



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

Case Reference	:	CHI/OOHH/HIN/2022/0028.
Property	:	Flat 2, Carlstan Court, Elmsleigh Road, Paignton, Devon TQ4 5AX.
Applicant	:	Mrs M E Zikic
Representative	:	Mr S Eden of Imove Letting Agents.
Respondent	:	Torbay Council.
Representative	:	Mr B Acutt Housing Inspector, Torbay Council.
Type of Application	:	Appeal against an Improvement Notice; Paragraph 10 of Schedule 1 to the Housing Act 2004 (the Act).
Tribunal Members	:	Robert Brown FRICS (Chairman) Judge M Tildesley OBE Judge A Cresswell
Date and Place of Hearing	:	8 th March 2023 at Plymouth Magistrates Court
Date of Decision	:	15 th March 2023

DECISION

1. The Tribunal **confirms** the Improvement Notice dated 28th October 2022 (ref: 003428) **subject to the variation agreed by the parties** to Schedule 2 paragraphs 1 and 2.
2. The wording of the variation is set out below.
3. Paragraph 1 of Schedule 2 is amended as follows:

Insert at the end of sub paragraph 1: ‘Reports to include the effects of the surveyors recommendations on the ‘use’ and ‘non use’ of the current heating system’.

Delete sub paragraphs 2,3,4,5,6,7 and 8.
4. Paragraph 2 of Schedule 2 is amended as follows:

Insert at the end of sub paragraph 1: ‘Reports to include the effects of the surveyors recommendations on the ‘use’ and ‘non use’ of the current heating system’.

Background

5. The Applicant represented by Mr Eden of Imove lettings, appealed against the Improvement Notice, (the Notice), relating to Flat 2 Carlstan Court, Elmsleigh Road, Paignton Devon, TQ4 5AX (the flat), served on it by the Respondent, Torbay Council by Mr B Acutt (Housing Officer).
6. The Notice dated 28th October 2022 and the application to appeal the notice is dated 16th November 2022.
7. Directions were issued by 16th January 2023. In directions the Tribunal explained the Tribunal did not inspect the dwelling but did have the benefit of photographs included in the Bundle
8. At the date of the Application the flat was occupied by tenants, but the Respondent was aware, at the date of the Notice, that the Applicant had already commenced proceedings to evict that tenant.
9. Hearing Bundles were sent to the Tribunal before the date of the Hearing.
10. The Tribunal identified the flat from the bundle as being a mid floor flat in a purpose built block of three flats. The building has cavity walls, the flat has upvc double glazing and electric wet system central heating.
11. The Tribunal noted from the documents contained in the Hearing Bundle that the Notice required that the specified works be undertaken, started by a due date, and completed within 60 days of 22nd November 2022.

The Hearing

12. Mr Eden representing the Applicant Mrs Zikic (Landlord) explained that his client did not consider that the matters in the notice were the landlord's responsibility because:
 - a) As identified in the bundle, works had been carried to alleviate the problems of damp and mould.
 - b) The current condition of the flat was down to the way in which the tenants occupied the flat in particular: furniture and boxes placed against walls, lack of ventilation and not being willing (because of the cost) of using the electric heating.
 - c) Reports from tradesmen and damp specialists do not suggest the Landlord is at fault.
13. Mr Acutt representing the Respondent Torbay Council explained that the Tenant's requested a visit to the flat on account of the condition particularly in connection with damp mould.
14. Mr Acutt invited both the Landlord and the agent to attend the inspection but for whatever reason neither were able to be present.
15. Prior to the inspection the tenants had contacted Mr Acutt's office to advise that they had received Notice of Eviction under Section 21 of the Housing Act 1988.
16. Following the inspection Mr Acutt prepared an Assessment of his findings using the Housing Health and Safety Rating System (HHRS) (Housing Act 2004). That assessment identified deficiencies as follows:
 - a) Excess Cold: Category 1
 - b) Mould and Damp: Category 2
 - c) Fire Risk: Category 2
17. Having identified Category 1 hazards Mr Acutt, in accordance with Torbay Council's Policy, served the Improvement Notice.
18. Mr Acutt's letter to the Applicant dated 28th October 2022 explained that the service of an Improvement Notice had the effect of suspending the section 21 Notice. Further it meant that the Respondent could not proceed down the usual first instance route of serving a Hazard Awareness Notice on the Landlord but was required to proceed to a formal Improvement Notice if Category 1 hazards were identified in the flat.
19. There is a current Energy Performance Certificate, (EPC), rating the flat at E valid until the 16th May 2029. The certificate notes the main boiler and radiators are 'very poor' and recommends cavity wall insulation.
20. Questioned by the Tribunal Mr Eden accepted that the hazards existed and that they were the responsibility of the Landlord. He further advised the tenants were expected to vacate around the 20th March and the flat would not be relet until the works were completed and the issue resolved.

21. The Tribunal questioned Mr Acutt in some detail as to the justifications put forward in his assessment of the hazards under the HHRS.
22. A short discussion followed during which it transpired that a better way forward might be for the Notice to be amended in respect of Excess Cold and Damp and Mould to provide for surveys to be carried as identified in the Notice before works were undertaken.

The Law

23. An appeal may be made to this Tribunal by a person on whom an Improvement Notice has been served in reliance on paragraph 10 of schedule 1 to the Act. The Application received by the Tribunal from the Respondent was made within the time limit specified in paragraph 14 of that schedule.
24. Paragraph 15 of schedule 1 to the Act sets out the powers of the Tribunal which enable it to consider the Application by way of a re-hearing and provides that it may make a determination having regard to matters of which the local housing authority were unaware. The Act give this Tribunal the power to confirm, quash or vary the Improvement Notice.

The Decision

25. The Improvement Notice was served on the Applicant having carried out an assessment under the HHRS and identified Category 1 and Category 2 hazards.
26. There is no dispute between the parties as to the existence or rating of the hazards identified in the Notice. The Notice was dated 28th October 2022. The operative date was 25th November 2022 and for works to be completed within 60 days. The Applicant appealed against the Notice before that date.
27. The parties were very co-operative and following a short adjournment the variation identified in the decision at paragraphs 1 and 2 (above) was agreed.
28. The Tribunal confirms the remainder of the Notice.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

- b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.