



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

Case Reference : CHI/00HH/HIN/2022/0031

Property : 8 Spencer Road, Paignton, Devon TQ3 3SX

Applicant : Anne Hoyle

Representative : Andrew Levy

Respondent : Torbay Council

Representative : Carole Knapp

Type of Application : Appeal against an Improvement Notice -
Housing Act 2004
Appeal against a demand for a payment of
a charge against enforcement action –
Schedule 3, para 11(1) Housing Act 2004

Tribunal members : D Banfield FRICS
N I Robinson FRICS
Ms P Gravell

Date of Hearing : 4 July 2023

Date of Decision : 7 July 2023

DECISION

Background

1. The Applicant seeks to appeal against an Improvement Notice and a Demand for Payment of a Charge for Enforcement Action in the sum of £179.55, both of which are dated 24 November 2022.
2. The application to the Tribunal was received by email on 2 December 2022.
3. The grounds of appeal were set out at part 16 of the application form.
4. The Applicant is the landlord of a three bedroom house known as 8 Spencer Road, Paignton, Devon TQ3 3SX (the Property).
5. Following an inspection of the Property the Respondent served on the Applicant an Improvement Notice pursuant to Sections 11 and 12 of The Housing Act 2004 (the Act) dated 24 November 2022. The Improvement Notice provided that the Respondent had identified Category 1 and Category 2 hazards at the Property. The Category 1 hazards were Fire and Excess Cold. The Category 2 hazards were Falling on Stairs, Food Safety, Electrical hazards and Damp and Mould.
6. The Applicant appeals against the Improvement Notice pursuant to paragraph 10(1) of Schedule 1 of the Act.
7. Directions were made by the Tribunal on 7 March 2023 setting out a timetable leading to an oral hearing on 18 May 2023. Due to an issue with an inadequate bundle and lack of access to relevant documents the hearing was adjourned and further directions made the same day requiring agreement of a revised bundle.

Documents

8. There was before the Tribunal a 182 page bundle which comprised the Applicant's application, the Directions of 7 March 2023, Statements of Case from both parties, a copy of the Improvement Notice, the Respondent's HHSRS scoring sheet, a number of photographs and a Property Inventory dated 30 August 2018.

The Inspection

9. The Tribunal indicated in its Directions that an inspection would not be carried out unless requested by a Party and gave permission for photographic evidence to be submitted if desired.

10. No request for an inspection was received and some photographic evidence is contained in the hearing bundle.

The Law

11. Part 1 of the Act provides for a system of assessing the condition of residential premises, and the way in which this is to be used in enforcing housing standards. It provides for a Housing Health and Safety Rating System (HHSRS) which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.
12. Local Authorities apply HHSRS to assess the condition of residential property in their areas. HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.
13. Section 2(1) of the Act defines hazard as “*any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)*”.
14. Section 2(3) provides “*regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur*”.
15. Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005.
16. Under Section 5 of the Act if a Local Authority considers that a Category 1 hazard exists on any residential premises, it must take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. If two or more courses of action are available the Local Authority must take the course which it considers to be the most appropriate. An Improvement Notice is included in the type of enforcement action that a Local Authority may take following identification of a Category 1 hazard.
17. Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority

to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include in Section 7(2) service of an Improvement Notice.

18. Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.
19. Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Categories 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person on whom it is served to take such remedial action in respect of the hazard as specified in the Notice.
20. Section 11(8) defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard and contains similar provisions to that in Section 11.
21. An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act.
22. The Appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority is unaware. The Tribunal may confirm, quash or vary the Improvement Notice. The function of the Tribunal on an Appeal against an Improvement Notice is not restricted to review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.
23. Reference to page numbers in the bundle is indicated by [x].

The Evidence

24. The Improvement Notice [99] identified the following hazards;
25. **Fire.** That the patio doors should be reinstated, ensure the door to the living/dining room is in working order, provide a well fitted solid door in good condition between the kitchen and escape route and thumb locks provided to final exit doors.

26. **Excess cold.** Replace the failed double glazing units.
27. **Falling on Stairs.** Fix the edges of the stair carpet.
28. **Food Safety.** Refix or repair drawer fronts, repair or replace cooker and replace seal between worktop and wall at the back of the sink.
29. **Electrical hazards.** Provide a cover for the open wiring in the understairs cupboard, cover or enclose in a cupboard the consumer unit and provide an adequate number of electrical sockets in the bedrooms and kitchen.
30. **Damp and Mould.** Repair or replace the mechanical ventilation in the bathroom.
31. The time for compliance for all of the above was stated to be 2 months.
32. The Respondent indicated that following consideration of the views of the Applicant and occupier, the impact on the environment and that a Section 21 notice requiring possession following complaint about condition an Improvement Notice was the most appropriate enforcement action for it to take.

The Hearing

33. The hearing was attended by Mr A Levy representing the Applicant, Mrs Anne Hoyle and Mrs Carole Knapp, Senior Environmental Health Officer for Torbay Council.
34. The Tribunal explained to the Parties that the Applicant's appeal was by way of a re-hearing before the Tribunal. The extent of the Tribunal's jurisdiction was also explained and the parties were asked to restrict their cases to matters capable of the Tribunal's determination. At an early stage it became apparent that Mrs Knapp was having difficulty in accessing some pages in the hearing bundle. Later in the proceedings it was also clear that the various attachments appended to the Applicant's statement had not been included in the bundle prepared by the Respondent. The Tribunal remained satisfied that it was able to hear the proceedings fairly and justly.
35. Mrs Knapp took the Tribunal through the HHSRS calculations [107].
36. **Fire.** The living room was an inside room, was separated from the kitchen by a folding door and there was no door between

the kitchen and the hallway. Whilst accepting that a suitably sized and located window was situated in the living room a more suitable escape route could be had if the locked patio door was made operable. Mrs Knapp expressed concern that a 5 year old child would be unable to escape through the window. A well fitted solid door should also be fitted between the kitchen and hallway. Mrs Knapp was unable to explain why Mr Marlow, who carried out the previous assessment had not included her proposals in his schedule of works [94]. She pointed out that Mr Marlow was covering for a regular employee due to the Covid emergency.

37. Mr Levy suggested that the patio door would be no more convenient for a child to open than escaping through the window given its weight. Mrs Hoyle had carried out Mr Marlow's requirements as requested and pointed out that it was the tenant's boyfriend who had broken the now missing door which the tenant had agreed to replace.
38. **Excess Cold.** Two sealed units had failed and required replacement. Mrs Knapp said that the failure was likely to reduce their effectiveness and hence increase the risk of cold. Example 9 in the RIAMS guidance suggested "a little bit more heat loss". In answer to the Tribunal's question on how single glazed windows would be assessed Mrs Knapp said that double glazing would be recommended but the outcome depended on the overall scoring.
39. **Falling on Stairs.** Mrs Knapp said that "some of the carpets were loose". Given that the photographs of the staircase [96 & 97] did not support the statement and Mr Levy asserted it was only a small corner that required sticking down the Tribunal asked to see photographic evidence in support of a wider issue. None however was available. Mrs Knapp was unable to identify the location of the carpets to which she had referred.
40. **Food Safety.** Mrs Knapp said that following the assessment she was sent a copy of the tenancy agreement which stated that the cooker was the tenants' responsibility [80] and could be removed from the schedule. Mr Levy said that the agreement had been sent to Mrs Knapp in November 2022 but had never received a response. Mrs Knapp was also concerned about a failed seal behind the sink which could cause deterioration to the cupboards. Clarification was given that her reference to drawer fronts not being able to be refixed referred to the tenant's ability to do so. In answer to a question from the Tribunal Mrs Knapp revised her score to "slightly more than average" Mr Levy noted that Mr Marlow hadn't identified any hazards at his inspection.

41. **Electrical Hazards.** Mrs Knapp said that there were insufficient power points in the bedrooms and that trailing leads were not acceptable. The two single bedrooms were occupied by the elder sons who had TVs and games devices plugged into such leads. The leads used in Mrs Hoyle's bedroom were removed when not in use. Mrs Knapp had followed the guidance on socket numbers provided by "Electrical Safety First" described as "The UK's electrical safety experts". Mrs Knapp considered that the advice was applicable to both existing and new build properties.
42. The consumer unit and associated supply wiring contained in the cupboard off the kitchen was used for storage and children could fall and displace cables exposing them to harm. She accepted that an Electrical Installation Condition Report (EICR) had been provided but couldn't recall whether it contained any recommendations. Mrs Knapp said she had looked at a worked example of an assessment of electrical hazards available from the RIAMS website when arriving at her own assessment of the likelihood of harm as 1:56. In a similar situation, but with the addition of broken sockets, the likelihood of harm had been increased to 1:10. This worked example was not available to the tribunal as it was not in the bundle. Mr Levy said that the certificate was unqualified however neither party had thought to include a copy in the bundle.
43. **Damp and Mould.** Mrs Knapp said that the photographs in the bundle [69,71 and 73] were taken by her on an inspection of the property on 3 April 2023 and showed evidence of mould. Mr Levy said that the photographs were not of the property as evidenced by the existence of ceramic wall tiles and a downlighter neither of which appeared in the photographs contained in the Property Inventory [85 to 89]. Given that the walls were covered in panels without the need for grouting any reference to it could not be correct. The Tribunal asked if the bathroom had a sloping ceiling as appeared to be apparent from Mrs Knapp's photographs, Mr Levy said it did not. Mrs Knapp also referred to the high damp readings she had taken.
44. Mr Levy expressed his dissatisfaction as to the manner in which the council conducted its proceedings and the lack of notice for the first inspection. He noted that the hand rail that had been provided but removed by the tenant had not been listed when it was clearly a hazard. Likewise the now replaced defective smoke alarms had not been identified.

45. Mrs Knapp said that notice was not required for an informal inspection. No challenge was made as to the notice given prior to the issue of the Improvement Notice.
46. With regard to timing to carry out any works Mr Levy said that Mrs Knapp had indicated that some flexibility was possible.
47. The parties agreed that of those matters referred to in the schedule the items remaining were;
 - Provision of additional sockets
 - Wiring to consumer unit
 - Repair to patio door
 - Provision of door between kitchen and hallway
 - Bathroom extractor fan.

The Tribunal's Decision

48. **FIRE.** The Tribunal is satisfied, as it appears Mr Marlow was also, that the existing escape route from the living room via the window is adequate. Whilst the tenant has accepted liability for replacing the missing door between kitchen and hallway the Tribunal considers that the landlord should ensure that the work is carried out.
49. **EXCESS COLD.** In the absence of evidence the Tribunal does not accept that the failure of the sealed units reduces their insulating properties sufficiently to increase the Hazard Rating Score as indicated. Whilst no doubt unsightly, the existence of two panes of glass set into a frame with suitable seals will possess significantly improved insulating properties than that of a traditional single glazed window.
50. **FALLING ON STAIRS.** On the evidence presented the Tribunal is not satisfied that this was any more than minor re sticking of a small area of carpet required. Despite the suggestion made during the hearing that there were more extensive areas the Tribunal notes that the Improvement Notice only refers to the “edges of carpet”
51. **FOOD SAFETY.** Now that the cooker has correctly been removed from the requirements Mrs Knapp acknowledges that the rating should be “slightly more than average” The Tribunal agrees.

52. **ELECTRICAL HAZARDS.** Given the existence of what the Tribunal accepts is an unqualified electrical safety certificate it is not agreed that the storage cupboard wiring constitutes a hazard. The Tribunal notes however that in the photograph of the consumer unit at [139] the plastic cover to the switches is sitting on top of the unit. This should be refixed.
53. Whilst the provision of additional sockets would no doubt be more convenient for the tenant the Tribunal is not satisfied that the current arrangement constitutes a hazard. This is a family house not an HMO where there would be a higher risk of high power items such as kettles and toasters being used in bedrooms. A single family member would typically be expected to use low power items in bedrooms. Mrs Knapp confirmed the items she had seen in use in the single rooms were low power appliances such as TVs and electronic games which the tribunal considers unlikely to overload the system.
54. **DAMP AND MOULD.** The Tribunal is not satisfied that the photographs contained in Mrs Knapp's evidence are of the subject property the differences between them and those contained in the Property Inventory not being capable of satisfactory explanation. (Agreed by the Respondent after the hearing) The Tribunal accepts that the wall coverings are as shown in the inventory and that no grouting is in existence to be affected by black mould. The Applicant accepts that the extractor fan in the bathroom is to be made working or replaced.
55. In summary the Tribunal determines that the following works are required;
- Provide a solid door between the kitchen and hallway
 - Repair seal behind sink unit
 - Refix cover to consumer unit
 - Ensure extractor fan to bathroom is operative.
56. The Tribunal has given careful consideration in relation to all of the hazards identified as to whether an Improvement Notice was the most appropriate enforcement action to take.
57. Section 5(2) of the Act identifies 7 types of enforcement action. The Tribunal accepts the Respondent's view that none of the hazards represent imminent danger to health and safety of the occupant which rules out the options of emergency remedial action and an emergency prohibition order or the radical options of demolition or clearance. The choice is therefore between a Hazard Awareness Notice, an Improvement Notice (with the possibility of suspending the Improvement Notice) and a Prohibition Order.

58. Given the relatively minor nature of the hazards identified, **the Tribunal is not satisfied that the most appropriate remedy was the issue of an Improvement Notice which is therefore quashed.** Mrs Hoyle had demonstrated her willingness to engage with the Council when dealing with Mr Marlow's schedule and it is anticipated that a similar approach would have been more productive than that taken.
59. The Tribunal therefore determines that the most appropriate action would be the making of a Hazard Awareness Notice comprising the matters referred to in paragraph 55 above.
60. **The Tribunal has determined that the serving of an Improvement Notice was unnecessary which must also include the associated costs incurred. The Tribunal therefore determines that the charge of £179.55 is not payable.**

D Banfield FRICS (Chairman)

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. If the person wishing to appeal does not comply with the 28 day time limit, the 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.
4. 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.