1 hazard of Excess Cold and 7 category 2 hazards across a range of items. On 28 May 2021 he sent a part 1 consultation to all interested parties using the OCE address for the landlord, no representations were received.
10. On 5 July 2021 Mr Cooper spoke to the tenant who confirmed that neither the council nor the landlord has been in contact about the repairs. On 6 July 2021 Mr Cooper rang Mr Newson on the number given by the tenant. He confirmed that he had left the address previously identified 12 years ago and provided contact details including an email address. Mr Cooper emailed the previous correspondence that day and asked for a response in relation to the works within 28 days.
11. On 28 July 2021 Mr Cooper received an email from the tenant asking for an update. As he had heard nothing from the applicant, Mr Cooper served an Improvement Notice on 4 August 2021.
12. On 5 August 2021 the fee for service of the notice of £514 was served on Mr Newson. That day, Mr Newson responded to say that Northwood would provide the information sought and would contact Mr Cooper about arranging a joint inspection of the Property. That inspection took place on 1 September 2021.
13. On 23 September 2021 Mr Newson emailed Mr Cooper to say he was making progress with the work and could replace the windows, he was hoping to submit the drawings to the council for approval in November.
14. On 13 December 2021 Mr Cooper met Mr Newson at the property and confirmed that all the works in the notice had been attended to other

than the replacement of the windows which were awaiting approval by the Home Ownership Team. He had rescored the Excess Cold hazard and rated it as Band C (i.e. still category 1). Once the new windows were installed he considered the hazard would be lowered to Band D and the notice could then be revoked.

15. On 10 January 2022 I asked both parties for an update. Both parties responded that they were still waiting to hear from the Home Ownership Team, the applicant expressed concern that their delay would result in an increased cost due to the rise in building costs.
16. Given Thurrock's ownership of the freehold, I requested a copy of the lease which confirmed that the council were responsible for keeping the structure and exterior in repair (clause 6(A)(a)). I therefore wrote to the parties on 28 February 2022 stating that in those circumstances and as confirmed by the Upper Tribunal in *Sheffield City Council v Oliver* LRX/146/2007, the windows appeared to be the responsibility of the council. I gave both parties a chance to respond and the council appeared to accept that conclusion in their reply that day, stating that: *"Our only outstanding query is regarding the part 1 fee. Can the council impose the fee and if so, what should the total be?"*
17. On 9 March 2022 Mr Cooper confirmed to the tribunal that Home Ownership had finally given permission to Mr Newson to replace his windows. If he decided he would prefer the council to replace them that would also be arranged and recharged to him under the lease.

The Issues

18. In his application Mr Newson challenged the service of the Improvement Notice on the basis that he had been given insufficient time to respond informally. The initial correspondence had been sent to the wrong address and copies were only sent to him on 6 July 2021 following Mr Cooper's telephone call. Sadly, his father passed away on 12 July and was buried on 28 July, which was the reason for his delay in dealing with the matter. He has dealt with matters promptly after that and considered that the service of the notice and the charge was unfair in all the circumstances.
19. The tribunal's powers on appeal are set out in Schedule 1 to the Housing Act 2004 at paragraph 15. The appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority were unaware. The tribunal has the power to confirm, quash or vary the improvement notice. In the circumstances the tribunal will consider the decision to serve the Notice on 4 August 2021 and impose the charge of £514, which Mr Cooper reduced to £466 in his response to the appeal.

Service of the Improvement Notice

20. Improvement notices are described in sections 11 to 19 of the Housing Act 2004. Essentially, section 11 sets out the duty to serve a notice where the local housing authority is satisfied that a category 1 hazard exists (or take other enforcement action) and a power to serve a notice in respect of category 2 hazards. The Act does not set out any steps prior to issue of a notice for either category, although the established practice is for the local authority to send the owner of the property the schedule of works and ask for a response before proceeding to a notice. Schedule 1 Part 1 of the 2004 Act contains provisions in respect of the service of improvement notices. In particular, in the circumstances of this property, the local housing authority must serve the notice on the owner of the flat.
21. In this case, Mr Cooper accepts that Mr Newson only received his initial correspondence on 6 July. Understandably, Mr Newson did not respond immediately due to the death of his father, although he didn't ask for an extension in the circumstances and Thurrock were unaware of the reason for the slight delay. However, Mr Cooper acted very promptly in issuing the Improvement Notice on 4 August, possibly because he was due to go on holiday the following day. It seems that by that date Mr Newson had indeed made progress, as the tenant provided the requested Electrical Installations report and the agent confirmed that a Gas Safety Certificate was not required as the boiler was disconnected. Mr Newson also pointed out that he had received demands for service charges and ground rent from Thurrock in respect of the Property at his correct address and therefore the use of an address given in 2007 was mystifying, as was the failure to use the telephone number at an earlier date.
22. However, an even more significant concern is the apparent failure of Mr Cooper to consider the council's responsibility for the problems at the property. He had mentioned contacting the Council's Repair Team in relation to the leaking downpipe but not considered whether they would also be responsible for the windows. In fact, it appears that both parties were under the impression that the leaseholder would be responsible for any works and refurbishment of the windows by the council 10 years ago had bypassed all leaseholder owned property. The deficiencies giving rise to the excess cold hazard are equally spread between issues with the heating and the windows and external damp caused by the leaking water down pipe. As stated above, the lease is clear that it is the council that are responsible for keeping the structure and exterior of the property in repair, which includes both these items.
23. In the circumstances, I consider that Mr Cooper acted too promptly in issuing the notice. His use of the address on the Office Copy Entries should have sparked concern, given that the entry was dated 2007. He had Mr Newson's telephone number and should have contacted him in May. Given Mr Newson's prompt action I consider that if he had done that, no notice would have been issued. I accept that 28 days had

passed since Mr Cooper had emailed the initial correspondence in July but Mr Newson's reasons for his delay in responding are compelling. In contrast, the Home Ownership team took several months to approve Mr Newson's offer to replace his windows and have failed to maintain them in accordance with their responsibility under the lease. In the circumstances it would be unjust to put Mr Newson at risk of criminal sanction (by failure to comply with the improvement notice) due to any further delay.

24. I therefore quash the notice.

Appeal against the council's costs of £500

25. Section 49 of the Housing Act 2004 gives the local housing authority the power to charge for serving an improvement notice, limited to the reasonable costs incurred in determining whether to serve the notice, identifying any action to be specified in the notice and serving the notice. Section 49(7) of the 2004 Act states that where a tribunal allows an appeal against the underlying notice it may make such order as it considers appropriate reducing, quashing or requiring the repayment of any charge under this section made in respect of the notice or order.

26. Given that I have quashed the notice on the basis that it was issued prematurely, I consider that it is also appropriate to quash the charge.

Name: Judge Wayte

Date: 14 March 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).