



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

Case Reference : **BIR/00CS/HIN/2023/0027**

Property : **131 Oldbury Road, Rowley Regis, West Midlands B65 0NR**

Applicant : **Mr J G and Mrs T Murowe**

Respondent : **Sandwell Metropolitan Borough Council**

Type of Application : **An appeal against an Improvement Notice under paragraph 10(1) of Schedule 1 to the Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**

Date and venue of Hearing : **Paper Determination**

Date of Decision : **2 April 2024**

DECISION

Decision

1. The Tribunal orders that the Improvement Notices dated 8 June 2024 and served on each of the Applicants, together with the two associated Demands for Payment of the same date, be quashed.

Reasons for Decision

Introduction

2. On 22 June 2023, the First-tier Tribunal (Property Chamber) received an application from Mrs Tendai Murowe for an appeal under paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act'). The appeal related to an improvement notice dated 8 June 2023, served upon her by Sandwell MBC ('the Respondent') relating to the property known as 131 Oldbury Road, Rowley Regis, West Midlands, B65 0NR ('the Property'), of which Mrs Murowe was the joint owner.
3. The improvement notice detailed, in Schedule 1, various defects at the Property. These defects were categorised as category 1 hazards in respect of Damp and mould growth; Falls between levels and Falls on level surfaces; and category 2 hazards in respect of Falls on stairs; Domestic hygiene, Pests and Refuse; Collision and entrapment and Electrical hazards. The Respondent served, with the improvement notice, a Statement of Reasons as to why the decision to take enforcement action had been made and a Demand for Payment, which demanded from her the sum of £164.05 in respect of the Respondent's expenses for serving the notice against her.
4. The Tribunal issued Directions on 28 July 2023 and, in accordance with the same, on 31 August 2023 received a bundle from Mrs Murowe setting out her case and, on 21 September 2023, received the Respondent's bundle.
5. Neither party requested an oral hearing and an inspection was arranged for 16 February 2024.
6. It became apparent from the Respondent's bundle that, rather than a single notice having been served on Mrs Murowe and the joint owner of the Property (her husband, Mr John George Murowe), separate improvement notices and Demands for Payment had been served upon each of them. During the inspection, Mr Murowe confirmed that the appeal was intended to have been made in respect of the improvement notices served against both him and his wife and, later that day, the Tribunal received written requests from both Mr and Mrs Murowe for Mr Murowe to be added to the proceedings.
7. On 21 February 2024, Mr Murowe was added as a party to the proceedings under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Accordingly, this decision relates to the two improvement notices dated 8 June 2023 ('the Notices') served individually on Mr John George Murowe and Mrs Tendai Murowe ('the Applicants') in respect of the Property, together with the two associated Demands for Payment issued against each of them ('the Demands for Payment').

The Law

8. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System ('the HHSRS') replaced the system imposed by the Housing Act 1985, which was based upon the concept of unfitness.
9. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as 'category 1 hazards' and those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards'.
10. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5(1) of the Act to take appropriate enforcement action. Section 5(2) sets out the courses of action (which include the serving of an improvement notice) which may constitute appropriate enforcement action.
11. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an improvement notice is one of the types of enforcement action which may be taken.
12. Section 9 of the Act requires the local housing authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued the 'Housing Health and Safety Rating System – Operating Guidance' ('the Operating Guidance') which deals with the assessment and scoring of the HHSRS hazards. At the same time the Secretary of State also issued the 'Housing Health and Safety Rating System – Enforcement Guidance' ('the Enforcement Guidance'), which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary powers under section 7 of the Act.
13. The person upon whom an improvement notice is served may appeal to the First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act. The appeal is by way of a rehearing and may be determined having regard to matters of which the local housing authority were unaware. The tribunal may, under paragraph 15(3) of Schedule 1, confirm, quash or vary the notice.
14. Where a tribunal allows an appeal against an underlying notice, the tribunal may, under section 49(7) of the Act, make such order as it considers appropriate with regard to any charge for that enforcement action by reducing, quashing or requiring repayment of it.

Inspection

15. The Tribunal inspected the Property on 16 February 2024. Mr Murowe was in attendance and the Respondent was represented by Ms Neena Varma, an Enforcement Officer employed by the Respondent within its Accommodation Team.
16. The Property comprises a two storey, semi-detached house on Oldbury Road in Rowley Regis, with a fair-sized lawned area and drive to the front of the house and reasonably sized garden to the rear. The house has solid brick walls and a recently renewed pitched, tiled roof.
17. The front door to the house leads to an entrance hall from which the lounge and the staircase to the first floor can be accessed. The lounge, in turn, leads to the kitchen from which a small washroom (containing a water closet) and door to the rear garden are located. The first floor comprises two double bedrooms, a single bedroom and a bathroom.
18. The interior of the Property was in the process of being completely renovated at the time of the inspection, with new double-glazed windows, together with new bathroom and kitchen suites having been installed. The Property already benefitted from gas-central heating.
19. With regard to the hazards referred to in the Notices, the carpet on the stairs had been removed and the walls in the hallway had been plastered. The bathroom had been renovated, so there was no evidence of mould in the same, although there were some indications of mould on the ceiling of the upstairs landing. The internal doors all had handles, although there were still no restrictors fixed to the first-floor windows and, although the kitchen flooring had been removed, there was still a hole in the bathroom floor.

Submissions

The Applicants' submissions

20. The Applicants' bundle contained a witness statement from Mrs Murowe dated 31 August 2023, in which she gave a brief history of the letting of the Property.
21. She stated that the Property had been let in December 2010, as her family were travelling abroad for a few years. On their return in 2013, she stated that she informed the tenant, through the managing agents, that she required vacant possession of the Property so that her family could take up occupation. She confirmed that she served a section 21 notice but stated that this was ignored by the tenant and, as a consequence, her family were required to find alternative accommodation.
22. Mrs Murowe stated that further section 21 notices were served on the tenant in 2020 but that due to the pandemic, court delays and an application becoming lost, the matter did not proceed. She stated that in July 2021 a new section 21 notice was served, which was again ignored by the tenant, so a further section

21 notice was issued in January 2022 and the matter was listed for a first hearing in January 2023.

23. Mrs Murowe submitted that it was her belief that the tenant had only approached the Respondent to complain about disrepair to the Property to be able to use the defence of 'retaliatory eviction' in those possession proceedings. She stated that, following the initial hearing, three further hearings were required due to this defence, but that at the final hearing, which took place on 27 June 2023, the defence was not accepted by the court, and the tenant was given 14 days to vacate the Property.
24. Mrs Murowe stated that, although the tenant had informed the managing agents that the Property would be vacated and her belongings removed by 31 July 2023, she had not returned the keys, so the Applicants had applied again to the court to appoint bailiffs. She stated that bailiffs were due to attend the Property on 5 September 2023.
25. Mrs Murowe confirmed that her reasons for appealing were two-fold. Firstly, she submitted that she believed that the Respondent had been used by the tenant in the ongoing dispute relating to the possession proceedings. She stated that the tenant had only approached the Respondent regarding repairs in December 2022 and the improvement notice was issued just a few weeks prior to the final possession hearing. She submitted that instead of issuing the Notices, the Respondent should have taken a more measured approach and issued a hazard awareness notice.
26. Secondly, Mrs Murowe stated that, despite having been involved with the Property since December 2022, the Respondent never thought to contact either herself or her husband until a few days prior to issuing the Notices.
27. She noted that the Respondent had dealt with the managing agents, Ian Perks, who had invited a contractor to map out the repairs. She confirmed that this had revealed a leak in the roof, which was subsequently repaired.
28. She stated that there had been no dialogue directly between her and her husband with the Respondent and that the Respondent should have sought discussion with them as soon as they realised that there were significant concerns with the Property. She stated that their first communication with Ms Varma was via an e-mail dated 6 June 2023 and, therefore, there was never any intention by the Respondent to engage with them for the purposes of improving the Property.
29. She confirmed that she believed that the Property was currently unoccupied, that the plan was to take legal possession of the Property on 5 September 2023 and that the Property would no longer be rented out as it would be their family home. She also confirmed that they had already approached contractors to carry out repairs to the Property prior to them moving in.

30. Mrs Murowe had included within the bundle a copy of the Order for Possession dated 29 June 2023, together with the Notice of Appointment of a bailiff dated 4 August 2023.

The Respondent's submissions

31. The Respondent included, within its bundle, a witness statement from Ms Varma dated 20 September 2023 and extracts from the Act. The exhibits to Ms Varma's statement included copies of correspondence with both Ian Perks and the Applicants, photographs taken during the inspection of the Property on 11 May 2023 and a copy of the Notices and Demands for Payment.
32. Ms Varma confirmed, in her statement, that the Respondent received an e-mail from the tenant of the Property on 6 January 2023 regarding disrepair at the same. The tenant had provided details of the managing agents, rather than the Applicants, and a letter was sent to Ian Perks, addressed to the Applicants, from a duty officer in the Private Sector Housing Team setting out those items of disrepair.
33. Ms Varma stated that, on 3 April 2023, an officer contacted Ian Perks to check to see if the work had been completed but it appeared that progress had been very slow and works were still outstanding. As such, a Request for Assistance form was completed and submitted to her team.
34. Ms Varma confirmed that she was allocated the case on 24 April 2023 and that she contacted Ian Perks the following day, by e-mail, explaining her involvement and requesting an update on the works. She confirmed that she received a reply from them the same day stating that they had always kept the Respondent updated on the progress of the works, that they had been unaware that the works had to be completed within a specified time scale, that the main roof required repair before internal works could be completed (as advised by their builder) and the roofer was unable to commence works until June 2023.
35. On 26 April 2023, Ms Varma stated that she replied to Ian Perks highlighting that the disrepair had been reported on 9 January 2023, that the works had not been completed within the timescale of 21 days detailed in that letter and that, as progress had been extremely slow, the case had been escalated for an inspection to be carried out. Ms Varma confirmed that letters were sent out confirming the date of the inspection to both Ian Perks and the tenant.
36. Ms Varma confirmed that she attended the property on 11 May 2023 and carried out a HHSRS inspection, to which both the agent and landlord were invited to but did not attend. She stated that several category 1 and category 2 hazards were identified as follows:

Electrical hazards – a category 1 hazard in respect of living room and landing ceiling lights being defective and not working and a kitchen socket, in close proximity to water, not working.

Damp and Mould growth – a category 1 hazard caused by the leak in the main roof.

Falling on level surfaces – a category 1 hazard in respect of a hole in the bathroom floor creating an uneven surface.

Falling between levels – a category 1 hazard due to the absence of window restrictors.

Collision and entrapment – a category 2 hazard due to the handles on internal doors being loose creating a risk of entrapment.

Domestic hygiene, Pests and Refuse – a category 1 hazard due to the walls and the ceiling in the hallway having no fixed plasterboard, meaning they could not be kept clean which created harbourage for insects.

37. Due to the severity of the hazards identified, the need to protect the tenant's well-being and the delay in actioning the repairs, she considered the service of an improvement notice to be the most appropriate course of action.
38. On 12 May 2023, Ms Varma stated that she sent an e-mail to Ian Perks with her findings and advised that an improvement notice and demand would be issued. Following this, she confirmed that she received further correspondence from Ian Perks between 19 May 2023 and 6 June 2023, in which they provided some outstanding information but failed to provide contact details for the Applicants.
39. Ms Varma confirmed that she carried out a check on the Respondent's Revenues and Benefits system and found an e-mail address for Mrs Murowe. She stated that she sent Mrs Murowe an email on 6 June 2023 and received a telephone call from Mr Murowe the same day, in which she discussed with him the findings of her inspection and informed him that she would be serving an improvement notice. Ms Varma confirmed that the Notices and Demands for Payment were issued on 8 June 2023, confirming that the works were to be completed by 7 August 2023.
40. Following the service of the Notices, Ms Varma confirmed that she received a series of emails from Mrs Murowe which she exhibited to her statement. She also confirmed that she was unable to revisit the Property to see if works had been completed, as Mrs Murowe wanted the appeal to take place first.
41. Ms Varma stated that she did not accept that issuing a hazard awareness notice would have been an appropriate in this case, as this would not have specified any timescale for the works to be completed. She noted that four months had passed since the Applicants/Ian Perks had originally been notified of the disrepair and, thus, considered that the service of an improvement notice was the appropriate form of enforcement action that should be taken.

The Tribunal's Deliberations

42. The Tribunal considered all of the evidence submitted by the parties, briefly summarised above, and examined each hazard detailed on the Notices in turn.
43. Although Ms Varma had referred to six items in her statement, the Tribunal noted that there were actually seven hazards referenced in the Notices, although two appeared to have been erroneously named 'Item 3'.

Item 1 – Damp and mould growth

44. The Tribunal noted that although Ms Varma had referred to this hazard as being related to the roof leak in her statement (and her calculations were based on this), in the Notices she referred to the damp and mould as relating to inadequate mechanical ventilation. Based on the information in the Notices, the Tribunal found that the damp and mould growth would have been a low scoring category 2 hazard.

Item 2 – Falls on stairs

45. The Notices referred to the carpet on the staircase being frayed and loose in several areas. The Tribunal noted that this hazard was not referred to in Ms Varma's statement and it was not included in the HHSRS calculation she had submitted (Exhibit NV7). Accordingly, the Tribunal found that it should not have been included as a hazard on the Notices.

Item 3 – Domestic hygiene, Pests and Refuse

46. The Tribunal accepted that the failure to have fixed plasterboards on the walls and ceilings did represent a hazard. Although the Tribunal considered that this hazard had been overscored by Ms Varma, based on its own calculations, the Tribunal found that it should still have been a category 2 hazard, albeit a low scoring one.

Item 3 [sic] – Collision and entrapment

47. The Tribunal found that the maintenance of door furniture was not part of the landlord's responsibility and that the internal door handles being loose did not fit the description of the hazard of 'Collision and entrapment' given in the Operating Guidance. Accordingly, the Tribunal found that this item should not have been included in the Notices.

Item 4 – Falls between levels

48. The Tribunal accepted that there were no window restrictors attached to the first-floor windows, however, found that Ms Varma's calculation was incorrect and, based on its own calculation, found it to be a low scoring category two hazard.

Item 5 – Electrical hazards

49. The Tribunal noted that there was no indication that Ms Varma had checked to see whether the light bulbs in either the living room or the landing needed replacing and, thus, was unable to confirm whether there was a defect in the electrical system.
50. In any event, the Tribunal found that neither the lights nor the electric socket in the kitchen not working would have represented an electrical hazard, as the hazard refers to shocks and burns resulting from exposure to electricity, something which would not have been possible if the items were simply not working. The Tribunal found that this would have equally applied to towel rail not working in the bathroom, which was also detailed in the Notices.
51. The Tribunal noted that the correct hazard might have related to ‘Falling on stairs’ if she had shown that there had been a fault to the light fitting on the landing i.e. it was not working, and possibly ‘Excess Cold’ with regard to the towel rail, again, if she had found a fault with the same.

Item 6 – Falls on level surfaces

52. The Tribunal noted that this item included both disrepair to the bathroom flooring and the vinyl flooring in the kitchen being damaged. In relation to the kitchen, the Tribunal noted that no calculation was given in relation to the same, so it should not have been included within the Notices. With regard to the bathroom flooring, the Tribunal found that Ms Varma had, again, miscalculated the hazard. Based on its own calculations, the Tribunal found the hazard to be a low scoring category 2 hazard.

Should an Improvement Notice have been served?

53. As the Tribunal found that no Category 1 hazards existed but that four low scoring category 2 hazards did exist, it went on to consider whether the service of an improvement notice was the most appropriate course of action based on all the circumstances of the case. The Tribunal determined it was not for the following three reasons.
54. Firstly, in her statement, Ms Varma referred to the issuing of an improvement notice due to the severity of the hazards identified and the need to protect the tenant. As detailed above, the Tribunal found that no category 1 hazards existed at the Property and that the category 2 hazards were low scoring hazards which, on their own, would not necessarily warrant the service of an improvement notice as the most appropriate course of action.
55. Secondly, the Tribunal did not accept, based on the evidence before it, that there had been substantial delays by the Applicants in carrying out the repairs to the Property. Although in Ms Varma’s initial e-mail to Ian Perks on 25 April 2023, she referred to the duty officer last contacting them on 27 January 2023, it was quite clear from the correspondence included within the Respondent’s bundle

that there had been a number of e-mail messages between the duty officers and Ian Perks between January and April 2023.

56. It appeared from this correspondence that three of the items of disrepair initially referred to in the correspondence in January 2023, had been completed by 7 February 2023. Ian Perks then confirmed that there was going to be a delay in completing the rest of the work as the builder they had instructed suspected a bad leak on the roof. They also confirmed that they had been instructed by the builder that there was little point in carrying out any of the remaining work until the roof had been fixed.
57. Following this the correspondence showed that Ian Perks confirmed, in early March 2023, that a roofer had been to inspect the roof and, by 16 March 2023, they had received a quote and were in the process of sending the same to the Applicants. On 4 April 2023, Ian Perks confirmed to the duty officer that Mrs Murowe was in the process of transferring funds across for the scaffolder and roofer.
58. After the referral by the Private Housing Sector to Ms Varma, Ian Perks confirmed in correspondence to her, on 25 April 2023, that the builder had been very clear that any work carried out before the roof was replaced would be quickly ruined, that they had received funds from the Applicants and that the roofing work was expected to commence in early June.
59. In addition, although Ms Varma referred in her e-mail of 26 April 2023 to Ian Perks, that they had been given a 21-day timescale to undertake all works in the duty officer's letter to them of 9 January 2023, the correspondence between the duty officers and Ian Perks between February and 4 April 2023 did not refer to any further timescale in which the work needed to be done.
60. The Tribunal accepted the argument, that there was little point in the Applicants trying to remedy the damp and mould, removing water markings on the walls and plastering the hallway, until the roof work was completed. The Tribunal also noted that the Enforcement Guidance, in paragraph 5.5, specifically suggests that "*Authorities should avoid taking enforcement action which results in "patch and mend" repairs.*"
61. Accordingly, the Tribunal did not consider that there had been any particular delays in the action to carry out the repairs at the Property which should have swayed the Respondent into considering that an improvement notice, with set timescales for completing works, was required to avoid any future delays.
62. Finally, the Tribunal noted that the Statement of Reasons given with the Notices referred to, when determining the most appropriate course of action, the Respondent had regard to the views of the occupier and the views "*of the person in control/ owner/manager/ licensee etc.*".
63. The Tribunal noted that, in her email to Ian Perks of 12 May 2023, Ms Varma referred to several items of disrepair revealed at the inspection which had not been included in the initial correspondence with them in January 2023. In this

e-mail she also referred to the fact that an improvement notice would be issued and did not ask for their views on her inspection findings.

64. In addition, the Respondent had not been in contact with the Applicants at all until Ms Varma's e-mail to Mrs Murowe on 6 June 2023. In addition, when referring to her telephone call with Mr Murowe that day she stated that, after discussing the findings of her inspection, she informed him that an improvement notice would be served. As the Notices were served two days later, on 8 June 2023, again, there was no evidence submitted which indicated that the views of the "owner" of the Property had been considered at all when deciding whether to issue the Notices.
65. As such, the Tribunal found that the Statement of Reasons given for issuing the Notices was incorrect.
66. Had Ms Varma spoken to the Applicants, she might also have been made aware of the history relating to the letting of the Property. This could have had an impact on her decision as to whether to issue an improvement notice, especially when taking into account 'occupancy factors' as referred to in paragraph 4.12 of the Enforcement Guidance and noting that the final hearing for the possession proceedings was imminent.
67. Having considered all of the above, the Tribunal found that the most appropriate means of dealing with the hazards, taking into account the severity of the hazards, the occupancy of the Property and the actions of the Applicants in remedying the repairs, would have been a hazard awareness notice. Accordingly, the Tribunal determined that the Notices should be quashed.
68. In relation to the Demands for Payment, as the Tribunal found that the underlying improvement notices should be quashed, it considered that the Respondent should not be able to make a charge in relation to the expenses incurred in relation to the service of the same.

Appeal

69. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM

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Judge M K Gandham