

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal (Wales)

**DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL**

**Reference: RPT/0006/05/22**

**In the Matter of Maritos, Dee Road, Talacre, Holywell, CH8 9RS**

**In the matter of an application under the Housing Act 2004 – appeal against an Improvement Notice**

APPLICANT	Ruth Gladys Holt
RESPONDENT	Flintshire County Council
TRIBUNAL:	Mr. T Rakhim, Legal Chair Mr. T Daulby, Surveyor Member Mr. B Brereton, Lay Member
Date of determination:	19 October 2022. Virtual hearing on the CVP Platform.

The Applicant was represented by Ms Jaimie Whiteley, Solicitor Advocate from Gamlins Law.

The Respondent was represented by Mr Aiden Kelly, Environmental Health Officer in Housing Enforcement.

**Order**

1. The Improvement Notice and the Demand for Recovery of Expenses, both served by the Respondent and dated 25 April 2022, were respectively revoked and withdrawn by the Respondent and so no order from the tribunal was required.
2. The Respondent is to pay the Applicant's costs, limited to £500, within 14 days of this decision being sent to the parties.

**Background**

3. This is an appeal brought by Ruth Gladys Holt (the Applicant) against an Improvement Notice served by the Local Authority (the Respondent) in relation to the premises known as Maritos, Dee Road, Talacre, Holywell, CH8 9RS ("the property"). The

Improvement Notice served was dated 25<sup>th</sup> April 2022 and pursuant to Section 12(5) of the Housing Act 2004. It related to:

- a. Damp and mould growth (category 1 hazard) – three deficiencies were raised; a missing downpipe, a window not having any opening parts and finally a roof leak (causing damp and mould alongside a bowed ceiling).
  - b. Excess cold (category 1 hazard) – four deficiencies were raised; concerns on loft insulation, concerns on external walls insulation, central heating not working with electrical heating deemed inadequate and cold draughts from wall flue.
  - c. Falling on level surfaces (category 1 hazard) – single deficiency raised; uneven ground in rear yard.
  - d. Fire (category 1 hazard) – six deficiencies were raised; issues in relation to smoke alarms, internal walls construction, ceilings construction, incomplete internal doors and frames, inappropriate sliding door and a variety of electrical installation issues.
  - e. Personal hygiene, sanitation and drainage (category 2 hazard) – two deficiencies were raised; lack of hot water to the hand basin and issues with the fitting of the water heater.
  - f. Domestic hygiene, pests and refuse (category 2 hazard) – single deficiency raised; accumulation of waste to external areas.
4. Remedial actions were listed by the Respondent alongside start dates ranging from 24 to 31 May 2022 and completion dates ranging from 24 May to 30 August 2022. The Notice was accompanied by a Statement of Reasons dated 25 April 2022.
  5. The second relevant notice is a Demand for recovery of expenses dated 25 April 2022, where the Respondent sought to exercise their power under section 49 of the Housing Act 2004 in seeking £300 as expenses incurred in serving the Improvement Notice. The expense claim included considering whether to serve the notice, identifying any action to be included within the notice and serving the notice.
  6. The Applicant had made an out of time application to appeal the Demand for recovery of expenses on 16 June 2022. The parties were notified on 22 June 2022 that a Procedural Chairman had granted this application.
  7. The Panel had before them the Applicant's bundle at 136 pages and Respondent's bundle at 111 pages.
  8. The Applicant's case was reflected in the application dated 12 May 2022, with the expanded grounds exhibited and statement of reasons. There was also an undated expanded statement of reasons within the bundle, which exhibited the Applicant's undated witness statement.
  9. The Applicant essentially argued as follows:

- a. The Improvement Notice is not the best course of action given the state of repair of the property as there is significant expensive work involved and issues in relation to the structure and foundations were also raised. The Applicant had no funds to undertake the repairs. In support of the costs involved in undertaking the repairs, she relied upon the extensive issues raised in the schedule to the Improvement Notice as well as further issues raised by the Respondent in relation to drainage at the end of May 2022.
  - b. The Applicant decided to sell the property in June 2021, a sale had been agreed with the neighbouring builder and the plan was to fully demolish and rebuild.
  - c. The Demand for recovery of expenses was also contested.
  - d. The Applicant argues that instead of the Improvement Notice there should be a Prohibition Order or Demolition Order.
10. A relevant argument raised from the outset of the appeal by the Applicant was that she contests there being power to serve an Improvement Notice as she disputed being a landlord and denied renting the property. The relevant points in relation to this issue were raised as follows:
  - a. The Applicant had been living there since 1997, until six years ago when her daughter returned from Spain with her newlywed husband. They asked to move in whilst they saved for their deposit and the Applicant believed this would be for two years.
  - b. The Applicant initially had a £30 per week contribution towards the utilities and this got raised to £50 per week.
  - c. The Applicant stated she had to leave the property over Christmas 2021 due to abuse from her daughter (detailed within the Applicant's witness statement).
  - d. The sale agreed (in June 2021) had not progressed as the Applicant's daughter resided in the property (with her husband) and she refused to leave.
  - e. There was never any intention to create legal relations with the occupiers (with the daughter or the daughter's husband).
11. Other evidence contained within the two bundles included various email correspondence between the parties (local authority / Respondent, Applicant, Applicant's solicitors, and daughter), hazard calculations and extensive photographs of the external and internal parts of the property.

12. There was no written statement on behalf of the Respondent but they did lodge their own bundle and were represented at the hearing.
13. In advance of the hearing, the Panel had reviewed the contents of both bundles.

### **Site inspection**

14. A site inspection was directed the day prior to the hearing with the Panel to attend. This was also attended by the Applicant, her friend (Mr. Bolton), her solicitor (Ms. Catrin Williams) and her advocate (Ms. Jaimie Whiteley). The local authority failed to attend.
15. The property was occupied at the time by the Applicant's daughter, Ms. Deborah Hassan and her two dogs. She was not agreeable to the Applicant or her representatives attending inside the property. The Panel deemed there to be no prejudice to the Applicant. The Applicant's solicitors were able to observe the front and rear of the external parts of the property as well as the neighbouring property.
16. The extensive photos within the bundle appear to fairly reflect the state of the property seen at the inspection. It was noticed that the damp in one of the rooms had got worse with the plaster from the ceiling in one of the rooms having fallen away. The Surveyor Member of the Panel verified the foundations are laid on sand.
17. The hazards within the schedule to the Improvement Notice were all seen to be present at the property during the inspection.

### **Hearing**

18. The remote hearing was attended by the Applicant, her advocate (Ms. Whiteley) and the Respondent's Environmental Health Officer (Mr. Kelly).
19. Upon exploring preliminary issues, Mr. Kelly for the Respondent was able to confirm that the Applicant had sought possession of the property via proceedings in the County Court and had been granted possession. Additionally, he also confirmed the Court had held the occupier had a licence to occupy, as opposed to an assured shorthold tenancy. Mr. Kelly also confirmed the occupier was being assisted in finding an alternate property.
20. Both parties were able to clarify the possession hearing in the County Court took place on 2 August 2022 and a copy of the court's order was provided to the Respondent by 3 August 2022. Mr. Kelly explained that he thought he couldn't contact the Applicant's solicitors and ask them to withdraw, the hearing had been listed with the fees paid and he considered it was for the Applicant to decide whether to continue with the appeal or not. He further explained he thought the Improvement Notice was in limbo, his hands were tied and he assumed he required the Tribunal's permission to withdraw the matter.

21. In line with the arguments raised, the Panel first turned its mind as to whether the Improvement Notice was valid. The parties had been in a dispute as to whether the Applicant was the landlord and whether the premises were being rented to her daughter. If the answers to these questions were in the negative, then the Improvement Notice would have no force and the application would be dismissed. The parties agreed with this approach.
22. Upon being asked, Mr. Kelly confirmed the Respondent no longer wished to proceed. Whilst previously the local authority were not aware of the legal status of the occupier, the County Court had now decided this and the occupier was not found to be a tenant. The Respondent thus revoked the Improvement Notice and also confirmed they would withdraw the Demand for recovery of expenses.
23. The Panel were thus not tasked with making any decision as the Applicant was contesting both the Improvement Notice and the Demand for recovery of expense. The Respondent had confirmed both of these were withdrawn.

### **Costs application**

24. At the withdrawal of both matters, Ms. Whiteley for the Applicant sought a wasted cost order for the work done from 3 August 2022 (the date of the County Court order granting possession) to the date of this Tribunal hearing. As she was unsure of the process and orders available, she also applied in the alternate for a general cost order.
25. Ms. Whiteley submitted the Respondent had acted unreasonably in defending this to the hearing and the hearing was unnecessary. She argued the decision to withdraw the notices was due to the County Court possession ordered at the hearing of 2 August 2022 and reflected in the court order drawn up the following day. She contended the proper course of action was for the Respondent to have withdrawn the notices upon receipt of the County Court outcome.
26. Ms. Whiteley confirmed the costs were calculated to be £1,600 + vat and this was the amount sought. She submitted the Applicant had to instruct the solicitors to prepare for the hearing and attend today.
27. Mr. Kelly resisted the application for costs and submitted it was not clear that the Respondent had the autonomy to withdraw the notices without agreement of this Tribunal. He contended a complaint was received from a residential occupier, the Respondent did inspect, had assisted with harassment allegations in relation to a person known by the Applicant and resources had been expended. He also confirmed the Respondent was still involved in dealing with the queries from the occupiers and having to resolve the housing situation. Finally, he suggested the Applicant may wish to seek the costs of the appeal from the Tribunal.

### **The law**

28. The following excerpts of the law are relevant to the issues (with wording of particular relevance to this application highlighted in bold).

29. Paragraph 12 of Schedule 13 to the Housing Act 2004 addresses costs:

**(1) A tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).**

*(2) The circumstances are where—*

*(a) he has failed to comply with an order made by the tribunal;*

*(b) in accordance with regulations made by virtue of paragraph 5(4), the tribunal dismisses, or allows, the whole or part of an application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5;*

*(c) in accordance with regulations made by virtue of paragraph 9, the tribunal dismisses the whole or part of an application or appeal made by him to the tribunal;*  
*or*

***(d) he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.***

***(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed—***

***(a) £500 or, in the case of an application to a tribunal under the Mobile Homes Act 1983, £5,000, or***

***(b) such other amount as may be specified in procedure regulations.***

***(4) A person may not be required to pay costs incurred by another person in connection with proceedings before a tribunal, except—***

***(a) by a determination under this paragraph, or***

***(b) in accordance with provision made by any enactment other than this paragraph.***

30. No determination under Schedule 13 can be made in respect of a party without first allowing them an opportunity of making representations (rule 34 (1) of the Residential Property Tribunal Procedure & Fee (Wales) Regulations 2016).

31. The parties have an obligation to cooperate with the tribunal and help the Tribunal in seeking to give effect to the overriding objective (rule 3 (3) of the Residential Property Tribunal Procedure & Fee (Wales) Regulations 2016). The Panel is to deal with applications fairly and justly which includes in a way proportionate to the complexity of the issues and to the resources of the parties.

## **Determination**

32. The Panel concluded the hearing could have been avoided. A preliminary issue that had been raised from the outset was the Applicant contesting being a landlord or renting the premises. The Respondent was on notice of the same and contested this issue.

33. Directions were issued by the Tribunal on 7 June 2022 with an original hearing window given of 15 August to 30 September 2022. Both parties were aware of the outcome of the County Court proceedings by 3 August 2022 at the latest.
34. It had been agreed by the parties that absence of a tenancy would mean the Improvement Notice could not have been validly issued (nor the Demand to recover expenses).
35. The Panel noted the Applicant's solicitor had emailed the Tribunal on 15 August 2022 as this was mentioned by Ms. Whiteley in the hearing. The Panel noted the email stated dates to avoid for the revised hearing window and the possession order was attached. The Applicant further stated in the email that upon the property being vacated it would be vacant, sold, demolished and then rebuilt. There was an absence of submissions in relation to the validity of the Respondent's notices.
36. The Prestatyn County Court order for possession dated 3 August 2022 adjudicated by District Judge Watkin did not state there was a lack of tenancy or a lack of landlord/tenant relationship. The order stated the Applicant's daughter had accepted there was a lack of exclusive possession of the property, though it is unclear what period this would relate to here.
37. The Tribunal had never been asked to consider the impact of the County Court order and its bearing on the case.
38. The application which is subject to this hearing could have been withdrawn at any time before the Panel started considering the application (rule 35 (1) of the Residential Property Tribunal Procedure & Fee (Wales) Regulations 2016). However, the Panel concluded this would only have been possible if the Respondent had first withdrawn the Improvement Notice and the Demand for recovery of expenses.
39. The Panel concluded it would be reasonable to expect the Respondent to consider the impact of the lack of tenancy and this should have been considered from as early as 3 August 2022. The matter proceeded to be listed for a site inspection and a hearing with a passage of 11 weeks to the point of the hearing. The Respondent only withdrew both notices after the hearing had commenced.
40. In considering the overriding objective, the Panel do not consider it reasonable for the application to have remain contested in the 11 weeks prior to the hearing. As well as the hearing, there was also a site inspection (not attended by the Respondent) which could have also been avoided. The Respondent's notices did not require the approval of the Tribunal to be revoked. If proactive steps been taken on this by the Respondent then the Applicant could have withdrawn the application which is the subject of this hearing.
41. Accordingly the Panel determined the Respondent is liable to pay the Applicant's costs under Paragraph 12 of Schedule 13 to the Housing Act 2004 as the Respondent's conduct was unreasonable.

42. The Tribunal is limited in power to award no more than £500. In assessing the amount of costs, the Panel noted £1920 is claimed by the Applicant (£1,600 + vat) and the Tribunal concluded these costs to have been reasonably incurred. A detailed consideration of the costs was not required given the Panel are limited in power to awarding no more than almost a quarter of the costs claimed.

43. It is for this reason that the Panel determined the Respondent is to pay £500 in costs.

DATED this 2<sup>nd</sup> day of December 2022

T Rakhim

Chairman