FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UF/HMC/2020/0001**
Property	**:**	**Ground Floor flat,** **81 London Road,** **High Wycombe,** **Bucks,** **HP11 1BN**
Applicants	**:**	**Steve Higgins & Jemma Synnott** **Unrepresented**
Respondent	**:**	**Devinder Chabba** **Unrepresented**
Date of Application	**:**	**1st February 2020**
Type of Application	**:**	**Rent Repayment order pursuant to section 41 of the Housing and Planning Act 2016**
Tribunal	**:**	**Judge J. Oxlade**
Date and venue of hearing	**:**	**7th July 2020** **Oral hearing over the telephone by BT Meet Me conferencing facility**

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DECISION

For the following reasons, I make a RRO payable by the Respondent to the Applicants in the sum of £3,675.00

REASONS

Background

1. The Applicants entered into an agreement to rent the property from the Respondent, subject to an assured shorthold tenancy, for a term of a year commencing on 21st August 2019, at a monthly rent of £750.

2. Having taken up occupation, the Applicants realised that the property was damp; it had been identified by them as a problem prior to entering into the tenancy, and lead to the insertion of a clause that the landlord would treat the damp prior to the start of the tenancy. There were other clauses included as "pre-tenancy" conditions, with which this case is not directly concerned.

3. Prior to the flat being offered to let, the Respondent was aware of a damp issue, and had secured professional intervention by Dampcure to remedy it, which works were undermined by subsequent internal replastering (by a different company) using the wrong type of plaster. It meant that the kitchen and bathroom walls were not sealed, so permitting water to penetrate the walls; not only did the damp proofing not work but the warranty that had come with it thereby invalidated.

4. Absent of resolution with the Respondent, the Applicants lodged a compliant with Wycombe District Council, leading to Investigation Officer Jackie Markworth inspecting the premises on 26th September 2019 ("the Officer").

5. Her first inspection established that there were problems arising not only from damp in the property, but that there were also fire hazards. The former arose because there were damp exterior walls within the kitchen/bathroom/and underneath the lounge window (which were not protected by the internal plasterwork, explained in 3 above), and pointing missing in the exterior rear back addition and underneath the lounge window. The latter arose because there was a communal hallway serving both the subject property and the flat above and there was absent a wired-in smoke alarm in the lounge and heat alarm in the kitchen of the property; the fire risk was compounded because the escape route through the backdoor depended on use of a key (rather than a mechanism to open from the inside without a key) and also the front door to the flat was not a fire-rated door.

6. The Officer established with Dampcure why the earlier remedial work was not effective and that the guarantee had been invalidated. She concluded that the remedy was to hack off plaster in the kitchen and bathroom to a height of 1.2 m, so that it could be re-plastered with suitable waterproof plaster; this would require the removal of the kitchen sink and unit/ w.c., wash hand basin in the bathroom, and all the pipework, and after the works were done to re-fit; this would take 3 days. She suggested to - and reminded - the Respondent to provide a dehumidifier to the Applicants (who were paying the electricity bill, arising from its use).

7. On 24th October 2019 the Officer served an improvement notice ("the first notice") on the Respondent, pursuant to sections 11 and 12 of the Housing Act 2004; the category 1 hazard identified was fire because of a risk of smoke inhalation and absence of early warning of fire, as (although within the flat there was a wired in fire alarm) there was nothing within the communal lobby area, and the entrance door to the flat was not fire-rated; the category 2 hazard identified was significant damp in the bathroom and kitchen, so giving rise to increased risk of respiratory illnesses.

8. The improvement notice required remedial action to address the category 1 hazards, to be *started* by 14th November 2019 and *completed* by 30th November 2019; there were 3 specific items of work required:

Action 1: provide mains-wired smoke alarms in both the ground floor communal lobby and lounge and a heat alarm in the kitchen, with battery back-up,

Action 2: provide a 30 – minute fire door as the front door to the flat, which should be openable from the inside without a key,

Action 3: change the lock on the rear door, so that it can be opened without use of a key.

9. The first notice also required remedial action to address the category 2 hazards, to be *started* on 14th November 2019 and *completed* by 14th December 2019; there were four specific items of work required:

Action 4: strip the plaster, as referred to in paragraph 6,

Action 5: re-render the external and rear walls, using the correct mix,

Action 6: replace all missing exterior pointing,

Action 7: check all guttering and downpipes to ensure no leaks.

10.On 4th December the Officer visited the premises to check on progress, and again on 22nd January 2020. By the second visit most of the actions had been completed, though action 3 had not been started, action 4 was partly completed (the wall behind the kitchen sink unit had not been plastered, the toilet pan, whb and pedestal had not been re-screwed to the floor/fixed to the wall, nor silicone sealed), and action 6 had not been completed (pointing under the living room window was still missing). This resulted in the Officer informing the Respondent that she would organise a contractor to finish the works and charge him accordingly (including for her time). The quote secured was too high, she searched for another builder (which was difficult for a relatively small job), and then covid-19 lockdown lead to the search being halted.

11. In the meantime, as mould was appearing on the inside of the front bay window because of poor rendering and brickwork, the Officer served a second improvement notice on 11th March 2020 ("the second notice"): action 8 was to re-render and repair all missing/damaged pointing in the bay window with a deadline to *start* on 8th April 2020 and be *completed* by 8th May 2020. The Officer accepted that as materials were hard to come by and because of the national lockdown, the works were understandably delayed.

12. By the time of filing a witness statement in these proceedings, the Officer confirmed that all had been completed.

Application

13. As a result of the problems in the flat, including – but not exclusively those detailed above - the tenants negotiated a rental discount for several months during February 2020, from £750 to £500 pcm; so the schedule of rent paid show that the Applicants paid net rent of £500 on 18th February 2020, 18th March, 17th April, and 18th May.

14. They made an application for a rent repayment order ("RRO"), seeking total RRO, and continuing at a daily rate.

15. The Applicants have set out in their application features which I categories as "aggravating features", namely that: the landlord was aware of damp problems before their let and their let was taken on the basis that he would resolve them; he showed no willingness to do so when pressed to do so (citing earlier expenditure) by either them or the Officer; provided a dehumidifier, but made no contribution to their electricity bills; the workmen charged with responsibility of resolving the problems at best led to massive disruption to their working and personal lives and at worst were messy/incompetent/breached their privacy; the landlord let himself in without permission and without appropriate notice, and on one occasion handled their possessions; the slow progress led to the Council intervening; the damp in the premises had lead to the First Applicant's asthma worsening; the landlord admitted to his estate agents that in retrospect he should not have let the flat.

Respondent's position

16. When served with the improvement notices the Respondent did not dispute to the Council that either (i) the works needed doing, (ii) nor that they amounted to category 1 and 2 hazards.

17. The Respondent's response to the Application is as follows: he did arrange workmen to do the work, but the Applicants were unreasonable, demanding, not accommodating, aggressive, and ended up upsetting each workman, so that there were delays, and the work could not be completed. They wanted final approval on the plasterer, before he could make a start. The Respondent denies securing entry without permission; rather the tenants opened the door at his request, so there was entry with permission. On another occasion he went into the bedroom to check on the damp situation.

18. Further, he had pointed out to the tenants that wet towels left in the property can cause condensation and so undermine the works done. This internal condensation was pointed out by Dampcure as an explanation for damp, rather than rising damp, which was considered as a possibility. He considered that internal condensation lead to the need for internal plaster to be taken off to a height of 1.2 m.

19. He says that he was subjected a stream of emails – sometimes stupid – up to 6 a day, many of which were unnecessary. As for the medical condition of the First Applicant – and possibly the Second – he did not understand why they chose not to move out, except to attempt to squeeze the greatest concession possible out of him. He

speculated that this was a tactic which could have been used by the Applicants previously.

20. He cites the Applicants conduct as both a reasonable excuse for failing to comply with the section 11 and 12 notices - and so a defence to the section 30 offence, under section 30(4) Housing Act 2004 – and in the alternative, as mitigation.

21. The Respondent disputes the aggravating factors cited in paragraph 16 above, and says that whilst the works were due to be done, he offered to provide alternative accommodation for them; he says that his workmen overheard them plotting to find a way of recovering the rent. In short, his case is that the Applicants have overstated their case, prevented the works from being completed, and set him up to fail.

Directions

22. The Tribunal made directions for the filing of evidence, from which I particularly note that the Respondent was required by paragraph 5(c) to file witness statements from any witnesses who were to give evidence at the hearing. The annex attached to the directions set out the relevant issues, including that the financial circumstances of the landlord are relevant, as had whether or not he had been convicted of an offence.

Hearing

23. The application was listed before me on 7th July 2020, by the BT Meet me conferencing facility, in light of the restrictions on opening courts caused by the COVID-19 pandemic; neither party objected to the hearing taking this format. Neither party was represented. Both parties had filed a bundle of documents, the Applicants in accordance with the directions. The Respondent's bundle consisted of a statement from him which set out his position as summarised in paragraphs 18-22 herein. His bundle contained a large number of emails between him and various other people, but it was not paginated, and though helpfully divided into sections, there was no specific guide to assist in establishing which email supported which point.

24. I heard evidence from the First Applicant, and submissions from him on behalf of both Applicants. The Officer gave oral evidence, to assist the Tribunal. The Respondent gave evidence.

25. He had also provided names to the Tribunal of those who had worked for him, and who he would wish to give evidence; however, there were practical problems in that they were all phoning in (and then leaving the conference) from building sites, and so not only were the conditions not ideal (noisy) but they were also working; the Respondent had arranged with the witnesses to phone in and make their statements, and then get back to work, but this had not been previously proposed/discussed/agreed with the Tribunal and would have led to the evidence being taken out of turn, which is not a suitable situation where the Applicants have to discharged a criminal standard of proof before the Respondent has to do anything; further, contrary to the directions they had not filed witness statements in support of what the Respondent wished them to say. The Respondent appreciated these practical difficulties, the witnesses rang off (presumably intent on returning to work) and made no application to call them irrespective of the above problems, nor to adjourn, and so I proceeded to consider the Respondent's case on the basis of the evidence filed by him and submissions.

26. I have a record of proceedings, which records the evidence given and submissions made. The BT Conferencing facility also gave rise to a recording.

27. I explained to the parties out the outset, that the application made under section 41 required me to be satisfied beyond reasonable doubt that an offence had occurred, namely under section 30 of the Housing Act 2004, having been served with the improvement notice that the Respondent had failed to comply with it, namely either or both failing to start and finish the work within the time limits given.

28. Further, there were limitations relevant in this case: the RRO could only return to the tenants rent actually paid by them to the landlord (i.e. so that where the rent was reduced to £500 per month, that was the maximum per month which could be returned to them). Further, the RRO could only be during the period when the offence was taking place; so though the Applicants sought a RRO for the period from before the Improvement notices were served, that was an order that could not be made. Finally, that the jurisdiction to make a section 44 RRO was dependant on a finding that (by section 40(4)) that the improvement notice related not to common parts (i.e. the communal hallway of the flats) but to the flat let to the Applicants. So, in this case if there was any complaint about delay in meeting the time limits set in respect of the communal fire alarm system, I would have no jurisdiction to make a RRO in respect of that.

Clarifying the extent of the Respondent's alleged default

29. I heard evidence from the Officer, during which it became apparent that I did not have a complete copy of the first notice; I was missing that part of the notice which required action 3, as set out above. The Respondent confirmed that there was no issue but that he had received a full copy. The Applicants agreed to provide it to the Tribunal within 48 hours, which they did.

30. The Officer confirmed that when she re-visited the premises on 22nd January 2020, both actions 1 and 2 had been completed, but not action 3. Mr. Higgins evidence (from the timeline at page 27) was that actions 1 and 2 were completed on 9th January 2020; the Respondent did not dispute that date. As to action 3, this was still outstanding when she visited again on 11th February 2020 and Mr. Higgins gave evidence that this remained the case at the date of the hearing; the point had been made at page 27 of the bundle, in the timeline document. The Officer said that at that inspection as to the hazard from damp, though the bathroom had been re-plastered, the fittings had not been adequately secured and sealed and the cutting back of the plaster and replastering had not been completed, so there was part of action 4 and 5 outstanding, and part 6 completely outstanding. The Respondent did not know when this work had been completed.

31. Accordingly, the RRO could be made from 1st December to 9th January 2020 in respect of actions 1 (so far as it relates to the property and not the common parts) and 2; in respect of action 3, this could be made from the date when the work should have started, namely 14th November 2019 to the date of the hearing, as the Respondent conceded that – though he said that he had asked the carpenter to do it - it may not have been done.

32. The Officer said that in respect of actions 4 and 5, these were partly done, but not 6, and should have been completed by 14th December, so a RRO can be made in respect of this from 15th December 2019 to 11th February 2020.

33. In respect of action 6, this became the subject of the second improvement notice, and gave rise to action 8; this was completed on 20th May 2020. Both the Officer and the First Applicant agreed that in light of the difficulties of securing plaster post covid lockdown, the delay in completing the works on the second notice could not properly lead to a penalty to the Respondent; in other words it would amount to a reasonable excuse. However, as the second notice arose out of a failure to complete action 6, a RRO can made in respect of this from the day that the Respondent was instructed to start, namely 14th November 2019 to the time when WDC took over the works, which according to the Applicant's time line was 3rd February 2020.

34. Accordingly, during the hearing the parties (in effect) agreed the extent of default.

Mitigation/Aggravation of offence

35. During the remainder of the hearing I heard from the First Applicant and the Respondent. The Applicants position was that he and his partner had been accommodating, and helpful, but been let down repeatedly by workmen not turning up, not respecting the premises, doing shoddy work and leaving their home (and the outside) in a mess. The First Applicant has health problems, which were not helped by their living conditions. The Applicants relied on statement from the Officer and Chancellors to say how accommodating they had been and had not been an impediment to the works. The First Applicant pointed to the Respondent's comments, blaming them, as failing to take responsibility. Further, that the Respondent admitted to his letting agents that he should not have let the premises. The Applicants sought a whole RRO, and relied on Vadamalayan v Stewart.

36. The Respondent had also found the whole experience stressful, caused by the Applicants endless emails (190 or so) and putting obstacles in the way of the workmen, to the point that there was a falling out with every single workman. He blamed the tenants use of the premises for the damp problems in the premises, which the Applicants would not address, despite his asking. In short the Applicants could not complain that the work was done – they were the problem. He considered that the Applicants were seeking to verify the credentials of the workmen. I twice asked the Respondent to point out examples of needless emails, but despite been given time to do so, failed to do so. He said that there were emails from Richard Essen, who stepped in to manage the works; specifically one dated 7th November 2019. I pointed out that it was after this time that the works were supposed to start, so later evidence would be what would be relevant. He referred to the plastering problem, and said that he asked the letting agents to get it done, after which they could not secure the plaster. I asked if he conceded that action 3 was outstanding, but he had thought this was done; he did not have a bill to check as he paid cash, and had not inspected it himself. He conceded it was his responsibility to get the work done. His basic position was the non-compliance arose from the tenant's conduct.

37. In reply, the First Applicant said that they had co-operated, initially making themselves available even at short notice, and when they could no longer take time off work, they bought a keybox (at their own expense) to leave a key for the workmen to let

themselves into the premises. They wanted to have some idea though of when people were going to need access, to not leave the key in the box all the time, because of the risk of break in. It was when they insisted on knowing that the relationship with Mr. Essen deteriorated, when one day they were not told, and he did not leave the key, so preventing access. He referred to a text message trail where he was being let down day after day by Mr. Essen's arrangements, re-arranging at last minute. It was after some weeks of this that they decided to keep the Respondent in the loop, so copied him into the correspondence.

38. The First Applicant said that the Respondent's approach to the proceedings was identical to his approach to them; failing to look after his tenants, granting himself access without permission, he has ignored them. He has failed to provide evidence of his financial circumstances. Had he maintained the home, he would not be in this position. Covid was not an excuse/explanation as this took place 7 months before covid hit.

39. The Respondent did not wish to exercise a right of reply.

40. I asked that the Applicant file a complete copy of the first notice, which was done.

41. However, the Respondent then sent into the Tribunal further material including email correspondence between him and the Applicants. I asked for clarification as to whether or not he said that this went to a question of reasonable excuse why the offences occurred or mitigation or both. By correspondence, he confirmed the latter. I invited the Applicants to comment. I therefore had post-hearing correspondence from both parties, which both had an opportunity to see and comment upon.

Findings

42. I have carefully considered the evidence filed and the submissions made.

43. I remind myself that I must be satisfied of the offence of a failure to comply with a section 30 notice to a high standard, namely beyond reasonable doubt, and that I must (as raised by the Respondent) consider if there was a reasonable excuse for non-compliance, which would amount to a defence.

44. There is no issue but that two improvement notices were served.

45. I shall address the second notice first, because it does not attract a RRO, for the following reasons; it was conceded by the Applicants and Officer, that the timing of the start of the works required by the second notice (coinciding with the Covid-19 lockdown) and the completion date (coinciding with the Covid -19 lockdown, and then difficulty in accessing materials) meant that the delay of two weeks in compliance was a reasonable explanation; I find it is a reasonable excuse within section 30(4). There is therefore no question of a RRO in respect of this.

46. The entire focus is the first notice: the alleged breaches are as set out in paragraphs 30 to 34.

47. Firstly, in respect of item 3, I find that the work was not started by 14th November 2019 and in fact had not been started by the date of the hearing. On this item – as with

all items - I have generally preferred the Applicants evidence to the Respondent's evidence; their statements of fact have been supported by documentary evidence, and witness statements, whilst the Respondent's assertions have not. Whilst the Respondent thought it had been done, and thought he had paid for it, he had not checked that this was the case – despite it being the Applicants case (as set out in the timeline at page 27) that the work was outstanding. The Applicant said that he paid in cash, and so did not have a receipt. However, he had not checked that the work was done, to satisfy himself this was the case. He said that the carpenter found it impossible "to work with these people", yet the carpenter's email of 11th May 2020 at 13:19 does not quite go that far; rather, he says that he is "finding it very difficult to work at 81 London Road" but does not say why that is the case. It remains the case that if work was carrying on in May 2020, it speaks to a lack of urgency on the Respondent's part to resolving a category 1 fire hazard, and which is straightforward to resolve by a simple change of a lock fitting to a rear external door, to escape a fire hazard. I reject the Respondent's claim to have done the work.

48. In respect of all works started and completed late I reject the Respondent's claim to have a reasonable excuse for not doing it, because the tenants had failed to co-operate. Firstly, having been under a legal obligation to do the work within a timeframe, had the Applicants failed to co-operate, the first person to whom that could be reported was the Officer, but it was not so reported. Indeed, it was her evidence that it was the Respondent who was dragging his feet, and who had to be chased. Secondly, the Respondent's own agents had (page 70) said that to their knowledge, the Applicants had not unreasonably refused entry to contractors, and the Officer confirmed that they had been cooperative. Thirdly, the only trail of correspondence which the Respondent relied on at the hearing to substantiate his point was dated 7th November 2019 - so well before any notice period started – did not support his point. Further, I have seen a sample trail of text messages between the Respondent's worker Mr. Essen and the First Applicant, which strongly supports the Applicants claim to be available and helpful, but to having been let down repeatedly. That they purchased and installed a key box to permit access, speaks volumes.

49. Had the Respondent wished to rely on the Applicant's failure to co-operate as a reasonable excuse for non-compliance, bare assertions could reasonably be expected to be supported by some details, and perhaps correspondence asserting during the currency of the notices.

50. The Respondent maintains that the Applicants were responsible/partly responsible for the damp in the properly, having left damp towels drying on radiators. However, the email dated 25th September 2019 from dampcare suggests that pipes may need to be lagged, that good extractors fans maybe needed in bathroom and kitchen, but more specifically that the internal plaster would have to have been used to the correct specification to be effective. It undermines the Respondent's allegation that the Applicants are responsible.

51. In summary, I find that the alleged breaches set out in paragraphs 30 to 34 are made out beyond reasonable doubt, and that no reasonable excuse has been made out.

Quantum of RRO

52. In assessing the appropriate RRO, I have regard to section 44(4). I have regard to the guidance in the case of Vadamalayan v Stewart where it was said that the starting point is a whole RRO. In this case that would be a whole RRO from 14th November 2019 to the date of the hearing on 7th July 2020, so £750 for November, December and January (totalling £2,250), then £500 p.c.m. after that (6 x £500). So, £5, 250.

53. I bear in mind that the longest outstanding work is to alleviate a category 1 fire hazard, and so is of considerable concern. However, I bear in mind that the seriousness of this is mitigated by the fact that actions 1 and 2 were completed – albeit late.

54. I bear in mind that the damp problems in the property were long-standing, and known before the Applicants took the tenancy; indeed they were highlighted as continuing to be an issue to the landlord when the tenancy agreement was entered into, as it was noted as a pre-contract condition. Whilst I accept that he had spent (no doubt) a large amount of money seeking to cure it early in 2019, this attempted was undermined by the failure to use the correct plaster mix. Whilst that may well not have been a fault attributable to the Respondent, it is open to him to look to the contractor who got that wrong, to seek to recover costs. I give credit to the fact that the Respondent did complete part of actions 4 and 5 in the bathroom, though not all, and none was done on time. I accept that he offered the tenants the opportunity to live elsewhere at his cost, whilst the work was done (recognising that it is very difficult to get plaster work off the walls, and redone, with tenants housed comfortably), but equally, this is easier said than done when the tenants have a pet. They are entitled to remain in their home, and for the works to be done around them, albeit that there will be unavoidable mess and inconvenience.

55. The damp problems were not confined to poor plaster mix, but poor pointing. It is somewhat surprising that a long hard look was not taken of the premises when the damp was first noticed to be a problem in early 2019, as curing damp in one place can be undermined by other issues (I.e. poor gutters or poor pointing).

56. The Respondent's approach to management of the premises I find to be reactive, and slow at that.

57. I totally reject his claim that the Applicants were bombarding him with silly emails; the matters are not trivial, and I reject his scepticism of the effects that these problems can have on health; the Respondent does not appear to appreciate that the whole purpose of the Hazard rating scheme is to protect tenants and their health. The Respondent's suggestion that the tenants had cooked this up, and sought to live there for free is not helpful and is not supported by evidence.

58. I find that the Respondent's failure to sensibly engage with these proceedings, seeking to shift the blame is an aggravating factor.

59. I accept that the facts relied on as aggravating factors set out in paragraph 15 are made out.

60. I bear in mind that the Respondent has not been prosecuted in respect of this matter, nor was there any suggestion by the Officer that there had been other convictions.

61. The Respondent has not set out his financial circumstances, and so I am not in a position to limit the RRO by reference to his affordability.

62. In light of all of the above, I start with a full RRO, which is £5,250, and reduce by a small amount to reflect the lack of conviction, by a small amount to reflect the fact that some of the (most hazardous) work was done (albeit slightly out of time), but bear in mind that one category 1 item remained outstanding at the date of the hearing, and that the Respondent's attempt to blame the Applicants is an aggravating factor. I can not make any further reduction on account of the Respondent's financial circumstances as little is really known about it.

63. Taking all of the above into account, I reduce the RRO by 30%, and so make a RRO of £3675.