FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

HMCTS code (audio, video, paper)		**V: CVPREMOTE**
Case Reference	**:**	**CAM/33UG/HMC/2022/0002**
Property	**:**	**54A St. Augustine Street Norwich Norfolk NR3**
Applicant	**:**	**Aaron Lally**
Represented by	**:**	**In person**
Respondent	**:**	**Dunhil Estates Ltd**
Represented by	**:**	**Mr John Sharman, Company Secretary**
Type of Application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016.**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans Mr Chris Gowman MCIEH**
Date and venue of Hearing	**:**	**21 and 22 November 2022, By CVP**
Date of Decision	**:**	**7 December 2022**

DECISION

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(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £4275 to the Applicant.

(2) The Respondent shall pay the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

DECISION

Introduction

1. The Applicant seeks an order for the repayment of 12 months' rent, which it is accepted has been paid to the Respondent.

2. The parties relationship commenced on 11 February 2020, when the Respondent granted to the Applicant an assured shorthold tenancy for a term of 1 year at a rent of £525 pcm.

3. The tenancy agreement contained obligations on the part of the Applicant (on page 9 thereof) to give access to the landlord for the purposes of inspection and repair. Further the agreement contained obligations on the part of the landlord in relation to repair, on pages 14 and 15.

4. The Applicant contends that on or around 30 March 2020 he saw rats inside the Property and evidence of the activity of rodents by way of refuse. He says that he immediately reported those matters to the Respondent.

5. The Applicant sent an email chaser on 13 April 2020, and the Respondent alleges it did call the Applicant back and leave a message for him.

6. There is evidence before us that the Applicant complained of rats once again, on 21 September 2020, and a list of issues concerning the state of repair of the flat was sent by him to the Respondent on 13 October 2020.

7. On 10 December 2020 an officer of Norwich City Council by the name of Mr Arlo Reddick inspected the Property and conducted a Housing Health and Safety Rating System assessment.

8. On 11 February 2021 the Applicant gave Mr Reddick a WhatsApp video tour of the state of the Property.

9. On 15 February 2021 Norwich City Council sent to the Applicant the inspection reports which they had prepared following their visit.

10. On 10 March 2021 Norwich City Council served upon the Respondent 3 Improvement Notices, in respect of hazards which were (a) damp and mould growth, (b) excess cold and (c) domestic hygiene, pests and refuse.

11. Improvement Notice 21/00321/HA2004 concerned an alleged category 2 hazard of domestic hygiene, pests and refuse. In summary, Schedule 1 noted the following deficiencies:

    (1) Gaps for services in kitchen cupboard; old piece of plumbing pipe that looked like it had been chewed;

    (2) No grate where external drainpipe at rear meets the drain, which could allow access for rats;

    (3) Cellar beneath Property; previous pest contractor reports full access could not be gained to the area;

    (4) Service ducting in bedroom behind which rats have been heard;

    (5) Open vent in front elevation of Property which could allow access into void spaces.

12. Schedule 2 to the above Improvement Notice specified the action to be taken:

    (1) Commission a qualified pest controller registered with the British Pest Control Association (BPCA) to undertake a full survey of the Property, including the cellar and rear courtyard. The survey should identify any access points into the Property and areas of harbourage, as well as remedial action for any deficiencies. Provide a written report to the Council;

    (2) Remedy all items identified in the report above.

13. On the first page of the notice, the Council stated that it required the Respondent to commence the remedial actions by 7 April 2021 and complete them by 28 April 2021.

14. Improvement Notice 21/00300/HA2004 concerned an alleged category 1 hazard of excess cold. In summary, Schedule 1 noted the following deficiencies:

(1) Large single glazed area on the front of the Property which will provide poor thermal insulation and allow excess heat loss; large crack above the glazing that will allow draughts and excess heat loss;
(2) Double door exit from the rear bedroom is largely single glazed and will provide poor thermal insulation and allow excess heat loss;

(3) Construction and condition of the cellar and floor under the flat need further investigation;

(4) Hazard of damp and mould at the Property as per notice 21/00317/HA2004.

15. Schedule 2 to the above Improvement Notice specified the action to be taken:

(1) Install under floor insulation throughout the Property. A U-value of 0.25 w/m2.K must be achieved. For any solid flooring, this may be achieved with thermal underlay. Refer to Building Regulations Approved Document L1B;

(2) Upgrade the existing glazing on the front elevation of the Property. Secondary glazing and/or reglazing must be considered (with relevant permissions). Ensure the existing unit is in good condition. There should be means for ensuring low level background ventilation without excessive heat loss or draughts. The Property is locally listed. Ensure all works comply with the relevant planning requirements;

(3) Upgrade the rear door. There should be means for ensuring low level background ventilation without excessive heat loss or draughts. Refer to Building Regulations Approved Document L1B;

(4) See Improvement Notice 21/00317/HA2004 for works required to remedy the hazard of damp and mould growth.

16. On the first page of the notice, the Council stated that it required the Respondent to commence the remedial actions by 7 April 2021 and complete them by 28 July 2021.

17. Improvement Notice 21/00317/HA2004 concerned an alleged category 1 hazard of damp and mould growth cold. In summary, Schedule 1 noted the following deficiencies:

(1) Mould growth on the carpet and underlay in the bedroom. Moisture visible on the concrete floor by the back door likely to be caused by condensation. Basement below the Property causing heat loss through the floor, making moisture condensing on this surface more likely.

Black mould spots around the door reveal and lower windows of the external bedroom door;

(2) No mechanical extraction in the kitchen/living room area. During periods of rapid moisture production, such as cooking, there is no way to remove the moisture laden air, which will increase humidity, condensation and promote subsequent mould growth;

(3) Some of the flooring in the kitchen is soft under foot, and requires further investigation;

(4) Large crack above the living room window which will allow excess draughts and cause uncontrollable ventilation. Reported previous issue with guttering above this window overflowing and water entering the Property through the crack;

(5) Plaster removed under the wash hand basin in the bathroom. The stud work is rotten;

(6) Property suffers from hazard of excess cold as per notice 21/00300/HA2004, which will affect condensation build up, specifically on the large glazed area, and as is evident under the carpet in the bedroom.

18. The Applicant moved out of the Property permanently on 7 September 2022.

The relevant Law

19. The relevant provisions of the Housing Act 2004 and the Housing and Planning Act 2016 are set out in the Appendix to this decision.

The Application

20. The Application for a rent repayment order was made on 1 April 2022. Accordingly, the Applicant has to show the commission of at least 1 offence committed in the period between 1 April 2021 and 1 April 2022.

21. The Applicant's case is that offences were committed on both 28 April 2021 (breach of Improvement Notice concerning pests) and 28 July 2021 (breach of the other 2 Improvement Notices).

The Inspection

22. The Tribunal inspected the Property on at 10am on the first day of the hearing. The Applicant was present, as was Mr John Hilditch, a Director of the Respondent. The Property was unoccupied.

23. On inspection and the Tribunal noted the following:

(1) Kitchen:

(a) No gaps were evident where services were routed in the cupboards;

(b) There was a renewed piece of plumbing pipe;

(c) No extractor fan was evident in the kitchen/living area, bar the hob extractor. The air filtration/ recycling cooker hood provided did not vent moist air to the outside;

(d) Springy flooring was noted adjacent to the kitchen sink cupboard and in an area where the carpet begins;

(2) Exterior:

(a) There was no evidence of gutters overflowing at the front;

(b) There was no grate fitted where the downpipe meets the gulley at the rear;

(c) There was a patchwork repair to the brickwork front elevation beneath the window;

(3) Bathroom:

(a) There was evidence of new plasterboard to the right hand side of the wash hand basin;

(4) Bedroom:

(a) There was intact service ducting in the bedroom;

(b) The rear bedroom double doors have had double glazing fitted to the panels;

(c) There was evidence of historic mould spotting to the right hand side of the rear double door;

(d) There was some black mould spotting to the grill vents at the bottom of the rear double doors;

(e) There was no evidence of insulation having been fitted to the floor, and Mr Hilditch would not permit the lifting of the carpet to inspect underneath;

(5) There was no visible indication of a cellar below;

(6) Living room:

(a) Secondary glazing had been applied to the large single glazed area on the front elevation of the Property;

(b) No cracks above the glazing could be seen;

(7) Notwithstanding the lack of any occupant and it being a cool temperature externally, the Property did not present as cold.

The Hearing

24. At the hearing the Tribunal clarified that the correct name of the Respondent was Dunhil Estates Ltd (and not Dunhill Estate Ltd as the tenancy agreement says, nor Dunhil Estate Ltd). Mr Sharman confirmed the company registration number of Dunhil Estates Ltd as 03277621.

25. In so far as necessary, we therefore amend the name of the Respondent to Dunhil Estates Ltd for the purposes of these proceedings.

26. The Respondent made an oral application to strike out the application on the grounds that the Applicant had failed to comply with the directions given by the Tribunal by letter dated 11 October 2022. These directions provided that the Applicant should serve his bundle by 21 October 2022 on the Respondent. However, it had been sent by recorded delivery on or about 25 October 2022, and had arrived with the Respondent on 27 October 2022. The Respondent pointed to the fact that the letter indicated that the Tribunal might apply the sanction of a strike out or impose some alternative sanction on the Applicant if he failed to comply with the directions. When questioned by the Tribunal, Mr Sharman accepted that he did not pretend that he had not been able to go through the bundle in the four week period following the service of the bundle. However, he contended that it was part of the Respondent's case generally that the Applicant had been obstructive throughout; this was yet another example. Mr Sharman left it to the Tribunal to determine what sanction other than a strike out might be appropriate. He confirmed the Respondent was able to proceed with the hearing that day.

27. The Applicant responded to accept that he had not complied with the directions, but contended that he had been bedridden with dental pain from about 14 October 2022 until 21 October 2022. He informed the Tribunal that he had posted the bundle on 24 October 2022, but could not dispute the Respondent's contention that it had not been received until 27 October 2022.

28. Although the Tribunal has power under rule 9(3) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to strike out the application, the Tribunal had no hesitation in refusing the application. The Tribunal bore in mind at all times Rule 3, being the overriding objective of dealing with cases justly, proportionately and enabling the parties to participate in a determination of the substantive merits of their respective cases. It would have been totally disproportionate to strike out the application or impose any other sanction (unspecified as it was) for the service of a bundle only 6 days late, and which caused no prejudice to the Respondent's ability to defend the application.

29. The Tribunal therefore proceeded to hear the merits of the application, first explaining where the burden and standard of proof lay: the Applicant has to prove the essential elements of any alleged offence beyond reasonable doubt, with the Respondent bearing the evidential burden of proving any statutory defence on balance of probability.

30. The Applicant then called his evidence (himself and Mr Reddick of Norwich City Council), and Mr Sharman called Mr Hilditch to prove his witness statement. Both parties had the opportunity to ask questions of each other's witnesses.

The Issues

31. As the Tribunal directions stated, the issues we have to decide are:

    (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

    (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

    (3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

    (4) What is the maximum amount that can be ordered under section 44(3) of the Act?

(5) What account must be taken of:

(a) The conduct of the landlord?

(b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other relevant factors?

Determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

Improvement Notice 21/00321/HA2004

32. The Applicant expanded upon his written case as follows, using notes he had taken contemporaneously with the events:

33. After the improvement notice was served, the Applicant was not contacted by John Hilditch, he said, but by Richard - an operative from a pest control company called C&R. Richard telephoned sometime before April to arrange an inspection of the Property. Richard explained there had been a delay because of his sciatica, and because a handyman working for the landlord called Paul was also required to attend.

34. The Applicant further explained that he received a telephone call at 1:30 PM on 13 April 2021. The Applicant explained he had hesitation about allowing the inspection, so he telephoned Mr Reddick at the Council for his views. After getting reassurance from Mr Reddick, the Applicant called Richard and offered some dates for access (16 or 17 April). Richard informed the Applicant that he would contact John Hilditch and revert, but he never called the Applicant back.

35. The Applicant explained that, on 15 April 2021, he received a telephone call from Arlo Reddick, who informed him that he had got an e-mail from John Hilditch, alleging that the Applicant had refused to give access. The Applicant explained his position, which Mr Reddick relayed on. This led ultimately to Richard calling the Applicant on the same day. When the Applicant explained to Richard that he would need to go into the cellar, Richard explained he had vertigo, so he would not be able to do so. The Applicant therefore suggested 20 or 21 April, and Richard confirmed he would be happy with those dates as long as Paul was able to assist by going down into the cellar.

36. On 19 April 2021 the Applicant called Richard for an update. Richard did not answer the telephone, so the Applicant left him a message. Richard called back the same day and said that Paul could not do the days the Applicant had offered, because his dog was sick. Richard could not attend on one of those days anyway, because he had electricians coming to his house. They agreed that if Paul was unavailable, someone else would need to give access to the cellar. Richard told the Applicant he would contact John Hilditch and get back to him.

37. Richard did not get back to the Applicant, who needed to call Richard on 27 April 2021 for an update. However, he could not get through to Richard, so he called Mr Reddick to explain that he had not heard from the Respondent itself since 15 April 2021. Mr Reddick explained he would contact John Hilditch and get back to him.

38. The Applicant then stated that he believed he may have got a telephone call on 28 April 2021 from Richard requesting access for the following day.

39. The Applicant explained (and it was common ground) that Richard attended on 29 April 2021 and produced a report dated 6 May 2021, which we have seen. The Applicant confirmed that Richard did not enter the cellar, only the Applicant and Paul did. The Applicant explained that the cellar had several holes in the walls, which he saw, numbering approximately 5. These were sealed on 29 April 2021 by Paul, before Richard arrived. Further, the back panel of the kitchen unit was replaced, and holes which might provide access for rodents were patch repaired within the bike shed outside the Property.

40. The Applicant further explained that gaps in the floorboard had been filled in by the Respondent, on 27 October 2020, even before the Improvement Notice.

41. The Applicant claimed that the corrugated iron sheet which covered the access to the cellar externally was not re-sealed following the visit on 29 April 2021, and that there was rodent activity after that date, albeit not within the Property.

42. The Applicant confirmed that a grate was never applied at the base of the downpipe externally to the rear double doors.

43. The Applicant called Mr Reddick, who confirmed he was a Public Protection Officer with Norwich City Council and had been such since May 2018, although he had worked at two other local authorities before in private sector housing, in Torridge and Welwyn.

44. Mr Reddick confirmed the contents of his statement as true. In answer to questions by the Respondent and the Tribunal, he confirmed he was the officer who attended on 10 December 2020. He explained that he had not attended on 11 February 2021 because he believed that it may have been during a national lockdown, and so he would not have inspected the Property in person unless it was absolutely necessary. He accepted that during the period when there were COVID restrictions, the construction industry and allied trades had been hindered by the effects of the pandemic.

45. In answer to the question to what extent (if any) the COVID risk was considered when he fixed the time limits within the 3 respective improvement notices, he answered that he gave periods which he considered were reasonable, and which had not been appealed. He added that some recipients of other notices had been able to get works undertaken, whilst others expressed difficulty; there was no common theme. He confirmed that there had been no request by the Respondent for an extension of time to undertake any of the works.

46. He confirmed that on 23 August 2021 he again inspected, and found some works had been attempted or started, but they were incomplete. He gave as an example the under floor insulation.

47. He confirmed that he had received the report of the surveyor on 10 May 2021 but the C&R report did not arrive until 14 May 2021. He stated that he did not consider the report from C&R suitable, because it failed to address the potential entry points for rodents into the Property. He added that he had called the operative R Leah (presumably this is Richard) but that gentleman said he had no notes, was semi-retired, and had been asked to do the job as a favour, so he helped out. Mr Reddick added that he looked through the database and could not find the pest controller on the register of the British Pest Control Association, but he had not done a thorough investigation into that aspect.

48. The Respondent's case is contained in Mr Hilditch's statement on page 2, in a single, long paragraph. In summary, he contends the Respondent instructed C&R, who made a report; that there was no evidence of rats within the Property on their visit; that he was entitled to accept and rely on the comment "no further recommendations needed" in the report; that the Applicant was happy with the situation; that neither the cellar, nor the bike shed, nor the storage shed were part of the demise to the Applicant; that the Applicant was obstructive to C&R after their first visit and refused to allow them entry; that Mr Hilditch had at all times cooperated, giving access to the cellar; that both requirements under Schedule 2 of the relevant notice had been complied with; the time period was very short, bearing in mind the fact that this was during the COVID crisis.

49. In the Tribunal's determination, the Respondent committed an offence on 28 April 2021. The Respondent did not provide the pest control report to the Council by 28 April 2021, only on 14 May 2021. It was not even written until 6 May 2021. We do not find there was a reasonable excuse for non-compliance by that date, on balance of probability. Whilst there may have been some general issues with trades being unable to react expeditiously during lockdown, there was no evidence from the Respondent that it had attempted to contact more than one pest controller, nor that specifically named persons including C&R been unable to assist before C&R did. The Respondent did not even provide any evidence as to when it first approached C&R. The Respondent did not cross examine the Applicant on his chronology of events concerning access, which we accept in full. If anything, the delay was on the part of the Respondent and its agents, namely Richard's health issues (sciatica and vertigo), Paul's dog being sick, and the general delay of Richard in getting back to the Applicant when he chased the Respondent.

50. We do not find that the Applicant has failed to give access. At law, by the terms of his tenancy at clause 7.1.1, the Applicant was entitled to 24 hours' notice of access in writing, except in an emergency. There was no written notice. There was no emergency either, the Tribunal finds, in the sense used in the tenancy agreement, although the presence of rats was a serious issue falling short of an emergency. Whilst the Applicant was initially hesitant about giving access, he sought Mr Reddick's assurance and soon contacted Richard. No delay was occasioned by the Applicant's actions or inactions, therefore.

51. We are not satisfied, however, that the Respondent committed any offence by not complying with paragraph 2 of Schedule 2 of this Notice. The C&R report did not identify any items for the Respondent to remedy; and the Notice did not (as Mr Reddick admitted to us) state that the Respondent had to remedy any of the items in Schedule 1 of the Notice.

Improvement Notice 21/00300/HA2004

Item 1: insulation

52. The Applicant explained that the first contractor who contacted him was someone sent by John Hilditch, called Carl. There were difficulties with scheduling him to come round, but the Applicant could not give further details, because he had lost his telephone and did not have notes from this time. He recollected that it had taken a couple of attempts by Carl to contact him. When Carl came round, the Applicant showed him the Improvement Notices, which Carl said he didn't have. The Applicant explained that insulation was required. Carl left and the Applicant heard no more from him.

53. The Applicant then explained that another contractor called Mark from M&M flooring attended the Property, but not until after 28 September 2021. The Tribunal took the Applicant to an e-mail written by John Hilditch on 26 October 2021 in which Mr Hilditch claimed that Mark had been ringing the Applicant recently. The Applicant disputed this fact.

54. In any event, the Applicant says that he rang Mark on the same day as the e-mail, namely 26 October 2021. The earliest day which Mark could do was 9 November 2021. This became the agreed date. However, Mark did not attend the Property on that date, nor did he contact the Applicant to say why he had not attended.

55. Mark then contacted the Applicant, and they rescheduled the works for 23 November 2021. On that day Mark did attend, but came to the conclusion, he told the Applicant, that there was no point in doing the job because of the rotten flooring in the kitchen area, and because of some dry rot in the cellar. Mark said he would contact John Hilditch.

56. The Applicant heard nothing thereafter. No work was performed in relation to the under floor insulation.

57. The Applicant denied refusing to give access to either Mark or Carl.

58. The Respondent's case is set out in page 2 of the Mr Hilditch's witness statement. Mr Hilditch asserts that M&M Flooring Specialists Ltd were refused access by the Applicant, although he does not state when, and how notice was given.

59. In the Tribunal's determination, an offence was committed August 28 July 2021. We prefer the Applicant's evidence to that of the Respondent. The sole defence to the failure to install the under-floor insulation throughout the Property as required by Schedule 2 of the improvement notice was alleged failure by the Applicant to give access to M&M. We reject the defence. Again, at law, by the terms of his tenancy at clause 7.1.1, the Applicant was entitled to 24 hours' notice of access in writing, except in an emergency. No such notice for access for works was given by the Respondent, nor was the situation an emergency. We believe the Applicant when he denies failing to give access.

60. More fundamentally, on the facts, it is clear from the email dated 28 September 2021 from the Respondent to the Applicant that the initial floor layer Carl was "finding it difficult to insulate the floor", and therefore M&M only became involved from around that date, some 2 months after the deadline within the Improvement Notice. Accordingly, even if the Applicant had refused access (an argument which we reject), the Respondent was already in breach of the notice by the above date.

61. For sake of completeness, we note that a letter from M&M flooring dated 13 September 2022 alleges that, on the first visit made by M&M, the Applicant "confirmed he did not want to go ahead with any flooring until the landlord had arranged and completed decorating". The author of this letter, Claire Dampier is an office manager at M&M, but not the operative concerned. Neither Ms Dampier nor the operative was called as a witness by the Respondent. Her evidence is hearsay. We prefer the Applicant's direct evidence that he did not confirm that he did not want to go ahead with any flooring until the landlord had arranged and completed decorating. We accept his submission that the assertion by M&M makes no sense, given that none of the works involved decorating.

Item 2: glazing on front elevation

62. The Applicant could not remember when he was first contacted in relation to this item, but he was able to inform the Tribunal that date had been arranged with a company called Norwich Glass Company for the works to take place on or about 26 July 2021. However, he had to self-isolate on the day in question because he was suffering with the coronavirus, and he informed John Hilditch of the fact. The Applicant explained that he had been contacted not that far in advance of the date for attendance, and had received no contact from the landlord before that time, since Mr Hilditch was not taking calls from him.

63. Norwich Glass then contacted the Applicant to say they could reschedule the date, but the early state they could do was 2 November 2021 (to which the Applicant agreed).

64. On 2 November 2021 the double glazing to the rear double doors was fitted by Norwich Glass. The Applicant then complained by telephone to the company the same day, about the hygiene of their contractors. He was not happy that they had not washed their hands when using the toilet, and had left shards of glass in the bedroom. During this call the Applicant made arrangements for Norwich Glass to attend on 12 November 2021 to do the glazing to the living room window on the front elevation. The Applicant remembered all this, he said, because he recalled asking Norwich Glass not to send the 2 previous operatives.

65. The Applicant could not say if any of the work did comply with relevant planning requirements.

66. The Respondent's witness statement is short on this point:

> "The next item is to upgrade the glazing. This was done by Norwich Glass Company, and I consider that there is no breach on that item."

67. In the Tribunal's determination, the Respondent committed an offence under section 30 of the Housing Act 2004 on 28 July 2021. The work was not done until 12 November 2021, and we have no evidence that, even if Norwich Glass Company Limited had attended on 26 July 2021, they could have completed the works by the deadline of 28 July 2021. Moreover, the Respondent neither appealed the Improvement Notice, nor requested an extension of time from the Council. We note that the works should have been commenced by 7 April 2021, but it is clear the Applicant was not contacted until shortly before 26 July 2021. As with all the Improvement Notices, we do not consider that the Respondent was given an unrealistic timescale in which to effect works.

68. So, whilst it is regrettable that the Applicant had to cancel the appointment made in the week commencing 26 July 2021 because he was self-isolating with the symptoms of coronavirus, we do not consider that the Respondent has a reasonable excuse for not complying with this Improvement Notice by the deadline date.

Item 3: glazing on rear door

69. The Applicant relied on his evidence as set out above.

70. The Respondent's witness statement is short on this point:

> "The next item is to upgrade the rear door. This was done by Norwich Glass at the same time as they attended to the rest of the glazing."

71. The works had been completed to the front elevation glazing on 2 November 2021. There was no ostensible dispute on that, but it came before the glazing to the front elevation.

72. In the Tribunal's determination, for the same reasons as under item 2, the Respondent committed an offence under section 30 of the Housing Act 2004 on 28 July 2021. The work was not done until 2 November 2021, and we had no evidence that, even if Norwich Glass Company Limited had attended on 26 July 2021, they could have completed the works by the deadline of 28 July 2021. Moreover, the Respondent neither appealed the Improvement Notice nor requested an extension of time from the council. We note that the works should have been commenced by 7 April 2021, but it is clear the Applicant was not contacted until shortly before 26 July 2021. We therefore do not find the Respondent had any reasonable excuse for not complying.

73. The Applicant accepted the surveyor's inspection had gone ahead, and a report was produced, so there was no breach in that regard.

74. However, the Applicant contended that the Respondent had not done all it had promised. He pointed to the report from the surveyor to Mr Hilditch dated 6 May 2021, wherein it was written: "You have confirmed that you will be installing secondary glazing…along with an extractor system taking the moisture outside from the kitchen area". However, the Respondent had not provided such an extractor.

75. Further, the report had recommended a door sweep, and extra thick curtains, and the sealing of gaps between side doors and jambs with long pieces of weather stripping. This had not been done either.

    Lastly, neither of the 2 options suggested by the surveyor for underfloor insulation had been undertaken.

76. The Respondent's witness statement claimed the door sweep had not been fitted because M&M were refused access when they were coming to do the flooring. Mr Hilditch also points to the surveyor's words, "On inspection, I did note most of the radiators within the flat were covered or had many items in front of them, which would restrict the heat from them." As regards the extractor, Mr Hilditch contends "a fully conforming filtration system was already in place prior to the commencement of the tenancy."

77. In the Tribunal's determination, the Respondent committed an offence under section 30 of the Housing Act 2004 on 28 July 2021. The Respondent did not carry out all the remedial actions identified in the survey. It has never fitted an extractor venting to the outside. There was no reasonable excuse for that. As regards the door sweep and flooring insulation, we find there was no refusal to give access, for the same reasons as under the other Improvement Notices. Lastly, there is no evidence that actions of the Applicant were causative of any damp or mould growth: Mr Goodge does not give any such opinion. Accordingly, the Respondent has no reasonable excuse for not fitting the curtains or undertaking the other works, we determine.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

78. It was accepted by both parties that the matter did relate to housing that was let to the Applicant as the tenant at all material times.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

79. For all the reasons given under the previous 2 issues, the Tribunal finds beyond reasonable doubt that the Respondent committed the offences within the relevant 12 month period.

80. The Tribunal in this case concludes that it should make a rent repayment order.

(4) What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

81. By section 44 of the 2016 Act, the amount must relate to a period, not exceeding 12 months, during which the landlord was committing the offence: s.44(2).

82. In *Acheampong v Roman* [2022] UKUT 239 (LC)T, the UT set out the following guidance on how to quantify the amount of an RRO which, it said, will ensure consistency:

(a) ascertain the whole of the rent for the relevant period;

(b) subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced Tribunal will be able to make an informed estimate.

(c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal

sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

(d) consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

83. It was an agreed fact in the instant case that all the payments alleged by the Applicant had been made in the total sum set out in the Application, i.e. 12 x £525 = £6300.

84. There was no evidence of receipt of universal credit to deduct from any rental payment, nor was it the case that utilities formed part of the rent.

85. Accordingly, steps (a) and (b) above result in a maximum amount of £6300.

86. A rent repayment order scheme is not meant to be compensatory. It is a punitive regime: *Ficcara v James* [2021] UKUT 38 (LC) at paras. 31 and 39. In accordance with step (c) in *Acheampong*, we must consider how serious the Respondent's offences as found above, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and when compared to other examples of the same type of offence.

87. Offences under s.30 of the Housing Act 2004 carry a penalty of a fine under level 5 compared to the other offences in the Table under s.41 of the Housing and Planning Act 2016. The 1977 Act offences, for example, can result in a maximum sentence of imprisonment for 2 years and a fine.

88. This was not, in our determination, the most serious case of a breach of an Improvement Notice, although the conduct of the Respondent as a whole was serious, especially given there were multiple breaches of 3 Notices. We note the glazing works were not done for over 3 months. We are concerned that the underfloor insulation has never been done, nor has the mechanical extraction. The obligation to take remedial action specified in the Notices in relation to hazards continues despite the fact that the period for completion of the action has expired: see s.30(5) of the Housing Act 2004.

89. We determine that an adjusted starting point figure should be 75% of the sum claimed, i.e. £4275, as a fair reflection of the seriousness of the offences.

(5) What account must be taken of the matters in s.44(4) or any other factors?

90. As to conduct, *Aytan v Moore and others* [2021] UKUT 27 (LC) demonstrates that the Tribunal is not required to undertake a fine grain analysis of the parties' conduct.

91. We do not consider there to be sufficient evidence of obstructive conduct on the part of the Applicant. There is some mitigation the landlord's part, in so far as some works were executed. However, Mr Hilditch presented as a Director who was prepared to overlook the Council's requirements if he considered the Respondent had done enough. The failure to provide the scheduled mechanical extraction is but one example.

92. The Applicant also complained of the lack of response to his request for the return of his deposit, but that is a matter after the relationship of landlord and tenant had ended. He also complained of some water leakage, in relation to which we had little detail. On balance, therefore, we determine that there was nothing relevant in the conduct of the landlord, or of the tenant, to warrant any further adjustment.

93. It was common ground the Respondent had not been convicted of any relevant offence.

94. As to the financial circumstances of the Respondent, Mr Sharman indicated the Respondent had the means to pay the maximum amount if ordered to.

95. In all the above circumstances, we consider that an award of £4275, being the adjusted starting point figure, is the appropriate final figure in this case.

Conclusions

96. The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant the sum of £4275 within 35 days of the date of this decision.

97. By virtue of section 47 of the Housing and Planning Act 2016, the above amount is recoverable by the Applicant against the Respondent as a debt.

98. The Tribunal further determines that the Respondent shall reimburse the successful Applicant his fee for the issue of the application in the sum of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

Judge:

S J Evans

Date:
7/12/22

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. 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.

Appendix 1

Housing and Planning Act 2016

Section 40

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1) Criminal Law Act 1977	section 6(1)	violence for securing entry
2) Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3) Housing Act 2004	section 30(1)	failure to comply with Improvement Notice
4)	section 32(1)	failure to comply with prohibition order etc
5)	section 72(1)	control or management of unlicensed HMO
6)	section 95(1)	control or management of unlicensed house
7) This Act		section 21 breach of banning order

Section 41

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed
the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)
-the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)
-a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the Tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 30

Offence of failing to comply with Improvement Notice

(1)Where an Improvement Notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2)For the purposes of this Chapter compliance with an Improvement Notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a)(if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b)(if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the Tribunal determining the appeal; and

(c)(if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3)A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5)The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6)In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

(7)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.