Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

Sections 11 and 12 of the Housing Act 2004

In the matter of the First Floor Flat, 53 Edward Street, Wrexham, LL13 7RY

Applicant: Mr William Charles Lane (Applicant)

Respondent: Wrexham Borough Council (Respondent)

Tribunal: Andrew R Grant – Chairman
Neil Martindale
William Brereton

Appearances for the Applicant: The applicant in person

Appearances for the respondent: Mr Wayne Beesley – Environmental Health Officer

DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL

This is an appeal by the freeholder Mr William Charles Lane (the Applicant) against an improvement Notice (the notice) dated the 4th March 2015 which was served upon him by the local housing authority, Wrexham Borough Council (the Respondent) in respect of the property known as the First Floor Flat , 53 Edward Street, Wrexham , LL13 7RY (the Property).

The subject property is a first floor flat which forms one of two self contained flats situated within a converted terraced house. The property shares a communal front door which leads into a communal hall area. The property itself is accessed by means of a staircase to the first floor. The property consists of a small kitchen, shower room, bedroom and living room. The property had the benefit of central heating provided by a boiler which was situated in the communal hall on the ground floor of the building.

On the 21st November 2014 the Respondent's Officer, Mr Wayne Beesley, inspected the property. As a result of the inspection the notice was served by the Respondent on the Applicant identifying various category 1 and category 2 hazards. The

applicant was required to commence the work specified in the notice by the 2nd April 2015 and complete the works by the 4th May 2015.

The Applicant appealed to this Tribunal.

The Tribunal inspected the property on the 10th July 2015 and was accompanied by the Applicant, his father and The Respondent's representative.

The hazards identified in the notice were as follows:

Excess cold – Category 1: The Notice identified that there was one central heating boiler shared between the two flats which was said to be unable to maintain an indoor temperature of at least 18 degrees Celsius. Furthermore the thermostat controls were situated within the ground floor flat. Together it is stated that this presented an unacceptable hazard to occupants.

Fire – Category 2: The Notice stated that there was no certified confirmation of a well designed, safely installed and operable fire detection and alarm system in place and that there was no certified confirmation of a dedicated landlord electrical supply for common and shared parts.

Fire – category 2: The smoke detector in the hall had been masked by sticky tape.

Fire – Category 2: There was no door leading to the kitchen and shower room.

Electrical – Category 2: There was no evidence that the electrical system conformed to current standards of electrical safety.

Falls on stairs – Category 2: There was no handrail present on the stairs.

Flames/ Hot surfaces – Category 2: There was insufficient space in front of the cooker thereby increasing the risk of serious harm from burns or scalds.

The matter was heard on the 10th July 2015. The Tribunal had before it the Applicants statement of case and accompanying documents together with a witness statement from Mr Wayne Beesley for the Respondent.

At the hearing the Applicant provided the Tribunal and the Respondent with written submissions and a complete copy of an electrical report which he had obtained.

We will deal with the hazards in the order in which they appear in the notice.

1. Excess Cold

1.0

The Applicant stated that in all cases the radiators provided at the property exceeded the requirements set for the respective room sizes. He said that the boiler at the house had the capacity to produce 103 BTU. He said the requirements in the main

room totalled 13.7 BTU and the capacity of the installed radiators totalled 17BTU. He stated that there was more than sufficient heating at the property.

In giving evidence he said that the property was very well insulated and that the roof space was insulated with 2 layers of 4 and 7 inch Kingspan insulation and that the insulation between the flats was made of fibreglass. He also said that the walls were insulated as well.

He said that the notice indicated that the boiler could not maintain an indoor temperature of at least 18 degrees celcius. He denied this and pointed out that the thermostat was set at the following times and temperatures –

21 degrees – 4.30 am – 10.am
18 degrees – 10.00 am – 3pm
20 degrees – 3pm – 6pm
21 degrees – 6pm – Midnight
9 degrees from midnight – 4.30 am

During the course of the inspection the Tribunal viewed the setting on the thermostat and the readings accorded with this evidence.

The Applicant went on to say that the tenants had never complained about the temperature levels and indeed the Applicant produced two e mails which he claimed were from the tenants. One was from Ewa Twardosz who is the tenant of the ground floor flat and the other was from Magda Wypych who presumably is the tenant of the first floor flat.

The Applicant went on to state that the temperatures are controlled by him by means of the thermostatic control situated in the ground floor flat. He said the control is locked so that he was the only person that could change the settings. He said that either he or his father was available at most times and if the tenants wanted the settings changed they could ask him. He said that he had a very good relationship with his tenants and if they were cold he would change the settings.

He said that provision of heating was included within the rent. The temperatures were agreed with the tenants and they paid a fixed price for the heating. He said that gave the tenant certainty as regards their heating bills.

In conclusion, the Applicant submitted that the house was thoroughly insulated and was warm. He denied that there was a risk of excess cold.

The Respondent confirmed in evidence that the risk of a hazard in the form of the property suffering from excess cold had been assessed following an inspection at the property and following an interview with the occupier of the first floor flat.

He said that the occupier had informed him that the heating was operational between 6.00 am and 6.45 am and then again at 4.00 pm – 4.45 pm.

There was no signed statement from the occupier confirming this point and there was a conflict between that evidence and the e-mails provided by the Applicant which he stated were sent by the tenants.

The Respondent stated that the evidence was written down by him in his notes of the inspection.

The Respondent went on to say that the central issue was one of control. He said the tenants of the property had no control over the temperature in the property in that they could not adjust the temperature of the thermostat as it was situated in the ground floor flat. He said that the tenant of the property worked shifts and if they came home at midnight the temperature may be too low yet they could not alter the settings.

He said that the risk of cold created a secondary hazard in the form of fire from other heating apparatus being used to heat the property.

DECISION

The Tribunal formed the view that having heard the evidence and having inspected the property, it is satisfied that the property does not suffer from the risk of excess cold and that the boiler is able to maintain an indoor temperature of at least 18 degrees celcius. The Tribunal is satisfied that the property is thoroughly insulated and that both the boiler and the radiator in situ are sufficient for the size of the property. The Tribunal also find that the settings of the thermostat are sufficient for the times of day for which they have been set.

The Tribunal further formed the view that the fact that the occupier of the property could not alter the settings did not pose a category 1 hazard. The settings had been agreed with the occupiers and could be altered with agreement with the landlord. The tenants can control the settings to some extent by using the thermostat which is fixed to each radiator.

The Tribunal does not consider that the hazard as described exists and to this extent we quash this item in the notice.

2. Fire

2.1

The Applicant stated that he provided his tenants with a working fire detection system which was mains wired and regularly tested. He said that there was a heat sensor in the kitchen and that the detection units have battery backups in case of mains failure. One alarm was also linked to the ground floor flat.

The Tribunal asked when he had the system fitted and he said that it had been in situ from the date that he had brought the property in 2009. He was asked if there had been any certificates provided to him when he purchased the property but he said that none had been provided.

The Respondent's Officer stated that the requirement to see a certificate from a certified electrician was not simply a matter of convention but that it was actually required. He said he was not prepared to accept the system was in order but required documentary evidence of the fact in the form of a document. He was not satisfied that the electrical report produced by the Applicant at the hearing covered the issue.

DECISION

Having heard the evidence the Tribunal is satisfied that the category 2 hazard does exist. No report has been produced for a number of years. The kitchen door is not a fire door and is situated opposite the stairway of the property. This presents a risk in exiting the building should there be a fire and thus a safe fire detection system was considered a necessity. The Tribunal therefore confirms this aspect of the notice.

3. Fire

2.2

The notice stated that the smoke detector had been tampered with and masked with sticky tape. At the date of the hearing this had been remedied. The Respondent confirmed that this was no longer an issue.

DECISION

This item in the notice is quashed.

4. Door leading to Kitchen and shower room

2.3

The notice stated that there was no door leading into the kitchen and shower room. At the date of the hearing the door had been fitted. The Respondent confirmed that this was no longer an issue.

DECISION

This item in the notice is quashed.

5. Electrical

Item 3.0

The Applicant produced the full copy of an electrical report which he had obtained from an independent electrical contractor. The Respondent said that it was satisfied with the report and this was no longer an issue.

DECISION

This item in the notice is quashed.

6. Falls on Stairs

Item 4.0

The notice stated that there was no handrail spanning the length of the stairs. At the date of the hearing the handrail had been fitted. The Respondent confirmed that this was no longer an issue.

DECISION

This item in the notice is quashed.

7. Flames / Hot Surfaces

Item 5.0

The notice stated that the space between the oven and the shower room wall was less than 800 mm and presented a hazard in that it increased the risk of touching a hotplate or oven. By the date of the hearing the cooker had been repositioned. At the hearing the Respondent indicated that it was satisfied with the new position of the cooker and that this item was no longer an issue.

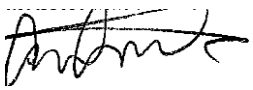
However, the Respondent was concerned that in moving the cooker a new hazard had been created as the cooker was now positioned below electrical fittings. The Respondent indicated that it would require a certificate to be produced by a suitably qualified electrical contractor confirming that the fitting of the cooker was safe and that the electrical fittings situated above the cooker had been made safe. The Applicant agreed to provide this.

DECISION

This item of the notice is varied to the extent that the Applicant must produce a certificate from a qualified electrical contractor confirming that the cooker has been safely installed and that the electrical fittings above the cooker have been made safe.

Either party may appeal this decision to the Upper Tribunal (Lands Chamber). An application for permission to appeal should in the first instance be made to this tribunal and must be made within 21 days of the date upon which this decision was made.

Dated this 4th day of August 2015



A Grant
Chairman