



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

Case reference : **LON/00BB/HIN/2023/0006**

Property : **Flat B 9 - 11 Adine Road E13 8LL**

Appellant : **Mr Leon Smith**

Representative : **In Person**

Respondent : **London Borough of Newham**

Representative : **Opeyemi Alabi - Senior Environmental Health Officer**

Type of application : **Appeal in respect of an Improvement Notice: Sections 11 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.**

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Mr. A. Fonka FCIEH, CEnvH, M.Sc.**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **2 November 2023**

DECISION

Decision of the tribunal

- (1) The improvement notice served by the London Borough of Newham on 27 January 2023 in respect of Flat B 9 - 11 Adine Road E13 8LL (the property) is confirmed. The appeal by Mr Leon Smith is therefore dismissed.

Reasons for the tribunal's decision

Introduction

1. Mr Leon Smith appealed against the service of an improvement notice under section 11 of the Housing Act 2004 by the London Borough of Newham in respect the property.
2. The improvement notice was served on 27 January 2023. The appeal to the tribunal was received on 22 February 2023, directions were issued on 23 May 2023 and the matter was heard on 2 November 2023. The tribunal did not inspect the property prior to the hearing.
3. At the hearing, the Appellant appeared in person; the Respondent was represented by Opeyemi Alabi, a Senior Environmental Health Officer with the Council.

Background

4. The property is a first floor 2 bedroom flat in a converted 2 storey building. The leasehold title is owned by the Appellant.
5. The flat has a selective licence issued on 7 June 2018 for occupation by a single household comprising of 4 persons. The flat is occupied by the tenant, his wife and 4 children.
6. The Appellant let the property to the tenant, who has been in occupation since 2010 and complained to the council on 15 December 2022 that, amongst other things there was mould and damp in the property and the bathroom floor had collapsed.
7. As a result, Ms Alabi of the Respondent council, inspected the property on 19 December 2022. On 21 December 2022, she wrote to the Appellant setting out that a category 1 hazard existed at the property and inviting the Appellant to contact her within 14 days. An exchange of emails followed but written assurance confirming the works would be carried out was not received and the Council served an Improvement notice on 27 January 2023.

8. The Improvement Noted required remedial work to start no later than 24 February 2023 and to be completed by 10 March 2023. The Improvement Notice annexed two schedules as follows:

- (i) Schedule 1 identified 4 defects assessed under the Housing Health and Safety Rating System (HHSRS) as resulting to a category 1 hazard of damp and mould growth, namely:
1. Severe damp and mould growth on the rear bedroom ceiling/wall.
 2. Damp and mould growth on the bathroom ceiling.
 3. Damp and mould growth on the wall and wall/ceiling joints in the living room.
 4. Extractor fan in the bathroom is faulty.

(ii) Schedule 2 identified all of the work necessary to deal with the hazards that had been identified.

1. Arrange a damp proof specialist/surveyor to examine the affected walls and ceiling for the presence of damp and mould growth and the condition of the roof insulation. Pay particular attention to the following areas: -

- Rear Bedroom ceiling and wall
- Bathroom ceiling
- Living Room wall and ceiling

Provide a copy of the damp proof report to the case officer and arrange to carry out all the required remedial works recommended by the specialist in the report to remedy damp and mould growth hazard within the property.

2. Repair or replace the extractor fan in the bathroom and leave in good working order.

9. The Improvement Notice was served on the Appellant, the tenant, the managing agent and the Appellants mortgage lenders. Following service of the Improvement Notice, the Appellant lodged an appeal on 9 February 2023 but not received by the tribunal until 22 February 2023. In the appeal form, the Appellant provided no grounds for the appeal.

The law

10. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS).

11. Where a hazard or several hazards in a property are rated as HHSRS category 1 hazards, the options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 among others.
12. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.
13. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out the works.
14. Appeals in respect of improvement notices are dealt with in Part 3 of Schedule 1 to the Act. Paragraph 10 of that schedule gives a relevant person a general right of appeal against service of an improvement notice. Paragraphs 11 and 12 provide:

11(1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

“12(1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

(2) The courses of action are:

(a) making a prohibition order under section 20 or 21 of this Act;

(b) serving a hazard awareness notice under section 28 or 29 of this Act; and

(c) making a demolition order under section 265 of the Housing Act 1985(c. 68).

The grounds of appeal

15. The Appellant's case is that their tenant reported the matters to the council and not to him so that he had no opportunity to deal with the disrepair before the Respondent became involved and served an improvement notice in respect of the category 1 hazard identified by the resulting inspection.
16. As set out in his hearing bundle, the grounds of appeal were set out as follows.
 - (a) He was unable to carry out remedial works as he had not been notified by the tenants that there was an issue. This meant he had no opportunity to avoid the service of the Improvement Notice and the imposition of an administration charge by the Respondent under s49.
 - (b) He was due to carry out remedial works to the bathroom floor at about that time but that was the only item of work which he was aware of.
17. At the hearing the tribunal took evidence and submissions from the Appellant, in respect of each of the grounds of appeal in turn.
18. The appellant confirmed he had no issue with the actions of the council and that the works required by the Notice were justified.
19. At the hearing the Respondent confirmed they were happy the works had been completed.

The tribunal's reasons for rejecting the appeal

20. The Appellant accepted that the works required were necessary and the assessment of the hazards and the remedial works specified by the Respondent was not challenged.
21. There is no right of appeal against a charge under s49. The charge can only be quashed if the Improvement Notice is quashed by the tribunal.
22. The grounds on which the tribunal can quash a notice are
 - a) The notice is served on the wrong person
 - b) Someone else needs to pay for the works
 - c) The council have served the wrong notice.
23. None of those circumstances apply.

24. In all the circumstances, it is not considered that the decision to serve an improvement notice was disproportionate. The appeal is therefore dismissed.

Name: A Harris

Date: 2 November 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.

If the First-tier Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).