[2020] IEHC_116

THE HIGH COURT

[RECORD NO. 2019/258 JR]

BETWEEN

NATANYA FEENEY

AND

KEALAN DUGGAN

APPLICANTS

AND

WATERFORD CITY AND COUNTY COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice Hyland delivered on the 3rd Day of March, 2020

Introduction

1. This case throws up a net but surprisingly complex issue: in what circumstances can a local authority cease making housing assistance payments (hereafter "HAP") to a landlord in respect of a specific property due to the condition of that property?

Background to the Proceedings

2. Here, the Applicants, a young couple both on disability benefit with two children age 4 and 5, obtained approval for the HAP scheme in 2014 from the Respondent, Waterford City and County Council (the "Council"). That scheme is governed, *inter alia,* by Part 4 of the Housing (Miscellaneous Provisions) Act 2014 (the "2014 Act"). In the parlance of the Act, the Applicants were a "qualified household" meaning that they were a household qualified for social housing support in respect of whom housing assistance under Part 4 of the 2014 Act is an appropriate form of social housing support (see s.35 of the 2014 Act).

3. They initially moved into a house that was approved for HAP which they had to vacate due to the landlord's decision to sell the property. They then moved into a second house approved for HAP which they vacated due to the state of the property, including carbon monoxide poisoning. Finally, on 1st June 2017, they moved into the property the subject matter of these proceedings, 5 Fenian Place, Abbeyside, Dungarvan, Co. Waterford.

4. The property had not previously been approved by the Council for HAP. Nonetheless, as envisaged by s.41 of the 2014 Act (discussed further below), the Council signed the HAP agreement with the landlord, Ms. D, with a view to the property being approved by the Council post commencement of HAP. Sometime in early September 2017, the Council came out to inspect the property and subsequently wrote a letter to Ms. D at an address in the USA on 14th September 2017 referring to the inspection and stating they understood she was the agent for the property. It appears in fact from the document exhibited at SIG2 that Ms. D is the owner of the property and not the agent. The letter identified various matters said to be in breach of the Housing (Standards for Rented Houses) Regulations and noted that the Council could take legal action on foot of such breaches under the Housing (Miscellaneous) Provisions Acts. The problems identified were (a) a leak coming from the attic, which was stated to be a matter of urgent attention as the water was coming through the ceiling light; (b) the immersion and temperature gauge; (c) lagging jackets; (d) installation of fire alarms; (e) provision of a mechanical extract vent over the cooker; and (f) repair of window in bathroom. Reference was made

to the requirements of the Housing (Standards for Rented Houses) Regulations in respect of certain of those matters. The landlord was given until 12th October 2017 to confirm that the defects had been rectified or were in the process of being rectified failing which the Council indicated they might need to take the matter further.

5. No action was taken by the landlord, and the HAP payment continued to be made to the landlord in the total amount of €575 per month. The Applicants' share of the rent was €60 per week. Section 44 of the 2014 Act provides that requires that HAP tenants shall pay a rent contribution to the housing authority concerned. Similarly, the agreement signed up to by the landlord with the Council (discussed below) provides that the tenant shall pay a weekly rental contribution to the local authority. Despite this, in this case the Applicants appear to have paid the landlord directly. Nothing appears to turn on that fact here save that it appears the Council were not administering the scheme in this case in accordance with the statutory requirements in this respect.

6. Following that inspection, the first named Applicant complained about the condition of the property on a number of occasions, including by email of 28th November 2018. On 29th November 2018, a further inspection of the property took place by the Council.

7. On 3rd December 2018, the Council wrote to Ms. D again outlining that certain matters were noted in breach of the Housing (Standards for Rented Houses) Regulations and warning that the Council "*may take legal action on foot of such breaches under the Housing (Miscellaneous Provisions) Acts*". From the list of defects, it appeared the condition of the property had substantially deteriorated in the intervening 15 months since the previous inspection. The work now required to be done included: (a) fitting of wall vent or window trickle vent in five rooms; (b) leak in bathroom ceiling; (c) all doors and windows in need of a service some requiring replacement, window restrictors to be fixed, glass fixed; (d) ventilation required in kitchen; (e) central heating, oil boiler broken, only source of heating is fireplace with back boiler, plumbing issues with taps and radiators leaking; (f) smoke alarm required; (g) gutters and downpipes blocked to be serviced and repaired; and (h)"*Gas and electricity systems: General Areas – Supply a current ETCI periodic inspection report by a registered electrical contractor for the electrical installation in the house. Current electrics is in a dangerous condition and all electrics in need of repair/replaced/upgrade*". The Council asked the landlord to confirm in writing before the end of January 2019 that they had rectified the defects.

8. On 10th December 2018 the Council wrote to the Applicants referring to the inspection and advising them they were required to move no later than 31st January 2019 or sooner if they could source an alternative HAP property. A new HAP application form was enclosed and they were asked to submit same when they found alternative accommodation. It is accepted by Ms. Phelan SC for the Council that the Council had no power to require the Applicants to move and that the letter was misconceived in this respect.

9. The Applicants did not move. On 8th February 2019, the Council wrote again to the Applicants referring to "your letter of 10 December 2018" and informing them that their

HAP had ceased from 31st January 2019 and that they were responsible to pay the landlord directly for rent from 1st February 2019. There is no letter exhibited of 10th December 2018 from the Applicants so it may be that the Council were referring to the letter that it had sent the Applicants on 10th December 2018. In any case, I am told by Counsel for the Applicants, Mr. Kennedy SC, that the Applicants continued to pay their share of the rent for February and March to the landlord but that they have now ceased paying rent to the landlord and are paying that money into a designated bank account so that it is available if their situation is regularised. Somewhat curiously, no action appears to have been taken by the landlord and therefore at the date of hearing, the Applicants remain in the house and the works identified remain undone.

10. It is agreed by both parties that the property does indeed suffer from the defects identified.

Relevant Statutory Provisions

11. Prior to the introduction of s.18A and B, s.18 of the Housing (Miscellaneous Provisions) Act 1992 as amended (the "1992 Act") provided for the making of regulations prescribing standards for houses for rent or other valuable consideration and specified that it was the duty of the landlord to ensure that the house complied with the requirements of such regulations. The Minister has prescribed various standards for rental properties over the years. The Applicants identified S.I. No. 17 of 2017 Housing (Standards for Rented Houses) Regulations 2017 as the currently applicable standards and the Council did not demur from that. In fact, it seems that those Regulations have been revoked and replaced by Housing (Standards for Rented Houses) Regulations (S.I. 137/2019). However, nothing turns on that since the 2019 Regulations still prescribe detailed standards for rented dwellings, albeit somewhat different to those prescribed in 2017.

12. Sections 18A and B were amendments to the 1992 Act, as inserted by the Housing (Miscellaneous) Provisions Act 2009 (the "2009 Act"). Under s.18A, the Minister is entitled to serve an improvement notice on any houses for rent or other valuable consideration requiring improvements. Section 18A sets out in some considerable detail the content of an improvement notice, provisions in respect of objection from the landlord, the response from the landlord where no objection takes place, appeals by the landlord to the District Court, the date of the coming into force of the notice and related matters. It is important in the context of this case to note that s.18A(1) is expressed in discretionary terms as follows:

Where, in the opinion of a housing authority, a landlord is contravening or has contravened a requirement of a regulation made under section 18, the authority may give notice in writing (in this Act referred to as an "improvement notice") to the landlord of the house concerned.

13. A prohibition notice is provided for by s. 18B and again its use is discretionary. Section 18B(1) provides:

Where a landlord fails to comply with an improvement notice in accordance with section 18A, the housing authority may give notice in writing (in this Act referred to as a "prohibition notice") to the landlord of the house concerned.

14. Under sub section 2, a prohibition notice shall, inter alia:

    (a) State that the housing authority is of the opinion that the landlord has failed to comply with an improvement notice;

    (b) Direct that the landlord shall not re-let the house for rent or other valuable consideration unless the landlord has remedied the contravention to which the improvement notice relates.

15. The prohibition notice shall also include information in respect of an appeal against the notice and be signed and dated by the housing authority. Again, there are provisions in respect of an appeal, the taking of effect of the notice, conformation of the notice and so on.

16. Section 18B(3) requires that when the housing authority gives a prohibition notice to the landlord, the housing authority shall also give a copy of the prohibition notice to the tenant. A landlord has a right of appeal in respect of the prohibition notice to the District Court under s.18B(4) and has 14 days to commence these proceedings and notify the housing authority. Where the landlord pursues an appeal the prohibition notice shall take effect, per s.18B(5), the day after the notice is confirmed or varied, the day after the appeal is withdrawn, or the expiry of the tenancy. In a case where an appeal is not pursued, the prohibition notice is effective the day after the expiry of the 14 day window in which a landlord may make an appeal, or the expiry of the tenancy.

17. Section 18B(6) provides that if a landlord remedies the issues identified in the prohibition notice, they must inform the housing authority of this. If satisfied that the matters have been remedied, the housing authority shall give written notice of that compliance to the landlord and the tenant (s.18B(7)). A housing authority may withdraw a prohibition notice, but this does not prevent the issuing of another prohibition notice. (Sections 18B(8) and (9)). Under s.18B(10) the housing authority shall take appropriate measures to bring the contents of the prohibition notice to the public.

18. A question arose during the hearing as to the ambit of sections 18A and 18B and whether they only applied to HAP properties. Having considered the entirety of s.18, that question must be answered in the negative. They are clearly part of a scheme intended to ensure enforcement of standards for all rental properties, including but not limited to HAP properties. The 1992 Act predated the HAP scheme by many years. Equally, as far as I can ascertain, s.18A and 18B, pre-dated the HAP scheme. Even leaving aside this temporal reasoning, there is no limitation on s.18A and B to HAP properties.

19. Turning now to s.41 of the 2014 Act, the core of the Applicants' case is s.41(2)(d) which provides:

(i) *A dwelling the subject of proceedings under section 18B of the Act of 1992 or in respect of which a prohibition notice under that section is in force shall not be, or shall cease to be, eligible for housing assistance.*

(ii) *Notwithstanding subparagraph (i), where a household is residing in the dwelling in respect of which a prohibition notice under section 18B of the Act of 1992 is in force, the housing authority may provide, or continue to provide, housing assistance in respect of the dwelling for a period prescribed under this subparagraph for the purposes of enabling the qualified household to find an alternative dwelling.*

(iii) *Where subparagraph (ii) applies, the housing authority shall notify the qualified household of the prescribed period under that subparagraph for which housing assistance is being provided in respect of the dwelling concerned.*

20. The Applicants say this means that no cessation of HAP can take place without a prohibition notice. They also invoke s.41(2)(c) which provides:

A housing authority may provide housing assistance in respect of a dwelling the subject of a subsisting improvement notice given under section 18A of the Act of 1992 and shall notify the qualified household accordingly.

21. Finally, Section 41(1) provides:

Except where otherwise provided for by this section, it is a condition of the provision of housing assistance to a household in respect of a dwelling that the housing authority concerned is satisfied that the dwelling complies with standards prescribed under section 18 of the Act of 1992.

22. Under s.41(2)(a) the dwelling will be deemed to comply with the standards under s. 18 of the 1992 Act if the housing authority inspects the dwelling and is satisfied that the dwelling complies with that condition. Where this does not apply, the housing authority must arrange to inspect the dwelling under s. 41(2)(b) within a prescribed period. The housing authority has discretion to continue paying HAP until the inspection.

Nature of the Relief sought

23. The Applicants come to Court asking, inter alia, for three reliefs:

1. *A Declaration that the notice served on the Applicants on the 10th December 2018 and taking effect on 31st January 2019 requiring the Applicants to move from their home at 5 Fenian Place, Abbeyside, Dungarven is in breach of natural and constitutional justice and ultra vires the Respondent pursuant to the Housing Miscellaneous Provisions Act 2014 and the Regulations made thereunder;*

2. *A Declaration that the decision by the Respondent to cease paying housing assistance payment to the applicants in respect of their home is contrary to natural*

and constitutional justice and ultra vires the Respondent pursuant to the Housing Miscellaneous Provisions Act 2014 and the Regulations made thereunder;

3. An order of mandamus by way of judicial review directing the Respondent, its servants or agents to take appropriate steps against the owner of the said property Ms. D of Maryland, USA pursuant to the said statute and the regulations.

Legal Issues Arising

24. I have identified above two letters written by the Council, in early September 2017 and 3rd December 2018, calling on the landlord to carry out works by a specified date. Both parties agreed that neither of the letters constitute prohibition notices within the meaning of s. 18B of the 1992 Act, as referred to in s.41 of the 2014 Act. Mr. Kennedy tentatively suggested that they might be improvement notices within the meaning of s. 18A. Ms. Phelan did not agree and said that neither letter was an improvement notice, not meeting the statutory requirements and not being the subject of a Manager's Order. I agree with this submission. Neither of the letters written to the landlord comply with the detailed requirements of s. 18A in respect of an improvement notice. Equally, neither comply with the similar requirements for a prohibition notice in s. 18B.

25. That being the case, the primary question raised by these proceedings is whether the Council were entitled to cease HAP to the Applicants without a prohibition notice having been served. The Council argues it was entitled to do so under the contractual relationship between the parties whereby the landlord's entitlement to payment under HAP is conditional upon the property being maintained in accordance with the Rental Standards for Housing Regulations. The Applicants say that (a) no contract has been entered into between the landlord and the Council (b) even if same existed, the legislative framework displaces any contractual entitlement to so do and (c) the legal effect of s. 41 is that cessation can only take place if a prohibition notice has been served. An argument was also made that if no improvement and/or prohibition notice had been made, the Council were under a duty to issue such notices in respect of the property.

26. A further question arises, namely the legal effects of s.41(1) and whether the Council has an entitlement to terminate HAP under s.41(1) even if no prohibition notice has been served.

Correct Interpretation of Section 41

27. When one turns to s.41, one can see that it is, at least in part, intended to address the impact of improvement and prohibition notices on HAP. In short, under s.41(2)(c), a housing authority may continue to provide HAP in respect of a dwelling the subject of an improvement notice. The position is different where a prohibition notice is served. In that case, s.41(2)(d)(i) provides that the dwelling shall cease to be eligible for household assistance. This is unsurprising when one recalls that a prohibition notice shall direct, *inter alia*, that the landlord shall not re-let the house for rent. It would be inconsistent in those circumstances for a housing authority to continue paying HAP. But that is not the end of the matter. Section 41(2)(d)(ii) allows for a certain discretion in that, even where a prohibition notice is in force, the housing authority may provide or continue to provide

HAP for a period to allow the qualified household to find an alternative dwelling. The Applicants' case is that s. 41 requires a prohibition notice to be served before HAP can be ceased due to the condition of a particular property.

28. On balance it seems to me the purpose of s.41(2)(c) and (d) is not to prescribe a mandatory statutory route to enable local authorities to terminate HAP for a failure to ensure that a dwelling complies with the rental standards for houses regulations. Rather, their purpose is to provide certainty to local authorities as to how HAP should be treated when either an improvement or prohibition notice is subsisting. One might argue that the very existence of s.41(2)(d) prohibiting HAP in respect of dwellings subject to a prohibition notice suggests the absence of a power on the part of a housing authority to terminate the HAP payment otherwise. However, read in the light of the entirety of s.41 and s.18,18A and 18B, I consider that s.41(2)(d) does not confer a power on a housing authority to terminate HAP but rather imposes a statutory prohibition, over and above any agreement between the landlord and the housing authority, on the continuation of HAP where a prohibition notice is in force (save where the housing authority avails of the statutory exception at s.41(d)(ii)). It follows that the role of s.41(d) is to address the position of a dwelling the subject of an improvement or a prohibition notice where rent is being paid under the HAP scheme rather than to establish a mandatory statutory framework for the termination of HAP due to breach of standards for rental dwellings. This makes sense when one considers that in a HAP situation, there is an existing relationship between the landlord and the housing authority pursuant to the HAP application form (discussed below) that governs the cessation of HAP for breach of rental standards regulations. It is also consistent with the discretionary nature of the issuing of improvement and prohibition notices by the housing authority. The interpretation of s.41 as contended for by the Applicants would mean that the issuing of improvement and prohibition notices was mandatory for housing authorities who wished to terminate HAP because of non-compliance with rental standards.

29. Section 41(1) is also relevant in this context. It provides:

Except where otherwise provided for by this section, it is a condition of the provision of housing assistance to a household in respect of a dwelling that the housing authority concerned is satisfied that the dwelling complies with standards prescribed under section 18 of the Act of 1992.

30. This section reflects the dominant theme of s.41 overall – that HAP should not be paid unless the housing authority is satisfied the dwelling complies with standards prescribed under s. 18 of the Act. The opening words "*except where otherwise provided for by this section*" are of significance. They do not suggest that there is one route, and one route only, by which a housing authority may satisfy itself of compliance with rental standards, which is the case made by the Applicants. Rather they acknowledge that the continuation of HAP in cases of non-compliance constitutes an exception to the primary rule i.e. that HAP should not be paid in respect of non-compliant dwellings.

31. The relevance of s.41(1) in the context of these proceedings is twofold. First, by implication, it suggests that a housing authority is not confined to a determination of non-compliance with rental standards exclusively by way of improvement and prohibition notices. It does not prescribe how a housing authority should arrive at its conclusion that the dwelling does not comply with relevant standards, although it is true that s.41(2)(a) and (b) provide for inspection of dwellings to ascertain compliance. Second, it provides a basis independent of the agreement between the landlord and the housing authority (discussed below) for a housing authority to cease paying HAP to a non-compliant dwelling. By necessary implication, if it is a condition of the provision of HAP that the housing authority is satisfied the dwelling complies with standards, then where it is not so satisfied, the condition has not been met and HAP ought not to be paid. Therefore, even if I am incorrect in my conclusions below to the effect that the agreement between the landlord and the Council entitles the Council to cease making HAP due to the condition of the dwelling, I am satisfied the Council were entitled to cease payments under the provisions of s.41(1) by reason of the non-compliance of the dwelling with the rental standards.

32. Having regard to my interpretation of the statutory provisions, it follows that where a housing authority have not issued a prohibition notice (as in the instant case), the cessation of HAP is neither governed by, nor precluded by, s.41(d)(i). Nor is there any obligation to serve an improvement notice prior to ceasing HAP.

33. A separate argument was made on behalf of the Applicants to the effect that the property had already been inspected prior to their taking up residence, the significance of this presumably being to support a contention that the housing authority had committed to the payment of HAP despite the condition of the property. As a matter of fact, the evidence appears to establish that there had been no pre-approval of the property, and that the inspection in September 2017 was carried out for the purposes of approving the property as provided for under s.41. As the sequence of events described above make clear, the Council was not satisfied with the condition of the property and sought remediation. At no point did the Council unconditionally approve the property.

34. Section 41(2)(b)(i)(II) provides that the housing authority, prior to inspecting a dwelling for the purpose of satisfying itself that the dwelling complies with applicable housing standards, may provide housing assistance until the dwelling is so inspected. As discussed above, Section 41(2)(c) then provides that a housing authority may provide HAP in respect of a dwelling house the subject of an improvement notice. On one reading of s.41, it might be concluded that if the authority inspects the dwelling and considers there is non-compliance with rental standards, then it must move to an improvement notice. But the service of an improvement notice is not mandatory. Further, for the reasons I have given earlier, the housing authority is not obliged to serve an improvement notice where there is a failure to comply with rental standards. Rather it is an option open to them, with s.41(2)(c) identifying the effect of that notice if the housing authority decides to take up that option. Therefore, in the same way that I concluded that Section 41(2)(d) does not require the service of a prohibition notice as a necessary pre-condition to the

cessation of HAP due to non-compliance with rental standards, I find that Section 41(2)(c) does not require the service of an improvement notice or preclude the housing authority from relying on any entitlement that may be derived from any agreement with the landlord to require remediation of the property.

Agreement between landlord and housing authority

35. In this case, given that no improvement or prohibition notice is in existence, the question then arises as to the derivation of the entitlement to terminate and whether the termination was valid. I have already indicated that I consider that there is an entitlement on the part of the Council to cease HAP on the basis of s.41(1). However, given that the Council argued strongly that there is a contractual entitlement to cease payment, and in the event that I am wrong about the effect of s. 41(1), I will address this issue also.

36. In this regard, the Council argue that the HAP application form (as described by Ivan Grimes in his supplemental affidavit sworn 4th February 2020 and as exhibited at SIG 2) submitted by the landlord on 20th June 2017 gives the Council an entitlement to cease HAP for non-compliance with rental standards. I should say that the document exhibited was incomplete and I asked the parties to supply a complete copy. They were not in a position to do that, but the Council did provide a sample copy of the form so that I could see the entirety of it and the solicitors for the Applicants were provided with a copy of same. Having seen that, I am satisfied that the form exhibited had not omitted any part material to these proceedings and I therefore proceed on the basis of the form exhibited.

37. Page 4 of that document states as follows:

> *"Payment of the Housing Assistance Payment (HAP) to a landlord is subject to the following terms and conditions:*
>
> *3. Rental Accommodation Standards: the property provided by the landlord to the tenant must comply with the Housing (Standards for Rented Houses) Regulations 2008 as amended. Further information regarding these standards can be found on the housing section of the Department of the Environment, Community and Local Government website www.environ.ie. The local authority will carry out an inspection of the property within 8 months of commencing HAP payments to ensure that the property is in compliance. If this inspection identifies matters of non-compliance with the standards, the landlord will be obliged to remedy the matter(s) of non-compliance within a time period indicated by the local authority in written notice to the landlord. Failure to remedy any matters of non-compliance within the stated timeframe will result in the suspension or cessation of HAP payments".*

38. It is notable that a procedure is laid out for non-compliance with the rental standards regulations i.e. by written notice to the landlord by the local authority, but that no reference is made to s.18A and the service of an improvement notice. In other words, the agreement clearly contemplates that the local authority is entitled to call on the landlord to comply with standards without recourse to the statutory framework.

39. On what appears to be the last page of the contract, the landlord is required to confirm that they have read the terms and conditions and are aware of their obligations. The landlord is required to certify that the dwelling meets the standards for rented houses and that the local authority will carry out an inspection of the property to ensure it meets the standards. In this case, the landlord signed up to these terms on 20th June 2017.

40. Therefore, under the HAP agreement between the landlord and the Council in this case, there is an obligation on the landlord to maintain the property to the standard required by the regulations as well as an obligation to remediate within a time specified by the local authority where there is non-compliance with standards. Where these obligations are not observed, there is a clear entitlement on the Council to cease HAP.

41. It is argued on behalf of the Council that the HAP application form establishes a contractual relationship between the parties and governs the terms of their relationship, that under those terms there was an entitlement on the part of the Council to terminate HAP for failure to remediate the property and that there was no requirement to issue a prohibition notice to entitle the Council to terminate.

42. Counsel for the Applicants says on the other hand that compliance with s.41(d) is a mandatory step prior to the cessation of HAP and that no contract had been established between the landlord and the Council so as to entitle it to terminate HAP. Mr. Kennedy lays particular emphasis on the following paragraph found on the last page of the document exhibited at SIG2:

> *"I am fully aware that the local authority will be making Housing Assistance Payments in respect of the rent … the tenancy of the Property solely on behalf of the tenant and notwithstanding the receipt of the Housing Assistance Payments, I acknowledge and accept that the payment by the Local Authority under the Housing Assistance Payments is strictly on behalf of the tenant of the Property and that this arrangement does not establish any contractual arrangement, any partnership, any joint venture or any landlord and tenant relationship between the Local Authority and I."*

43. Despite the wording of this paragraph, it seems to me that the application form constitutes the basis on which the Council makes monthly payments to the landlord. The application form identifies various circumstances in which HAP may be ceased apart from non-compliance with rental standards, including non-payment of the rental contribution by the tenant to the local authority and anti-social behaviour by the tenant. The sentence in the above paragraph disavowing a contractual relationship is found in a context where it is being made clear that the payments are being made by the local authority on behalf of the tenant and not *qua* tenant of the landlord. The wording reflects a desire to make it clear that there is no tenancy relationship, or other ongoing relationship between the landlord and the local authority. Nonetheless, ongoing payments are being made by the local authority and the application form clearly regulates those payments, identifying for example the method by which payments are to be made, the obligation of the HAP tenant to make a weekly rental contribution to the local authority, the management of the

tenancy, tax compliance, payment of local property tax and so on. As previously noted, the landlord acknowledges by signing that they are aware of the terms and conditions set out in the application form. Insofar as consideration is concerned, the landlord is making the house available to a nominated tenant or tenants and the local authority is paying a monthly sum of money to the landlord.

44. In those circumstances, I consider that, despite the reference to the arrangement not being contractual, the HAP application form governs ongoing payments to the landlord by the local authority and those payments are subject to the terms set out in the form, however one describes the nature of that document.

45. Turning now to the question as to whether in the circumstances of this case, the Council was entitled to cease providing HAP having regard to the terms of the application form, the form clearly entitles the local authority to cease making payments under certain conditions, including the failure to meet standards established by Housing Regulations. In this case, there is an agreed failure to meet such standards, as notified twice to the landlord by the Council and after the landlord having twice being called upon to remediate the property.

46. It is true that, as relied upon by Mr. Kennedy for the Applicants, the second notification of 3rd December 2018 gave the landlord until 31st January 2019 to remediate the property, but that nonetheless HAP stopped on 31st January 2019 and the Applicants were told to vacate the property by 31st January 2019 by letter of 10th December 2018. Mr. Kennedy makes the point that it was unreasonable not to wait to see whether the landlord would in fact remediate before sending the letter of 3rd December.

47. In circumstances where the Council had already carried out an inspection in September 2017, had notified the landlord of the matters in need of remedy under the Housing Standards Regulations and sought rectification by 12th October 2017, and where no rectification had been carried out by that date, the Council was entitled to terminate HAP without further notification pursuant to the application form. It is true that the Council allowed some considerable time to go by before deciding to cease HAP, but there is no factual material to suggest that they had waived any such entitlement under the application form and nor was that argument made to me.

48. The letter of 3rd December 2018 identified further, more serious defects, including electrics stated to be in a "dangerous condition" and gave a date by which they should be remediated, being 31st January 2019 but clearly a decision had been made at that point that there was existing non-compliance with the rental standards regulations sufficient to justify cessation of the HAP on 31 January 2019. In my view, the Council were entitled to so conclude having regard to the prior correspondence and the condition of the property.

49. I should add that as a matter of fact, the landlord did not remediate the property prior to 31st January 2019 or indeed at any later date. A striking feature of this case is the apparent indifference of the landlord to both requests on the part of the Council to remediate the property, to the cessation of HAP on 31st January 2019 and to the

unsurprising decision of the Applicants to cease paying rent by the spring of 2019, given the condition of the property.

Application for Mandamus

50. As noted above, a separate argument was made by the Applicants, corresponding to the third relief sought, to the effect that I should make an Order of Mandamus directing the Council, to take appropriate steps against the landlord, Ms. D. Counsel for the Applicants accepted that the Court would only make orders of mandamus directing executive action in very limited circumstances, but cited the case of *Hussey & Ors. v. Dublin City Council* [2007] IEHC 425 in support of an assertion that such a power could be exercised in certain circumstances. Orders of mandamus, just like orders of certiorari, and declarations, are remedies for a breach by a respondent. Before even getting to the question as to when it might be appropriate to employ a given remedy, it is first necessary to identify a breach.

51. The basis for the third relief in the Notice of Motion appeared to be that it was desirable, and in ease of the Applicants that the landlord would be required to remediate the property by the exercise by the Council of its statutory powers. I have already identified the relevant statutory powers above, whereby the ultimate power of the Council is to issue a prohibition notice which does not mandate the landlord to do the necessary works but rather directs that the landlord shall not re-let the house for rent or other valuable consideration. In the instant case, it is unlikely that this would have had the desired effect of forcing the landlord to remediate given the landlord's history of apparent indifference to the steps the Council took. It is not clear that the issuance of such notices would benefit the Applicants. More relevant is the fact that the Applicants cannot point to any legal wrong on the part of the Council in not issuing an improvement or prohibition notice. The Council has a discretion insofar as the issuing of the notices are concerned. It is not legally obliged to issue such notices.

52. In those circumstances I find that the Applicants have failed to identify any basis upon which they are entitled to an order of mandamus in the terms sought.

Summary of Conclusions

53. Having regard to the above, I find:

- The Council were entitled to cease HAP despite no prohibition notice being served;

- The Council were entitled to cease HAP solely on the basis of s.41(1) i.e. where the Council were not satisfied that the dwelling complied with rental standards prescribed under section 18 of the 1992 Act;

- The Council were also separately entitled to cease HAP due to the failure to comply with rental standards pursuant to the agreement between the Council and HAP as evidenced by the HAP application form submitted by the landlord;

- The Council were not under any duty to issue an improvement or prohibition notice against the landlord.

54. In those circumstances, I find there is no basis for granting the second or third reliefs sought by the Applicants.

55. In respect of the first relief, i.e. a Declaration that the notice served on the Applicants on the 10th December 2018 requiring the Applicants to move from their home was is in breach of natural and constitutional justice and ultra vires the Respondent, it is frankly admitted by Ms. Phelan on behalf of the Council that it had no entitlement to require the Applicants to move. However, on the basis of the evidence before me, the Applicants took no steps on foot of this letter and insofar as the requirement to move is concerned, it had no consequences for the Applicants. In other words, the letter appears not to have impacted at all on either the factual or legal position of the Applicants. Granting a declaration in respect of the impugned part of the letter would have no practical effect whatsoever. Accordingly, I will refuse that relief, having regard to the discretionary nature of relief in judicial review, as further discussed below.

Discretionary Nature of Relief in Judicial Review

56. In any case where judicial review is sought, it is well established that the Court has a discretion not to grant the relief sought, even if a breach has been made out. I have dealt with the first relief sought above on that basis. In respect of the other reliefs, I have found that the Applicants are not entitled to those reliefs. But even if I had found illegality in the cessation of HAP, I would been very reluctant to grant any relief that either directly or indirectly required the Council to recommence the payment of HAP, having regard the nature of the defects in the property. The letter from the Council of 3rd December 2018 to the landlord states unambiguously that the current electrics in the property are in a dangerous condition and that all electrics are in need of repair/replacement/upgrading. It is submitted on behalf of the Council that if I make the Orders sought, that will put the Council in an invidious position as it may take the view it is required to make HAP to a landlord where that property is in a dangerous condition without the Council being in a position to ensure the property can be put into a safe and acceptable condition of repair. The Council has stopped making HAP because of the condition of the house. It has good reason to so do. If it continued making such payments after calling on the landlord to remedy defects that potentially endanger tenants, and no such remediation steps are taken, then should a tenant be injured, it might well be considered to bear part of the responsibility. It seems quite inappropriate to me that a Court should play any role in the Council being forced to make HAP in respect of a property that it has identified as dangerous.

57. Finally, I should conclude by noting that I am very conscious of the vulnerable position of the Applicants given their family circumstances and the necessity of them having a safe and secure dwelling to raise their young family. They are obviously deeply committed to ensuring their children grow up in an appropriate environment. But unfortunately, for all the reasons set out above, I am forced to conclude that they are not entitled to the relief sought in these proceedings. As noted by the Council in submissions, the Applicants remain a "qualified household" entitled to HAP and it is to be hoped that they will obtain a suitable property in respect of which HAP can be paid.