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RESIDENTIAL PROPERTY TRIBUNAL WALES

Reference: RPT/0004/04/22

In the matter of 275 The Hawthorns, Cardiff CF23 7AN
And in the matter of an Application under the Housing Act 2004 (“The Act”)

Tribunal Judge: T Richards-Clarke

Surveyor member: Mrs J Coupe

Lay member: Mrs J Playfair

Applicant: Ms Hussain

Representative: In person
Mr Abbas (Applicant’s husband and Agent)

Respondent: Cardiff County Council

Representative: Mr Grigg Solicitor
Mr Aske (Respondent’s Housing Enforcement Officer)

Date and Venue of Hearing: 26 September 2022 via CVP Remote Hearing

ORDER

The Improvement Notices in relation to 275 The Hawthorns Cardiff CF23 7AN are confirmed and varied as set out below.

Pursuant to Section 49(7) of the Act the Tribunal orders the Applicant to pay to the Respondent the sum of £152 in respect of expenses incurred by the Respondent in determining whether to serve the notice, identifying any action specified in the notice and serving the notice.

The Application

1. On 13 April 2022, the Applicant appealed to the Tribunal, pursuant to paragraph 10(1) of Part 3 of Schedule 1 to the Housing Act 2004 (“the Act”) against the improvement notice and the notice of expenses issued by the Respondent under s11 and s12 of the 2004 Act dated 28 March 2022. In the application to the Tribunal the Applicant states that the improvements in Category 1 are inaccurate to the health and safety risks claimed. Regarding the Category 2 hazards claimed, the Applicant states that no numerical score was offered, these have not fully been reported by the tenant and would have been remedied by the landlord if allowed access to do so.
2. Directions dated 28 April 2022 were issued which both parties have complied with.

3. The Tribunal had regard to the hearing bundle paginated numbered pages 1-59 together with findings of the Tribunal Surveyor member following the inspection on 7 September 2022.

The Law

4. Chapter 1 of the Housing Act 2004 provides a means of assessing housing condition through the Housing, Health, and Safety Rating System (HHSRS). Operating Guidance assists Environmental Health Officers in assessing hazards. The guidance lists 29 different types of hazards. Under s5 of the Act local authorities are compelled to take enforcement action where Category 1 hazards are identified following an assessment of Hazard Score. Under s7 of the Act local authorities have a power to take enforcement action where Category 2 hazards exist at a residential premises. The Enforcement Guidance assists officers in identifying the best enforcement option.
5. In the present case the Respondent decided to serve an Improvement Notice pursuant to s11 and s12 of the Act which state the following:

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1)If—

(a)the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

servicing an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2)An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3)The notice may require remedial action to be taken in relation to the following premises—

(a)if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b)if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c)if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4)The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a)that the deficiency from which the hazard arises is situated there, and

(b)that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5)The remedial action required to be taken by the notice —

(a)must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b)may extend beyond such action.

(6)An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7)The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8)In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

12 Improvement notices relating to category 2 hazards: power of authority to serve notice

(1)If—

(a)the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2)An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3)Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4)An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5)An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6)The operation of an improvement notice under this section may be suspended in accordance with section 14.

6. Paragraph 10 of Schedule 1 to the Act gives a general right of appeal to the Tribunal against an Improvement Notice. Under Paragraph 14 of Schedule 1 to the Act any

appeal must be brought within 21 days from the date the notice is served. Under Paragraph 15 (3) of Schedule 1 of the Act the Tribunal are given power to confirm, quash or vary the Improvement Notice.

Improvement Notice s11 and s12 Housing Act 2004 28 March 2022

7. At the inspection on 28 February 2022 the Respondent identified several defects at the property. These are set out in Schedule 1 of the Notice of Improvement as:

Category 1 Hazard

Excess Cold (2)

Ground floor lounge window hinge defective & stiff when opening
First floor rear bedroom (right) hinge defective & window will not open.
First floor rear bedroom (left) window is out of alignment and does not close.
No loft insulation in the attic.

Category 2 Hazards

Entry by Intruders (12)

Rear yard fence panels are defective and rotten

Food Safety 16)

Kitchen cupboards damaged/missing.
Mould on the sealant behind the kitchen taps/sink

Personal Hygiene, Sanitation and Drainage (17)

Leak to the toilet waste outlet pipe.
Bath panel cracked/defective. Mould on bath sealant.

Falling on level surfaces (20),

Floor level to the rear yard has cracks and different levels.

Fire (24)

No heat detector in kitchen.

Collision and Entrapment (26)

Glazed panel porch inner door - no evidence this is safety glass.
Ground floor bathroom window hinges defective.

Structural collapse and falling elements (26)

Rear yard fence, rear porch/car port - timber support to the polycarbonate roof is rotten and not securely fixed in place.

8. The works required pursuant to s8 Housing Act 2004 were set out in Schedule 2 of the Notice of Improvement.

The Inspection

9. On 7 September 2022, the Tribunal Surveyor member conducted an inspection of the premises in the presence of Mr R Grigg solicitor of Cardiff Council; Mr Aske Housing Enforcement Officer of Cardiff Council; and the tenants Mr & Mrs Tomescu.
10. The findings of the Tribunal Surveyor were:
11. The property is an extended end-terraced house of cross wall construction, part tile hung, beneath a pitched roof clad in tiles. Access to the front is pedestrian only and via a small garden. To the rear is a timber carport with small store attached, and a small patio garden area. The property is situated in a predominantly residential area close to all local amenities. The weather at the time of the inspection was dry and bright. The previous day heavy rain had fallen. The tenants were accommodating and provided access to all areas. They also pointed out where works had been completed by the landlord.

Category 1 hazard

1. Ground floor lounge window hinge defective & stiff when opening

Hinge remains defective. Window is extremely difficult to open. Repair or replacement required.

2. First floor rear bedroom (right) hinge defective & window will not open.

One window has been screwed shut. Second window - handles stiff and difficult to operate. Repair or replacement required.

3. First floor rear bedroom (left) window is out of alignment and does not close.

This is the front bedroom window. One window has been secured shut, whilst the second window is very stiff to operate. Repair or replacement required.

4. No loft insulation in the attic.

Incorrect. Insulation more than 270mm was evident but was partially obscured by timber boarding. No action required.

Category 2 hazards

1. Rear yard fence panels are defective and rotten

The fence panels have been replaced and are now secure. No further action required.

2. Kitchen cupboards damaged/missing. Mould on the sealant behind the kitchen taps/sink

One cupboard door is missing, whilst other doors and drawers are out of alignment and fail to shut securely. All units are showing significant wear and tear and are at the end of their economic life. Sealant around the sink is either missing or has failed and is showing a considerable build-up of mould. Action - strip out and replace all sealant.

3. Leak to the toilet waste outlet pipe.

Repaired. No further action required.

4. Bath panel cracked/defective. Mould on bath sealant.

Bath panel is cracked and requires replacement. Sealant has failed and requires stripping out and replacement.

5. Floor level to the rear yard has cracks and different levels.

Repaired. No further action required.

6. No heat detector in kitchen.

Heat detector installed. No further action required.

7. Glazed panel porch inner door - no evidence this is safety glass

Glass does not appear to be safety glass. Health and safety risk. Replacement with safety glass required.

8. Ground floor bathroom window hinges defective.

Hinges are non-operative. When opening the window, the entire, large, unit falls inwards with no support. Highly unsafe and likely to cause serious injury or harm to the occupiers. Urgent repairs or replacement required.

9. Rear yard fence, rear porch/car port - timber support to the polycarbonate roof is rotten and not securely fixed in place.

Rear yard fence repaired. Remaining defects are outstanding.

The Hearing

12. At the start of the hearing the Respondent requested that the Improvement Notice be varied. This was because following service of the Improvement notice some defects had been remedied. Mr Aske on behalf of the Respondent gave evidence as to the outstanding defects and requested a variation of the Improvement Notice to those defects outstanding as at the inspection on 7 September 2022.

13. In response the Applicant stated that they did not object to undertaking the repair work at the property, but that the landlord had experienced problems obtaining access to the property and that she wished to return to live at the property. The Applicant's husband and agent Mr Abbas also stated that the works had not been completed because of lack of access and that all the outstanding works would be completed. Both the Applicant and her Husband/Agent indicated that they were happy to do all the work at the property.

Summary

14. The Tribunal is satisfied that defects identified by the Respondent at the inspection on 28 February 2022 and set out Schedule 1 to the Improvement Notice dated 28 March 2022 amount to Category 1 Hazard and Category 2 Hazards. The Tribunal is further satisfied that while some works have been carried out several defects are outstanding as was identified by the Tribunal Surveyor member at the inspection on 7 September 2022.

15. The Tribunal therefore confirms the Improvement Notice served by the Respondent on 28 March 2022 with the following variations:

Schedule 1 – Deficiencies at Property

Category 1 hazard

Excess Heat (3)

Deficiencies that contribute to the hazard:

- Ground floor lounge window hinge defective & stiff when opening
- First floor rear bedroom (right) hinge defective & window will not open.
- First floor front bedroom (left) window is out of alignment and does not close.

Category 2 hazards

Food Safety (16)

Kitchen cupboards damaged/missing.

Mould on the sealant behind the kitchen taps/sink

Personal Hygiene, Sanitation and Drainage (17)

Bath panel cracked/defective. Mould on bath sealant.

Collision and Entrapment (26)

Glazed panel porch inner door - no evidence this is safety glass.

Ground floor bathroom window hinges defective.

Structural collapse and falling elements (26)

Rear porch/car port - timber support to the polycarbonate roof is rotten and not securely fixed in place.

Schedule 2 – works required

1. The Rear Porch/Car Port

Take down completely and make good or renew or repair to rotten timber and leave the structure watertight and structural sound condition.

2. Ground Floor Porch Inner Door

The glazing within the critical locations to the ground floor porch inner door will need to be replaced with the appropriate safety glass, as noted under the Part N of the Building Regulations (glazing areas between finished floor level and 800mm about that level in internal and external walls and partitions). It is the responsibility of the Glazier to ensure that the correct glass is installed in relation to its size requirements.

3. Ground Floor Bathroom, Ground Floor Lounge and First Floor Front (left) bedroom windows

Renew or repair existing hinge mechanism to the top opening window to ensure the openings can close right into the frame and open in a safe manner.

4. Kitchen Cupboards

Replace or refix missing or damaged kitchen cupboard doors. Ensure they can open and close correctly.

5. Kitchen Sink

Remove the sealant surrounding the kitchen sink/behind the kitchen sink and replace with a new waterproof sealant

6. First floor rear bedroom (right) window

Re-align the window to ensure there are no unnecessary draughts and can close tight into the frame and open in a safe manner

7. First Floor Bathroom Bath

Remove the sealant surrounding the bath and replace with a new waterproof sealant. Renew or repair the existing bath panel surround and leave in sound condition

8. Other works

Carry out such other works as are necessary or an ancillary to those specified above

Dated this 17th day of October 2022

T Richards-Clarke
Chairman