



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : **BIR/00CQ/HIN/2024/0005**

Property : **Flat 4, Barley Lea House, The
Barley Lea, Coventry, CV3 1EW**

Applicant : **Harjit Suman**

Representative : **Wilson's Estate Agents**

Respondent : **Coventry City Council**

Representative : **Mr Joseph Dunn**

Type of application : **Housing Act 2004 - Schedule 1,
paragraphs 10(1) appeal against an
improvement notice, and Schedule
3, paragraph 11(1) – appeal against
a charge.**

Tribunal members : **Tribunal Judge Kelly**

Venue : **On Paper**

Date of decision : **28 May 2024**

DECISION

1. This Application relates to enforcement action taken by the Respondent against the Application concerning deficiencies said to exist at the property known as Flat 4, Barley Lea House, The Barley Lea, Coventry, CV3 1EW (“the Property”).
2. On 24 January 2024, the Respondent wrote to the Applicant to advise that, as he was the leasehold owner of the Property, and that the council had received a complaint, the Applicant was required to provide access to the Property for an inspection on 30 January 2024.
3. By letter dated 16 February 2024, pursuant to the provisions of the Housing Act 2004 (“the Act”), the Respondent served an improvement notice upon the Application in relation to a category 1 and category 2 hazard said to exist at the Property (“the Improvement Notice”).
4. The hazards were identified as “*Damp and Mould*”, which was identified by the Respondent as a category one hazard. Further, hazards of “*Carbon Monoxide and Fuel Combustion*” and “*Fire*” were identified in the notice as category two hazards.
5. Further, a demand was made by the Respondent at the same time as serving the Improvement Notice for payment by the Applicant of the sum of £435, being the sum said to apply to cover the expenses of the Respondent in determining whether to serve the notice, identifying the works to be specified in the notice and serving the notice (“the Fee Demand”).
6. On 14 March 2024, the Applicant lodged with the Tribunal his application notice seeking to appeal the imposition of the Improvement Notice and the Fee Demand. The Application stated:
 - 6.1. that the tenant in the Property should bear the cost of the Fee Demand;
 - 6.2. that there had not been problems with mould at the Property previously and that the source of any such issue was likely the tenant not opening the windows and obtaining ventilation; and
 - 6.3. that the costs of the works required by the Improvement Notice should be borne by the tenant.
7. On 8 April 2023, the Applicant wrote to the Tribunal seeking to challenge the conclusion that the appeal is out of time.
8. On 28 March 2024, Regional Surveyor Ward directed that, as the appeal is out of time, it must be struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 20123 or the appeal be allowed to proceed under paragraph 14(3) of the Act. The parties were invited to make written submissions on the timing issue.

9. There are in fact two separate provisions which are the source of relevant time limits, fortunately, both the same, which makes the application of the provisions consistent on the facts of this case. They are:

9.1. Paragraph 14 of Schedule 1 of the Act states:

“14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

*(3) the appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) **if it is satisfied that there is a good reason for the failure to appeal before the end of that period** (and for any delay since then in applying for permission to appeal out of time).”*

*(**my emphasis added**)*

9.2 Paragraph 11 of Schedule 3 of the Act states:

“11(1) A person on whom a demand for the recovery of expenses has been served may appeal to the appropriate tribunal against the demand.

*(2) An appeal must be made **within the period of 21 days** beginning with the date of service of the demand or copy of it under paragraph 9.*

(3) The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).”

10. The applicable time limits and test for allowing an appeal out of time, are the same under both parts of the Act.
11. As the Improvement Notice and Fee Demand were sent to the Applicant on 16 February 2024 by email and post. In accordance with the general rules on service under section 7 of the Interpretation Act 1987, the Improvement Notice and Fee Demand would be treated as served, unless the contrary be proven (which it has not been in this case), on the day on which the letter would be delivered in the ordinary course of post. In my judgment the ordinary course of post would deliver the letter on the second day (excluding Sundays) after posting, i.e. on 19 February 2024.

12. Consequently, the 21-day period for lodging any appeal commenced with day one, on 20 February 2024, and the 21-day period expired at midnight on 11 March 2024. The Application, having been submitted on 14 March 2024, it was three-days late.
13. I pause to note that references have been made in the Respondent's paperwork to it having served the Improvement Notice and Fee Demand on 16 February 2024. It appears that the Respondent takes this view on the basis of the email sent on that date which included the Improvement Notice, but there is no evidence of service being agreed to take place by email. As such, I proceed on the basis that service has only lawfully been effected by post on the facts of this case, but I note that the outcome of this preliminary issue does not alter whether the date of service is 16 February 2024 or 8 February 2024 as contended for by the Respondent. No alternative date for service is suggested by the Applicant.
14. The Applicant's position was that the Application should be allowed to proceed out of time because:
 - 14.1. on 14 March 2023, the Applicant says he was informed by the Tribunal staff that he has 28 days to file an appeal, with the dealing being 15 March 2024 and that he met that deadline, by lodging the documents on 14 March 2024; and
 - 14.2. the Respondent's approach in enforcement had been "*very heavy handed and unjustifiably severe*" and he then provided some examples of why he characterised the Respondent's approach in this way.
15. The Respondent says that the Application should not be allowed to proceed and should be struck out, because:
 - 15.1. there is no good reason known to it as to why the Application was late;
 - 15.2. the Applicant was made aware of the timeframe for making the appeal and the means by which to make it and this was set out in the Improvement Notice;
 - 15.3. the Applicant has professional advice available to him; and
 - 15.4. there was no notification to the Respondent of any intention to appeal until 14 March 2024.
16. Ultimately, it is for the Applicant to persuade me that a "*good reason*" exists for submitting the Application late. He has failed to do this. The only reason advanced relating to timing is that he was informed, on 14 March 2024, by Tribunal staff, that the Application had to be in by 15 March 2024. Even if this is

correct, and I make no determination on that point either way, the reality is that by the time of the Applicant's enquiry on time limits, the deadline had passed.

17. The Applicant's assertion that the Respondent's enforcement has been heavy handed does not impact upon the timing of the Application being lodged and I see nothing in the paperwork submitted that would enable me to conclude otherwise.
18. Given that there is no other basis of explanation that goes to the timing of the Application being made, I am satisfied it is appropriate to strike out the Application and that is the consequence of this decision.
19. The Improvement Notice and the Fee Demand stand.

APPEALS

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission to appeal must be made to the First-tier Tribunal at the Regional Office which has been dealing with this case.
2. 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.
3. 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 reasons for not complying with the 28-day time limit; the Tribunal will then look at such reasons and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. Any application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. provide the date, the property and case number) and set out the grounds of appeal and state the result the party making the application is seeking.

TRIBUNAL JUDGE C KELLY