



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

Case Reference : **LON/00BB/HMF/2022/0065**

**HMCTS code
(paper, video,
audio)** : **V - Video**

Property : **52A, Little Ilford Lane, London E12 5PW**

Applicant : **Ewa Zych**

Representative : **Not represented**

Respondent : **Grace Opong**

Representative : **Not represented**

Type of Application : **Application for a rent repayment order by
tenant**

Tribunal : **Tribunal Judge S.J. Walker
Tribunal Member Mr. A. Fonka MCIEH,
CEnvH, M.Sc.**

**Date and Venue of
Hearing** : **1 December 2022 – video hearing**

Date of Decision : **1 December 2022**

DECISION

The application for a rent repayment order is struck out pursuant to the Tribunal's powers under rule 9(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds that there is no reasonable prospect of the application succeeding

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be

determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

1. On 14 March 2022 the Applicant made an application for a rent repayment order. The grounds of her application set out a number of items of disrepair at her home and made reference to inspections by the local housing authority. No allegation was made that the Respondent had committed any of the offences set out in section 40(3) of the Housing and Planning Act 2016.
2. On 8 June 2022 the Tribunal issued a notice to the Applicant stating that it was minded to strike out her application as she had not identified the offence which she alleged that her landlord had committed. This notice set out the table of offences and also stated as follows;
“The applicant does not identify in her application the offence that she alleges that the landlord has committed. The tenant’s application alleges persistent disrepair in the property. It may be that the applicant is alleging failure to comply with an improvement notice served by a local authority. If this is the case then the application must state this and provide a copy of the improvement notice”.
3. In response, the Applicant sent to the Tribunal copies of two letters from the London Borough of Newham dated 9 December 2019 and 7 February 2022. These stated that the local housing authority had identified a number of hazards at the property and stated an intention to serve an improvement notice.
4. On the basis of this information the Tribunal issued directions on 6 July 2022 which identified the offence relied on by the Applicant as a failure to comply with an improvement notice contrary to section 30(1) of the Housing Act 2004. These directions reminded the Applicant that she had to establish beyond reasonable doubt that an offence had been committed and that supporting documents from the local authority should be provided if available. The Applicant was also directed to prepare a bundle of documents for the hearing.
5. The application was listed for a video hearing on 1 December 2022. Both parties attended. The Applicant produced a bundle of documents. However, no improvement notice was included.
6. At the outset of the hearing the Tribunal raised with the Applicant the question of which offence it was being alleged had been committed. She confirmed that she was alleging a failure to comply with an improvement notice. When asked if she had a copy of the improvement notice she referred only to the letters from the London Borough of Newham mentioned above. These are not improvement notices, but

merely letters indicating an intention to serve an improvement notice. She was unable to produce any actual improvement notices.

7. In order to obtain a rent repayment order it is necessary to prove that a landlord has committed one of 7 offences. In this case the alleged offence is a failure to comply with an improvement notice contrary to section 30(1) of the Housing Act 2004. Such notices may be served by a local authority under sections 11 to 13 of that Act. They must specify the remedial action which is to be taken, the date on which that action is to be started and the period within which it is to be completed.
8. In order to prove that a person has committed an offence of failing to comply with an improvement notice contrary to section 30(1) of the Housing Act 2004 it is necessary to prove both that an improvement notice has in fact been served on the landlord and also that the landlord has failed to do what the notice requires of them within the time specified in the notice.
9. In this case the Applicant has failed to provide a copy of the improvement notice(s) on which she relies. In those circumstances the Tribunal could never be satisfied that such notices had, in fact, ever been served. A letter stating an intention to serve a notice is not the same as the service of an actual notice.
10. Even if the Tribunal could be satisfied that notices had been served, without knowing the contents of those notices the Tribunal cannot know what the landlord was required to do and when they were required to do it. That being the case, the Applicant could never show beyond reasonable doubt that the landlord had failed to comply with the notice.
11. It follows that in the absence of the improvement notices relied on the Applicant has no reasonable prospect of proving that her landlord has failed to comply with such notices and so her case is doomed to fail.
12. The Tribunal has power under rule 9(3)(c) of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to strike out proceedings where there is no reasonable prospect of their succeeding.
13. In view of what is set out above the Tribunal exercised that power and struck out the Applicant's application.

Name: Tribunal Judge S.J.
Walker

Date: 1 December 2022