



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

Case References: MAN/36UE/HIN/2023/0011

Properties: 12 Darlington Rd, Richmond, North Yorkshire,
DL10 7AW

Applicant: Mrs June Speight

Respondent: Richmondshire District Council

Type of Application: Housing Act 2004 - Schedule 1, Paragraph 10(1)

Tribunal Members: Judge Caroline Hunter
Valuer Member Neil Swain MRICS

Date of Decision: 23 June, 2023

DECISION

Summary Decision

1. The Tribunal quashes the Improvement Notice made by Richmondshire District Council. In relation to the hazards of damp and mould growth and excess cold this is because the hazards have been largely resolved. In relation to the hazard of falls on stairs only, the Tribunal finds that an hazard awareness notice is the best course of action.

The statutory framework

2. The Housing Act 2004 (“the Act”) provides for a system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
3. Those hazards which score 1000 or above are classed as category 1 hazards. If a local housing authority makes a category 1 hazard assessment, it becomes mandatory under section 5(1) of the Act for it to take appropriate enforcement action. These include under s.5(2)(a) serving an improvement notice under s.11 of the Act and under s.5(2)(c) a hazard awareness notice under section 28.
4. Hazards with a score below 1000 are category 2 hazards, in respect of which the authority has a discretion whether to take enforcement action under section 7(1) of the Act. In the case of category 2 hazards, section 7 sets out five different courses of action. These include the power under section 12 to serve an improvement notice and under s.28 to serve a hazard awareness notice.
5. The duty of a local authority to inspect a property is set out in section 4 of the Act. Inspections are governed by the Housing Health and Safety Rating System (England) Regulations) (2005/3208) which by reg. 5 provide that an inspector must:
 - a) have regard to any guidance for the time being given under section 9 of the Act in relation to the inspection of residential premises;
 - b) inspect any residential premises with a view to preparing an accurate record of their state and condition; and,
 - c) prepare and keep such a record in written or in electronic form.
6. The relevant Guidance is the Housing Health and Safety Rating System – Operating Guidance, issued by the Secretary of State under section 9 of the Act in February 2006 (“the operating guidance”). Authorities must also take it into account in assessing hazards: see s.9(1)(a). In addition further guidance has been issued under s.9 which “is intended to help authorities decide which is the appropriate enforcement action under section 5 of the Act and how they should exercise their discretionary powers under section 7.” This Guidance is the Housing Health and Safety Rating System – Enforcement Guidance, issued by the Secretary of State in February 2006 (“the enforcement guidance”).
7. A “relevant person” may appeal to the First Tier Tribunal against an improvement notice (Schedule 1, para.10 of the Act). Although there are no statutory limits on the grounds of appeal, Schedule 1, paras. 11 and 12 of the Act provide two specific grounds: that another person ought to take the action

concerned or pay part of the costs, and; that another course of action (e.g. a hazard awareness notice) is the best course of action in relation to the hazard in respect of which the notice was made. The appeal is by way of re-hearing (Schedule 1, para.15(2) of the Act). The Tribunal may confirm, quash or vary the improvement notice (Schedule 1, para. 15(3) of the Act). In deciding what is the best course of action the Tribunal is required to take into account any Guidance issued under section 9 of the Act: Schedule 1, para. 17(2) of the Act.

Background

8. 12 Darlington Rd ('the property') is an end of terrace two storey house, with two bedrooms in Richmond. The applicant, Mrs Speight is the owner of the property. On 29 February 2021 the tenant, David Martin, moved into the property.
9. A complaint from the tenant was received by the Respondent authority, Richmondshire District Council ('the Council'), on 25 November 2022 regarding disrepair issues at the property.
10. On 15 December 2022 a Housing Enforcement Officer from the Council attended the property to inspect it. The Council's officer identified two category level 1 hazards and one category 2 hazard and took the view that an Improvement Notice should be served.
11. On 24 January 2023, the Council sent Mrs Speight a statement of reasons for action and a copy of the Improvement Notice. The Notice was dated 20 January 2023.
12. Mrs Speight appealed the Improvement Notice on 21 February 2023. Directions were made by the Tribunal on 29 March 2023. The Tribunal directed that an inspection of property should be undertaken. That inspection took place on 21 June 2023. The Council did not attend the inspection. Sometime before the inspection the tenant moved out of the property. At the time of the inspection the property was not occupied and Mrs Speight had put it on the market to sell it.
13. The Application was listed to be determined on the papers alone and neither party applied for an oral hearing.

The Notices

14. As noted above the Improvement Notice identified three hazards. These were damp and mould growth; falls on stairs; and, excess cold.
15. *Damp and Mould Growth – category 1 hazard.* The notice required the applicant to:
 - a) To undertake and commission an independent damp survey to diagnose current damp issues and to undertake all recommendations in the report.
 - b) To install a humidity-controlled extractor fan in bathroom;
 - c) To install slot-type ventilation to all windows where applicable.
16. *Fall on Stairs etc – category 1 hazard.* The applicant was required to:

- a) To install handrails on stairs to ensure there is a continuous and safe handrail the length of the stairwell.
- b) To ensure there is no more than 100mm gaps between spindles and where there is to undertake remedial works to ensure the gaps between spindles is less than 100mm.

17. *Excess Cold – category 2 hazard.* For this hazard the notice required:

- a) To ensure all radiators are working efficiently and effectively and that an internal temperature of 21°C can be maintained whilst outside is -1°C. This can be achieved in a number of ways, contact us for specific recommendations.
- b) To consider the upgrade of loft installation to a recommended depth of 257mm to help with energy efficiency of the dwelling.
- c) To consider the installation of TRV's on radiations to enable control of individual rooms to help with energy efficiency.

The Inspection

18. In the inspection, the Tribunal's view of the three hazards and the proposed works were:

19. *Damp and Mould Growth.* Upon arrival at the property, it was clear that work had been recently undertaken. The front and side of the property was newly rendered to a high standard, including the chimney stack. Internally, there was no evidence of damp or mould within the upstairs bedrooms. Within the bedrooms and bathroom, there was no smell of damp and or evidence of mould growth. However, it should be noted that the house had been completely redecorated in readiness to be sold. Whilst the weather has been hot recently, there has been significant heavy rain, but no evidence that this has penetrated the building. Therefore, it is likely that the work undertaken has successfully resolved the issue.

20. The other actions referred to in the notice, namely the installation of an extractor fan and trickle vents in windows in each room had been completed satisfactorily.

21. *Fall on Stairs etc.* The issues with the lack of handrails and wide spindle spacing had not been resolved. Whilst the calculations for the hazard had not been provided within the Council's evidence pack, the lack of handrails at the top and bottom of the staircase and the wide spacing of the spindles would likely result in a category 1 hazard.

22. *Excess Cold.* The Applicant stated that the radiators had been bled following the concerns raised and that had resolved the problem with the heating. It was not possible to confirm this, as being such a warm day, the heating was switched off.

23. The Applicant confirmed that neither of the other two items (extra roof insulation and TRVs on radiators) had been carried out. The roof space was not checked, but a visual inspection confirmed that TRVs were not fitted to the radiators. Both of these items were optional (given the wording of the improvement notice) and given that the property was for sale, entirely reasonable that they had not been undertaken.

Argument and Conclusion

24. Mrs Speight in her statement argued that she has sought to respond to complaints made by the tenant before he complained to the council. In particular:
- a) She had hired a dehumidifier early on in the tenancy. (She also had told the tenant not to dry washing in the house.)
 - b) Mould to the bathroom ceiling – a decorator was found to repaint using mould resistant the tenant had recommended.
 - c) Damp in the entrance - she had informed the tenant that re-rendering of all on the front of the house would be done in the New Year 2023.
 - d) The decorator was booked to 19 November 2022, and as was temporary repair to the front external wall for 24 November 2022.
 - e) The tenant cancelled the decorator, and the applicant cancelled the works on 24 November. The tenant stopped communicating with the applicant. Because of this she appointed agents to manage the property.
25. The relationship with the tenant was not helped by the fact that the agents served notice to evict him on 30 November 2022. We have been provided with evidence that the reasons to sell the property were financial. The notice to evict, or rather a slightly earlier more informal notice of this, may have triggered the complaint to the council. However, that is not relevant to the matters before the Tribunal.
26. Mrs Speight also complained the invitation from the council to attend the inspection on 15 December 2022, sent by 2nd class post, did not arrive until 29 December 2022. Accordingly she was not given the opportunity to inform the council that the works were scheduled to start on 4 January 2023. Nor to highlight that the tenant was routinely drying clothes inside the property.
27. Following receipt of the Improvement Notice, Mrs Speight repeatedly sought to contact the Council but phone calls went to voicemail and emails were not answered. The Council acknowledges that a call 1 February 2023 was missed due to workload pressures and that an email dated 13 February 2023 was not responded to.
28. As a litigant in person, Mrs Speight's has not clearly set out her grounds of appeal. However we have read them as including an appeal under Schedule 1, para.12 of the Act – that a better course of action was the serving of a hazard awareness notice.
29. The Council simply relied on the inspection and statement of reasons sent with the notice. This stated that 'a Hazard Awareness Notice was not deemed appropriate due to the seriousness of the hazard found and the fact that this approach does not require works to be undertaken.'
30. As a Tribunal we wish to note very poor communication from the Council. Even before the Notice was served, Mrs Speight was planning to undertake major works that would have resolved some of the issues. In our experience it is usual for Councils to seek to resolve concerns about unfitness without serving a formal notice. Better communication before or after the Notice would have given Mrs

Speight the opportunity to demonstrate her plans, as well as her willingness to complete other works.

31. As it is, our inspection has revealed that the Category 1 issue of damp and mould growth has been rectified. Although it was not possible to check the heating, in our view it is likely that the Category 2 excess cold problem has largely been resolved too.
32. That leaves the fall on stairs hazard. Given that the property is currently empty and for sale, in our view a hazard awareness notice is the appropriate action in this case.

RIGHTS OF APPEAL

33. 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.
34. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
35. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.
36. The application for permission to appeal must 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.