



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

Case Reference : CHI/00MR/LDC/2018/0047

Property : 1 Croxden Way, Willingdon
East Sussex BN22 0HU

Applicant : Ms Diane Struppe

Representative : Mrs Cottell

Respondent : Eastbourne Borough Council

Representative : Michele Wilkinson, Council Solicitor

Type of Application : Appeal in respect of an Improvement Notice
Housing Act 2004

Date of Decision : 06 December 2018

Tribunal Member(s) : Judge JA Talbot
Mr N Robinson FRICS

DECISION

The Decision

The appeal is refused.

The Improvement Notice dated 25 June 2018 is confirmed.

The Appeal

1. On 5 July 2018, Ms Struppe appealed against an Improvement Notice issued by Eastbourne Borough Council (“the Council”) under Sections 11 & 12 of the Housing Act 2004 (“the Act”) and dated 25 June 2018.
2. The Improvement Notice concerns a property at 1 Croxden Way, Willingdon BN22 0HU. The freehold owner is the appellant, Ms D Struppe, who lives in Malta. She was represented by her sister, Mrs Cottell, who is familiar with the property and prepared the appeal on Ms Struppe’s behalf.
3. The property is occupied by Ms Amy Woodward, a lone parent with two young children, on an assured shorthold tenancy.
4. The Council considered that an Improvement Notice was appropriate because substantial works were needed to reduce the risks presented by various category 1 and category 2 hazards.
5. In summary, the category 1 hazard was: excess cold. The category 2 hazards were: falls on stairs, damp & mould, electrical hazards and falls on levels.
6. The remedial actions required were:
 - Excess cold: renew/repair radiator in dining room, provide additional radiators or an appropriate form of heating with thermostat controls to the bathroom, toilet and downstairs hallway, to ensure the property can be adequately heated and remove cold spots where condensation can form creating black mould.
 - Falls on stairs: take up and re-fit the stair carpet so that it is securely fixed down and not loose and ensure the spikes from the gripper rods cannot be felt through the carpet.
 - Damp & mould: renew the gutter joint to the rear of the property and ensure water discharges into proper drainage.
 - Electrical hazards: provide a copy of the Electrical Installation Condition Report, repair/replace the outside light to the rear of the property, and make good all damaged and defective electrical sockets.
 - Falls on levels: remove all frayed carpets to the dining room and living room, provide a suitable floor covering fitted to manufacturer’s instructions.

7. Ms Struppe's relevant grounds of appeal, in summary, were: (1) insufficient category 1 & 2 hazards existed in the property to justify the issue of the Improvement Notice; (2) she disagreed with some of the category 1 & 2 hazards and the required remedial actions.
8. Directions were issued by the tribunal on 11 July and 14 September 2018. In the latter Directions, Judge Tildesley OBE admitted the appeal as valid following an objection by the Council. Both parties complied with Directions for certain further steps to be taken to prepare for the hearing.

The Law (insofar as is relevant to the appeal)

Housing Act 2004

Section 1 New System for assessing housing conditions and enforcing housing standards

(1) This Part provides –

- (a) for a new system of assessing the condition of residential premises, and
- (b) for that system to be used in the enforcement of housing standards in relation to such premises.

(2) The new system –

- (a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see Section 2), and
- (b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c 68).

Section 2 Meaning of “category 1 hazard” and “category 2 hazard”

(1) In this Act –

“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a

result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)—

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section—

“building” includes part of a building;

“harm” includes temporary harm.

(5) In this Act “health” includes mental health.

Section 11 Improvement notices relating to category 1 hazards: duty of local authority to make order

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

Serving an improvement notice under this section is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards general duty to take enforcement action).

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

..... (3) to (8)

Section 12 Improvement notice relating to category 2 hazards

(1) If –

(a) the local authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) and section 15.

..... (3) to (6)

Inspection

9. The members of the tribunal inspected the property before the hearing, accompanied by Ms Struppe's representative Mrs Cottell and her husband, Ms D Kidson, Specialist Advisor (Private Housing), the tenant Ms Woodward, and two of her friends.

10. The property is a modern end of terrace two storey house with two good size bedrooms, bathroom and separate WC upstairs and a lounge and kitchen/dining room downstairs. The tribunal's attention was drawn to a power point in one bedroom where a small amount of plaster had disintegrated immediately below the power point, the lack of heating provision in the entrance hallway, bathroom and separate WC, damp and mould marking to the bathroom ceiling, a slightly stretched carpet with noticeable spikes from the gripper rods on the stairs, rippled carpet on the half landing, frayed carpet edges to the lounge and dining room, a non-working radiator in the dining room, a buzzing light fitting in the entrance hall, two power points in the living room with a mastic or similar treatment around them, and visibly dripping guttering outside at the back of the property.

The hearing

11. A hearing took place at Bexhill Town Hall on 8 November 2018. Ms Struppe did not attend in person. She was represented by Mrs Cottell, who was accompanied by her husband. Ms M Wilkinson, solicitor, represented the Council. Also in attendance were Ms D Kidson, Specialist Advisor (Private Housing) and Ms R Wynn, Private Housing Manager.

Background facts

12. Ms Struppe is the freehold owner the property. In or around March 2017, Ms Woodward moved in under an assured shorthold tenancy. The tribunal did not have a copy of the tenancy agreement.
13. At that time, the property was managed on behalf of Ms Struppe by Stevens and Carter, who prepared an Inventory and Schedule of Condition dated 3 March 2017, presumably before Ms Woodward moved in. Insofar as is relevant to this appeal, the Inventory noted that the dining room carpet was frayed at the edge, the stairs/landing carpet was rippled, and the lounge carpet was in good condition. The Inventory disclaimers stated that none of the electrical or gas appliances had been checked as to working order. The radiators and power points were listed as in situ but they were not tested.
14. According to a letter from BHT Eastbourne Advice, which was accepted by the tribunal as likely to be accurate as to the history, Ms Woodward first sought advice about various disrepair issues in April 2017. She had been told after she moved in that the property would be sold. BHT wrote to Ms Struppe in March 2018 about the disrepair and other matters relating to the tenancy. Several Notices under S13 Housing Act 1988 were served seeking to increase the rent, the outcome of which is unknown.
15. A S21 Notice (Notice Seeking Possession for an AST) was served on 22 August 2017 which expired before possession proceedings were issued. A further S21 Notice was served on 3 June 2018 with an end date of 3 August 2018. Meanwhile, the Improvement Notice had been issued, so the NSP was rendered invalid under the Deregulation Act 2015.
16. BHT further stated that on 28 November 2017 the new managing agents, Oakfield Property Ltd, emailed Ms Woodward stating that Ms Struppe did not wish to carry out any further works to the property at that time. Subsequently the heating system broke down on 28 December 2017 and was fixed on 5 January 2018.
17. According to the witness statement of Ms Kidson, dated 10 October 2018, on 2 January 2018 the Council received a complaint from Ms Woodward. At that time the boiler was not working. Ms Kidson contacted Oakfield, who confirmed they acted for Ms Struppe, but without her permission they were unable to carry out works.
18. Following contact with Oakfield and Ms Struppe, on 1 February 2018 Ms Kidson served Notice of Intention to inspect the property in respect of Ms Woodward' ongoing concerns following the boiler repair. The inspection took place on 8 February 2018, when Ms Kidson carried out a full Housing Health and Safety Rating System (HHSRS) assessment.

19. Ms Kidson sent her report and remedial action required to Ms Struppe by email on 21 February 2018 with a two-month deadline to complete the works on an informal basis, and a warning that failure to do so would result in formal action being taken with a charge attached. Oakfield were copied in.
20. By April 2018, some repairs had been carried out to the windows and to the electrical sockets, though some associated plaster damage had not been made good around the sockets. On 6 May 2018 Oakfield confirmed they were no longer acting as managing agents for Ms Struppe.
21. Ms Kidson re-inspected the property on 16 May 2018 and found that in her opinion the category 1 and category 2 hazards still existed. The two-month deadline for the required works to be carried out had expired. Ms Kidson informed Ms Struppe of this by email on 23 May 2018 but received no reply. As a result, the Improvement Notice was prepared and served on 25 June 2018. Ms Struppe objected by email on 27 June 2018 that the Improvement Notice was unlawful, and subsequently the appeal was made to the tribunal.

Ms Struppe's Case

22. The appeal, prepared by Mrs Cottell, contained 18 numbered points. Only items 7 to 12 related directly to the Improvement Notice. The others related largely to the landlord and tenant relationship between Ms Struppe and Ms Woodward.
23. For example, Ms Cottell sought to argue that as the result of the Improvement Notice, the Deregulation Act 2015 meant that the S21 Notice was of no effect, which had adversely affected both Ms Struppe's ability to evict Ms Woodward and her prospects of selling the property. In addition, the Council had acted unlawfully in inspecting the property, was biased against Ms Struppe, and along with other third parties (including BHT and the local MP) had given unlawful and misleading advice to Ms Woodward. Mrs Cottell further contended that Ms Woodward was in rent arrears and had damaged the property.
24. At the start of the hearing, the tribunal explained to Mrs Cottell that it had no jurisdiction over these issues. The tribunal could only consider the grounds of appeal and objections to the Improvement Notice. Under paragraph 15(3) of Part 3 of Schedule 1 to the Housing Act 2004, the power of the tribunal was limited to deciding whether to confirm, quash, or vary the Improvement Notice.
25. Regarding the Improvement Notice, Mrs Cottell submitted that the Housing Health & Safety Hazard Ratings (HHSRS) risk assessments had not been adequately justified or explained. She argued that Health and Safety legislation should apply to the case so that the Council's requirements were not "reasonably practicable".

26. In relation to excess cold, Mrs Cottell submitted that the heating system was in working order and that there was a radiator on the landing by the bathroom which should be sufficient for the bathroom. She alleged that the toilet was too small to fit a radiator. Previous tenants had not complained of cold. Radiator valve caps had been removed (by implication by the tenant). The HHSRS criteria applied to occupants aged 65 and were therefore not applicable.
27. In relation to falls on stairs, Mrs Cottell did not agree that the ripple on the landing stair carpet amounted to a hazard and said that all flooring and carpets had been replaced in 2015/16.
28. Turning to electrical hazards, Ms Cottell argued that these did not exist. The outside light and interior sockets had been repaired in May 2018 and there was no missing plasterwork around any sockets. Ms Struppe had incurred costs of £474 for an electrical report which turned out not to be necessary.
29. In relation to mould and damp, Mrs Cottell submitted that repairs had been carried out to the guttering in December 2015 and that there was no evidence of damp or water being discharged onto the property.
30. In relation to falls on levels, Mrs Cottell submitted that the fraying carpets in the lounge and dining area were due to the tenant cutting them, and it was the tenant's responsibility to replace the damaged carpets under the terms of the tenancy agreement.
31. In reply to questions from the tribunal, Mrs Cottell admitted that no action had been taken by Ms Struppe in respect of remedial action under the Improvement Notice other than to the electrical hazards. She could not commit Ms Struppe in connection to repairs to the dripping gutter. In general Mrs Cottell took the view that the tenant was responsible for remedying any problems that were not the landlord's fault.

The Council's Case

32. With reference to the category 1 and 2 hazards, Ms Wilkinson submitted that the correct procedures had been followed, that Ms Kidson's assessment of the relevant hazards under the relevant legislation and guidance was correct. The inspection was lawful as proper notice had been given. She confirmed that Ms Kidson was fully qualified and trained to carry out HHSRS assessments and prepare Improvement Notices. Health and Safety legislation was irrelevant to the Improvement Notice which was governed solely by the Housing Act 2004.
33. Further, under S11 & 12 of the Act, the existence of category 1 hazards and category 2 hazards meant that the Council had a general duty and power to take enforcement action, and the issuing of the Improvement Notice was a course of action properly open to it.

34. In relation to excess cold, Ms Wilkinson explained that the assessment of hazards under HHSRS was based on the risk to any potential occupant who is most vulnerable to the hazard, which would be elderly people. The fact that the current occupier Ms Woodward and her children were under 65 was irrelevant.
35. Ms Wilkinson rejected any suggestion that Ms Kidson or any Council was in any way biased against Ms Struppe. The Council had acted properly in response to complaints from the tenant.
36. The Council did not accept that the required remedial actions had been carried out, apart from making good the damaged electrical sockets. The requirement for a full Electrical Installation Condition Report had been relaxed and Ms Struppe had been informed that a minor works electrical certificate would suffice but this had not been provided.

Consideration

37. The issue to be determined by the tribunal was whether the Improvement Notice should be confirmed, quashed or varied.
38. In the tribunal's view, in all the circumstances and on the balance of probabilities, the hazards identified in the Improvement Notice existed at the date of issue of the Notice, had been reasonably assessed in accordance with the statutory procedure and required methodology. In addition, the remedial actions were appropriate and proportionate.
39. By the date of the hearing, the tribunal found that the electrical hazards had largely been rectified, which suggested that these had been accepted by Ms Struppe, but the other hazards and remedial actions remained outstanding and these were observed by the tribunal at the inspection.
40. Mrs Cottell had produced various contractor's invoices which she argued demonstrated that either the relevant hazard did not exist or had been remedied in relation to the guttering and lounge radiator.
41. However, the tribunal noted that an invoice from BGW for works to clear and repair the rear guttering was dated 7 December 2017, some six months before the date of the Improvement Notice. The invoice did not specify which part of the guttering had been repaired, but it was beyond doubt that the central joint was defective as it was seen to be dripping at the time of the inspection. Work to the lounge radiator had been carried out in December 2016 but this radiator was not mentioned in the Improvement Notice. It was the dining room radiator that was not working and required repair or replacement.
42. It appeared to the tribunal that Mrs Cottell's objections to the Improvement Notice stemmed mainly from her belief that the assessed hazards were either insignificant, or due to defaults or actions by the tenant Ms Woodward, and that therefore it was not Ms Struppe's responsibility to carry out the remedial actions.

43. However, this is to confuse the landlord and tenant relationship with the statutory HHSRS scheme, under which Ms Struppe, as the freehold owner and landlord, is the responsible person.
44. The tribunal makes no comment on Ms Struppe's obligations to repair under the tenancy agreement or S.11 of the Landlord and Tenant Act 1985, and it makes no findings on any alleged actions or defaults by Ms Woodward. It was, however, clear from the Stevens and Carter inventory that the frayed dining room carpet and rippled stair carpet existed before Ms Woodward took up occupation.
45. For all the above reasons the tribunal confirmed the Improvement Notice and refused the appeal.

Judge JA Talbot

Dated 4 December 2018

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 a written application to the First-tier Tribunal at the regional office which has been dealing with the case.
2. The application must arrive at the Tribunal office within 28 days after the Tribunal sends to the person making the application the 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the person making the application is seeking.

