



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

Case Reference : **HAV/00HE/HIN/2024/0502**

Property : **3 Trevelgue Road, Newquay, Cornwall,
TR7 3LY**

Applicant : **Mr Haydn Haynes**

Respondent : **Cornwall Council**

Representative : **Mr Luke Hall**

Type of Application : **Appeal against Improvement Notices
and costs, Section 11 Housing Act 2004**

**Tribunal
Member(s)** : **Tribunal Judge H Lumby

Mr A Crawford

Ms T Wong**

Date of Hearing : **12 March 2025**

Date of Decision : **12 March 2025**

**DECISION TO STRIKE OUT AN APPLICATION PURSUANT TO
RULE 9 OF THE TRIBUNAL PROCEDURE (FIRST-TIER
TRIBUNAL) (PROPERTY CHAMBER) RULES 2013**

Background

1. The Applicant submitted an application relating to three Improvement Notices and two notices of Recovery of Expenses served by the Respondent. The notices were dated 25 June 2024. The Tribunal first received the application on 11 August 2024. The signed signature page was dated 22 August 2024.
2. The Applicant attached various supporting documents to the application which included copies of the two notices of Recovery of Expenses, one for £174.00 and the other for £203.00. Incomplete copies of the Improvement Notices were submitted by email to the Tribunal by the Applicant on 28 October 2024. Full copies of the notices were subsequently received from the Respondent.
3. In relation to an appeal against an Improvement Notice, Schedule 1, paragraph 14 (1) of the Housing Act 2004 states that “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.”
4. The application in respect of the Improvement Notices was received outside of the 21 day time limit.
5. Schedule 1, Paragraph 14 (3) of the Housing Act 2004 states that “[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).”
6. In relation to the demand for the recovery of expenses, Schedule 3, paragraph 11 (2) of the Housing Act 2004 states “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.”
7. The application in respect of the recovery of expenses was made outside of the 21 days.
8. Paragraph 11 (3) states “[The appropriate tribunal] may allow an appeal to be made 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).”
9. The Tribunal issued a notice on 6 January 2025 stating it was minded to strike out the application in accordance with Rule 9 (2) (a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that it does not have jurisdiction and for the Applicant to provide the Tribunal with reasons for the appeal being made out of time.
10. The Applicant has responded in an email dated 13 January 2025; this attached copies of letters from his 4 lodgers relating to the temperature

of the Property. The Respondent replied on 17 January 2025 asking the Applicant for further clarification.

11. The Applicant responded by email to the Respondent on 20 January 2025 with further attached documents, which the Respondent has also copied to the Tribunal.
12. The Respondent's representations in relation to the Tribunal's notice of 6 January 2025 are contained in their letter to the Tribunal dated 16 January 2025.
13. The Respondent has also provided a copy of the email dated 25 June 2024 sent to the Applicant with the three Improvement Notices and the two demands for expenses attached.
14. By Directions dated 11 February 2025, the parties were required to attend an online hearing on 12 March 2025. The hearing was for the Tribunal to consider, as a preliminary issue, if it is satisfied that there was a good reason for the failure by the Applicant to appeal before the end of the 21 day time limits and for any delay since then in applying for permission to appeal out of time.

Hearing

15. The hearing took place online, using the Tribunal's CVP system. The Applicant attended together with an assistant. Mr Tim Dunn attended separately as a potential witness in relation to the heating system he installed in the Property. Mr Luke Hall appeared for the Respondent. Ms Tracy Tully and Mr Guy Quint were also in attendance; they are both Environmental Health Officers – Private Sector Housing at the Respondent.
16. Mr Crawford explained that he worked with a separate department at Cornwall Council, in a way wholly unrelated to residential housing. He offered to recuse himself from the panel if either of the parties objected. Both parties confirmed they had no objection to him remaining on the panel.
17. It was explained that the hearing was not to determine the appeal but to consider whether to allow the out of time application to proceed.

Applicant's case

18. The Applicant's case is that he received one of the letters 13 or 14 days after being sent. He said that this letter, which he was able to open and read on receipt, stated that he was being fined for not having proper heating in the Property. He said he acted immediately by having letters typed for each of his lodgers to sign confirming the Property was sufficiently warm. In evidence he later referred to the letter being received on 25 July or a Saturday around then (which would have been 27 July).

19. The Applicant conceded that he may have received notice by email but as he was registered blind, he could not deal with emails.
20. He could not explain why in making his application he stated that he had been aware of the notices on 28 June 2024. He confirmed that the notices were received in separate letters but he could not say when the other letters were received. At the time of the receipt of the letter purportedly referring to a fine, he confirmed that lodgers were still in the house.
21. He felt that the notices relating to cold were misconceived as he had just spent £4,000 having heating installed by Mr Dunn. He contended that Ms Tully (the responsible EHO) had been challenged on this and had argued the notice only related to the garage (where a lodger was then residing). His argument was that the notice referred to a dwelling and that the garage was not a dwelling. He read emails to the Tribunal explaining the position. (The Tribunal noted that the relevant Improvement Notice clearly referred to the garage and also used the term dwelling).
22. On being asked why he delayed before submitting his appeal, he explained that, as he was registered blind, he needed help to make applications; his timing was dependent on the availability of assistance. This was the same reason why he could not contact the council or the Tribunal to seek an extension.
23. All of the required work had apparently been done, except the disputed heating to the garage. The lodgers had in any event moved out.

Respondent's case

24. The Respondent did not accept that the Applicant only received the letters on 25 July. A certificate of service was prepared on 26 June confirming that they had all been posted, as well as emailed to the Applicant. No postal issues in the area were known or had been identified. The lodgers would have received the notices too and should have alerted him. By failing to contact the council or the Tribunal or deal with the application promptly, he had clearly not prioritised the application, the delay caused meant that the Respondent could not check the required works had been completed. They therefore requested that the application be struck out.

Consideration

25. The Tribunal carefully considered the documentation submitted ahead of the hearing and the submissions made at the hearing. Based on this, they have made the following determinations.
26. Three Improvement Notices and two Recovery of Expenses notices were issued by the Respondent on 25 June 2024. One of the Improvement

Notices covered excess cold, relating to the lack of heating in the garage. The Tribunal is satisfied that these were all posted and emailed to the Applicant on 25 June 2024.

27. Based on this, the applications to appeal against these would need to be lodged with the Tribunal by 17 July 2024. The 21 day deadline was clear from all the notices.
28. The application was not received until August 2024, with the application signature page being dated 22 August 2024. The application in relation to all five notices was therefore made substantially out of time.
29. The Applicant argues that he only became aware of the notices on 25 or 27 July 2024. The evidence is contradictory on this. The application says he became aware of the notices on 28 June 2024. He said on a number of occasions the letter relating to excess cold was received 13 or 14 days after 25 June 2024, suggesting perhaps 7 or 8 July 2024. One of the letters signed by the lodgers and said to have been prepared the same day he received the notice was dated 7 July 2024. The five notices were sent separately and he could not confirm when the others were received. The notices were emailed to him on 25 June 2024; he claimed not to be able to deal with emails but was able to send these promptly to the Respondent and the Tribunal during these proceedings (as referred to under Background above). He confirmed he was able to read his post and read emails to us during the hearing.
30. As a result, the Tribunal is not satisfied that the first the Applicant knew of the notices was on 25 or 27 July 2024. A finite date cannot be identified but the evidence suggests that, on the balance of probabilities, he was aware by at least 7 July 2024 and probably earlier.
31. The Applicant raises a particular point as to whether or not the Improvement Notice relating to excess cold covered the garage or the whole Property. This is not relevant to the issue of whether to allow an out of time application. However, it is possible that the notice relating to excess cold inflamed him and prompted him to take action. That action was to get his lodgers to sign letters and to get Mr Dunn to contact Ms Tully, rather than to apply to the Tribunal.
32. He argues that he did not apply to the Tribunal earlier because he could not get help to do so. He makes the same argument as to why he did not contact the Tribunal or council by phone or email. In evidence, he said he would call external contacts and if one could not help for a week, he would contact someone else. The ability to make calls, the dealing with emails during the proceedings, the prompt action on the same day he said he received the excess cold letter and the fact he would seek other help if someone was not able to assist within a week is inconsistent with the delay in submitting the appeal. His ability to read, as confirmed by him, meant he would have been aware of the 21 day deadline.

33. The Tribunal therefore determines that there is not a good reason for the Applicant's failure to submit his appeal against the five notices within the 21 day deadline. In addition, it does not consider that there is a good reason for the delay in submitting the application until August 2024. As a result, the Applicant fails the tests for out of time applications relating to Improvement Notices and the Recovery of Expenses. As a consequence, the Tribunal does not have jurisdiction to consider this case and it must be struck out.

Decision

34. The Tribunal therefore strikes out the application in accordance with Rule 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the Tribunal does not have jurisdiction in relation to the proceedings or case (as provided by Rule (2)(a)).

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

