FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FB/HIN/2020/0017**
Property	**:**	**35 Richmond Street Bridlington North Humberside YO15 3DL**
Applicant	**:**	**Amanda Harrison**
Respondent	**:**	**East Riding of Yorkshire Council**
Representative	**:**	
Type of Application	**:**	**Schedule 1 Paragraph 10(1) Housing Act 2004**
Tribunal Members	**:**	**Mr John Murray LLB** **Mr. Peter Mountain**
Date of Decision	**:**	**5 April 2021**
Date of Determination	**:**	**13 April 2021**

REASONS FOR DECISION

ORDER

The Appeal is dismissed.

INTRODUCTION

1. The Applicant appealed a notice served by the Respondent local authority under Schedule 1 Paragraph 10(1) Housing Act 2004

2. The Respondent served two notices, numbered 089832 and 089833 upon the Applicant regarding premises at 35 Richmond Street, Bridlington, East Riding of Yorkshire YO15 3DL ("the Property") on 28th February 2020, giving 28 days to organise works, to be completed by 26th June 2020

3. The Tribunal made directions on 3 June 2020 that the applicant submit a bundle within 28 days of the directions with a copy of the application form and documents, a full statement of reasons for the appeal, together with supporting evidence and documentation. The Respondent was to submit bundles in respond within 21 days of receipt of the Applicant's bundle.

4. The hearing took place as a Full Video Hearing with the consent of the parties. The Applicant appeared in person, but representations were made by her husband Mr. Clifford Harrison. The Respondent was represented by Ms. Julie Hilton, and evidence was given by Ms. Hilton and Mrs. Hannah Skelton.

5. The basis for the appeal as set out in the application form was in summary as follows:

(a) The Respondent gave 28 days' notice that the hard-wired smoke detectors were inoperative; the work was completed within the deadline. The Respondent accepted at the hearing that this was not part of the notice under appeal.

(b) The Respondent gave an emergency 24 hours' notice to replace a damaged socket. The work was completed within the deadline. The Respondent accepted at the hearing that this was not part of the notice under appeal.

(c) The Applicant acknowledged the pre statutory notice from the Respondent, and replied to say she disagreed with the majority of the work specified and had decided to evict the tenants on or before 28th April 2020 and sell the Property.

(d) The Applicant felt that the Respondent was more concerned about the costs of £416 and negating the service of notices than trying to find a solution to the problem.

(e) The Applicant said her builder considered a timescale of four to five months was more realistic and that a time scale of 8 weeks was not realistic. The Applicant said that the Respondent was not prepared to discuss a longer timetable to complete the works.

(f) In the pre statutory letter dated 11th February the Respondent had said the works could be completed within an 8 week period (10th March to 5th May). The statutory notice was sent without consultation and the timetable had been changed to 13 weeks but was still not achievable and the Respondent's Mrs. Skelton was not prepared to discuss a longer timetable to complete the works.

LEGISLATION

6. Schedule 1 Paragraph 10(1) Housing Act 2004 reads as follows:

APPEALS RELATING TO IMPROVEMENT NOTICES

10(1)The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.

(2)Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

11 (1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—.

(a) take the action concerned, or
(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

12 (1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are—

(a) making a prohibition order under section 20 or 21 of this Act;
(b) serving a hazard awareness notice under section 28 or 29 of this Act; and
(c) making a demolition order under section 265 of the Housing Act 1985

15(1)This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 10.

(2)The appeal—

(a)is to be by way of a re-hearing, but

(b)may be determined having regard to matters of which the authority were unaware.

(3)The tribunal may by order confirm, quash or vary the improvement notice.

SUBMISSIONS FOR THE APPLICANT

7. At the video hearing the Applicant spoke only to confirm that all submissions and evidence would be submitted by her husband Mr. Clifford Harrison. He confirmed that he personally was the person most likely to manage the Property and deal with the tenants on behalf of his wife who was the legal owner and landlord of the Property.

8. The Applicant made the following submissions on the Respondent's statement of facts:

9. The property had been built in 1933 and not 1899 as claimed by the Respondent.

10. The property had been rented to a Mr & Mrs Wilson and their 4 teenage children who in 2020 had all been working, and there was and never had been a disabled child living at the Property.

11. The Applicant's builder Wilcock Contractors Limited had sent a letter dated 20th June to the Respondent itemising each individual hazard and stating what was agreed/disagreed.

12. The Applicant denied that there had been an issue in 2008 and that the tenant was fictitious.

13. The Respondent had failed to mention that the smoke detectors required attention and a tenant damaged socket that required as an urgent repair had both been attended to (the Applicant accepted this was not referred to on the Notices.

14. Mrs Skelton for the Respondent had confirmed that both section 8 & 21 notices(P6) were served on the tenants and these were served correctly and legally and the tenants were obliged to leave the property on 28th April the legal requirement on 2 full calendar months from the start date of the tenancy had correctly been applied.

15. The tenants had agreed to leave by the 28th April if rent arrears were not pursued and they did leave. They actually left in June.

16. The tenants had lived at the Property for over 9 years and during that time, improvements at a cost of some £18,800 had been carried out, and a further period of 4 months would not have been unreasonable particularly considering the Coronavirus Pandemic and a compromise should have been sought.

17. In relation to the specific improvements sought, the Applicant asserted as follows:

18. There is no loft access so a loft hatch could not be fitted and neither the loft nor the dormer window could not therefore be insulated and all the properties in the block had the same problem. The Applicant said that three people who advised them to leave the area as it was.

19. There was no rising damp in the kitchen, and there was a guarantee on the DPC course and the damp patch below the kitchen window was caused by the tenant fitting his own outside tap incorrectly causing the damp patch to the wall

20. The small end wall at the rear of the kitchen was not single skinned as claimed; a cavity wall was created by lats (sic) and plasterboard to stop damp penetration this alteration was carried out before she purchased the property in 2002, and they were advised of this by the Respondent when they were asked for planning approval

21. The accepted standard for all rented properties is an “E” rating and the Property received a “D” rating which was superior.

22. The inside of the kitchen wall had a cavity wall so the builders report she had provided was correct.

23. The window cills were not broken and did not carry through to the living room as the inside had a cavity to stop any drafts or heat loss.

24. There were 2 wireless thermostats in the Property which had been missed on the 3 visits by the Respondent and was part of the EPC report (page 101)

25. The windows had been fitted by Fensa registered fitters in April 2014 (an invoice was provided at page 106).

26. The velux window was made of steel and could not rot. It was rusty but could not be insulated as this would block light to the staircase**.**

27. There was no requirement to produce an EICR until 1st April this year the previous report had recommended that the installation(?) should be redone in December 2020 since that time there had been no additions or alterations to the electrical system as can be seen by and in the electrical report in 2010 the whole system condition had been described as satisfactory with no faults or problems. The Applicant could not accept the Respondent was qualified to comment on the appearance of the electrical system.

28. There is no gas supply in the electric cupboard ; the gas meter was outside the front door and the Respondent's officers must have passed it several time son their way in and out so this was considered a very strange comment to make.

29. Fingers could not enter the consumer unit also and it was perfectly acceptable for cable to enter the top of a consumer unit which had been in place when the electrical inspection took place (in 2010) along with all the existing wiring.

30. The fuses and metres were in the original place that the whole house had been wired under the stairs with easy access for maintenance work .

31. The earth wiring was in the Applicant's view exactly as it should be, to the gas supply and water supply under the kitchen sink and the bath, and nothing had changed since the inspection. The Respondent had not produced any photos showing that the earthing was not present and the Applicant questioned what experience did the Applicant have in such matters?

32. The Applicant questioned the disrepair noted to the electrical system, whether this was to supply meters fuses wiring sockets light fitting or switches. The Applicant stated that the only repair asked for was to repair a tenant damaged double socket and this was done.

33. In respect of the socket fitted to the skirting board at a 90-degree angle where only one socket could be used the Applicant stated that this was on top of the first floor landing for sole use for a hoover, and fingers could not access from the back as the wiring was connected from underneath the surface mounted box suggesting a total lack of knowledge of electrical systems by the Respondent.

34. In relation to point 23 the leak had been "sorted out" and there was no danger of water now getting to the socket and therefore no need to change the socket at all

35. At Point 24 there was a hairline crack in the switch again caused by the tenants but in the Applicant's view was not a hazard as there were no exposed wires but it was changed

36. Point 25 the dining room ceiling rose was perfectly safe and secure and did not require changing the tenants have obviously held onto this while changing a bulb but it was safe and secure as it was.

37. The meter board and consumer unit were firmly fixed as they should be and nothing needed doing**.**

38. The socket was not too low as suggested – the photograph showed it tobe above the work top.

39. There were no children living at the Property they were all adults and with the windows opening from the top it was very difficult to get out of anyway

40. The balustrade was built into the wall and to make sure it could not be pulled away from the wall a bracket was fitted making it completely safe.

41. The tenants had not reported any rodent infestation and when the boarding was moved there was no such sign either.

42. It was denied that there were problems with the brickwork of the rear main wall end.

43. The rear chimney on inspection was found to be structurally safe and sound and in reasonable condition.

SUBMISSIONS FOR THE RESPONDENT

44. At the video hearing, oral evidence was given by Ms. Hilton and her colleague Mrs. Skelton.

45. The Respondent provided a statement of reasons by Environmental Health Officer Julie Hilton who qualified in 1993 and has 15 years' experience in Private Sector Housing work.

46. She stated that the property was constructed in 1899, and is a 5 bedroomed three storey mid terraced single dwelling house with a large three storey rear main addition and small single storey rear addition. The walls are of brick construction with the rear single storey addition being constructed of single leaf. The roof is of original slate and the window in the main are UPVC double glazed. There is a gas central heating system. At the time of inspection the property was occupied by two adults and their disabled son.

47. Ms. Hilton stated that the Applicants had never told the Respondent which works they disagreed with.

48. Miss Hilton said that the Respondent had been contacted by the tenant of the property in January 2020 about disrepair and lack of smoke detection. The tenant had not reported previously as she was concerned she would be evicted. Miss Hilton said that the Respondent's records confirmed that the Applicant had a history of similar behaviour having served a s21 notice on a previous tenant who involved the Respondent in relation to disrepair, and said he was going to sell the Property.

49. An informal letter with a schedule of works was sent to the Applicant on the 11th February 2020.

50. The Applicant's husband wrote to the Respondent on the 12th February by email, saying that they were away from the following week until the end of April, and would not be able to complete the works on time. He said they would serve notice on the tenants, renovate the property and sell it.

51. The tenants were subsequently advised on 19th February 2020 by the Respondent's Homeless Prevention Team that the s21 notice served was invalid (due to inadequate notice). The tenants disputed the s8 notice, denying they were in arrears.

52. On 21 February 2020 the Respondent received representations and a schedule of works to start on 8th May 2020 and complete on 31st December 2020. These timescales were considered unacceptable by the Respondent due to the

serious category 1 HHSRS hazards in the Property. Consequently, and in accordance with the Respondent's enforcement policy, a re-inspection carried out, an HHSRS assessment completed, and a notice served.

53. A number of defects were recorded as being present in the property, leading to excess cold, falls associated with baths and showers, electrical hazards, falls between levels, domestic hygiene, pests and refuse, structural collapse and falling elements..

54. (says there are a number of thermostatic valves but then only one on boiler and one in kitchen)

55. The Applicant did not contact the Respondent to confirm that work would be carried out.

56. Ms Hilton provided a detailed breakdown of the time spent and of the Council's costs recoverable as "reasonable charges" under s49 Housing Act 2004 which totalled £415.46

DETERMINATION

57. The basis of the Appeal appeared to be that the Applicant disagreed with the majority of the work specified, that the time table provided was not realistic, and the Respondent was not prepared to discuss a longer timetable to complete the works. In addition the Applicant had decided to evict the tenants on or before 28th April 2020 and to sell the Property, and consequently the Respondent should have not served notice.

58. The Appeal was brought generally under Paragraph 10(1). The Grounds under Paragraph 11(1) were not relied upon (there were no other relevant persons involved) and the Applicant was not relying upon Paragraph 12; she did not suggestion that either a Prohibition Order, a hazard awareness notice or a demolition order would have been the best course of action.

59. The Tribunal took into account a considerable amount of documentation, and heard representations from the Applicant's husband and from two of the Respondent's officers.

60. It was clear from the extensive photographic evidence, and the extensive list of defects that this was a property in poor condition. The Applicant maintained that part at least of the property condition was the responsibility of the tenants. If that were the case that in itself was a matter of contractual liability between the Applicant and her tenants, and not for the Respondent to adjudicate over. The condition of the Property seemed to come as a surprise to the Applicant, suggesting that very little management of this tenancy had been taking place.

61. The Respondent had invited the Applicant in their letters to contact the office on a telephone number to discuss all aspects of the matter. The Respondent's evidence was that no contact had been made. The Tribunal accepted the Respondent's evidence; the Applicant's attitude (or more accurately that of her husband who conducted the appeal and had clearly written all the correspondence) towards the Respondent , was for the most part obstructive, and antagonistic, in terms of personal criticism levelled at the Respondent's officers as they undertook their duties.

62. The Applicant's response was simply – the works don't need doing, if they did need doing, they would take in excess of ten months. In addition, and in response to the notice the Applicant intended to evict the tenants, which was what the tenants had feared would happen, and a retaliatory eviction, which parts of the Deregulation Act 2015 had been framed to prevent.

63. There was no suggestion of any compromise or co-operation in the Applicant's response, other than to the emergency works which were to her credit responded to swiftly. There was certainly no contact suggesting that some works could or could be carried out, and the Applicant indicated because she was away for some two months, works would not even start for three months. The Applicant was invited to attend meetings with the Respondent but declined to do so. The Applicant and her husband were going to be away for several months but had apparently not told the tenants nor given them any emergency contact details. They were unable to arrange works or attend meetings but were able to serve eviction notices.

64. The Applicant's husband stated (in the name of the Applicant) that he "was expecting" some form of communication that never happened, only the serving of the formal schedule of works and a £416 demand for payment "which could never have been achieved". He did not clarify why he had this expectation, when the Respondent's expectations had been made clear.

65. The Applicant's response to the proposal that the property was to be insulated was to say it could not be carried out, and this was his builder's view. At the hearing he accepted that retro fitted insulation could indeed be installed, but it would be expensive (c£5,000). He made no comment on the representations from the Respondent that grant assistance was available.

66. The electrical equipment appeared to be in poor condition, and the Tribunal found it entirely appropriate for the Council to conclude from a visual inspection that an EICR should be carried out. The Applicant is aware that from 1st April 2021 Landlords must be law carry out such an inspection every five years, and given the previous inspection was ten years old when the Council

inspected, in 2020, the request, and then the notice, that a new inspection be carried out was reasonable.

67. Many of the works were designed to address excess cold; it was not acceptable for the Applicant to propose a delay in commencement of the works for three months, and for proposed completion to be almost a year from the date of initial inspection, whilst denying the works were needed, taking action to evict the tenants who had laid complaint to the Respondent, whilst simultaneously expecting (with no basis for such expectation) the Respondent to revert for further negotiation.

68. The Tribunal found that the service of a notice was within the realms of a reasonable action by the Respondent and the appeal is dismissed.

J N Murray
Tribunal Judge
5 April 2021