

**DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL PURSUANT TO  
SCHEDULE 1 HOUSING ACT 2004**

**Case Reference:** LON/00AS/HIN/2012/0015

**Premises:** 5 Camden Avenue, UB4 0PN

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**Appellant:** Mr Kandasamy Pushpakanthan

**Respondent:** London Borough of Hillingdon

**Date of hearing:** 31 August 2012

**Appearance for  
Applicant:** None

**Appearance for  
Respondent:** Mr S Chan MRICS  
Mr McLellan (Antisocial Behaviour Officer)

**Leasehold Valuation  
Tribunal:** Mr M Martynski (Solicitor)  
Ms S Coughlin MCIEH  
Mr J Francis QPM

**Date of decision:** 10 September 2012

## Decision Summary

1. The Improvement Notice is varied as set out at the end of this decision.
2. The sum payable by the Appellant in respect of the Respondent's costs of preparing and serving the notice is reduced from £300.00 to £25.00.

## Background

### *The property*

3. The Property in question is a two-storey semi-detached house comprising, on the ground floor, front and rear rooms and a kitchen; on the first floor, two bedrooms facing the front and one facing the rear and a combined bathroom and WC. At the side of the property on ground floor level there is a lean-to.

### *The Improvement Notice*

4. The Improvement Notice in question in this appeal is dated 14 May 2012 and was probably served on or soon after this date according to the evidence from the parties.
5. The relevant part of the Improvement Notice read as follows:

#### **G/F & 1F Front bedroom**

#### **Damp and mould growth**

Damp patches, defective wall plaster and rendering found in these areas

Investigate source of damp in the bedrooms, carry out adequate damp proofing work by a competent person or professional damp proofing specialist

#### **Throughout**

#### **Domestic Hygiene, pest and refuse**

Main house and side conservatory were both heavily infested by rats and pigeons

Demolish the side conservatory and fill all holes on the floor or side wall with cement mix.

Block holes to the 1/F left hand side wall and roof space to restrict pigeon access.

Instruct a competent pest control company to treat the infestation and provide report on completion

#### **Kitchen**

#### **Food safety**

Kitchen has been left without proper ceiling cover and bathroom is located directly above the area which had leaked previously, causing concern to user during food preparation

Make good kitchen and refit all lighting and other electrical cabling

6. Although the notice was dated, it contained no date by which the works specified to be carried out were to be started<sup>1</sup>. The notice required the works to be completed by 12 June 2012 which was just 28 days after the date of the notice. The notice was therefore clearly defective.

#### *The appeal*

7. The Appellant's appeal form (dated 1 June 2012 and received by the Tribunal on the 7 June 2012) against the Notice was lodged with the Tribunal office out of time but notwithstanding this, an earlier Tribunal accepted the appeal and allowed it to proceed.
8. The Appellant's appeal challenged the Notice only in respect of:-
  - (a) The time allowed for the work to be completed – it was alleged that the tenant living in the property, a Mr Sivaneswaran, had refused access for work to be done inside the property – the Appellant asked for the notice to be suspended until such time as the tenant ceased to occupy the property
  - (b) The notice to be varied so as to make Mr Sivaneswaran responsible for carrying out the work on the basis that "the conduct of the tenant has been the cause of the Improvement Notice being served on the Applicant"

#### *The inspection*

9. The Tribunal inspected the Property on the morning of the hearing in the presence of the Appellant's wife and daughter and the tenant, Mr Sivaneswaran and his wife and son. No-one from the local authority was present. The weather was fine and dry, which it had been for some days prior to the hearing.
10. The Tribunal noticed that various works had been carried out to the exterior of the property. The render to the exterior of the ground floor front room bay had been replaced. The holes in the side and rear walls of the property had been filled in. The workmanship in respect of the hole caused by the removal of a boiler flue was not good, however the holes appeared completely sealed. The floor of the lean-to had been concreted.
11. Inside the property the Tribunal did not find any evidence of damp other than mould growth on the walls in the bathroom, and the first floor front bedroom<sup>2</sup>. There were no walls in the property that appeared to be damp to the touch or which registered any significant reading on a damp meter.
12. In the kitchen; the ceiling was missing, the light fitting was attached directly to the joist of the bathroom floor which is situated directly above the kitchen. There was at least one loose and unconnected cable in the ceiling void. There was clear evidence of leaking from the bathroom above by way of staining on and rot in the floor joists of the bathroom. The rotted floor joists had been doubled up with new joists at some point in the past.

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<sup>1</sup>Contrary to section 13(2)(e) Housing Act 2004

<sup>2</sup>This was the larger bedroom directly above the front room on the ground floor.

13. There was (by way of droppings and gnawed timbers) evidence of a previous rodent infestation but no evidence of any current infestation (whether by rodents or pigeons) and there was no complaint of an infestation by the tenant present at the inspection.

### **The hearing and the evidence**

14. The Appellant had filed within the bundle that he had provided to the Tribunal, copies of the claims that he had made to the County Court to try and get a possession order against Mr Sivaneswaran. One claim made earlier in the year had been dismissed due to a defective notice having been served. The Tribunal was told by the Appellant's wife during the inspection that the second claim was due to be heard on 11 September 2012. This claim for possession was based on the service of a Notice Requiring Possession and the Tribunal notes that, subject to that notice being valid and subject to it having been properly served, the Appellant will be entitled to a possession order as the fixed term of Mr Sivaneswaran's tenancy (originally granted some years ago) has expired.
15. Mr Chan, for the Respondent, told the Tribunal that he had inspected the subject property in January 2012 and had not re-inspected the property prior to serving the Notice in May, some four months later, nor had he re-inspected prior to the hearing. Prior to serving the Notice, he relied upon what he had been told by the tenant (whose English was limited) as to the condition of the property.
16. Mr Chan did not have any notes from his inspection and was therefore unable to properly clarify various points raised by the Tribunal regarding the Notice.

### **The Tribunal's decisions**

#### *Damp and mould growth*

17. So far as the Damp and Mould Growth hazard was concerned, as stated above, there was no evidence of penetrating or rising damp. There was no evidence of the cause of the mould growth observed by the Tribunal on the walls and ceilings in various parts of the property.
18. The Notice failed to give any detail as to the location of the "damp patches, defective wall plaster and rendering". Mr Chan claimed that the damp patches could be seen in the photographs of the interior of the property taken by him. Those photographs only showed mould growth and could only show evidence that may indicate damp, no photograph would be able to show actual damp. The works required in this section on the notice were similarly vague and unhelpful. There was no indication that Mr Chan had interviewed the tenant on the question of the mould growth to establish a possible cause. In fact the services of an interpreter would have been necessary to have the sort of conversation necessary.

19. Given the Tribunal's findings on inspection and the lack of any other evidence, the Tribunal concludes that whilst the mould growth in the property could amount to a hazard, there was no evidence as to the cause of the mould growth and accordingly, in the absence of such evidence, it was not appropriate for the notice to require any works or further investigation at this stage.

#### *Domestic Hygiene, pest and refuse*

20. Although there is no evidence of a current infestation, there is ample evidence that there was a significant infestation of rats in the past. It is quite possible that the rats have dug underground in the lean-to prior to the floor there having been concreted and therefore it is possible that the rats are currently harbouring in the drains just outside the property.
21. In the circumstances, the Tribunal considers it appropriate for some part of the Notice to stand (as detailed later in this decision) insofar as it requires investigation by a pest control company.

#### *Food safety*

22. Again the Tribunal was concerned about the very loose wording of the Notice where it specified the work required to the kitchen. As the wording stands it is so vague as to not make sense. Further, the works in this section of the notice required included electrical works despite the fact that there was no finding, in the notice, of an electrical hazard.
23. The lack of a kitchen ceiling is clearly a hazard both in terms of leaks from above affecting food preparation areas and the lighting and cabling there.
24. The Tribunal has modified (as set out below) the wording of the Notice to reflect the findings it has made.

#### *The tenant's responsibility*

25. There was no clear evidence as to who was responsible for the removal of the kitchen ceiling. The Appellant made an allegation as to Mr Sivaneswaran having "caused damage to the ceiling and bedroom walls" in his witness statement contained with the hearing bundle. There was no further detail on this apart from an assertion made by the Appellant's wife at the inspection that the ceiling had been removed by the tenant which was denied by Mr Sivaneswaran. In the appeal form and in his witness statement the Appellant made reference to the tenant not giving access for works to be carried out to the interior of the property but the Appellant was not at the hearing to be further questioned about this. Mr Sivaneswaran denied the allegation and Mr Chan and his colleague at the hearing, Mr McLellan both stated that Mr Sivaneswaran had told them that he would allow works to be done in the property. There was no evidence that the Appellant had made written requests for access or that he had explored the possibility of enforcing his right of access.

26. It is not possible for the local authority to serve a notice on the tenant as requested by the Appellant, as the Housing Act requires that the notice is served on the person having control of the premises, which in this case, is the Appellant. In the circumstances therefore and given that; (a) the Appellant has an enforceable right of access, and; (b) it would appear likely that he will obtain a possession order in respect of the property in any event and be able to evict Mr Sivaneswaran, the Tribunal considers it appropriate to confirm the Improvement Notice (as varied) to be completed within a reasonable amount of time.

#### *Costs of the notice*

27. In a demand dated 17 May 2012, the Respondent asked the Appellant to pay £300.00 in respect of its costs of the Notice.
28. The Tribunal has a number of concerns regarding the Notice and the process of compiling and serving it as follows:-
- (a) No notes were taken of the inspection
  - (b) The Notice was served months after the inspection was carried out and at a time when some of the works required by it may have already been carried out<sup>3</sup>
  - (c) The notice failed to specify a date by which works were to start and so was defective in any event. The local authority officer had apparently amended a standard form to remove the start date.
  - (d) The Notice did not contain a proper and precise description of the hazards complained of nor did it contain a proper and precise description of the works that it required
29. Accordingly, the Tribunal considers that it would be wholly unreasonable to ask the Appellant to pay the sum as demanded. Given the very poor preparation of the notice, that sum is reduced to a token sum of £25.00.

#### **Variation of the notice**

30. The notice is accordingly varied as follows:

##### **G/F & 1F Front bedroom**

##### **Damp and mould growth**

~~Damp patches, defective wall plaster and rendering found in these areas~~

~~Investigate source of damp in the bedrooms, carry out adequate damp proofing work by a competent person or professional damp proofing specialist~~

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<sup>3</sup>According to the Appellant's wife, the works to the exterior of the property were carried out in or about March 2012

## Throughout

### Domestic Hygiene, pest and refuse

Main house and side conservatory were both heavily infested by rats and pigeon

~~Demolish the side conservatory and fill all holes on the floor or side wall with cement mix.~~

~~Block holes to the 1/F left hand side wall and roof space to restrict pigeon access.~~

~~Instruct a competent pest control company to treat the infestation investigate and provide a report on completion any additional works reasonably necessary to prevent a re-infestation of rats~~

This must be started no later than 22 October 2012 and be completed within 3 calendar months

## Kitchen

### Food safety

Kitchen has been left without proper ceiling cover and bathroom is located directly above the area which had leaked previously, causing concern to user during food preparation

Renew kitchen ceiling and ~~refit all lighting and other electrical cabling~~ make safe, as necessary, all cables in the ceiling void. Re-fit light fitting on completion.

This must be started no later than 22 October 2012 and be completed within 28 days

Chairman:



Mark Martynski

Date:

10 September 2012