



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

Case Reference : **MAN/00CC/HIN/2021/0028**

Property : **55 St Johns Road, Edlington, Doncaster**

Applicant : **Albert Obayuwana**

Respondent : **Doncaster Metropolitan Borough Council**

Type of Application : **Appeal against Improvement Notice, paragraph 10, Schedule 1 to the Housing Act 2004**

Tribunal Members : **A M Davies, LLB
P Mountain**

Date of Decision : **20 February 2023**

DECISION

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DECISION

The Improvement Notice issued by the Respondent to the Applicant on 1st November 2021 and varied by Notice to Vary dated 20 February 2023 is varied to read as set out in the attached schedule.

REASONS

BACKGROUND

1. Mr Obayuwana owns 55 St Johns Road, Edlington (“the Property”) and lets it to Ms Collins who lives there with her family.
2. In October 2021 the Respondent’s Senior Environmental Health Practitioner Mr Stephens carried out a selective licensing compliance visit to the Property and noted the presence of hazards. Having made an assessment pursuant to the Housing Health and Safety Rating System (England) Regulations 2005 (“HHSRS”) Mr Stephens found that excess cold in the kitchen was a Category 1 Hazard necessitating action by the Respondent. He found a number of additional matters which he considered to be a risk to health in the Property and classed these as Category 2 Hazards.
3. The Respondent determined that an Improvement Notice was the appropriate course of action for most of the hazards identified at the Property and issued a Hazard Awareness Notice in respect of others. The Improvement Notice and Hazard Awareness Notice were dated 1 November 2021. Correspondence with the Applicant followed, concerning whether the requested work could be carried out with the tenant in possession. The Respondent extended the time for compliance with the Improvement Notice to 1 April 2022. Later that month the Applicant appealed to this Tribunal against the Improvement Notice. The Tribunal accepted his late application.

THE LAW

4. The HHSRS is a system for assessing the severity of hazards in residential properties, and includes guidance as to how the system is to be administered. Chapter 2 of the Housing Act 2004 (“the Act”) provides local housing authorities with powers to take enforcement action against landlords where the HHSRS assessment indicates that the safety of occupiers is at risk.
5. Section 5 of the Act requires a local housing authority to take enforcement action where a Category 1 Hazard is identified, and section 11 provides that that action may be service of an improvement notice. Section 12 of the Act provides that an improvement notice may also be served where a Category 2 Hazard is identified. An improvement notice requires the person on whom it is served to take such remedial action as is specified in the notice. The notice must provide a date when the remedial action is to be started, but operation of the notice may be suspended and the time for compliance may be extended by the local housing authority.

6. Paragraph 10(1) of Schedule 1 to the Act provides that a person who has received an improvement notice may appeal to this Tribunal. The Tribunal makes its own determination and may have regard to matters of which the local housing authority was unaware. It may confirm, quash or vary the improvement notice.
7. Alternative forms of enforcement are available, including issue of a Hazard Awareness Notice which puts the landlord on notice that risks to health exist in his property, but which does not require remedial work to be carried out within a specified time.

INSPECTION OF THE PROPERTY

8. On 15 December 2022 the Tribunal inspected the Property in the presence of the Applicant, Mr Stephens, Mrs Robinson the Respondent's Housing Manager, and the tenant. The areas of concern were pointed out and noted by the Tribunal members.

VARIATION OF THE IMPROVEMENT NOTICE

9. On 15 December 2022 it appears that the Improvement Notice was varied by Mr Stephens partly due to his decision to remove from the Notice some of the items previously indicated as hazards and partly in acknowledgement of work that had been carried out at the Property by the Applicant since the inspection of October 2021.

THE HEARING

10. A hearing that was to have taken place on 15 December 2022 by video link had to be adjourned due to technical issues. The hearing took place by video link on 20 February 2023. The Applicant represented himself, and the Respondent was represented by Mr Stephens and Mrs Robinson.
11. At the hearing (and prior to the inspection) the Tribunal had a comprehensive bundle of documents including the written representations of both parties and photographs taken by Mr Stephens firstly in October 2021 and secondly after the Applicant had had some repairs carried out at the Property.

FINDINGS

12. As set out in the Improvement Notice varied by the Respondent there were 7 categories of hazard to be considered:

- 1) Excess Cold: lack of any fixed heating in the kitchen.

This was categorized as a Category 1 Hazard, but in practical terms the potential for harm is not severe and any harms likely to occur are not substantial. There is no space for sitting to eat in the kitchen. The Applicant said that there had never been heating in the kitchen and that so far as he knew no harm had come to anyone as a result. Further, the heat from the adjacent living room would tend to heat the kitchen as well, and in any event the boiler and cooker, when working, would also provide a source of heat. He

said that if he was required to provide a heater, he would extend the central heating system into the kitchen.

The HHSRS guidance recommends a fixed heating appliance in each room of the house. Mr Stephens reminded the Tribunal that harm could be psychological, and that if anyone was required to spend much time working in the kitchen in winter some health issues could result. He said that the cost of extending heating into the kitchen is minor compared to the health benefits that would be achieved. Mrs Robinson added that the cold kitchen would tend to draw heat out of the heated rooms in the house. The Tribunal accepts that excess cold in the kitchen is a hazard but assesses it as a Category 2 Hazard to be addressed within 6 months of this decision., ie before the weather turns cold again.

2) Entry by Intruders:

- (a) lack of window locks in the kitchen and ground floor middle room.

The Tribunal does not accept that a narrow unlocked uPVC window opening located above a larger window is a genuine hazard. Anyone seeking to enter the house via such a small window would, Mr Stephens acknowledged, need to use a drill to gain access to the inner lever. While it is true that this means of entry would be impossible if the windows were locked, it is also true that anyone wanting to enter the house and equipped with a drill could find much easier ways of doing so.

- (b) lack of key for the living room window, preventing the window being opened for ventilation.

The Applicant says that he has provided window keys to the tenant. She has told the Respondent that she does not have one. The Tribunal accepts that some ventilation other than leaving the front or back door open should be available in the living room and has therefore determined that a key is to be provided.

3) Domestic hygiene, pests and refuse: hole in kitchen wall, lack of cowl to the soil stack, lack of vent cover to the vent.

The Applicant says that these issues should have been the subject of a Hazard Awareness

Notice. He also says that there is a vent cover, but did not produce any evidence of this. The Respondent points out that rats and mice can enter through very small holes, and that the lack of a cowl to the soil stack allows for the entry of birds. The Tribunal agrees that there is an element of risk to health and has provided that the work, which is minor, should be carried out within one month.

- 4) Food safety: ventilation unit above the cooker is not connected to the electrical supply.

The Applicant acknowledged that this work, which he had ordered, had not been carried out by his contractor and agreed to have it checked and completed as necessary.

- 5) Personal hygiene, sanitation and drainage:

- (a) wash hand basin in the bathroom not properly secured to the wall.

When the Tribunal inspected, there was slight movement of the wash hand basin. At the hearing Mr Stephens confirmed that he did not know whether the basin was adequately fixed to the wall. The Tribunal does not accept that there is any health hazard arising from this item.

- (b) damaged wall near a bedroom door.

Mr Stephens said that the damage prevented adequate cleaning and therefore presented a health hazard. Having inspected the damaged area, the Tribunal does not accept this.

- 6) Falling on stairs: The second kite winder tread is insecure.

On inspection the Tribunal found that the tread was springy. Mrs Robinson pointed out that the time to fix this is prior to the tread giving way, particularly as it is near the top of the flight of stairs. The Tribunal notes that the stair is not currently dangerous but may become a potentially serious hazard at any time. Further, access for repair can be obtained from the below-stairs cupboard. Provision has therefore been made for this defect to be corrected.

- 7) Collision and entrapment: lack of latches or handles on the door between kitchen and living room and on the below-stairs cupboard door.

Mr Stephens argued that the lack of latches or handles resulted in doors being slammed with the danger that fingers or hands could be trapped. The Applicant says that at the time of the inspection in December 2022 the latch to the kitchen door was working, the door had a handle, and there was a latch on the cupboard door. The Tribunal's inspection notes indicate that the kitchen door had been repaired by 15 December 2022 although a latch on the cupboard door was not seen. In any event, the Tribunal does not consider that the lack of these items comprises any potential for harm over and above the possible injuries that can be caused by any door.

13. Generally, the Applicant said that he was having difficulties with his tenant, whom he accuses of deliberately damaging the Property to support an action she has brought in damages against him. He also says that his workmen have been denied access. While the Tribunal noted on inspection that the tenant does not by any means keep the Property clean or tidy, the hazards noted in

the attached Variation to the Improvement Notice are matters for which the Applicant as landlord is responsible under the HHSRS.

14. The Tribunal notes that over 14 months has elapsed since an Improvement Notice was first served and hazards still remain at the Property. The Applicant employs letting agents and is aware of his right, as landlord, to enter the property to carry out necessary work. In the circumstances it is appropriate to address these hazards by way of an Improvement Notice so as to assist the Applicant in gaining access and enabling him to ensure that the work is carried out within a reasonable time.

AM Davies
Tribunal Judge
20 February 2023

SCHEDULE

IMPROVEMENT NOTICE VARIED ON 20 FEBRUARY 2023

1. Hazard Profile no. 2, Excess Cold – Category 2 Hazard

Deficiency giving rise to the hazard: no fixed heating appliance in the kitchen.

Remedial action: provide a fixed heating appliance capable of adjustment and ensuring that a temperature of 18° C can be maintained within the kitchen.

To be carried out: by 31 August 2023.

2. Hazard Profile no. 12, Entry by Intruders - Category 2 Hazard

Deficiency giving rise to the hazard: no key for the ground floor living room window.

Remedial action: provide a key to the window to allow for ventilation.

To be carried out: by 31 March 2023

3. Hazard Profile no. 15, Domestic hygiene, pests and refuse - Category 2 Hazard

Deficiency giving rise to the hazard:

a) hole in the kitchen wall next to the boiler

d) lack of cowl to soil stack

e) lack of vent cover to the vent in kitchen wall

Remedial action :

a) In-fill the hole in the wall next to the boiler in the kitchen with a suitable mortar mix.

d) Provide and fit a cowl to the soil stack serving the rear elevation.

e) Provide and fit a vent cover to the vent to the side elevation.

To be carried out: by 31 March 2023

4. Hazard Profile No. 16, Food safety - Category 2 Hazard

Deficiency giving rise to the hazard: the ventilation unit above the cooker is not connected to the electrical supply.

Remedial action: connect the ventilation unit to the electrical supply and ensure that it is operational.

To be carried out: by 31 March 2023

5. Hazard Profile No. 21, Falling on stairs etc - Category 2 Hazard

Deficiency giving rise to the hazard: the second kite winder tread down from the top of the staircase is insecure.

Remedial action: replace or re-fix the second kite winder tread down from the top of the staircase ensuring that it is secure and stable.

To be carried out: by 31 May 2023