



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

Case Reference : **BIR/41UE/HIN/2022/0015**

Property : **2 Peake Street, Newcastle-under-Lyme,
Staffordshire ST5 6DP**

Applicant : **Mrs Fiona Rosenberg**

Respondent : **Newcastle-under-Lyme Borough
Council**

Type of Application : **An appeal against an Improvement
Notice under paragraph 10 (1) of
Schedule 1 to the Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **29 March 2023**

DECISION

Decision

1. The Tribunal hereby orders that the Improvement Notice dated 30 August 2022 be varied as detailed in the Appendix to this decision.

Reasons for Decision

Introduction

2. On 15 September 2022, the First-tier Tribunal (Property Chamber) received an application from Mrs Fiona Rosenberg ('the Applicant') for an appeal under Paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act'). The appeal related to an Improvement Notice dated 30 August 2022 ('the Notice'), served upon her by Newcastle-under-Lyme Borough Council ('the Respondent') relating to the property known as 2 Peake Street, Newcastle-under-Lyme, Staffordshire ST56DP ('the Property'), of which the Applicant is the owner.
3. The Notice detailed, in Schedule 1, various deficiencies at the Property. These were categorised as a category 1 hazard in respect of Damp and Mould, in respect of ground floor bathroom, first floor front bedroom and first floor rear bedroom. The Respondent served, with the Notice, a Statement of Reasons as to why the decision to take enforcement action had been made. The Respondent did not appear to have served any demand for expenses with the Notice.
4. The Respondent provided a bundle of documents on 18 October 2022 and a Statement of Case and bundle setting out the Applicant's case was received by the Tribunal on 10 November 2022.
5. Neither party requested an oral hearing and an inspection was arranged for 16 January 2023.

The Law

6. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System ('the HHSRS') replaced the system imposed by the Housing Act 1985, which was based upon the concept of unfitness.
7. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as 'category 1 hazards' and

those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards'.

8. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5(1) of the Act to take appropriate enforcement action. Section 5(2) sets out the courses of action (which include the serving of an improvement notice) which may constitute appropriate enforcement action.
9. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an improvement notice is one of the types of enforcement action which may be taken.
10. Section 9 of the Act requires the local housing authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued the 'Housing Health and Safety Rating System – Operating Guidance' ('the Operating Guidance') which deals with the assessment and scoring of the HHSRS hazards. At the same time the Secretary of State also issued the 'Housing Health and Safety Rating System – Enforcement Guidance' ('the Enforcement Guidance'), which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary powers under section 7 of the Act.
11. The person upon whom an improvement notice is served may appeal to the First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act. The appeal is by way of a rehearing and may be determined having regard to matters of which the local housing authority were unaware. The Tribunal may, under paragraph 15(3) of Schedule 1, confirm, quash or vary the notice.

Inspection

12. The Tribunal inspected the Property on 16 January 2023. The Applicant attended the inspection and was accompanied by her husband, Mr Anthony Rosenberg. The tenant was also present. No-one attended on behalf of the Respondent.
13. The Property is a small, two-storey terraced house situated on Peake Street, in an area of similar properties. It has solid brick walls and a pitched, tiled roof, with a paved rear yard. The Property is double-glazed and has the benefit of central heating.
14. The front door of the Property leads directly into the front living room and there is a small under stairs storage area between this room and the rear living room. The ground floor back addition kitchen is accessed from the rear living room and, directly off the rear of the kitchen, there is a brick built extension which comprises the bathroom. The rear yard is also accessed via the rear living room, as are stairs leading to the first floor. The first floor comprises a small landing with two double bedrooms – one to the front and the other to the rear of the Property.

15. Although, on the day of the inspection, the Property was in a cluttered state, it did show signs of rising damp and condensation in both the kitchen and bathroom – the damp meter readings taken by the Tribunal from the base of the partition wall between the bathroom and kitchen and from the right hand wall behind the toilet, being much higher than would be recorded for condensation alone. In addition, there was some mould spotting on the walls and the ceiling in the bathroom, which the Tribunal noted did not have the benefit of an extractor fan.
16. In relation to the first floor, the front bedroom appeared to have been cleaned and redecorated and no signs of damp were recorded by the Tribunal. The rear bedroom, however, did show signs of penetrating damp under the window, on the chimney breast and in the alcoves to the left party wall.
17. The Tribunal also noted that the brick wall forming the left hand boundary in the rear garden appeared in need of stabilising, as it swayed when pressure was applied to it. [This was not referred to in the Notice and the Tribunal has no information as to whether the boundary wall is the responsibility of the Applicant. According, this has been noted simply for the benefit of the Applicant.]

Submissions

The Applicant's submissions

18. The Applicant, in her statement of case, confirmed that she had owned the Property since April 2007 and that it had first been let to the current tenant in 2017. The Applicant stated that the Property had been let in a good condition with no damp problems and provided photographs, which she submitted evidenced the same, within her bundle.
19. The Applicant stated that she was first contacted by the tenant regarding a damp issue in September 2018. She stated that she contacted her contractors to carry out works to both the front and rear chimneys but was informed by them that the main reason for the damp was due to the tenant having overloaded the Property with furniture and having failed to ventilate it properly.
20. The Applicant confirmed that, in June 2020, the tenant contacted her again to state that the mould had returned. The Applicant stated that she instructed her usual contractors to attend the Property again, however, submitted that they had problems gaining access to the Property. When they finally did gain access, she submitted that they noted that the house was in a very poor state of repair, that it was full of furniture and that there were several animals living in the Property.
21. The Applicant stated that she contacted the tenant to inform her that it was her actions that were causing the damp problem. She stated that the tenant was also informed that she was in breach of the terms of her tenancy agreement, that she needed to tidy the house before the works could be started and that, after the works had been completed, that she would need to ventilate the Property properly. Although the Applicant's roofing contractor was able to complete the

external works, the Applicant submitted that he was unable to gain access to the inside of the Property to fit air bricks.

22. The Applicant stated that she did not hear further from the tenant regarding any mould at the Property until May 2021. Due to an argument between the tenant and one of the Applicant's contractors, she confirmed that she arranged to meet them both at the Property in February 2022. The Applicant stated that, by this time, in addition to the tenant and her two young children, there were three dogs and a rabbit living in the Property – a situation the Applicant considered was no longer acceptable. After this meeting, the Applicant stated that her contractor had difficulties with access again, so he invoiced the Applicant for the call out and stated that he was no longer prepared to carry out the work.
23. The Applicant submitted that, following this, she had contacted three other contractors in relation to the works required to the Property, two of whom had inspected and one of whom provided her with an estimate for £8,995 for works (which included the replacement of the kitchen and bathroom). She submitted that all of the contractors advised her that the tenant would need to move out of the Property in order for the work to be carried out properly.
24. The Applicant stated that the tenant had informed her that she had nowhere to stay whilst the works were being undertaken and that the Respondent had informed the tenant that they were unable to assist her as no formal eviction notice had been served by the Applicant.
25. On 29 June 2022, the Applicant stated that she was informed by the Respondent that they would be inspecting the Property. The Applicant confirmed that there was email exchange between her and Ms Tracey Mellor, a Housing Standards Officer for the Respondent, in which the Applicant reiterated that the tenant would need to vacate the Property in order for the works be carried out. The Applicant also stated that she informed Ms Mellor of her intention to sell the Property. The Applicant submitted that she believed that it was at this point that the Respondent decided to issue the Notice, as the Respondent was unable to house the tenant and this was a way of preventing the Applicant from evicting her.
26. The Applicant provided within her bundle, a copy of the tenancy agreement, copy photographs and copies of various email exchanges, including an Estate Agency Agreement dated 2 November 2022.

The Respondent's submissions

27. The Respondent did not provide a statement of case but, instead, in their bundle provided a Chronology of events ('the Chronology') to which they annexed various documents including copy email correspondence, details of an inspection of the Property carried out on 4 July 2022 and a copy of the Notice.
28. The Chronology indicated that the Respondent was first contacted by the tenant, who reported mould at the Property, in May 2022. The Respondent contacted

the Applicant the same month requesting details of electrical and gas safety certificates, which the Applicant provided.

29. The Respondent retained contact with the tenant and, as remedial works had not been carried out or started by the end of June 2022, the Respondent carried out a HHSRS Property Inspection on 4 July 2022. The inspection revealed two category 1 hazards (including damp and mould growth) and two category 2 hazards. A copy of the report was sent to the Applicant on the same day. The Chronology noted that the Respondent decided not to take any formal action following the inspection, as it appeared that the Appellant would be carrying out the repairs.
30. The Chronology detailed that the Applicant informed the Respondent of her intention to sell the Property in July 2022, and noted that the Applicant was informed, in an email from Ms Mellor on 7 July 2022, that she would still need to address the issues in relation to damp and mould at the Property.
31. Following this correspondence, various emails detailed that Ms Mellor requested from the Applicant a copy of any report carried out in respect of the damp at the Property and confirmation that a contractor had been arranged to clean off the mould from the walls with a fungicidal wash. Emails from the Applicant to Ms Mellor indicated that the Applicant had spoken to various damp contractors, all of whom she submitted were unwilling to carry out any works without the tenant moving out. She referred to one contractor confirming that he would not even write a “*full damp report*” without the tenant having vacated, there being too many things inside the house to complete a comprehensive report.
32. The Chronology noted that Ms Mellor emailed the Applicant on 18 August 2022 stating that the text which the Applicant had sent to her from one of the contractors referred to the ‘tanking’ of walls, which suggested that there was an issue with penetrating damp, and that, as they had still not received a damp report indicating the cause of the problem, the Respondent would need to go down the enforcement route.
33. The Notice was issued on 30 August 2022 following a re-inspection which revealed that, although one of the category 1 hazards had been rectified, the other (relating to the damp and mould at the Property) remained.

The Tribunal’s Deliberations

34. The Tribunal considered all of the evidence submitted by the parties, briefly summarised above.
35. With regard to the submissions made by the Applicant that the tenant obstructed her ability to affect the repairs to the Property, the Tribunal does not accept the same.
36. Although the emails provided by the Applicant do indicate some issues with access prior to March 2022, in particular with regard to one of the Applicant’s

usual contractors, this was some months prior to the tenant reporting the problem with the mould to the Respondent. Following this referral, the Applicant does not appear to have reported any further issues with access.

37. Accordingly, the Tribunal finds that any access issues with the tenant would not have affected the Applicant in remedying any of the hazards reported by the Respondent in their letter to her of 4 July 2022.
38. In relation to the tenant being in breach of her tenancy agreement, this is not relevant to the Tribunal in making its determination in this matter. The Tribunal does note, however, that the Applicant had been aware of the tenant's breach for almost two years' prior to the tenant contacting the Respondent. Despite this, and even though the Applicant submitted that she believed that the tenant's actions were causing the damp at the Property, the Applicant appeared to have taken no formal action in respect of the tenant's breaches.
39. With regard to the whether the breach of the terms of the tenancy were a "major" contributing factor to the damp problem, firstly, it is a landlord's responsibility to ensure that a house is free from hazards and, secondly, having carried out its inspection, the Tribunal considers that the Property is affected by rising damp and penetrating damp, both of which are structural problems relating to the house.
40. The Tribunal did note that the Property was cluttered and also that, during the inspection, the tenant was drying clothes in an upstairs room without proper ventilation. The Tribunal accepts that these actions do little to assist the damp issues, however, does not consider that these are the major contributing factors to the problem.
41. As to the reasons for the service of the Notice, the Tribunal finds that the email correspondence between Ms Mellor and the Applicant set out the reasons for the same. From the correspondence, it was quite clear that the Respondent was in informal talks with the Applicant from May 2022.
42. Although the Applicant stated that she had arranged for four contractors to visit the Property, she had failed to provide to the Respondent any written report from any of those contractors detailing the cause of the damp problem or that they required the tenant to vacate the Property in order to rectify the hazard.
43. An email from 17 August 2022 to Ms Mellor from the Applicant, referred to one contractor not being willing to write a "full damp report" without the tenant vacating, suggesting that the other three contractors had provided the Applicant with some form of report. In addition, the one text message the Applicant did provide to Ms Mellor indicated that the walls would require tanking, suggesting that the Applicant was aware that there was a structural problem with the Property in June 2022.
44. In relation to the Applicant's belief that the issuing of the Notice was due to the Applicant stating that she intended to sell the Property, the correspondence shows that the Respondent had been aware of the Applicant's intention to sell

from the beginning of July 2022, but that the Respondent allowed her a further seven weeks to investigate the damp hazard and provide a report.

45. As the Respondent had identified that there was a category 1 hazard at the Property, they were under a duty to take appropriate enforcement action in relation to the hazard under section 5(1) of the Act.
46. Having considered all of the evidence, the Tribunal considers that the Respondent's actions when issuing the Notice were reasonable and justified.
47. Bearing in mind that an appeal to the Tribunal is by way of a rehearing but may be determined having regard to matters of which the local authority was unaware, at the time of the Tribunal's inspection works had clearly been carried out to the first floor front bedroom – it appeared to have been cleaned of mould and redecorated. The Tribunal did, however, find that a category 1 hazard still existed in respect of the rising damp and penetrating damp located in the ground floor bathroom and rear bedroom.
48. Accordingly, the Tribunal orders that the 'Nature of the hazard' and the 'Nature of the remedial action required to be taken' in Schedule 1 to the Notice be varied as detailed in the Appendix to this decision.

Appeal

49. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM

.....
Judge M K Gandham

Appendix

Nature of the hazard:	Damp and Mould
The deficiencies giving rise to the hazard are:	<ol style="list-style-type: none">1. Ground Floor Bathroom – Rising damp on the partition wall between the bathroom and kitchen and on the rear wall behind, and to the right hand side, of the water closet. Condensation mould on other areas of wall and on the ceiling.2. First Floor Rear Bedroom – Severe penetrating dampness to the top of the chimney breast, alcoves and directly below the window. Condensation mould on other areas of the rear wall.
Nature of remedial action required to be taken:	<ol style="list-style-type: none">1. Employ the services of a damp specialist (registered with the Property Care Association) to attend the property and perform an inspection of the affected areas to identify the cause of the dampness and possible remedies. Carry out any remedial work identified as necessary to ensure that the rooms remain damp free.2. Thoroughly clean all mould affected surfaces with a suitable fungicidal wash.3. Install an extractor fan in the kitchen and the bathroom.