



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

Case Reference	:	CHI/00LC/HIN/2023/0025
Property	:	81 Thorold Road, Chatham, Kent ME5 7DS
Applicant	:	Patricia Baldwin
Representative	:	
Respondent	:	Medway Council (Private Sector Housing)
Representative	:	Mr Venky Krishnan, Medway Council & Gravesham shared Legal Services
Type of Application	:	Appeal against an Improvement Notice
Tribunal members	:	D Banfield FRICS (Chairman) K Ridgeway MRICS E Shaylor MCIEH
Date and place of Hearing	:	14 November 2023 at Havant Justice Centre and by Cloud Video Platform (CVP)
Date of Decision	:	20 November 2023

DECISION

The Tribunal dismisses the Appeal and confirms the making of the Improvement Notice dated 24 May 2023 together with the sum of £727.32 being the costs referred to in the Notice of Demand of the same date.

Background

1. The Applicant seeks to appeal against an Improvement Notice dated 24 May 2023 issued by the Respondent Council. The Appeal was received on 10 June 2023.
2. Directions were made on 7 September 2023 setting out a timetable for the exchange of cases leading to the preparation by the Applicant of a hearing bundle and an oral hearing which took place on 14 November 2023 at Havant Justice Centre. References to pages in the Hearing Bundle are given in [] Mr Coward's statement and annexes are not however numbered but will be described if referred to.
3. The grounds of appeal were set out at part 16 of the application form.
4. The Applicant is the landlord of a Victorian two storey two bedroom house with ground floor kitchen and first floor bathroom ("the Property").
5. Following an inspection of the Property on 19 May 2023 the Respondent served on the Applicant an Improvement Notice pursuant to Section 12 of The Housing Act 2004 (the Act) dated 24 May 2023. [21] The Improvement Notice provided that the Respondent had identified Category 2 hazards at the Property namely Damp and Mould growth, Carbon Monoxide and fuel combustion products, Domestic Hygiene Pests and Refuse and Fire. Specified remedial action is in each category to be completed by 2 August 2023.
6. The Applicant appeals against the Improvement Notice pursuant to paragraph 10(1) of Schedule 1 of the Act.
7. There was also a Notice of Demand for Payment of a Charge for Enforcement Action dated 24 May 2023 for £727.32. [29]

Documents

8. There was before the Tribunal a 147 page hearing bundle, the Applicant's skeleton argument and a 366 page bundle containing Mr Coward's witness statement and exhibits.

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 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.

The Hearing

23. The hearing was attended by the Applicant, Ms P Baldwin and on behalf of the Respondent was Mr Venky Krishnan and Mr Michael Coward. Mr Banfield was in Havant Justice Centre all others appearing by CVP.

24. 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.
25. The Applicant said that she accepted that the work identified in the Improvement Notice was required and did not challenge the HHSRS ratings.
26. In explaining her grounds for objecting to the Notice Ms Baldwin said that;
- She had to sell the property now that her interest only mortgage was coming to an end
 - The tenant had in June 2022 told her that the property was too small and agreed to move
 - The house had been put on the market and viewings arranged, and a condition inspection on 6 August 2022 had been arranged by her agents which revealed the need for remedial works
 - The condition of the property had not been mentioned by the tenant and her builder said the repairs had been left too long and would now need the tenant to vacate before it was possible for the work to be carried out
 - The tenant had sought help from the Council but none had been forthcoming, instead the Council had told the tenant not to move until a Court Order had been obtained
 - Whilst another way was preferred her only solution was to serve a S.21 Notice
 - In December 2022, the tenant contacted the Council about the disrepair in the property and the Council arranged an inspection
27. In cross-examination by Mr Krishnan Ms Baldwin said that;
- The tenant had been in occupation since 2012 being the third tenant she had had since purchasing in 2004
 - She accepted that the landlord was responsible for repairs
 - Her builder had dealt with the mould in the bathroom in 2019, using chemicals and replastering; it took a week with the tenant in situ
 - Her agent collects the rent but doesn't manage the property on her behalf
 - She last visited the property in the early 2000s and relies on the agent to deal with any issues with the property
 - The rent was £575 per month for a long time but is now £1,150 although the tenant only pays her £850
 - The current tenancy ended on 16 June 2022 and the tenant originally agreed to move but later changed her mind
 - A second S.21 notice had to be served as the first one lapsed

- A S.21 notice was served in August 2022 giving 2 month's notice, the tenant agreed to vacate
 - Following the inspection on 6 August 2022 she would have had the work done but the builder said that the property was too cramped to work in with young children. However she does not agree that she should carry out the work when the tenant was due to vacate
 - She accepts that mould and damp were present but asked "How does tenants' rights interfere with her finances?" and said that the tenant had not brought the matters to her attention
 - She received the Council's letter of 5 January 2023 with the schedules attached detailing the works required to be completed by 17 February 2023 and which referred to wishing to follow an informal approach.
 - She did not agree that some of the more minor items could be carried out with the tenant in situ and in any case the property was going to be sold and the tenant evicted, so she did not agree that she was obliged to carry out repairs in those circumstances as the new owner would do their own works
 - She was disappointed that the Council did not accept this explanation
 - She does not agree that she failed in her duty towards the tenant.
28. In answer to questions from the Tribunal Ms Baldwin said that her interest only mortgage matured in 5 years and that once paid off she would have money left over. However, during her ownership she had increased her borrowing and provided new bathroom, kitchen, central heating and double glazing. The boiler was last replaced in 2021. Increasing interest rates were making the monthly repayments difficult to afford and she said she was in arrears.
29. Ms Baldwin said that her main argument was that the Council could have dealt with the matter a different way, such as by moving the tenant and her children into alternative accommodation thus giving her vacant possession.
30. Ms Baldwin said that the Carbon Monoxide alarm referred to in the HHSRS assessment was referred to in the gas safety certificate that was still current. The agents arranged all inspections in good time.
31. Mr Krishna then called Mr Michael Coward; Senior Private Sector Housing Officer employed by the Respondent.

32. Mr Coward took the Tribunal through the photographs at pages 157 to 197 of his bundle illustrating the various wants of repair referred to in the HHSRS assessment. He considered that the mould in the bathroom [175] would have taken months to develop. The damp was not assisted by the extensive vegetation in the gutter above [169].
33. Mr Coward went through the procedures leading to the service of the notice which was necessary in the absence of work being carried out there being no alternative.
34. He did not accept that the work could not be conducted with the tenant in situ and referred to the wording of the builder's letter of 6 August 2022 which referred to "work would be better to be carried out once the Tenant is not in the property" [107]
35. In other similar cases landlords had provided alternative accommodation whilst works were undertaken and this should have been considered here.
36. Mr Coward said that "being sold" is not a sufficient reason not to serve a notice unless a definite end date is in sight. E.g. going to auction.
37. It is not acceptable for a tenant to be left in poor conditions whilst the eviction process is ongoing.
38. In cross examination Ms Baldwin referred to the photograph of the bathroom [120] showing its good condition following works in 2020. The gutters had also been cleared about 5 years ago.
39. In answer to a question from the Tribunal Mr Coward said that he considered that the time given to carry out the works was sufficient and if some progress had been made a reasonable extension could have been given.

The Tribunal's Decision

40. Ms Baldwin does not challenge the contents of the HHSRS rating and the Tribunal has not therefore had cause to examine its contents.
41. As Mr Krishna had acknowledged, Mrs Baldwin had for the most part been a good landlord, with her tenant having been in occupation for over 10 years. Improvements had been conducted during the life of the tenancy and Ms Baldwin

readily acknowledged responsibility to maintain the property for her tenant.

42. It is clear from the content of the Improvement Notice that works were required to put the property in repair and the issue for the Tribunal is whether Mrs Baldwin's intention to sell was relevant to whether the Notice should have been served.
43. Mr Coward has said that the property being on the market is not relevant to whether the service of a Notice was appropriate and this Tribunal agrees. Section 2(1) of the Act makes it clear that the landlord's responsibility is to "*any risk of harm to the health or safety of **an actual or potential occupier***" and this must therefore include those currently residing at the property. Whilst the Tribunal understands the situation in which Ms Baldwin finds herself that does not remove her responsibility to maintain the property to an acceptable standard whilst it remains occupied.
44. **The Tribunal therefore dismisses the Appeal and confirms the making of the Improvement Notice dated 24 May 2023 together with the sum of £727.32 being the costs referred to in the Notice of Demand of the same date.**

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.