



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

Case Reference : **MAN/30UJ/HED/2023/0002**

Property : **36 Dover Street, Nelson, BB9 7RF**

Applicant : **Mr Sharaz Manzur**

**Respondent
Represented by** : **Pendle Borough Council
Ms Emma Barker, Legal Services Manager.**

**Type of
Application** : **Demand for recovery of expenses, Section 31
and Schedule 3, Part 3, Housing Act 2004**

**Tribunal
Members** : **Judge C. P. Tonge LLB, BA.
Mr A. Hossain, MRICS, BSc.**

Date of Decision : **1 March 2024**

DECISION

Background

1. This case comes before the Tribunal pursuant to an application made by Mr Sharaz Manzur, “the Applicant” who first made his intention clear that he sought to challenge this demand for recovery of expenses in an email to the Tribunal office, dated 15 September 2023.
2. The Respondent Council served an Improvement Notice, relating to 36 Dover Street, Nelson, BB9 7RF, “the property” on 12 January 2022, remedial action to be completed by 11 March 2022. The remedial action was not completed by that date. The notice identified five category one hazards, namely damp and mould growth (10 defects), excess cold (7 defects), entry by intruders (3 defects), electrical hazards (9 defects) and risk of explosions (3 defects).
3. On 28 July 2022 the Respondent sent a letter to the Applicant stating that the Respondent had decided that it would undertake the remedial works and invoice the Applicant for the cost of those works. This was accompanied by a notice of the Respondent’s intention to enter the property to execute the works required pursuant to the Improvement Notice. The works were carried out by a contractor appointed by the Respondent during the period of August 2022 to November 2022.
4. On 18 July 2023 the Respondent sent a demand for payment relating to the cost of this work of £9,633.90, accompanied by an invoice, to the Applicant.
5. On 7 June 2023 the Tribunal received an application from the Applicant seeking to appeal against the improvement notice. Various communications followed between the Tribunal and the Applicant, with a Case Management Conference being held on 23 October 2023, presided over by Deputy Regional Judge Bennett.
6. On 6 December 2023 Deputy Regional Judge Holbrook handed down a Case Management Note in which he decided that the application to appeal the Improvement Notice could not proceed any further because it was made late, the last date on which it could properly be made was 2 February 2022. There was no good or sufficient reason to extend that time limit to 7 June 2023.
7. During the correspondence between the Tribunal and the Applicant it had become clear that the Applicant sought to challenge the demand for reimbursement of cost of the works carried out by the Respondent of £9,633.90. Deputy Regional Judge Holbrook decided that this application could proceed.

8. Directions were issued on 7 December 2023, indicating that the Tribunal presiding over the final hearing would determine if an inspection of the property was necessary.
9. The Applicant has served a bundle of 40 pages, including a 5 page critique of the works done by the Respondent and the cost of the work carried out. There are 10 photographs, an estimate for the cost of work that is said to cover the remedial work required pursuant to the improvement notice and a quantity of screen shots from the Applicant's mobile telephone.
10. The Respondent has served a bundle of 83 pages with an additional set of papers, bringing their bundle up to 93 pages. This includes a statement of case, a report from Housing Enforcement Officer Gott, a statement from Housing Technical Officer Blackburn, 6 photographs, the Improvement Notice, a demand for payment and various other exhibits.
11. The Tribunal arranged for a hearing to take place over the Tribunal's video hearing platform on 1 March 2024.
12. On 29 February 2024, the Applicant sent an email to the Tribunal seeking an adjournment of the case due to take place on the following day so that he could instruct a solicitor to represent him at a hearing to be fixed at some date in the future.
13. This application to adjourn the case was put before Judge Tonge who sat on 29 February 2024 to consider the application. Judge Tonge decided that the hearing scheduled for the following day would continue, there being no good or sufficient reason to adjourn the hearing.
14. The Tribunal copies the reply sent to the Applicant: "This case has been pending for some time. The Parties were notified of the hearing date on 5 February 2024. On 29 February 2024, the day before the hearing, the Applicant seeks to adjourn the hearing so that he can instruct a solicitor. The Applicant has the right to be represented by a solicitor at the hearing, if he chooses to be so represented. However legal representation should have been arranged in good time before the hearing. The Applicant, having failed to arrange legal representation, should now instruct a solicitor that can appear at the hearing tomorrow (notifying the tribunal office of that solicitors details), or continue as a litigant in person. If the Applicant represents himself and has difficulty formulating questions to ask, the Tribunal will assist him in that regard. The case will be heard tomorrow, 1 March 2024."

The law

The Housing Act 2004

Section 31 Enforcement action by local housing authorities

Schedule 3 (which enables enforcement action in respect of an improvement notice to be taken by local housing authorities either with or without agreement and which provides for the recovery of related expenses) has effect.

Schedule 3, part 2

Paragraph 3 Power to take action without agreement

- (1) The local housing authority may themselves take the action required to be taken in relation to a hazard by an improvement notice if sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the notice is not complied with in relation to that hazard.
- (3) This sub-paragraph applies if, before the end of the period which under section 30(2) is appropriate for completion of the action specified in the notice in relation to the hazard, they consider that reasonable progress is not being made towards compliance with the notice in relation to the hazard.
- (4) Any person authorised in writing by the authority may enter any part of the specified premises for the purposes of the taking of any action which the authority are authorised to take under this paragraph.
- (5) The right of entry conferred by sub-paragraph (4) may be exercised at any reasonable time.
- (6) Any reference in this Part of this Schedule (of whatever nature) to a local housing authority entering any premises under this paragraph is a reference to their doing so in accordance with sub-paragraph (4).
- (7) In this paragraph “*improvement notice*” means an improvement notice which has become operative under Chapter 2 of Part 1 of this Act.

Paragraph 4 Notice requirements in relation to taking action without agreement

- (1) The local housing authority must serve a notice under this paragraph before they enter any premises under paragraph 3 for the purpose of taking action in relation to a hazard.
- (2) The notice must identify the improvement notice to which it relates and state—
 - (a) the premises and hazard concerned;

- (b) that the authority intend to enter the premises;
- (c) the action which the authority intend to take on the premises; and
- (d) the power under which the authority intend to enter the premises and take the action.

(3) The notice must be served on the person on whom the improvement notice was served, and a copy of the notice must be served on any other person who is an occupier of the premises.

(4) The notice and any such copy must be served sufficiently in advance of the time when the authority intend to enter the premises as to give the recipients reasonable notice of the intended entry.

(5) A copy of the notice may also be served on any owner of the premises.

Paragraph 5 Obstruction of action taken without agreement

- (1) If, at any relevant time–
 - (a) the person on whom the notice under paragraph 4 was served is on the premises for the purpose of carrying out any works, or
 - (b) any workman employed by that person, or by any contractor employed by that person, is on the premises for such a purpose,
 that person is to be taken to have committed an offence under section 241(1).
- (2) In proceedings for such an offence it is a defence that there was an urgent necessity to carry out the works in order to prevent danger to persons occupying the premises.
- (3) In sub-paragraph (1) “*relevant time*” means any time–
 - (a) after the end of the period of 7 days beginning with the date of service of the notice under paragraph 4, and
 - (b) when any workman or contractor employed by the local housing authority is taking action on the premises which has been mentioned in the notice in accordance with paragraph 4(2)(c).

Paragraph 6 Expenses in relation to taking action without agreement

- (1) Part 3 of this Schedule applies with respect to the recovery by the local housing authority of expenses incurred by them in taking action under paragraph 3.
- (2) Sub-paragraph (3) applies where, after a local housing authority have given notice under paragraph 4 of their intention to enter premises and take action, the action is in fact taken by the person on whom the improvement notice is served.
- (3) Any administrative and other expenses incurred by the authority with a view to themselves taking the action are to be treated for the purposes of Part 3 of this Schedule as expenses incurred by them in taking action under paragraph 3.

Schedule 3, part 3

Paragraph 7 Introductory

This Part of this Schedule applies for the purpose of enabling a local housing authority to recover expenses reasonably incurred by them in taking action under paragraph 3.

Paragraph 8 Recovery of expenses

- (1) The expenses are recoverable by the local housing authority from the person on whom the improvement notice was served (“the relevant person”).
- (2) Where the relevant person receives the rent of the premises as agent or trustee for another person, the expenses are also recoverable by the local housing authority from the other person, or partly from him and partly from the relevant person.
- (3) Sub-paragraph (4) applies where the relevant person proves in connection with a demand under paragraph 9–
 - (a) that sub-paragraph (2) applies, and
 - (b) that he has not, and since the date of the service on him of the demand has not had, in his hands on behalf of the other person sufficient money to discharge the whole demand of the local housing authority.
- (4) The liability of the relevant person is limited to the total amount of the money which he has, or has had, in his hands as mentioned in sub-paragraph (3)(b).
- (5) Expenses are not recoverable under this paragraph so far as they are, by any direction given by [the appropriate tribunal]¹ on an appeal to the tribunal under paragraph 11, recoverable under an order of the tribunal.

The hearing

15. The video hearing commenced at 10.30 am on 1 March 2024. The Applicant appeared to represent himself. The Respondent Council was represented by Ms Emma Barker with three employees of the Respondent present, being Housing Enforcement Officer Gott, Housing Technical Officer Blackburn and Residential Team Leader Whitwell.
16. The Tribunal members sat in private conference before the case commenced to discuss the written evidence and the issue of whether or not an inspection of the property is necessary.
17. At the commencement of the hearing Judge Tonge indicated that the Tribunal had come to the preliminary view that an inspection of the property is not necessary, because there are 16 photographs of relevant parts of the property and the remedial work required has been completed.

The Respondent agreed with this view. The Applicant indicated that he took the view that an inspection of the property is necessary, so that the Tribunal could see that the remedial work was not done to a reasonable standard and in particular to see the wall in the rear living room where remedial work has been undertaken to combat damp. The Applicant has exhibited one photograph of this wall, being the fifth photograph in the collection of ten photographs. The Respondent has exhibited 2 photographs of the wall.

18. The Tribunal determined that this issue would be kept under review and that if, after considering all the evidence in the case, the Tribunal considers it necessary to inspect the property, then an inspection will be arranged. The applicant did not renew his application (made yesterday) to adjourn the hearing.
19. The Respondent's case was presented.
20. Officer Gott summarised her involvement in the case, being, the inspections of the property, issue of the improvement notice, the Applicants failure to comply with the requirement to undertake the remedial works and the decision taken that the Respondent would undertake the remedial work itself, demanding payment from the Applicant for the work that had to be done. A Technical Officer, employed by the Respondent was given the task of preparing a schedule of works that needed to be carried out and this was detailed in a document entitled 'Instructions to Contractor Works in Default'. That officer then gave his estimate as to how much he expected each item of work to cost, endorsing the figure on one copy of this form. The total came to £7,745 (Respondent's bundle, 3.7 Appendix 7).
21. Two contractors were then chosen from the Respondent's list of approved contractors and copies of the form Instructions to Contractor Works in Default were sent to them. These did not have the estimated costs shown upon them. The two contractors completed their forms, showing what they would charge for each item of work and returned the forms to the Respondent. The lower of the two tenders was accepted by the Respondent at an estimated cost of £6,182.72.
22. On 28 July 2022, Officer Gott sent a letter to the Applicant informing him that since he had failed to comply with the Improvement Notice, the Respondent would now undertake the work, required by the notice. At the same time Officer Whittaker sent the Applicant a Notice of Local Authority's Intention to Enter and Execute Works, under section 31 and schedule 3, paragraph 3 of the Housing Act 2004 "the Act".

23. Whilst the contractor was dealing with the remedial works at the property it reported that additional work was required, over and above that specified on the Instructions to Contractor Works in Default. These additional works being necessary to properly remedy the faults that existed at the property. Officer Blackburn dealt with the further works that he agreed were necessary. The first additional works being that on 17 August 2022 the Respondent had received an email from the contractor that there were problems with the electrical installation and that five items of additional work had to be completed. This work was authorised and carried out at an additional cost of £287.59 with a further cost of £290.95 for chasing and then patching up with bonding and a skim of plaster.

24. The contractor further notified the Respondent that the works that had been specified in the schedule of works to prevent penetrating damp had been carried out, but that the damp had not have been completely prevented. A subcontracted company prepared a survey report on the damp, indicating that further work was necessary. This was authorised at a cost of £3,381.62 by Officer Whitwell on 20 October 2022 (Respondent's bundle, 3.10, Appendix 10). The specialist subcontractor discovered a problem with rising damp and undertook additional work, supported by a 10 year guarantee.

25. Officer Blackburn inspected the property on 30 March 2023 and listed a number of works that had not been completed by the contractor. He contacted the contractor and arranged a joint visit to the property. Matters were resolved under snagging works or where that could not be achieved, by taking the cost of the item off the demand for reimbursement that was then sent to the Applicant. It was not possible to have an electrical ECIR certificate completed because the electrician could not gain access to the property.

26. The final demand for reimbursement is calculated as follows:

• Work on the instructions to contractor	£6,182.72
• Additional rising damp work	£3,381.42
• Additional electrical work	£287.59
• Additional chasing and plastering	£290.95
• Deduction for no ECIR certificate	-£287.59
• Deduction for no security light (tenant's request)	-259.16
• Deduction for not replacing blown double glazed panel	-£312.59.
• Additional costs for time spent by Respondent's Officers	£326.65
• Additional costs for administration work	£23.91
Total	£9,633.90

27. A demand for reimbursement for the sum of £9,633.90 was sent to the Applicant on 18 July 2023.

28. Officer Blackburn was cross examined and stated that he had absolutely no doubt that the additional work was required and that it was therefore authorised. The photographs attached to his statement were of the area where additional works had been carried out to prevent rising damp after the penetrating damp had been dealt with. The Tribunal comments that this area is the area that the Applicant particularly wants the Tribunal to inspect.

29. The Officer was asked about how the Respondent had dealt with the possibility of the Applicant evicting the tenant from the property and said that it is not possible to evict a tenant whilst an Improvement Notice is pending. A letter was sent to the tenant and the Applicant pointing this out.

30. The Applicant pointed out that he has 32 years' experience as a buyer of items for dental use and was, until 8 years ago a 16th edition electrician. He challenged the costs of the remedial work as being excessive, indicating that in his view the additional rising damp work should only have cost £800. Officer Blackburn did not agree with this.

31. The Tribunal asked various questions relating to the additional works to test whether or not they were necessary.

32. The Applicant gave evidence and went through each of his 10 photographs, taken during January 2023. The Applicant made it clear which item of work (as per the Instructions to Contractor form) that the photograph referred to. In general he stated that the work was too expensive and not completed to a good standard.

33. The Applicant referred to the invoice that he had exhibited from LPM Lancashire Property Management that is undated and gives an estimate for the work on the Instructions to Contractor form of £2,495. He agreed that this invoice had been obtained long after the work had been completed. He also agreed that the costs of materials had been higher during the period that the work was carried out by the Respondent due to shortages of materials brought about by the Covid 19 pandemic.

34. The Applicant has served a statement challenging some of the individual costs for work described in the Instructions to Contractor form.

35. The Applicant stated that he would have had the remedial work done at his expense but could not gain access to his own property because the tenant would not allow him access to the property.

36. The Tribunal notes that the Applicant was able to gain access to the property to take the photographs that he has relied upon. Further, there is evidence in the Respondent's hearing bundle that during the period covered by this case a Notice was served pursuant to section 80 of the Environmental Protection Act 1990, relating to the provision of hot water in the property and that the tenant did permit access for this work to be done. The Notice was issued by Officer Whittaker on 13 May 2022. Further, the Respondent was able to gain access to the property to inspect it on several occasions and the chosen contractor was able to gain access to work at the property, discussing the fact that a tenant did not want a security light fitting.

37. The Applicant exhibits a number of screen shots from his mobile telephone that are meant to support the fact that he was having difficulty gaining access to the property. It is clear that these refer to the Notice in paragraph 36, above. One of the messages actually refers to an application for additional time to comply with the Environmental Protection Act 1990 Notice.

Determination

38. The Tribunal again considered whether or not an inspection of the property is necessary to view the quality of the work carried out by the contractor engaged by the Respondent, in particular to the walls that were subject to remedial work to eradicate damp.

39. The Tribunal has seen 16 photographs taken inside this property. Ten of these have been taken by the Applicant who has gone into detail as to what the photographs show. Three photographs show the walls that have been subject to the work to eradicate damp, one taken by the Applicant. The Tribunal also notes that the Respondent's contractors could not gain access to the property to conduct the electrical inspection for the ECIR report. Further, the Applicant states that he had difficulty gaining access to the property, this being his reason for not carrying out the remedial works himself.

40. The Tribunal determines that it not necessary to delay the conclusion of this case so that an inspection of the property can take place.

41. The Tribunal accepts that from time to time there have been difficulties in gaining access to the property. There is no appeal against the Improvement Notice. The Applicant had his chance to comply with that Notice and he did not do so. The Respondent then had to decide what action to take in the circumstances presented to them. They could have commenced a criminal prosecution. They could have imposed a Civil Financial Penalty. They chose to complete the remedial works themselves and demand reimbursement of the cost of undertaking the remedial

works, pursuant to paragraph 3 of Schedule 3, Part 3, of the Housing Act 2004.

42. The Tribunal agrees with the Respondent that this was a perfectly reasonable approach to take.
43. The Tribunal is impressed with the work that went into the preparation of the Instructions to Contractor Works in Default form and notes that a Technical Officer estimated that the work should cost in the region of £7,745. The lowest tender was accepted. Again, in the judgement of the Tribunal a reasonable approach to take.
44. Works were undertaken. It was found that additional work was required over above the initial specifications. This would have been the case no matter who undertook the work. The additional works were considered by the Respondent's Officers and approved.
45. The Tribunal has tested the necessity for the additional works to be carried out and determines that they were necessary to complete the remedial work.
46. Remedial work has been carried out and it must be paid for, the only question is whether to permit the whole sum demanded or to reduce that figure due to the evidence called by the Applicant. The Tribunal determines that the Respondent was careful to ensure that value for money was achieved in carrying out these remedial works.
47. The Tribunal is not impressed by the Applicant's evidence.
48. The Applicant seeks to rely on an estimate for the works at a cost of £2,495. The invoice is undated but has been completed after the work had been carried out by the Respondent. As such the representative of LPM Lancashire that provided the estimate could not have looked at the work that needed to be done. If the estimate was provided from the Improvement Notice, then it must have been clear that the work had already been done because of the age of that Notice. Hence, the person completing the estimate would have known that his or her firm would not be engaged to undertake the work.
49. The Estimate has 17 briefly described items of work to be done, none of which are priced individually. This is to be compared with the Respondent's Instructions to Contractor Works in Default form that takes three pages to detail the remedial work to be carried out. The Instructions to Contractor Works in Default form does not mention VAT because the Respondent is registered for VAT and will be able to claim the VAT paid to its contractor as an input against its own VAT bill. The Applicant's

estimate should include VAT and does not. The Tribunal determines that this is not a credible quote and we give it no evidential weight.

50. The Applicant seeks to persuade the Tribunal that all the items of work and additional work that have been carried out have been charged for at too high a value, but his opinion on these matters is largely based on guess work. He has not provided any supporting evidence as to the cost to purchase anything that would have to be purchased to carry out this work and has not provided any credible evidence as to how much should have been charged for the labour involved.
51. The Tribunal accepts the Applicant's evidence that he had a certificate that qualified him to work as an electrician, lapsing 8 years ago. He did not state how many years' experience he has (if any) in working as an electrician, stating that he has 32 years' experience as a buyer of dental supplies. The Tribunal determines that this does not make his personal estimates as to the cost of work reliable or persuasive.
52. The Applicant seeks to challenge the quality of the work as carried out by the Respondent's contractor. The Tribunal has viewed the photographs and listened to the evidence of the Applicant and the Respondent's Officers. The Tribunal determines that the work carried out by the Respondent's contractor is up to an acceptable standard, or if it was not it was caught by the Respondent's inspections and snagging work or not recharged to the Applicant at all.
53. The Tribunal determines that it is fair, just and reasonable to approve the demand for reimbursement of the full amount as claimed by the Respondent, namely £9,633.90.

Decision

54. The Tribunal decides that the Respondent is entitled to claim reimbursement of the sum of £9,633.90, pursuant to section 31 and paragraph 7 of Schedule 3, Part 3, of the Housing Act 2004. This amount is payable forthwith.
55. Appeal against this decision is to the Upper Tribunal. If any party to the case should wish to appeal against this decision, then that party has 28 days from the date that the decision is sent to the parties to deliver to this First-tier Tribunal an application for permission to appeal. Such an application for permission to appeal should state the grounds of the appeal, the particulars of those grounds and the paragraph numbers of the decision that are challenged.

Judge Tonge

This decision was sent to the parties on 20 March 2024.

Annex 1. Case Management Note of Deputy Regional Judge Holbrook
dated 6 December 2023.



**First-tier Tribunal
(Property Chamber)
Residential Property**

Tribunal Reference: **MAN/30UJ/HED/2023/0002**

Premises: **36 Dover Street, Nelson BB9 7RF**

Applicant: **Sharaz Manzur**

Respondent: **Pendle Borough Council**

Judge: **Jonathan Holbrook**

CASE MANAGEMENT NOTE

1. On 7 June 2023, the Tribunal received an appeal against an improvement notice in respect of the Premises which had been served on the applicant by the respondent local authority on 12 January 2022. The appeal therefore appeared to have been made substantially outside of the usual 21-day time period for appealing against an improvement notice.

2. As a result of various communications between the Tribunal and the parties in an attempt to clarify matters, it appears that, as the applicant did not comply with the improvement notice, the local authority exercised its statutory powers to enter the Premises and carry out the required remedial works. Those works were carried out in August 2022 and, on 18 July 2023, the local authority served the applicant with a demand for payment of the expenses it had incurred in this regard. That demand was served under paragraph 9 of Schedule 3 to the Housing Act 2004, and it now appears that the applicant wishes to appeal against this demand as well as against the original improvement notice.

3. The applicant initially said that he did not become aware of the improvement notice until 21 May 2023. However, an email he sent to the Tribunal on 15 September 2023 outlines various discussions between himself and his tenants about the need to carry out the works. These discussions took place before the local authority took action to carry out the works itself in 2022. I am therefore not persuaded that the applicant was unaware of the improvement

notice until relatively recently and I can see no justification for extending time to permit an appeal against the improvement notice to proceed.

4. That leaves the matter of the separate appeal against the local authority's demand for payment. An appeal against such a demand must generally be made (under paragraph 11 of Schedule 3 to the 2004 Act) within the period of 21 days beginning with the date of service of the demand (i.e., by 7 August 2023 in this case). The first indication which the applicant gave of his desire to appeal against the demand for payment was in the email of 15 September to which I have referred, and a formal application was not received until 21 November. Nevertheless, the Tribunal has power to extend time for making the appeal if it is satisfied that there is good reason for the failure to appeal before the end of the usual 21-day period (and for any delay since then in applying for permission to appeal out of time).

5. In the present circumstances, I am satisfied that, having initiated an appeal against the original improvement notice before the demand for payment was served, the applicant may not have appreciated the need to appeal separately against the demand. He was also waiting for a case management hearing to be listed before Judge Bennett, and that did not happen until October. I am therefore satisfied that the appeal against the demand for payment should be permitted to proceed out of time, and case management directions for the conduct of the appeal will therefore be issued separately in due course.

6. The parties should note that no question may be raised on appeal against the demand for payment which might have been raised on an appeal against the improvement notice.

Signed: J W HOLBROOK
Date: 6 December 2023

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