



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

Case reference HMCTS Code	:	CAM/38UC/HIN/2021/0011 V: CVP REMOTE
Property	:	10 Brambling Way, Oxford OX4 6EQ
Applicant	:	Ibukun Olusesan Adeboyejo
Respondent	:	Oxford City Council
Representative	:	Rebecca Jeffries, Environmental Health Officer
Type of application	:	Appeal against an Improvement Notice and expenses
Tribunal member(s)	:	Judge Wayte
Date of decision	:	13 June 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing by video (following an earlier brief telephone hearing). A face-to-face hearing was not held because the applicant was abroad and all issues could be determined in a remote hearing. I received a hearing bundle prepared by Oxford City Council and also considered the email correspondence referred to in the decision and statement in respect of housing benefit dated 20 May 2022.

The tribunal determines that:

(1)The Improvement Notice is varied by extending the completion date for the works to 13 September 2022.

(2)The respondent must reimburse the applicant the tribunal fees of £300, to be set off against the charge for the Notice (reducing the amount payable by the applicant to £318.50).

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 £618.50 expenses for issuing the notice.
2. The appeal was dated 18 November 2021 and directions were issued on 14 January 2022. The application focussed on the charge for the Notice rather than the works. The main ground for objection was based on the tenant's rent arrears, which the applicant stated he had made clear to Oxford "on many occasions". He also stated that he would undertake to do the works when her arrears (£3,604) were paid.
3. Directions were issued on 14 January 2022 and the applicant was requested to confirm the extent of his challenge by 31 January 2022. The applicant emailed the tribunal on that date to reiterate that as soon as the arrears were paid, he would do the works within a new specified time to be agreed with Oxford and the tribunal. The tribunal therefore confirmed on 1 February 2022 that the issues were the time for completion of the works and the council's costs.
4. The appeal was set down for a video hearing on 14 April 2022. On 5 April 2022 the applicant wrote to the tribunal to confirm that on 30 January 2022 the council had agreed to pay the rent directly to him but he had not received any payments from them. The application was therefore adjourned to a new date on the basis that the respondent would clarify the housing benefit position but the tribunal hoped that the parties could agree a way forward between them.
5. The respondent subsequently confirmed that their housing benefit department had decided to treat the applicant as "a not fit and proper landlord" meaning that they had reversed their previous decision to pay the rent directly and all payments would be made to the tenant. The hearing was therefore relisted on 31 May 2022.

Background

6. The Property is a terraced house built as part of a 1960s estate. A complaint was made by the tenant to the respondent in November 2020 regarding the heating and other items of disrepair. The heating was repaired in January 2021 but the respondent's policy was to carry out a whole house inspection to assess whether there were any other

hazards. That inspection was delayed to April 2021 due to the pandemic.

7. Ms Jeffries carried out the inspection on 20 April 2021. She identified two hazards: excess cold and fire and sent details of those hazards and suggested remedial action to the applicant by letter dated 27 April 2021. Excess cold was said to be due to faulty double glazing and a draft from a fireplace in the living room.
8. A re-inspection was carried out on 29 June 2021 to check progress. The fire hazard had been dealt with by the provision of mains operated smoke alarms but further deficiencies were noted and a revised schedule sent to the applicant on 30 June 2021. The applicant responded that same day to say that he considered that the works would be completed within a month.
9. On 5 October 2021 the applicant emailed Ms Jeffries to say that he thought the only outstanding works were the replacement windows. Although they had been delivered to the property awaiting installation they had not been fitted as he was unable to pay the contractor due to the tenant's rent arrears. He asked Ms Jeffries and Tenancy Relations to step in and pay at least part of the arrears so that the works could be finalised.
10. Ms Jeffries replied on 27 October 2021 explaining that following her visit to the property on 15 October she had no option but to serve an improvement notice with a fee to get the works completed. The outstanding works were identified as the windows, a broken hot water tap and some electrical work. In terms of the query in respect of the rent, she responded that *"...as discussed previously, this is not something that we can get involved with as it is a civil matter."*
11. The Improvement Notice was served on 4 November 2021 detailing a Category 1 hazard of excess cold due to the faulty double glazing to the bedrooms and bathroom and two category 2 hazards in respect of the other defects described above. The works were to start by 6 December 2021 and be completed by 13 January 2022. A demand for £618.50 was also issued.
12. The respondent's bundle included a Victim Personal Statement from the tenant, Ms East, dated 23 February 2022. That statement complained about the cold, although stated that the family spent *"a lot of time in our bedrooms as it is warmer"*. She made reference to payment to the landlord of £2,000 in January 2021 and said that it hadn't been taken off the rent arrears, although work was undertaken as a result. Ms East was sent a copy of the appeal and invited to take part as an interested person but did not respond.

13. On 21 January 2022 the respondent's housing benefit department wrote to the applicant to confirm that as the tenant was more than 8 weeks in arrears, rent would be paid directly to him, including £4,181.39 for September 2021 to January 2022. In fact, only one payment of £856.82 was made and following apparent difficulties in contacting the applicant or his wife, a decision was made to amend the payment direction back to the tenant with effect from 31 January 2021. A subsequent decision that the applicant and his wife were not "fit and proper" landlords within the Housing Benefit regulations was made, apparently due to the disrepair to the property.

The Issues

14. As set out above, the issues were the time to do the works and Oxford's claim for costs, with the underlying issue being the applicant's wish to receive housing benefit directly.

Time for the works

15. As stated above, the original date for completing the works was 13 January 2022. This appeal extended the operative time for that notice. At the hearing, the applicant confirmed that he was willing to do the works and undertook to complete the installation of the windows by 1 September 2022. I will allow him until 13 September 2022 but he must ensure they are fully completed by that date as failure to do so could amount to an offence and render him liable for a civil penalty of up to £30,000.
16. As to the argument in respect of payment of rent, this was never raised by the applicant as a ground for appeal, rather as a plea for assistance. The applicant confirmed at the hearing that he had been receiving the rent this year but there are still arrears. He also confirmed that he had given the tenant credit for the payment of £2,000 made in January 2021. That said, I take a dim view of the council's decision to reverse their previous decision to pay the housing benefit directly on the basis that the landlords were not "fit and proper". The respondent was well aware that the tenant's rent arrears were causing the applicant difficulties in terms of completing the works back in October 2021 and that they were central to his appeal. Their failure to pay the arrears to the applicant, when they had previously confirmed they would do so, led to the appeal being unnecessary prolonged. I accept that it is likely that the housing benefit team took this decision without consulting Ms Jeffries but the optics are bad. Quite apart from anything else, it was extremely straight forward to communicate with the applicant by email and the improvement notice was suspended due to the appeal.

Appeal against the council's costs of £500

17. 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.

18. I read allowing an appeal as quashing the notice, rather than extending time for the works but in the circumstances of this case I consider it just and equitable to set off the tribunal fees paid by the applicant to reduce that sum to £318.15. For the avoidance of doubt, this decision is made under the tribunal's discretion set out in rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge Wayte

Date: 13 June 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).