



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

**Case Reference** : **BIR/17 UK/HIN/2023/0035-37**

**Property** : **32 Parliament Street, Derby DE11 0SQ**

**Applicant** : **Mr David Strong**

**Respondent** : **South Derbyshire District Council**

**Respondent's Representative** : **Dr Priya Tromans. Counsel  
Adam Mikula, Senior Legal Officer, South Derbyshire District Council**

**Type of Application** : **Application relating to Improvement Notice, Emergency Remedial Action and Recovery Expenses under Housing Act 20024**

**Tribunal** : **Tribunal Judge P. J. Ellis  
Tribunal Member Mr R Chumley-Roberts  
MCIEH. JP**

**Date of Hearing** : **9 April 2024 (Video)**

**Date of Decision** : **30 April 2024**

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**DECISION**

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1. **The NERA was properly served.**
2. **The Respondent is entitled to reimbursement from the Applicant of the sum of £3837.14 incurred in taking emergency remedial action.**
3. **The Tribunal makes no award of interest on the sum due.**

### **Introduction**

1. This case is concerned with whether or not a Notice of Emergency Remedial Action (NERA) was effectively served on the Applicant on 2 March 2023. If so is the Applicant out of time for appealing the Notice. If not is the claim for reimbursement of the expense of the remedial action justified or should the Tribunal vary or reduce the sum claimed? The Respondent seeks interest on any sum awarded under paragraph 10 Part 3 Schedule 3 Housing Act 2004 (the Act)
2. The Applicant appeared in person. The Respondent was represented by Dr Priya Tromans of Counsel. Two employees of the Respondent attended to give evidence.
3. The application was issued on 4 August 2023. At paragraph 7 of the originating application the Applicant set out the relevant matters upon which he sought a determination by using the numbering scheme in Annex 1 of the application as:
  - 1) An appeal against an improvement Notice by the person on who it is served-schedule 1 Para 10(1)
  - 8) Emergency Remedial Action An appeal against a decision by the LHA to take Emergency Remedial Action.
  - 10) An appeal against the demand for recovery of expenses where LHA takes Emergency Remedial Action - Terms
4. The application related to a notice served on 2 March 2023 and was therefore outside the 21 and 28 day time limits for appeal. Directions were issued for a preliminary hearing to determine whether the application should be struck out.
5. The matter came before the Tribunal on 12 December 2023 upon a paper determination. The Tribunal ruled the Respondent had not served an

Improvement Notice. It further ruled the Applicant had a good reason for being slightly late in appealing the Demand in that it was not until 27 July 2023 that he saw the Notice of Emergency Remedial Action, which then required him to carry out research into the law and procedure around emergency remedial actions and realise his options regarding appealing the Demand for recovery of expenses. Accordingly, the Tribunal extended the time for appeal.

6. The Demand for Recovery of Expenses does not (and indeed is not required to) include any information about rights of appeal so the need to appeal within a limited time was not clearly drawn to his attention. Therefore, the time to appeal the Demand was also extended. Directions were then given for service of evidence in readiness for consideration of the appeal. The matter came before this Tribunal for final determination of the Applicant's appeal.
7. Although the parties complied substantially with the directions, the Respondent served an additional statement the day before the hearing. The late statement was made by Ms Anita Hughes a Housing Standards Officer for Environmental Health employed by the Respondent. The Applicant resisted the admission of the evidence because he had not had time to consider it. The Tribunal admitted the evidence because it was substantially corroborative of the evidence of the principal witness of the Respondent Mr Tim Summers, but it gave the Applicant 14 days to make any replies he wished to make.

### **The Property**

8. The Tribunal has not inspected 32 Parliament Street Derby, (the Property). A description of the Property is taken from the evidence of Mr Tim Summers, the Principal Environmental Health Officer employed by the Respondent. There was no dispute about the description given by Mr Summers. The Property is a two-storey semi-detached dwelling. The roof is covered with Marley Modern concrete tiles and the walls are of solid, 220mm brick construction. The front elevation is rendered whilst the side gable wall remains brick. The windows and doors are PVC. The Property consists of three bedrooms at first floor level with a bathroom and two reception rooms, a kitchen and bathroom at ground floor, with a small entrance hall at the base of the stairs, adjacent to the front door.

9. The Property was let to Ms Kerry Parker who was known to have a young child. Ms Parker took no part in the proceedings. The Applicant asserted the tenant vacated the Property in or about February 2024.

### **The Service of Notices and Demand**

10. On 13 December 2022 Ms Parker sent an e-mail to the Respondent's environmental health team, alleging the Property was extremely cold with damp and mould present. On 15th December 2022 Ms Anita Hughes carried out an inspection of the property that confirmed low temperatures and the presence of black mould. Also, on 15 December 2022 the Respondent sent a Compliance Notice addressed to the Applicant at 2 St Matthews Street Burton upon Trent. That was not the correct address for the Applicant who lives at 21 St Matthews Street Burton Upon Trent.
11. Notice of Emergency Remedial Action was sent to the Applicant on 2 March 2023 addressed to the Applicant at his correct address of 21 St Matthews Street. The Notice was attached to an email sent by Ms Hughes to Mr Strong on the same day. A copy of the Notice was pinned to the door of the Property on the same day. The works the subject of the Notice were carried out at the Property on 9 March 2023.
12. On 7 July 2023 the accounts department of the Respondent sent a demand by an invoice to the Applicant addressed as 21 St Matthews Street seeking reimbursement of the cost of the emergency remedial work in the sum of £3837.14
13. The Applicant has not made the payment because he denies that he received any of the Compliance Notice or the Notice of Emergency Remedial Action whether by post or email. He asserts that in December he had taken enough action to remedy the defect in the heating system with the supply of electrical heaters. Further and in any event if work was required to the heating system he

could have arranged for that work at a much lower cost than incurred by the Respondent. The first he knew of work undertaken at his property was when he received the demand for reimbursement. He seeks the Tribunal's determination that the demand for reimbursement of expenses be set aside.

14. The Respondent asserts it has properly served the Notice of Emergency Remedial Action and the Applicant is out of time to appeal the Notice.

## **The Parties Submissions**

### **The Applicant**

15. The Applicant made several contentions attacking the validity of the Notice of Emergency Remedial Action. As far as he was concerned, the Respondent had not properly served the Notice, it had been altered, the work was unnecessary, he was unaware of the work at the time it was carried out, his own gas engineer advised him that the heating system was satisfactory.
16. Before the involvement of the council the Applicant had received text messages from the tenant complaining about cold. He described the tenant as "problematic" and as someone who emphasised problems in order to encourage the council to provide her with accommodation. The Applicant agreed there had been a telephone conversation with Ms Hughes before Christmas 2022 regarding cold at the Property. He denied there was a problem with mould asserting that on his last visit to the Property he did not see mould. He arranged for a sole trader with suitable qualifications to attend the Property to check the heating. As it was close to the Christmas holidays, he was unable to appoint a larger contractor. He could not remember the name of the trader but said he inspected his qualifications before sending him to the Property. He did not produce an invoice for the work. As a result of the visit he understood heating to the upper floor was in order but the radiators on the lower floor were only luke warm. He arranged for three electric heaters to be given to the tenant.
17. He made a telephone call to speak to Ms Hughes after Christmas, but she was off work with sickness. As far as he was concerned, he had resolved the issue of cold. He understood from correspondence disclosed in the course of these

proceedings that the Council regarded the situation as not needing further enforcement action.

18. He could not produce his correspondence with the tenant at the hearing because his computer was out of order. He did not attend the Property at the time of the inspection by Ms Hughes. He was unaware of the inspection. He knew there was a child in the Property but was not aware the child had a respiratory illness. He was unaware of work being carried out at the Property until after he made a Subject Access Request under Data Protection legislation, although the tenant had said something to him about the heating when she vacated the Property and handed over the keys.
19. In answer to questions from the Tribunal the Applicant admitted that he was aware of work being carried out at the end of March as a result of his conversation with the tenant.
20. He repeatedly averred he had not received any of the copies of the Notice of Emergency Remedial Action. There had been a postal strike affecting mail delivery. His email account did not permit attachments. Although he has seen the picture of the Notice allegedly pinned to the door of the Property, he denied the picture was conclusive of the Notice being attached. He said the picture was not sufficiently clear to identify the Property.
21. As far as the cost of the work itself was concerned, the Applicant agreed the system required flushing. He referred to correspondence of February 7 and 8 2023 between the Respondent and Renuvo, the contractor retained by the Respondent to carry out the remedial work and produced by the Respondent for these proceedings.
22. Ms Hughes asked whether a repair was possible. The Renuvo reply indicated the heating system required an upgrade and that the boiler was fitted in an illegal position in the bathroom. After this exchange the Respondent opted for a replacement of the boiler. The Applicant contended this correspondence indicated a repair of the system may have been sufficient but the Respondent

chose the more expensive option of replacement. He could have arranged for repair work to be done cheaper, but he had not obtained any quotes for the work.

23. He denied suggesting the incorrect address was an “old address” of his. At all times he has resided at 21 St Matthews Street. The Applicant also asserted that the wording on the relevant notice had been altered. In his comments on the late served statement of Ms Hughes, Mr Strong repeated his assertion that he had never given any cause for belief that his address was 2 St Matthews Street. He believed Ms Hughes was mistaken, having initially referenced number 2 having been provided by the tenant, later to state it was he who had given that address.

### **The Respondent**

24. Dr Tromans, on behalf of the Respondent submitted the council relied on sending an email with the notice attached, posting the Notice with first class postage to the correct address and affixing the Notice to the Property as sufficient service of the notice. The post is deemed sufficient for service of the Notice by s246 Housing Act 2004.

25. It was acknowledged that the Compliance Notice of 15 December 2022 had a typographical error misdescribing the Applicants address as 2 St Matthews Street. However, that claim was based on the demand for reimbursement of expenses following emergency remedial action. The work was carried out on 9 March 2023 following good service of the relevant Notice.

26. Evidence was given by Mr Timothy Summers and Ms Anita Hughes both orally at the hearing and by written statements.

27. Ms Hughes gave oral evidence explaining that in her conversation with the tenant in December 2022 she was given that street number. In conversation with Mr Strong she understood him to say that was an “old address”. In that conversation, Mr Strong gave her his email address.

28. Mr Summers stated the Respondent knew the correct address of the Applicant was 21 St Matthews Street. He had a consultation with Ms Hughes on 2 March 2023 when he decided it was appropriate to issue the NERA with service by affixing to the door of the subject property and posting with a further copy to go by email to the address for Mr Strong.
29. He accepted the recommendation of the advisers to replace the boiler. The "partial repair of the system" was confined to the replacement and resiting of the boiler.
30. In answer to questions from the Tribunal Mr Summers agreed there were inaccuracies in the EPC rating for the Property but asserted at the time of the NERA the general performance of the building was poor and the heating system had failed. He acknowledged there had been a suggestion of an amendment to the NERA but the document as served was not altered. The suggestion had not been adopted.
31. He was not aware of any problems with the post at the time. The Notice was sent to the Respondent's post room in the normal way of all postage. He had confidence that the post room would have sent the letter. The Notice was in a clear view envelope saving the need to type an address on the envelope in addition to the content itself. The Demand was served by the accounts department. It was in the form of an invoice for the cost of the works.
32. Ms Hughes gave evidence of her qualifications and experience. She had started as an administrative assistant in the environmental health department and progressed to her post as Housing Standards Officer with a Diploma in Housing issued by the Institute of Housing. She confirmed that enquiries with the Staffordshire council for Burton upon Trent had confirmed Mr Strong was a ratepayer living at 21 St Mathews Street. By the time of the meeting with Mr Summers on 2 March 2023 the address of Mr Strong was known as 21. Sending the Compliance Notice to No 2 was an error and possible data breach which had been investigated by the data security official.



33. Ms Hughes accepted that the decision to proceed with the remedial work had been taken without any further inspection. She relied upon the word of the tenant that the heating had failed by that time and the advice of Renuvo.

### **Statutory Framework**

34. The relevant statutory framework is set out in the Decision of Judge Goodall of 12 December at paragraphs 15-25 determining the Preliminary Issue of time for appeal. They are not repeated here.

### **Discussion**

35. The Applicant contends that service of the NERA was ineffective. He was unaware of the work being carried out at the Property. The work was unnecessary and at an unreasonable cost. He seeks an order revoking the NERA and consequentially the demand for reimbursement of expenses.

36. The Tribunal was asked to strike out the case because the Respondent had complied with its obligations under the Housing Act and the Applicant was too late with his application. As the Tribunal reviewed the Applicant's protestations regarding the adequacy of service and decided to extend time for the appeal, this Tribunal, although not bound by the earlier decision will not alter the previous decision. The claim is not struck out.

37. The Respondent's evidence included late service of a statement by Anita Hughes. It arrived the day before the hearing. The Applicant had not seen it, he said, because of a problem with his computer. There was no reason for the late service of this evidence. The Tribunal gave the Applicant extra time to consider the evidence and make any reply to it. This decision is written having regard to the Applicant's submission about the evidence. Ms Hughes was present at the hearing to give evidence and to be cross examined if required. The Tribunal allows the admission of the evidence because it was largely corroborative of the evidence of Mr Summers. There were no new facts in the statement and Ms Hughes was present to verify her statement.

38. Section 246(9) Housing Act 2004 applies s233 Local Government Act 1972 in relation to service by post of any documents which are required to be served by the local authority. Paragraph 4 of Schedule 3 Part 2 requires a local authority to serve a notice under this paragraph before they may enter any premises for the purpose of taking action in relation to a hazard. Sending the NERA by post is good service. These provisions do not require proof of receipt by the addressee. They are deeming provisions.

39. In this case the earlier error by the local authority in sending a compliance notice to the wrong address has sown some confusion by enabling the Applicant to challenge the compliance of the Respondent with its duty under s40(7) of the Act to serve a NERA. The Respondent asserts that by 2 March 2023 it was satisfied the Applicant resided at 21 St Matthews Street justifying use of that address as the address for service. The Applicant has put forward an argument that borders on sophistry that because the Respondent misled itself over his address in December 2022 then it was still in a state of confusion in March 2023. The Applicant's evidence was that at all relevant times he resided at number 21. That was the address used by the Respondent in March 2023. The service rules are satisfied. It is not necessary for the Tribunal to make any further findings regarding the address of the Applicant.

40. In addition, the Respondent further complied with its service obligations by pinning the NERA to the door of the Property. A photograph of the notice affixed to the door was produced. The Tribunal is satisfied it is acceptable evidence of affixing the notice to the door of the Property. The Applicant challenged the quality of the photograph, but the Tribunal was able to make out the notice pinned to a door numbered 32.

41. Finally for good measure the Respondent sent a copy of the notice by email to the Applicant's email address.

42. Although, the Applicant held firm to his proposition that the NERA had not been brought to his attention, the Tribunal finds that the Respondent fully

complied with its service obligations. It is not necessary to prove that the notice was actually seen or received, only that the service provisions are discharged.

43. The Applicant did not produce any evidence of alternative costs of the work required to remove the hazard of cold. The Respondent instructed a contractor appointed under a framework agreement. The purpose of such agreements is to ensure value for money. In the absence of any evidence that the costs claimed were unreasonable or excessive the Tribunal finds that the principal sum of £3837.14 due under the demand of 7 July 2023 is payable.

44. As the Tribunal has determined that the expenses incurred by the Respondent should be reimbursed, the Respondent is entitled to claim interest on the sum due pursuant to part 3 Schedule 3 Housing Act 2004 at such reasonable rate as the Respondent may determine from the date of service until payment of all sums due under the demand. The demand is in the form of an invoice addressed to the Applicant. It makes no reference to the entitlement to claim or the rate of interest. A note submitted by counsel for the Respondent recited paragraphs of schedule 3 pertaining to interest but no evidence was adduced by the Respondent regarding the rate proposed. Interest was not referred to in its Statement of Case. The Tribunal makes no award of interest on the sum due.

## **Appeal**

45. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Tribunal Judge P.J.Ellis