



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

Case Reference	:	BIR/00GA/HNA/2024/0007
Property	:	Pool House, Monkhide, Herefordshire, HR8 2TX
Applicant	:	Yolande Doughty
Representative	:	Alex Pritchard-Jones of Counsel instructed by Kirsty Dance of Paytons Solicitors LLP, Malvern, WR14 1AB
Respondent	:	Herefordshire Council
Representative	:	Lucy Harries, Environmental Health Officer, Herefordshire Council
Type of Application	:	Appeal against Herefordshire Council financial penalty of £25,000 under paragraph 10, Schedule 13A, Housing Act 2004
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS A. McMurdo MCIEH
Date and Venue of Hearing	:	4 February 2025 at Hereford Magistrates Court
Date of Decision	:	06 June 2025

DECISION

DECISION

- 1 The First-tier Tribunal (Property Chamber) ('the Tribunal') cancels the Final Notice dated 10 April 2024 issued by Herefordshire Council relating to breach of an Improvement Notice No: IN U/003523 dated 24 January 2023.

REASONS

Introduction

- 2 This Decision relates to an Appeal by the landlord of a house in Herefordshire against a financial penalty imposed by Herefordshire Council under the Housing Act 2004 ('the Act').
- 3 The house is owned by Mrs Yolande Doughty. The history of the case is that the former tenants, Mr Ryan and Mrs Delaney, rented the property by Assured Shorthold tenancy from 4 September 2018. The landlord and freehold owner at the time was Mr Peter Ball.
- 4 The property comprises a semi-detached house in a rural part of Herefordshire about 8 miles to the east of Hereford. It was in good condition when let and for the first 4 years of the tenancy no defects were reported to the landlord.
- 5 However, at some point in 2021 or 2022, the landlord decided to let a field he owned nearby and although Mr Ryan and Mrs Delaney were interested in taking a tenancy of the field, he decided to let to another party. At that point relations between the tenants of the house and the landlord broke down.
- 6 Mr Ball, who was elderly, transferred the title to the house to his daughter Mrs Yolande Doughty in May 2021.
- 7 Relations between the landlord and tenant became strained and on 10 November 2022 the tenants complained to Herefordshire Council that the property was in poor condition. It was claimed there was a problem with the water supply and on 13 November 2023 they complained to the Council that they had no running water. The case was allocated to Miss Lucy Harries of the Council's Environmental Health Department who contacted the landlord's father, Mr Ball, to discuss the issue. Mr Ball visited the property with a plumber but said that during the appointment the tenant and his two adult sons became aggressive and assaulted him. Nevertheless, the water supply was re-instated.
- 8 The tenants subsequently made further complaints to the Council about the condition of the house and after carrying out an inspection on 9 January 2023, the Council served an Improvement Notice (No: U/003523) on Mrs Doughty on 24 January 2023 listing Category 1 and 2 hazards under sections 11 and 12 of the Housing Act 2004.
- 9 On 6 October 2023 the Council served a Notice of Intention to serve a Civil Penalty Notice on Mrs Doughty for breach of the Improvement Notice.
- 10 Mrs Doughty responded to the Notice of Intent with written representations received by the authority on 3 November 2023.
- 11 The Council did not respond to the representations for 6 months until 10 April 2024 when they issued a Final Notice imposing a financial penalty of £25,000.

- 12 The tenants vacated in Spring 2024, since when it has been unoccupied. However, the Improvement Notice remained a live issue.
- 13 Mrs Doughty appealed the Final Notice on 7 May 2024 under para.10 to Schedule 13A of the Housing Act 2004 by application to the Tribunal.
- 14 The Tribunal issued Directions and the case was heard in Hereford Magistrates Court on 4 February 2025. Having considered the parties' Submissions and evidence presented at the Hearing, the Tribunal cancels the Final Notice for the Reasons set out below.

The Law

- 15 Sections 11 and 12 of the Housing Act 2004 grant local housing authorities the power to serve an Improvement Notice requiring a landlord to carry out improvements to residential property where they consider a Category 1 or 2 hazard exists.
- 16 If work required by the Improvement Notice is not carried out, section 249A of the Housing Act 2004 grants authorities the ability to impose a financial penalty on the recipient if satisfied 'beyond reasonable doubt' that a relevant housing offence has been committed. A 'relevant housing offence' includes failure to comply with an Improvement Notice under section 249A(2)(a).
- 17 The fine cannot exceed a maximum of £30,000 under section 249A(4) of the Act.
- 18 The party on whom it is served is required to comply with the Notice unless it can be shown in defence that they have a reasonable excuse for non-compliance under section 30(4) of the Act.
- 19 By paragraph 10 Schedule 13A to the Act, a person on whom a final notice is served may appeal to the Tribunal against the penalty. The fine is suspended pending a decision on the appeal.
- 20 The Tribunal is required to consider the appeal by re-hearing the local housing authority's decision [Sch.13A. para.10(3)(a)] and under the Act has the power to confirm, vary or cancel the final notice [Sch.13A,para.10(4)].

Facts Found

- 21 The Tribunal inspected the property before the Hearing with Miss Harries, representing the Respondent. No-one was present for the Applicant. However, the inspection was purely a fact finding visit and no evidence was taken from Miss Harries at the inspection.
- 22 The property is a semi-detached house in the rural hamlet of Monkhide, about 8 miles to the east of Hereford. The original house was stone construction which was understood to be about 400 years old although it now has brick built extensions to the front and rear. The roof covering is slate. Inside, the accommodation comprises a hall, two reception rooms, kitchen, toilet and lobby on the ground floor with a landing, four bedrooms and bathroom on the first floor.
- 23 By the date of the Tribunal inspection the property had been vacant for nearly a year but was in appalling condition and uninhabitable without substantial refurbishment. There were holes in the roof and water ingress had damaged the first floor ceilings, the kitchen and cloakroom had been vandalised, there were exposed wires, the flue of a log burning fire had been disconnected and the whole house was in very poor condition. The gardens

were overgrown and the rainwater goods, water supply pipes and drainage system had been vandalised.

Improvement Notice

- 24 The Notice served by Herefordshire Council dated 24 January 2023 identified the following hazards:

1	Hazard 2	Excess cold	Category 1
2	Hazard 18	Water supply	Category 1
3	Hazard 29	Structural Collapse	Category 2
4	Hazard 6	Carbon Monoxide	Category 2
5	Hazard 1	Damp and Mould	Category 2
6	Hazard 17	Personal Hygiene	Category 2

Hearing

- 25 A hearing was held at Hereford Magistrates Court.
- 26 The Applicant was represented by Mr Alex Pritchard Jones of Counsel instructed by Miss Kirsty Dance of Paytons Solicitors, Malvern, who attended the hearing. Evidence was heard from Mrs Doughty and her husband. Mr Ball was elderly and did not attend.
- 27 The Respondent authority was represented by Miss Lucy Harries. There was no legal representation on behalf of the authority and none of the other Council officers referred to in the submissions attended.
- 28 The former tenants Mr Ryan and Mrs Delaney did not attend and had not provided statements.

Procedure

- 29 The Tribunal is required to re-hear the case based on the policy adopted by Herefordshire Council ('Herefordshire Council Policy on deciding a Financial Penalty Amount'). The policy identifies the correct approach to consider serving a Notice under the following headings:

- 1) culpability;
- 2) seriousness of harm risked;
- 3) penalty band;
- 4) mitigation;
- 5) financial benefit;
- 6) total amount;
- 7) representations.

The Tribunal's decision on the points set out below are based on the parties' submissions.

- 30 1) Culpability
Mrs Doughty's culpability for each defect listed by the authority is as follows:

- 31 **1 Hazard 2 Excess cold Category 1**
This relates to four points:

a) the central heating system had been out of action

Respondent

Miss Harries found the boiler was not working during her inspection.

Applicant

In evidence, the Applicants proved that the boiler had been serviced by an engineer who reported it to be in working order but that the oil tank was empty, probably caused by the tenants not buying fuel.

Tribunal

Miss Harries conceded the point at the hearing and agreed it should be deleted from the Notice as the 'defect' had not been caused by the landlord.

b) A log burning fire in the lounge was unuseable as the flue had been disconnected

Respondent

Miss Harries said the log burner in the lounge was out of action and required it to be repaired. Miss Harris was unable to say whether or not it had been installed by the tenants but said that as it was there, it had to be maintained by the landlord.

Applicant

In oral evidence which was not challenged by Miss Harries, it was submitted that the log burner had been installed by the tenants. Mrs Doughty gave evidence that it had not been in the property when let to them. It was a tenant fitting that the tenants were required to maintain under the terms of the tenancy agreement.

Tribunal

The log burner was found to be a tenant alteration as it had not been there when the previous tenants occupied the house. The tenancy agreement required the tenants to sweep the flue and maintain the fire and it was clearly their responsibility. Accordingly, the Tribunal finds it to be a tenant liability to keep in repair and deletes it from the Notice.

c) a FENSA certificate had not been provided for the double glazed windows

Respondent

The Notice stated that the windows had not been correctly installed and had gaps around them. The authority required the landlord to provide a FENSA certificate.

Applicant

As the windows were around 17 years old, there was no requirement to provide a FENSA certificate.

Tribunal

There is no requirement to provide a FENSA certificate which is available to prevent having to apply for consent under Building Regulations. It would not necessarily have dealt with disrepair and the requirement is deleted.

d) a hole in the roof was allowing water ingress causing partial collapse of the first floor ceiling

Respondent

The Notice required the roof to be repaired.

Applicant

The landlord agreed there were holes in the roof but said they had been caused by vandalism by the tenants.

Tribunal

Having heard the history of the tenancy, the aggressive nature of the tenants towards the landlord which on at least one occasion resulted in the tenants being interviewed by the Police, and having seen the property, the Tribunal finds the damage is likely to have been caused by the tenants. The Applicant has a reasonable excuse and the item is deleted.

32 **2 Hazard 18 Water supply Category 1**

Respondent

Miss Harries advised that the water supply was found to be polluted by coliforms and required the Applicant to instal a good supply.

Applicant

Mrs Doughty provided photographs showing that a water supply pipe had been cut and vandalised and that foul drains around the property had been damaged by bricks and a car battery forced into a manhole. The damage, it was submitted, could only have been carried out by the former tenants.

Tribunal

The Tribunal agrees it would have been perverse for the landlord to damage the water supply or drains that will cost significant sums to repair. The damage is most likely to have been caused by the tenants, especially as there had been no previous reported problems with the water supply before the nearby field had been let by Mr Ball to another party. The Tribunal finds that while Mrs Doughty is required to provide a safe water supply, she has a reasonable excuse under section 30(4) of the Act and deletes the item from the Notice.

33 **3 Hazard 29 Structural Collapse Category 2**

Respondent

The Notice identified defective ceilings throughout the upper floor of the property with several areas of collapse and further areas of bulging, sagging and leaks. The Notice required Mrs Doughty to repair the damage.

Applicant

Mrs Doughty gave evidence that she had employed a roofing contractor to carry out work to the roof in 2021 and as far as she had been aware it had been left in good condition. Photographs of the house at the time the previous tenants left were further evidence that it had been let in good repair and the tenants had not notified her of any outstanding repairs for the first three years of the tenancy.

Tribunal

The Tribunal inspected the first floor ceilings which were damaged in several places. The Tribunal inspected the roof surface from ground level and apart from a few obvious missing and damaged slates, the majority were in fair condition. The Tribunal finds it highly unlikely that the roofing contractor would have left the roof with substantial holes and the pattern of damage to the ceilings suggests it may have been caused by damage from below, rather than above. In other words, the Tribunal finds it highly plausible to have been vandalism caused by the tenants and certainly not 'beyond reasonable doubt' by the landlord. The Tribunal finds Mrs Doughty has a reasonable excuse under section 30(4) of the Act and deletes the item from the Notice.

34 **4** **Hazard 6** **Carbon Monoxide** **Category 2**

Respondent

Miss Harries advised that the log burner in the lounge was not sufficiently vented as the flue had not been swept for years and there was a risk of smoke blowing back into the room. The room should have been fitted with a carbon monoxide monitor which the landlord was required to provide under the Smoke and Carbon Monoxide Alarm Regulations 2015

Applicant

Mrs Doughty's husband Mr Doughty is a builder and advised the authority that a monitor would be installed. He advised that it was installed, but after the tenants vacated, he found the monitor hidden in a cupboard and suggested it had been put there by the tenants. A photograph of the detector was submitted in evidence.

Tribunal

There was no evidence that a detector had not been provided and the photograph suggested it had been moved. It cannot at this stage be proved either way but the Tribunal prefers the evidence of Mr Doughty and is not prepared to find 'beyond reasonable doubt' that it was not in the property at the appropriate time. The item is deleted.

35 **5** **Hazard 1** **Damp and Mould** **Category 2**

Respondent

The authority's Notice indicates damp and mould throughout the upper floor of the property such as staining and bowing of ceilings, defective roof covering and lack of a working heating system.

Applicant

The Applicant's points have already been made in this respect under items 3 (structural collapse) and 1 (excess cold) above.

Tribunal

The Tribunal agrees there is damp and mould throughout the house but reiterates its findings above, that the Applicant has reasonable excuses on both grounds because it is likely the ceilings were damaged from below by the tenants and the Respondent conceded at the hearing that the boiler had been in working order, albeit likely that the tenants had not bought fuel. The tenants were responsible for the defective lounge log burner under the terms of the tenancy agreement. Having considered the evidence, the Tribunal deletes the item.

36 **6** **Hazard 17** **Personal Hygiene** **Category 2**

Respondent

Miss Harries found there was no hot water supply to the ground floor lobby hand basin. The Notice required Mrs Doughty to provide hot water to the basin.

Applicant

Mrs Doughty agreed there was no hot water supply to the basin but advised the Tribunal that there never had been. There had been a hot water supply to the kitchen and bathroom but the lobby only ever had a cold supply. Providing hot water would have been an improvement beyond the scope of the Notice.

Tribunal

A local authority can require improvements but is restricted to disrepair only under the provisions of the Housing Act 2004. The item is therefore deleted from the Notice.

Summary

- 37 The Tribunal finds the Applicant Mrs Doughty has a reasonable excuse for all of the defects referred to in the Final Notice issued by Herefordshire Council dated 10 April 2024 under section 30(4) of the Act.
- 38 The Tribunal therefore cancels the Final Notice under paragraph 10(4) to Schedule 13A to the Housing Act 2004.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Tenant / respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 28 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, you should send your further application for permission to appeal by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).