

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL for the Northern Rent Assessment Panel

Housing Act 2004, Section 42 and paragraph 11 of Schedule 3

Re: 35 Richmond Street, Bridlington YO15 3DL

MRS A HARRISON

Applicant

EAST RIDING OF YORKSHIRE COUNCIL

Respondent

Tribunal: Mrs A M Davies, LLB
Mr I Loncaster, FRICS

Hearing date: 4 July 2011

DECISION

The demand for recovery of expenses relating to emergency remedial action at 35 Richmond Street, Bridlington contained in a notice dated 10 February 2011 and served by the Respondent on the Applicant is quashed.

REASONS

1. In November 2010 the Respondent incurred expenses in relation to emergency remedial work which (in its capacity as the local housing authority) it determined was an appropriate course of action in relation to a Category 1 fire hazard at 35 Richmond Street, Bridlington ("the property").
2. The Applicant is the owner of the property and her husband Mr Harrison manages it on her behalf. The property is occupied by Mrs Kendrick and her 7 children.
3. On Thursday 25 November 2011 two officers of the Respondent, Russell Lee and Laura Sandrey, visited the property and were admitted by Mrs Kendrick. They inspected the electrics in the kitchen and determined that there were defects in the electrical sockets serving (a) the boiler and (b) the cooker which amounted to a Category 1 hazard. They also determined that it was necessary to ascertain the cause of the electricity supply constantly tripping.

4. Mrs Sandrey spoke to Mr Harrison by telephone and informed him of the need to carry out remedial works urgently. He said that he would do so, but the conversation was acrimonious and in case he failed to carry out the work before the weekend, Mrs Sandrey, fearing a fire at the property, arranged for the Respondent's emergency building services contractor to send an electrician to the property if necessary the following afternoon, Friday 26 November. She prepared a schedule of works which was sent to the Respondent's contractor.
5. At about lunchtime on 26 November, Mr Harrison attended the property with an electrician and carried out remedial works, which were completed later on that afternoon by further repairs to the property which stopped water overflowing into the kitchen and (potentially) affecting the electrical sockets.
6. Mrs Sandrey was informed by Mrs Kendrick that Mr Harrison had carried out remedial work at the property but having no information about the qualifications of the person carrying out the electrical work she determined to inspect it with the Respondent's contractor in any event, and did so during the afternoon of 26 November. The Respondent's contractor carried out further work at the property during that visit.
7. The Respondent incurred expenses in attending at the property, assessing the risk, planning the remedial work, preparing the schedule of works, supervising the contractor, preparing a notice which was served on the Applicant under section 40(7) of the Housing Act 2004, and subsequently seeking reimbursement of these expenses and registering a Local Land Charge against the property in relation to its claim for payment. The Respondent's notice requesting reimbursement was dated 10 February 2011, and the Applicant appealed against it to this Tribunal on 14 February 2011.
8. The Respondent is entitled under section 42 Housing Act 2004 to recover from the Applicant expenses

"reasonably incurred in taking emergency remedial action under section 40".

Section 40 provides that such action may be taken if the housing authority are satisfied that a Category 1 hazard exists in any premises in relation to which remedial action could be required to be taken by an improvement notice under section 11 of the Act.

9. Subsection 40(5) provides that paragraphs 3 to 5 of Schedule 3 to the Act apply in connection with the taking of emergency remedial action under section 40, but as modified by subsection 40(6), which states

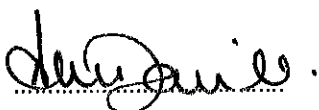
*"(b) the notice required by paragraph 4 (notice before entering premises) must.....be served on every person, who to the authority's knowledge –
(i) is an occupier of the premises....."*

Paragraph 4(1) of Schedule 3 states that the housing authority

"must serve a notice under this paragraph before they enter premises under paragraph 3 [which gives power to enter premises without agreement] for the purpose of taking action in relation to a hazard."

Paragraph 4(2) provides that the notice must state the premises and hazard concerned, that the authority intends to enter the premises, the action which the authority intends to take on the premises, and the power under which it intends to do so.

10. The Respondent did not claim to have, and did not have, the Applicant's agreement to carry out any remedial work. Although some of the Respondent's expenses may have been reasonably incurred, the Respondent did not comply with the requirements of section 40 in that no notice was served on Mrs Kendrick prior to the Respondent attending at the property on 26 November 2011 to carry out remedial work. Therefore no emergency expenses are recoverable from the Applicant under section 42 of the Housing Act 2004.

A handwritten signature in black ink, appearing to read 'A M Davies', written over a dotted horizontal line.

A M Davies
Chairman