

**HM COURTS & TRIBUNAL SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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**Housing Act 2004 – Section 45(1)**

<b>Property</b>	<b>46 Howdene Road, Newcastle upon Tyne, NE15 7HT</b>
<b>Applicant</b>	<b>Thistle Court Property Developments Limited</b>
<b>Respondent</b>	<b>Newcastle City Council</b>
<b>Date of Application</b>	<b>27 August 2012</b>
<b>Date of Determination</b>	<b>3 December 2012</b>
<b>The Tribunal</b>	<b>Mr W.L. Brown LL.B Mr I.R. Harris FRICS</b>

**Decision**

The recovery of expenses is confirmed relating to emergency remedial action at 46 Howdene Road, Newcastle upon Tyne NE15 7HT, in the sum of £110 arising from the Emergency Remedial Order

**Reasons**

**Background and the Application**

1. The Applicant applied to the Residential Property Tribunal (the Tribunal) on 29<sup>th</sup> August 2012 by an application dated 27<sup>th</sup> August 2012 appealing against a notice issued on 17<sup>th</sup> August 2012 by Newcastle City Council, the Local Housing Authority (LHA). The notice followed emergency remedial action (ERA) taken by the LHA on 9<sup>th</sup> August 2012.
2. A Tribunal Chairman issued directions on 1<sup>st</sup> October 2012.

3. Neither party requested a hearing and the Tribunal convened in Newcastle upon Tyne to make its determination.
4. The Property is a ground floor flat.
5. The Applicant is the owner of the Property which is let to a tenant.

#### **Events occurring**

6. On 9<sup>th</sup> August 2012 Mr Ian Smithem, Technical Officer of the Respondent, received a complaint from the tenant of the Property that the back door lock at the Property was broken and could not be used. The front door lock was also broken and the door could not be opened and she had to use the window at the front of the Property for entry and exit.
7. Mr Smithem attended at the Property and observed that the handle to the rear door was missing preventing the door from opening he was unable to open the door and he also established that the other door to the property similarly was fastened shut, apparently because the levers on the lock had dropped.
8. He found that the Property was occupied by the Tenant and her children aged 1 and 2.
9. At the request of Mr Smithem, Gwen Burin, Senior Environmental Health Officer of the Respondent, carried out an assessment using the Housing Health and Safety Rating System and determined that a Category 1 hazard existed in that there was a risk posing an imminent risk of serious harm to the health and safety of the occupants. Section 40 of the Act indicates that where a Category 1 hazard exists the LHA may take emergency remedial action to remove the imminent risk.
10. Mr Smithem attempted to speak to Mr Derek Mair of the Applicant by mobile telephone between 15:15 and 15:30. He was unable to obtain a reply and there were no facilities available to leave a message.
11. Mr Smithem was informed by the tenant that she also had tried unsuccessfully to contact the Respondent.
12. Mr Smithem contacted an approved contractor of the Respondent who agreed to carry out works to the rear door handle and lock between 17:00 and 18:00 that day, which was a Friday.
13. At about 16:59 Mr Mair telephoned Mr Smithem. He confirmed he had no answer phone facility on his mobile telephone number, but he managed up to 40 properties and according to Mr Smithem's statement he advised that he would not have carried out remedial work because the tenant was prone to vandalising the Property and losing the keys.
14. The remedial works were carried out during 9<sup>th</sup> August 2012 and an invoice was raised by the contractor to the Respondent for the sum of £110.

## **The Law**

15. The LHA took ERA under Section 40 of the Act. It may do so where it is satisfied that a Category 1 hazard exists and that the hazard involves an imminent risk of serious harm to health and safety of the occupants of those residential premises.
16. ERA means such remedial action in respect of the hazard as the LHA considers it immediately necessary to remove the imminent risk of serious harm.
17. Section 41 of the Act gives the requirements of the notice to be served including the information to be given in the notice and the right of appeal.
18. Section 45 of the Act gives the right of appeal to the person on whom the notice has been served to the Tribunal.

## **The submissions**

19. Although the Applicant is unclear in the Application as to the nature of his appeal it appears to the Tribunal that he is not objecting to the remedial works having been carried out, but that the Applicant was denied appropriate time in which to carry out the works.
20. The Applicant also indicated that it "queried why (the ERA) was necessary without reference to [the] Landlord because the front door locks were serviceable and provided adequate access and exit routes."
21. The Applicant represented that the Respondent's policy for attending to emergency repairs (understood to refer to its capacity as a Landlord) is a "...time window of four hours." The Respondent explained that it believed the Applicant had agreed to written procedures adopted by Your Homes Newcastle, the Arms Length Management Organisation for the Respondent. It was good practice applied by Your Homes Newcastle not linked to the statutory requirements of the Act.
22. The basis of assessment in this matter of the risk being a Category 1 hazard was by reference to Hazard 12 of the HHSRS – Entry by Intruders. The Property is in a generally depressed area in which the Respondent believed that the likelihood of harm to the occupiers as a result of unauthorised entry into the Property over the next 12 months was one in one compared to the national average likelihood for entry by intruders of one in forty.
23. The Applicant advised that Mr Mair had not received a SMS text and that the tenant had not advised the Landlord of any malfunction of the rear door lock.
24. The Applicant made reference to alleged criminal damage to the Property and inappropriate behaviour by the tenant.

## **Tribunal's determination**

25. The Tribunal accepted that a Category 1 hazard was present when the ERA was taken.

26. While the Tribunal sympathises with the Applicant that had it been given a longer period of time in which to carry out remedial work it would have done so, the Tribunal accepts that the LHA considered that such works were not going to be undertaken promptly and bearing in mind that the matter arose on a Friday afternoon when obtaining contractors so close to the weekend would have been difficult, the ERA taken was appropriate. The fact is that the Property was at risk of entry by intruders (notwithstanding that entry and exit could only be effected through the window).
27. Under Section 5 of the Act, if a LHA considers that a Category 1 hazard exists on any residential premises the LHA must take the appropriate enforcement action in relation to the hazard. One of the appropriate enforcement actions is ERA. The Tribunal agreed that in this case the other enforcement actions prescribed in Section 5 would not be appropriate. The Tribunal accepted that the LHA was correct to serve the ERA Notice and therefore the Applicant's appeal is dismissed.
28. The Tribunal has power to reduce, quash or require repayment of any charge where the Tribunal allows an appeal (Section 49 (7) of the Act). It is understood that pending the outcome of the Application no invoice has yet been sent by the Respondent to the Applicant for the costs of the works. However, as the appeal is not allowed the Tribunal is unable to specify that there should be a reduction of the cost of the ERA works in the sum of £110.
29. The Tribunal therefore confirms the Notice and approves the cost of the ERA in the sum of £110 being passed on by the Respondent to the Applicant.

W.L. Brown



Date: 3 December 2012

Chairman of the Residential Property Tribunal