



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

**Case Reference** : **MAN/00BS/HIN/2019/0043**

**Property** : **52, Thomson Street, Stockport SK3 9DR**

**Applicant** : **Ms Neeta Tanna**

**Respondent** : **Stockport Metropolitan Borough Council**

**Type of Application** : **Appeal against an improvement notice –  
Schedule 1, Housing Act 2004**

**Tribunal Members** : **Tribunal Judge C Wood  
Mr. J. Faulkner**

**Date of Determination** : **4 September 2020**

**Date of Decision** : **8 September 2020**

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**DECISION**

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## **Order**

1. In accordance with paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal orders that the improvement notice dated 29 August 2019, (“the Improvement Notice”), is varied by the deletion of the Category 1 hazard: Flames, hot surface, and the Category 2 hazard: Domestic hygiene, Pest and Refuse, but is otherwise confirmed as issued.
2. Pursuant to section 49(7) of the Act, the Tribunal orders the Applicant to pay to the Respondent the sum of £315 in respect of certain administration and other expenses incurred by the Respondent in connection with the preparation and service of the Improvement Notice.

## **Background**

3. By an application dated 17 September 2019, (“the Application”), the Applicant appealed against the Improvement Notice under paragraph 10 of Schedule 1 to the Housing Act 2004, (“the Act”).
4. Directions dated 11 October 2019 were issued pursuant to which both parties submitted written representations.
5. Following further correspondence between the parties and the Tribunal, a Case Management Conference, (“CMC”), was held on 15 May 2020, and further Directions dated 28 May were issued. Further written submissions were received from both parties.
6. The parties were notified that, if a hearing of the Application was to be held, the earliest date would be in or about September 2020. Having regard to the delays that had already occurred, the Tribunal determined that it was consistent with the overriding objective to determine the Application on the papers, which was then scheduled for determination on Monday 17 August 2020. The Tribunal had particular reference to the evidence submitted by the Respondent in April 2020 comprising videos of the Property from December 2019 which showed that the leak from the bathroom into the living room was continuing, and an email dated 22 May 2020 from MySpace Housing that stated no repairs had been carried out at the Property since the expiry of the Improvement Notice.
7. Prior to its determination on 17 August 2020, the Tribunal raised a number of specific questions with the parties. Relevant responses were taken into account by the Tribunal in reaching its determinations.
8. Due to covid-19 restrictions, the Tribunal determined that it was not appropriate to conduct an internal inspection of the Property but was satisfied that the photographic and video evidence submitted was sufficient to enable it to make its determination.

## **The Law**

9. The Act introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
10. Hazards are categorised as Category 1 and Category 2 hazards.
11. Section 7(2) of the Act sets out five types of enforcement action which a local authority may take in respect of a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. One of these is an improvement notice.
12. An improvement notice 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: section 12(2).
13. The person on whom an improvement notice is served may appeal to the Tribunal against an improvement notice (Schedule 1, para.10(1) of the Act).
14. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority were unaware, (para. 15(2)(b)).
15. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

## **Evidence**

16. The Applicant's grounds of appeal as set out in the Application are as follows:
  - 16.1 the Respondent has acted irrationally and failed to take account of factual information;
  - 16.2 the Respondent has acted unreasonably in issuing an improvement notice because of the difficulties in gaining access to the Property experienced by the Applicant;
  - 16.3 the Respondent has not provided supporting evidence regarding the availability of access to the Property. The Respondent is required to take account of all relevant evidence at the date of service of the Improvement Notice, and information coming to light subsequently. The Respondent has issued the notice without exercising due diligence;
  - 16.4 the Applicant has been granted limited access to the Property which may be insufficient to effect the repairs.
17. The Applicant submitted written representations in January 2020, ("the Applicant's First Statement") and supplementary representations in June 2020, ("the Applicant's Second Statement").

18. In the Applicant's First Statement, the following grounds of appeal were stated:
  - 18.1 the Applicant was advised that there is a question regarding the validity of the Improvement Notice;
  - 18.2 not all of the repairs listed on the Improvement Notice are the Applicant's responsibility but are the responsibility of her tenant, MySpace Housing Solutions, ("MySpace");
  - 18.3 the repairs were done in February 2019, including replacement of door handles. The damage is due to "neglect and wilful damage";
  - 18.4 the list of hazards have been wrongly categorised, are unreasonable and have not been explained to the Applicant;
  - 18.5 the problems regarding access;
  - 18.6 the tenant has "manipulated" this process to enable her to remain in the Property, her tenancy having expired and having been asked to vacate.
19. Attached to the Applicant's First Statement are a number of exhibits which include an EPC dated 25 August 2019 and a gas installation/safety record dated 18 January 2019 issued in the name of MySpace.
20. In the Applicant's Second Statement, the Applicant states as follows:
  - 20.1 there is a complaint about the lack of page numbering in the Respondent's submissions;
  - 20.2 there is a re-statement of the problems with access to the Property;
  - 20.3 MySpace are paying rent "well under market rent";
  - 20.4 both MySpace and the Respondent are aware of the Applicant's need for the Property but have taken no action to re-house the occupant. They are "creating repairs issues" the result of "wilful neglect and damage".
21. The Respondent's submissions are set out in its Statement of Reasons and the supplementary information submitted following the CMC and are summarised as follows:
  - 21.1 they have responded individually to the grounds of appeal set out in the Application and the Applicant's First Statement, as detailed in paragraphs 16, and 18 above;
  - 21.2 specifically, whilst pointing out that no specific examples are provided by the Applicant to support her claims, they reject that the Respondent acted irrationally or unreasonably in choosing to take enforcement action by way of issue of the Improvement Notice;
  - 21.3 they refer to the correspondence between the various parties between 10 December 2018 and 29 August 2019 in rejecting the Applicant's claims regarding the difficulties of obtaining access to the Property to effect repairs, and again correspondence between the parties from 23 August 2019 – September 2019 in rejecting the Applicant's claim that time restrictions for completion of repairs were imposed by the Respondent;

- 21.4 the Respondent is satisfied from the information obtained from the Land Registry that the Applicant is the owner of the Property;
- 21.5 they reference the information provided to it by MySpace in an email dated 2 July 2019 (and included within the Bundle SMBCo8), regarding the responsibility for repairs at the Property and conclude that, "...it can be noted that the required works to address these matters [ie the deficiencies and remedial action as set out in Schedules 1 and 2 to the Improvement Notice] are not included in the service provided by MySpace Housing Solutions";
- 21.6 they refer to the two tenancy agreements signed in July 2017, between Mr Raj Tanna and MySpace and between MySpace and Antoinette Gordon, ("AG"), in the context of the Applicant's claim that AG's tenancy had expired and that the Applicant had made clear her wish to sale the Property. The Respondent states that no evidence to this effect has been provided by the Applicant;
- 21.7 the Respondent also addresses a number of issues raised by the Applicant which are not pertinent to the Application eg complaint made by Mr.Raj Tanna;
- 21.8 the Respondent states that the Applicant has not provided any evidence to substantiate her claim that there is a question regarding the validity of the Improvement Notice or to particularise the claim.

### **Reasons**

- 22. The Tribunal has considerable sympathy for the Applicant's complaint regarding the lack of page numbering in the Respondent's submissions.
- 23. The Tribunal noted that in the Application the Applicant has not challenged the Respondent's assessment of the hazards at the Property, ( save for claims that certain of the identified hazards are the result of damage/neglect by the occupants) or the appropriateness of the Respondent's choice of enforcement action.
- 24. Further, the Tribunal is satisfied that the Applicant's appeal has been made under the general right of appeal under paragraph 10, Part 3 of Schedule to the Act.
- 24. In reaching its Decision, the Tribunal has addressed the following issues which it considers are the only substantive issues relevant to the appeal:
  - 24.1 validity of the Improvement Notice;
  - 24.2 the "person having control" of the Property;
  - 24.3 the Applicant's claims regarding certain of the identified hazards as being the result of damage/neglect by the occupant and the effect on compliance with the Improvement Notice by reasons of the difficulties of gaining access to the Property.

25. Validity of the Improvement Notice:

- 25.1 paragraph 5(1)(a) of Part 3 of Schedule 1 to the Act provides that an improvement notice must be served on “...every other person, who, to their knowledge...has a relevant interest in any specified premises”. “Relevant interest” is defined in paragraph 5(2) as “an interest as freeholder, mortgagee or lessee”.
- 25.2 as acknowledged by the Respondent, there is no evidence of service of the Improvement Notice on MySpace;
- 25.3 the Tribunal notes the Respondent’s comments in its email to the Tribunal dated 17 August 2020 as follows:
- “We would invite the Tribunal to consider that the Improvement Notice was served, and, in the alternative, that in any event MySpace was fully aware that the Improvement Notices had been served on other relevant parties, including MySpace's sub-tenant Ms Gordon who lives at the property, and that also MySpace was at all times fully aware of the exact contents of the Improvement Notice. Stockport MBC would therefore invite the Tribunal to use its discretion to dispense with the need for the Council to have served MySpace with the Improvement Notice, on the basis that MySpace was not prejudiced in any way by such failure (if failure it was), because MySpace had been involved at every stage leading to Stockport MBC's service of the Improvement Notice, but also because MySpace were in no position to effect any improvements, and service on them was - as with service on Ms Gordon - simply a matter of keeping relevant parties informed. Certainly the owners of the Property (Mr & Mrs Tanna) were not prejudiced in any way by this omission, and that this narrow issue should not therefore be allowed to determine the entire appeal.”
- 25.4 the Applicant refers to an email dated 1 October 2019 from MySpace to the Respondent requesting a copy of the Improvement Notice as evidence of the Respondent’s failure to serve MySpace.

26. The Tribunal is satisfied that:

- 26.1 MySpace has a “relevant interest” in the Property as a lessee of the Property;
- 26.2 that the Respondent has failed to produce any evidence of service of the Improvement Notice on MySpace;
- 26.3 it has no general discretion to dispense with service, as suggested by the Respondent;
- 26.4 the purpose of service of an improvement notice on persons having “a relevant interest” is to ensure that they are aware of the issue of the notice by the local authority;
- 26.5 MySpace were fully aware of the Respondent’s involvement with the Applicant over many months prior to the issue of the Improvement Notice and of the nature of the repairs required to the Property and;
- 26.6 there was no prejudice to the Applicant by reason of the Respondent’s failure to serve the Improvement Notice on MySpace;

26.5 in accordance with the Upper Tribunal decision in London Borough of Waltham Forest v Hasan Younis [2019] UKUT 0362, and, without limitation, having regard to paragraphs 26.5 and 26.6 above, the failure to serve the Improvement Notice on MySpace does not affect the validity of the Improvement Notice.

27. “Person having control” of the Property

27.1 It is not clear to the Tribunal at what date the Respondent became aware of the terms of the tenancy agreement between MySpace and the occupier of the Property but it is assumed that this was prior to the service of the Improvement Notice.

27.2 It is clear that the Respondent made a decision very soon after the problems with the condition of the Property were referred to them that the appropriate person against whom to take enforcement action was the Applicant. In this respect, the Tribunal refers to the email dated 21 January 2019 from Chantelle Morris of the Respondent to Kim Hooley of Stockport Homes in which Ms Morris confirms that enforcement action will only be taken against the Applicant in the following terms: “No we won’t take action against MySpace just the Landlord/Landlady”.

27.3 It also appears that this remains the Respondent’s position, as illustrated in their email to the Tribunal dated 17 August 2020, when they stated, “...but also because MySpace were in no position to effect any improvements...”;

27.4 the tenancy agreement between MySpace and the occupant of the Property imposes the following contractual obligations on MySpace (Tribunal’s emphasis):

(i) “A planned and agreed approach will see MySpace **undertake** the following:

- Smoke Sensors
- **Doors**
- Co Sensors
- **Wiring**
- **Gas**
- **Windows**
- Locks
- Third Party Removal
- Manage external areas and fixtures”

(ii) “ Having already undertaken a thorough assessment of needs and agreed this property has the right location and building in relation to those assessed needs - .....

**4. Undertake repairs or improve the property in partnership with you and all agencies.**

**5. Undertake SAFETY CHECKS Gas, Electricity, Utilities, electrical equipment and ensure a proper file is set up with appropriate Certificates....**

- 28.1 Having reviewed the terms of the MySpace tenancy agreement, the Tribunal is satisfied that MySpace was a sub-landlord and was contractually and statutorily obliged to its tenant to effect repairs at the Property of the kind identified as hazards in the Improvement Notice.
- 28.2 Further, whilst the Tribunal accepts that the Respondent may not have been aware of the nature of MySpace's relationship with the occupant of the Property at the outset of this matter, it is not clear why the Respondent appears not to have reviewed its position towards MySpace on becoming aware of the contents of the tenancy agreement. Further, notwithstanding the terms of the tenancy agreement, the Respondent appears to have accepted the position as suggested by MySpace that their position was more akin to that of a managing agent of the Property, rather than a sub-landlord. The Tribunal considers that it was incumbent on the Respondent to fully investigate the legal implications of the MySpace tenancy agreement, and to make decisions regarding enforcement action in full comprehension of the legal rights and obligations of the various parties. The Tribunal is not satisfied that the Respondent has done so.
29. In particular, the Tribunal considers that the Respondent should have given proper consideration to the question whether MySpace was a "person having control" of the Property, as that term is defined in section 263 of the Act, and, if so, whether it was the more appropriate person against whom enforcement action should have been taken, or whether improvement notices should have been issued against both the Applicant and MySpace.
30. As a practical matter, the Tribunal considers that it may be that, if the Respondent had taken enforcement action against MySpace, then the necessary repairs may have been effected much more quickly than has been the case, to the benefit of the occupants, which is, after all, the ultimate objective of such enforcement action.
31. Notwithstanding the above, the Tribunal remains satisfied that the Applicant was properly determined to be a "person having control" of the Property and that the Respondent's failure to consider the appropriateness or otherwise of taking enforcement action against MySpace does not, in any way, affect the right of the Respondent to take such action against the Applicant, nor does it in any way affect the validity of the Improvement Notice.
32. Hazards/access:
- 32.1 With regard to the Schedule 1, Category 1 hazards in the Improvement Notice, the Tribunal notes as follows:
- (i) excess cold: the Applicant has since provided an EPC for the Property;
  - (ii) flames, hot surfaces etc: the Tribunal has not had an opportunity to inspect the Property but has seen photographs of the kitchen. It appears from the MySpace tenancy agreement that they assessed the Property as suitable for occupation by the occupants, an assessment which it is reasonable to assume would have included an assessment of the suitability of the layout of the kitchen. It is surprising that



MySpace would have reached such a conclusion if the layout constituted the significant hazard identified by the Respondent. Based on this evidence, the Tribunal does not consider it as appropriate to include this as a hazard in the Improvement Notice.

32.2 With regard to the Schedule 2, Category 2 hazards in the Improvement Notice, the Tribunal notes as follows:

- (i) domestic hygiene, pest and refuse: the Tribunal considers that skirting boards are essentially decorative and the limited extent of the skirting board which is missing is unlikely to present the hazard as identified. Accordingly, the Tribunal does not consider it as appropriate to include this as a hazard in the Improvement Notice;
- (ii) electrical installation: whilst the Tribunal considers it appropriate to include this as a category 2 hazard in the Improvement Notice, it refers to the MySpace tenancy agreement in which MySpace undertook to ensure that all appropriate certificates relating to the electrical installation were obtained;
- (iii) collision and entrapment: again whilst accepting the inclusion of missing door handles as a category 2 hazard, the Tribunal considers it surprising that MySpace would have assessed the Property as suitable for occupation by the occupant if door handles had been loose/missing at the date of such assessment. The Tribunal considers that this lends weight to the Applicant's claim that this hazard may have arisen by reason of damage/neglect by the occupants of the Property.

32.3 In view of paragraphs 32.1(ii) and 32.2(i), the Tribunal considers that the Improvement Notice should be varied by deletion of the hazards referred to in those paragraphs.

### 33. Access:

Having regard to the substantial documentary evidence submitted by the Respondent comprising communications between the Applicant and the Respondent over many months prior to and after the issue of the Improvement Notice, the Tribunal is not persuaded that the difficulties in gaining access to the Property were of the magnitude as described by the Applicant. In particular, but without limitation, the Tribunal determined that they were not such as to prevent the Applicant from enabling contractors to inspect the Property to ascertain the nature/extent of works required. Further, having regard to the relatively limited nature of the repairs required, the Tribunal was satisfied that such works could have been carried out within the period required under the Improvement Notice. The Tribunal was satisfied that the evidence demonstrated that the Applicant was given repeated opportunities, both prior to, and following the issue of the Improvement Notice, to carry out repairs, and that, had the Applicant taken advantage of those opportunities between January and August 2019, the issue of the Improvement Notice could have been avoided.

34. Having regard to the above, the Tribunal is satisfied that the Respondent acted appropriately in its choice of enforcement action with regard to the category 1 and category 2 hazards, as varied in accordance with paragraph 32.3, in the Improvement Notice. Specifically, the Tribunal is satisfied that there is no evidence to support the Applicant's claims that the Respondent acted irrationally or unreasonably in its choice of enforcement action and the issue of the Improvement Notice.
35. In view of its determination, the Tribunal considers it appropriate to make an order pursuant to section 49(7) of the Act requiring the Applicant to make payment of the Respondent's reasonable charges in relation to the preparation and service of the Improvement Notice. The Tribunal notes that the Respondent has indicated that these costs are in the sum of £315, which the Tribunal confirms is a reasonable charge.

C Wood  
Tribunal Judge  
4 September 2020