



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

Case Reference : BIR/00FY/HIN/2019/0001

Property : 17 Ladysmith Street, Nottingham, NG2 4AU

Applicant : Mrs Simmi Babita Bedi

Representative : Messers Solicitors

Respondent : Nottingham City Council

Type of Application : Appeal against the service of an Improvement Notice

Tribunal Members : Judge T N Jackson
Mr D Lavender MCIEH

Date of inspection : 28th June 2019

Date of Decision : 18th July 2019

DECISION

Decision

We determine that the Improvement Notice is varied as set out below:

- a) The deletion of remedial action 3 of Schedule 1 relating to the Hazard of Excess Cold**
- b) The deletion in its entirety of Schedule 2.3 relating to Fire Hazards**
- c) The deletion of remedial action 2 of Schedule 2.4 relating to Electrical Hazards**
- d) The deletion of remedial action 3 of Schedule 2.5 relating to the Hazard of Food Safety**

The remedial works are to be started by 20th August 2019 and each part of them is to be completed within 8 weeks of the start date.

Reasons for decision

Introduction

1. The Applicant owns the Property which was occupied by a tenant under a statutory periodic tenancy. On 6th March 2019 the Respondent Local Authority served an Improvement Notice on the Applicant. The Improvement Notice detailed both Category 1 and 2 Hazards and set out the remedial action to be taken and the time within which it should be taken. The Applicant appealed to the Tribunal on 25th March 2019.

Background

2. On 1st February 2018, the Respondent received a complaint from the tenant regarding damp to the front entrance and bedrooms, the boiler was reported to be working intermittently and the kitchen roof was said to be coming down. An inspection was carried out on 23rd February 2018 and the Applicant attended. The Respondent took photos of the Property which are included in the Respondent's bundle. Following a lack of action by the Applicant regarding the boiler, on 26th April 2018, the Respondent sent a letter to the Applicant and managing agent enclosing a copy of the Respondent's report on the Property including details of Category 1 and 2 Hazards and included a schedule of works which would be necessary to remove the identified Hazards. The letter gave the Applicant 14 days to contact the Respondent to consult on the remedial works prior to the consideration of enforcement action.
3. On 26th April 2018, the tenant made the Respondent aware that the managing agent had said that the Property may be put on the market due to the number of issues in the Property.
4. On 24th May 2018, the tenant advised the Respondent that whilst a leak under the sink had been repaired all other works remained outstanding.

5. On 15th November 2018, the Respondent carried out an inspection and found that the works requested on 26th April 2018 had not been completed and that the category 1 and 2 Hazards were still present.
6. On 16th November 2018, the Respondent contacted the managing agent outlining the items of disrepair which had not been completed. On 21st November 2018 the managing agent advised the Respondent that the Applicant intended to sell the Property.
7. The Respondent carried out a HHSRS assessment based on potential risks to health and safety arising from the deficiencies identified during the inspection. The Respondent's assessment judged that there was a likelihood of an occurrence within 12 months which could result in harm to a member of the relevant vulnerable group. The Respondent found that the most effective and appropriate course of action to deal with the Category 1 and 2 Hazards was to serve an Improvement Notice. An Improvement Notice was not served at this time.
8. On 28th January 2019, the Respondent carried out an inspection and found the Category 1 and 2 Hazards to be in the Property and that the condition of the Property had deteriorated further. The Respondent contacted the Applicant by phone to discuss the main concerns at the Property namely lack of heating to the ground floor and toilet not capable of being flushed. The Applicant confirmed repairs would be carried out on the 28th or 29th January 2019 and an update provided.
9. On 11th February 2019, the Applicant advised the Respondent that the Property was now sold subject to contract but that the tenant was not vacating the Property.
10. On 5th March 2019, the Respondent was advised that the tenant was still in the Property and there was no confirmed date when she would be vacating the Property.
11. The Respondent had worked informally with the Applicant for over a year to remove the Category 1 and 2 Hazards but the Hazards were still present at the inspection on 28th January 2019. The Respondent decided that serving an Improvement Notice was the most appropriate course of action because there were various Hazards which could cause harm to any occupier over the next 12 months.
12. An Improvement Notice dated 6th March 2019 was served by post on the Applicant.

The Improvement Notice

13. A full copy of the Improvement Notice was included within the Respondent's bundle. It identified Category 1 and 2 Hazards and detailed the remedial work to be carried out in relation to each Hazard.

The Category 1 Hazard

14. **Excess Cold** There is inadequate insulation in the loft. The Property is solid brick, therefore there is no cavity wall insulation. The internal plaster has perished in the kitchen, low level near the back door and near the front door in the lobby area due to damp. It is not known whether the rear addition has a cavity wall/cavity wall insulation. The heating system to the ground floor is defective which leaves it impossible for the rooms to reach and maintain a healthy temperature.

The Category 2 Hazards

15. **Falling on Level Surfaces.** The rear yard area was made up of three levels of paving slabs. The paving in the upper two areas had uneven concrete slabs and one was cracked. There was no external light and several trip Hazards.

16. **Damp and mould** There is damp in the lobby/porch area with black mould above the fanlight. The plaster has perished and is crumbling. Damp has affected the walls in the kitchen either side of the rear exit door. The plaster has perished and is crumbling. There is mould in the seal around the bath. The grout between some of the wall tiles and seal around the wash hand basin is mouldy. There is no mechanical extraction.

17. **Fire** The stand -alone battery -operated smoke alarms are not working.

18. **Electrical Hazards** The bathroom light is a batten type without a cover. There are insufficient sockets in the kitchen causing the occupier to use an extension cable.

19. **Food safety** The kitchen cupboards have damaged and missing doors, missing handles, damaged drawer fronts and a cupboard door with a handle on the hinge side of the door. There is a loose piece of wood obscuring part of a cupboard but the door adjacent doesn't close fully. The visible low- level plaster either side of the back door is perishing and large parts are missing due to damp. It is unclear whether the dampness affecting the plaster around the door extends behind the kitchen carcasses. There are insufficient electrical sockets.

20. The Improvement Notice required the Applicant to begin specified remedial works on 15th April 2019 and complete them within 8 weeks.

Inspection

21. With the consent of the tenant, we inspected the Property on 28th June 2019 in the presence of the tenant and Mr Chrysanthou, on behalf of the Respondent. The Applicant, her managing agent and legal representative did not attend.

22. The Property is a Victorian 3-bedroom mid terrace with ground floor passageway to the right- hand side of the Property. The main house is of a solid wall (9 inch) construction with the two-story extension to the rear being of a cavity construction. There was no evidence of cavity wall insulation have been installed retrospectively. The Property had predominantly double glazed upvc windows and doors throughout.

23. The render to the front elevation and to the rear extension was cracked, missing, and defective in parts.
24. The Property consisted to the ground floor front living room, hallway, rear living room / dining room and kitchen. There are 3 double bedrooms and a family bathroom to the first floor.
25. The Property has the benefit of a full wet gas central heating system throughout with radiators in all rooms. The tenant complains that the radiators to the ground floor do not warm despite a number of repairs having been previously undertaken. The heating is provided by Combi 30HE boiler which had some age. The heating was further supplemented by the tenant providing on peak oil filled radiators to several rooms. It was not possible to inspect the loft, but the tenant and local authority indicated that there was either no or inadequate loft insulation to the main roof.
26. There had been a chemical damp proof course installed to the ground floor front elevation wall. There was evidence of rising dampness / deteriorated plaster to the left-hand side front hallway wall and respective internal wall to the ground floor front living room up to a height of 300mm for approximately 0.4 meters. There was evidence of rising dampness / deteriorated plaster to a small section of the front elevation wall up to a height of 200mm for approximately 0.3 meters in total.
27. There was evidence of dampness at low level adjacent to the kitchen external door, which had caused the deteriorating of the plasterwork. It was evident that the cavity had been breached by the installation of the washing machine discharge pipe to the external drain.
28. There was evidence of damp staining to the ground floor rear kitchen ceiling, which was due to the defective seal between the bath and the wall. The tiles above the bath (up to 3 tiles) and silicon seal surrounding the wash hand basin had evidence of mould growth.
29. There was minor evidence of mould growth as a result of condensation dampness to the ground floor hallway and first floor bathroom. There was no provision of mechanical ventilation provided to the kitchen or bathroom. There was a batten type light fitting to the bathroom.
30. There were two fire angels 10 -year long life battery smoke detectors fitted to the ground floor hallway and first floor landing.
31. The kitchen had a range of units that were in poor condition including 1 cupboard door missing, several cupboard doors needing adjusting to enable them to close properly, as well two drawer handles missing. A section of work top had also been cut and removed from the right-hand side.
32. There were 3 double sockets and two additional single sockets (one adjacent to 30amp cooker point and another) provided above the work surfaces. There was also the provision of double socket at low-level adjacent to the back door, serving the washing machine and a low-level single socket serving the fridge freezer.

33. There is a paved area accessed via the external kitchen door. The paved area to rear of the extension was in reasonable condition. The paving to the left-hand side of the extension (2 upper levels) were in a poor condition with several slabs cracked, uneven and raised by as much as 3/4 inch in parts. There was the provision of an external light to the rear, which looked weathered and the bulb was missing. The rear of the property did not benefit from any borrowed lighting from any alternative sources such as street lighting.

Hearing

34. Neither party requested a hearing and we therefore dealt with the matter on the basis of the written submissions provided by each party.

The Law

35. The Housing Act 2004 introduced a new system for assessing the condition of residential premises operated by reference to the existence of Category 1 and Category 2 Hazards. Section 2 of the Act defines Category 1 and 2 Hazards and provides for Regulations for calculating the seriousness of such Hazards. The relevant Regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the HHSRS) which came into force on 6th April 2006.

36. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on an authority to inspect properties in certain circumstances. If on such an inspection the authority considers that a category 1 Hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Where the Hazards are rated as category 2, section 7 provides that the authority has discretion to take action, including the service of an Improvement Notice. An Improvement Notice requires the party on whom it is served to take remedial action in respect of the Hazard, usually by carrying out specified works.

37. Section 13 of the Act sets out the statutory provisions regarding the contents of Improvement Notices whether served under section 11, in relation to Category 1 Hazards, or section 12 in relation to Category 2 Hazards.

38. Section 8 of the Act requires the authority to prepare a Statement of Reasons explaining why they decided to take the relevant action-in this case an Improvement Notice- rather than any of the other kinds of enforcement action available to them.

39. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 15 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The Tribunal may confirm, quash or vary the Improvement Notice.

40. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act, in particular their functions under Chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that an authority must have regard to any such guidance.

41. In 2006, the then Office of the Deputy Prime Minister issued guidance under section 9 relating to HHSRS Operating Guidance (reference 05HMDO385/A) and HHSRS Enforcement Guidance (reference 05HMDO385/B), as amended.

Submissions

Applicant

Works

42. The Applicant submits that issues to the interior of the Property relating to damp have been caused by the tenant's lifestyle and the Property is not in need of improvement.
43. The smoke alarms and boiler operate adequately.
44. The number of sockets in the kitchen is sufficient and, in any event, the use of an extension cord is a common occurrence within a property and does not represent a Hazard.
45. The Applicant has instructed contractors to complete the installation of the loft insulation and the repairs to the rear yard.

Suspension of Notice

46. The Applicant states that the Property was occupied pursuant to an Assured Shorthold Tenancy Agreement which commenced on 16th December 2014 for an initial term of 6 months. At the expiry of the fixed term the tenant occupied under a statutory periodic monthly tenancy.
47. On approximately 15th December 2018 the Applicant served upon the tenant a notice under section 21 Housing Act 1988 terminating the tenancy on 20th February 2019. The Applicant says that a sale of the Property was agreed, subject to contract, on 30th January 2019.
48. The tenant did not vacate the premises by 20th February 2019 and the Applicant commenced possession proceedings. The Applicant states that the possession proceedings were dismissed at a hearing on 24th April 2019 by reason of a defective notice.
49. On 15th May 2019, the Applicant served a further notice under section 21 of the Housing Act 1988 terminating the tenancy on 17th July 2019. The purchaser remains ready and willing to complete the purchase of the Property and the price reflects the current condition. The Property is to be sold with vacant possession and the Applicant expects the tenant to vacate upon expiry of the Notice on 17th July 2019. In those circumstances the work set out on the Improvement Notice would be unnecessary.
50. In the circumstances where the Applicant completes the sale of the Property, the Applicant relies on section 19 of the Housing Act 2014 as she would not be the person liable to comply with the Improvement Notice. The Applicant had

anticipated that this would be the case in circumstances where the tenant had vacated and the sale completed in the 8 week period from the 15th April 2019 allowed for in the Improvement Notice.

51. The Applicant seeks a suspension of the Improvement Notice until 15th August 2019 on the basis that the tenant will vacate in that period and the sale of the Property will have been completed. In the event that this has not happened the Applicant is prepared to undertake to complete any remaining works under the Improvement Notice.

Respondent

52. The Respondent's case as to why an Improvement Notice (rather than any other formal Notice or Order) is appropriate is set out in the "Statement of Reasons for decision to take enforcement action" dated 6th March 2019 which was sent with the Improvement Notice.

Deliberations

53. We consider the matter by way of a rehearing. We are looking at matters afresh; but what we are looking at is **the Respondent's decision** rather than making a decision based on what we have seen at the inspection. We should make a decision considering the evidence that was available to the Respondent when it made its decision, although we may have regard to matters of which the Respondent was unaware.

Hazards

54. Having had regard to the photographs in the Respondent's bundle and having inspected the Property, we agree that the Category 1 and 2 Hazards, as described in the Improvement Notice, existed. Having regard to the nature of the Hazards, the background and the lack of progress following an informal approach in relation to Hazards properly categorised as Category 1, (in relation to which the Respondent has a **duty** to act), and Category 2, we do not consider the Respondent's action in serving an Improvement Notice to have been unreasonable.
55. We consider that an Improvement Notice, rather than any other formal Notice or Order or indeed no formal action, was appropriate. We agree with the considerations as to the appropriate option as set out in the Respondent's Statement of Reasons dated 6th March 2019.

Remedial action

56. Some work has been done to the Property as noted in paragraph 23-33 above. The majority of issues remain unresolved as at the date of inspection.

Excess cold

57. There was no evidence that loft insulation has been carried out despite the Applicant's assertion that she had instructed contractors. The Applicant has provided no evidence that the boiler is working effectively. We noted that it was

an aged model. We were not provided with evidence of boiler service records or evidence of repairs to the boiler having been carried out. The evidence was that the boiler and therefore the Property's heating system had been defective since April 2018 and continued to be defective as at the date of inspection.

58. Having regard to the solid brick construction of the house and that the heating system is reliant on the boiler, we find the remedial action detailed in points 1,2 and 4 of Schedule 1 of the Improvement Notice to be appropriate and proportionate.
59. Remedial action point 3 of Schedule 1 requires the Applicant to '*investigate the structure of the rear addition. If there is a cavity wall, install cavity wall insulation, if not already present*'. We note that the main Property is of a solid wall construction, with the extension being of a cavity wall type. There was no evidence of installation of retro fitted cavity installation. However, if the Property has the benefit of a working full central heating system, loft insulation and double glazing, we do not find it proportionate to insert cavity wall insulation if not already present in the rear addition. We delete remedial action point 3 from Schedule 1.

Falling on level Surfaces

60. There was no evidence that repairs had been carried out to the rear yard despite the Applicant's assertion that she had instructed contractors. On inspection we noted the Hazard as described in the Improvement Notice still existed. We find the remedial action detailed in points 1 and 2 of Schedule 2.1 to be appropriate and proportionate.

Damp and Mould

61. The Applicant has not identified or produced evidence as to what elements of the occupier's "lifestyle" they claim has caused the damp. As noted from the inspection, we find that the damp has been caused by rising dampness to the ground floor hallway and front elevation. There is dampness to the kitchen wall adjacent to the rear kitchen door as a result of the cavity being breached by the washing machine waste pipe or debris in the cavity or failure to lap the damp proof membrane in floor into the cavity wall damp proof course. At the inspection we noted that the Hazard as described in Schedule 2.2 of the Improvement Notice still existed. We also noted evidence of water penetration on the kitchen ceiling which was situated below the bathroom. We find the remedial action detailed in points 1 to 7 inclusive of Schedule 2.2 to be appropriate and proportionate.

Fire

62. The Applicant had fitted two sealed battery operated 10-year life Fire Angel smoke detectors in the ground floor hallway and first floor landing. The Improvement Notice required a mains wired smoke alarm with integral battery backup. The sealed smoke detectors meet the requirements of the Smoke and Carbon Monoxide Regulations 2015. Having regard to the fact that the Property is only two storey, has full central heating as opposed to open fires, the layout and means of egress is straight forward in that the occupier does not have to pass through a high risk room to escape, we find that sealed battery -operated smoke

detectors are appropriate and proportionate to the risk of fire at this particular Property. We delete Schedule 2.3 of the Improvement Notice relating to the Fire Hazard.

Electrical Hazards

63. Having inspected the Property and noting that the Hazard still exists, we find remedial action point 1 of Schedule 2.4 to be appropriate and proportionate.
64. Remedial action point 2 requires the Applicant to *‘employ an appropriately qualified electrical contractor to increase the number of electrical sockets in the kitchen. There shall be a minimum of 3 double sockets above the work surface for the occupiers to use portable electric appliances.’* Having regard to the number of double sockets and single sockets above and below the work surface, we find that appropriate provision already exists. We delete remedial action point 2 of Schedule 2.4 as it is unnecessary and disproportionate.

Food safety

65. On inspection we noted, (with the exception of the electrical sockets detailed above), that the Hazard as described in Schedule 2.5 of the Improvement Notice still existed. We find the remedial action points 1,2 and 4 to be appropriate and proportionate.
66. Remedial action point 3 requires the Applicant to *‘Undertake remedial works detailed in Schedule 2.4 point 2’*. As we have deleted that requirement as detailed in paragraph 64 above, we also delete the requirement detailed in remedial action point 3 of Schedule 2.5.

Suspension of Improvement Notice

67. We have considered the Applicant’s request to suspend the Improvement Notice until 15th August 2019 on the basis that the tenant will vacate in that period and the sale of the Property will have been completed. In the event that this has not happened the Applicant is prepared to undertake to complete any remaining works under the Improvement Notice.
68. The Applicant has produced a copy of the Memorandum of Sale dated 30th January 2019 which notes that the Purchaser has agreed to “do repairs after he moves in” and that “the tenant has been issued notice”.
69. A Memorandum of Sale is not a legally binding document and either party can withdraw at this stage. Although the Applicant has produced a letter dated 21st February 2019 from her solicitor enclosing the Deed of Transfer for signing, we have not received any evidence of the exchange of contracts following which the Purchaser is contractually bound to proceed with the transaction. As at 21st June 2019, the date of the Applicant’s submission, the sale still appears to be at the stage of Memorandum of sale only and the tenant remains in the Property.
70. There is a conflict of evidence as to why the section 21 possession notice court proceedings on 24th April 2019 did not result in the Applicant obtaining possession of the Property. The Applicant states that it was due to a defective

section 21 notice. The Respondent states that the hearing did not go ahead as neither the landlord nor her agent attended the hearing although the tenant did attend. We have not been provided with a copy of the court order from 24th April 2019.

71. The tenant is entitled to remain in occupation until the expiry of the notice on 17th July 2019. If she fails to vacate, the Applicant, (subject possibly to the requirements of the Deregulation Act 2015), will need to take further action to gain possession. Having noted the outcome of the last possession proceedings, (regardless of for which of the two reasons we have been given), there is no certainty that any such proceedings are likely to be successful, or that if they are, that the tenant will vacate without the need for subsequent enforcement action. There is therefore no certainty as to the date that the tenant will actually vacate the Property.
72. If and when the Property is sold to the purchaser, we have not been advised of whether the Property is to be occupied and on what basis. The Hazards may therefore continue for any incoming occupier. We note the provisions of section 19 of the Housing Act 2004 will apply if the Applicant ceases to be the owner of the Property but there is no evidence that that will occur in the immediate future.
73. We note the Applicant says that she will undertake the remedial works after 15th August 2019 if the tenant has not vacated and the sale of the Property has not been completed by that date. For the reasons set out in paragraph 71 above there can be no certainty that the Property will be vacant or sold by 15th August 2019. Having regard to the state of repair of the Property during the Applicant's ownership, her failure to carry out any of the works, (with the exception of the smoke detectors), since April 2018 when advised of them informally, and the lack of apparent work to install loft insulation or repairs to the rear yard despite the Applicant saying that she had instructed contractors, we have little confidence that the works would be carried out by the Applicant as stated.
74. We appreciate that some of the required remedial work may be redundant once the Property has been sold depending on a purchaser's intentions for the Property. However, matters on the sale have not progressed beyond a Memorandum of Sale that was agreed 5 months ago. We note that it was suggested both in April 2018 and November 2018 that the Property was to be sold and yet matters have not progressed beyond a Memorandum of Sale, a non-binding agreement. Throughout this time the tenant has occupied the Property with the Hazards. Negotiations between the Applicant and prospective purchaser as to the terms of the sale of a property the subject of an Improvement Notice should not place a tenant in a position of a continuing risk to health and safety. We therefore do not agree to the request to suspend the Improvement Notice on the terms suggested by the Applicant.

Date to start and complete the works

75. The remedial works are to be started by 20th August 2019 and each part of them is to be completed within 8 weeks of the start date.

Costs

76. Neither party has made an application for costs and we therefore make no costs award.

Appeal

77. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson