

**HM COURTS & TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

NORTHERN RENT ASSESSMENT PANEL

Housing Act 2004 Schedule 1 Paragraph 10(1)

Appellant: Mr Shabbir Ahmed
Respondent: Bolton MBC
Property: 36 Leverhulme Avenue, Bolton, Lancashire, BL3 2LA
Date of hearing: 12 December 2012
The Tribunal: Phillip Barber - Chairman
Tudor Roberts FRICS

Application

1. Mr Shabbir Ahmed appeals under Schedule 1 Paragraph 10(1) of the Housing Act 2004 in respect of an improvement notice served on the 17 July 2012 relating to 36 Leverhulme Avenue, Bolton, BL3 2LA (the Property).
2. The Tribunal had two bundles comprising of the Appellant's bundle and the Respondent's bundle and held an oral hearing on the 12 December 2012 where evidence was taken from Mr Ahmed, the Appellant and Mr J. Tomkinson and Ms G. Harrison from Bolton MBC represented by Mr Morris.
3. We carried out an inspection of the property at 10.30am in the presence of Mr Ahmed and Mr Tomkinson and Ms Harrison.

Findings of Fact

1. Mr Ahmed has accepted responsibility for this matter as agent (and father) of the owner of the property. There is a suggestion that his son, Tanzil Ahmed, owns the property but throughout Mr Ahmed has acted as if he is the landlord/owner and clearly has control of the property. We did not find it necessary to look into this issue any deeper given no point was taken.
2. On the 19 March 2012 Bolton Council received a complaint from the tenant of the property, Mr Muthallab Shir concerning the living conditions for his family of 5 (3 adults and 2 children) and on the 27 March 2012, Mr John Tomkinson, a Technical Officer in the Housing and Public Health Unit, wrote to the Tanzil Ahmed giving 25 hours notice that an inspection was about to be carried out.

3. On the 4 April 2012 Mr Tomkinson undertook an inspection and on the 11 April 2012 he wrote to Mr Shabbir Ahmed indicating that his inspection had identified a number of category 1 and category 2 hazards within the property. On the 23 April 2012, Mr Ahmed wrote to Mr Tomkinson advising that the works would be carried out within 2 weeks except for the damp which would take longer.
4. However, the tenants told Mr Tomkinson that nothing had happened by the 24 May 2012 and so he wrote again to Mr Shabbir Ahmed giving him 7 days to start works otherwise an improvement notice would be served.
5. A series of emails followed in which there was some discussion about whether the tenants were allowing access for works to be carried out and/or intended leaving the property. However by the 17 July 2012 the works had still not been commenced and given the seriousness of Mr Tomkinson's findings at inspection, the Respondent decided to serve an Improvement Notice pursuant to sections 11 and 12 of the 2004 Act. Mr Ahmed appealed that notice.
6. Schedules 1 paragraph 10(1) of the Housing Act 2004 sets out the very wide jurisdiction of the Tribunal in relation to appeals against improvements notices and the powers of the Tribunal are set out in paragraph 15(3) as a power to confirm, quash or vary the improvement notice.
7. The Tribunal visited the property on the morning before the hearing, and our relevant findings are set out below in relation to each of the items listed on the improvement notice.
8. Firstly, however, we should deal with Mr Ahmed's main complaints about the service of the improvement notice in that he instructed builders but they were unable to gain access and that the tenants were moving out. Having taken evidence from Mr Ahmed we reject both of these claims. We were provided with no evidence from any worker that had attended and was refused entry and the only evidence of a refusal of entry was one occasion detailed in his statement. This is wholly insufficient to satisfy us that Mr Ahmed was doing everything he could to remedy to clearly deplorable conditions in the property. We also find it highly improbable that a family living in such conditions as these would complain to the Local Authority and then refuse access. Whilst tenants do refuse access this is not usually after making a complaint to a Local Authority.
9. Further, we place very little credibility on a great deal of what Mr Ahmed said about the above matters. It seems that despite him describing himself as the agent (and a barrister) he utilized the services of a neighbour (Saleem) to deal with the tenancy and could provide us with no copy of the tenancy agreement or even the name of the worker who had been instructed to carry out works on the property (or the full name of Saleem for that matter). He tried to excuse this careless state of affairs by arguing that it was a friendly community arrangement and seemed at one point to blame the neighbour for the problems with the tenants.
10. In relation to the issue of whether or not the tenants were moving out, given the conditions we were not surprised that the tenants wished to move out of the property, and in any event we find as fact that this has no bearing whatsoever on the service of the improvement notice and we are satisfied that at the date of service the problems with the property still existed and required urgent remedial

action, whether or not the tenants were moving out. That said, the tenants did move out at the beginning of August and so the urgency for completion subsided thereafter.

11. Mr Ahmed disputed the date of the photographs in the Respondent's bundle, however in relation to the photographs we accept entirely Mr Tomkinson's evidence as to when they were taken but in any event the date they were taken has very little to do with whether or not we quash, uphold the improvement notice as we are satisfied that the hazards existed at the time of service. We are satisfied that the conditions existed in April (when the property was occupied) and in September (when the property was empty).
12. In relation to each of the items of the improvement notice we find as follows:
 - a. Large hole in ceiling – this is a category 1 hazard; at the date of our visit works had been carried out but it was not clear whether the works were to an adequate standard and no evidence has been provided that the schedule 2 works had been carried out. Accordingly we confirm this deficiency and action required.
 - b. Rising damp/high condensation levels/mould growth – Mr Tomkinson indicates, and we accept entirely, that the mould growth in the property was the worst he had seen in over 7 years. We visited the property and whilst some works had been attempted they appeared to be simply patching up the problem. Extensive mould growth was still evident and was even re-appearing from behind the upstairs decoration works. We checked the damp levels in the living room under the window and although we were unable to reproduce our own evidence of rising dampness, given the considerable levels of dampness in the property we are satisfied that an appropriate and responsible response of any reasonable landlord would be to obtain a report from a specialist contractor. We are also satisfied that the balance of works specified in schedule 2 in relation to the damp and mould growth are appropriate and confirm them.
 - c. Kitchen window – we are satisfied that this window opening is in a high position and difficult to open. We accept that it may have been installed whilst the property was owned by either the Local Authority or the ALMO but standards change and at the date of the improvement notice the location of the opening was not suitable. Mr Ahmed indicated that he has given his workman an extractor fan and he is to undertake remedial work and accordingly we confirm this item and the specification of works required.
 - d. Accumulation of domestic waste – this had gone at the date of our visit and the Local Authority indicated that they were agreeable to this being removed from the Schedule of Works. Accordingly we will vary the notice to remove this item.
 - e. Smoke Detection – the Respondent had made a referral to the Fire Service in relation to this issue and appropriate smoke detection has been installed. Accordingly we will vary the improvement notice to remove this item.

- f. Internal Doors – we checked the internal doors at the date of our visit and they remain a problem. Some of them do not close properly; whilst others having missing door handles and locks. This is clearly a hazard and should be remedied before any new tenants move in. We therefore confirm this item and the schedule of works required.
- g. Kitchen door - this is clearly a serious concern and should be remedied before any new tenants move into the property. We confirm this item and the schedule of works required.
- h. Bedroom window – at the time of our visit the bedroom window closing mechanism was still loose and defective and there was no restrictor on the window. Mr Ahmed indicated these works would be completed before any new tenant moved into the property. We confirm this item and the schedule of works required.

Decision

We therefore vary the Schedule of Works in order to remove items 4 and 5 from Schedules 1 and 2 but confirm the balance of schedules 1 and 2. The property is now vacant and Mr Ahmed told us that his son might move into the property (dependent upon getting a job in Bolton) or it would be re-let. The Respondent indicated that in these circumstances they would place the Notice on hold pending any new tenants and would probably remove the notice if Mr Ahmed's son moved in. The Tribunal stress however that the required works should be completed before any new tenant moves into the property.

There was no request in relation to the fee paid by Mr Ahmed and accordingly we make no decision concerning this.

Phillip Barber - Chairman

12 December 2012