RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL

An appeal pursuant to Schedule 1, 10(1) of the Housing Act 2004

LON/00AG/HIN/2007/0009

Premises:	Flat 7, 37-41 Gower Street, London WC1E 6HH
Applicant:	Mr. & Mrs. R Evans (In Person)
Respondent:	London Borough of Camden
Represented by:	Mr. D Pullen & Mr. Durant
Also present:	Mr. Winn-Smith, Counsel for Mr. & Mrs. Ackerman (as interested persons) Observer on behalf of London Borough of Bromley
Hearing:	29th August 2007
Tribunal:	Ms. L M Tagliavini, LLM, Dip Law, BA(Hons) Mr. T Sennett MA FCIEH Dr. A Fox PhD, BSc MCIArb

1. This is an appeal pursuant to Schedule 1; Part 3 of the Housing Act 2004 against the service of an Improvement Notice ("the Notice") dated 13 June 2007 served by the Respondent. This Notice requires the Applicants to carry out works of improvement at the subject premises as set out in Schedule 2 of the Notice and comprising the installation of double glazing and a central heating system in order to address the identified hazard of "Excess Cold".

2. The subject premises comprise a two bedroom flat in a Grade II listed building containing commercial premises on the ground floor and part of the basement floor with a total of 10 residential flats. The freehold is owned by Bedford Estates. The Applicants have a lease of Flat 3 granted from 17 September and expiring on 4 March 2096. Mr. and Mrs. Ackerman were the headlessors of the building whose lease expired on 25 March 2006. The Tribunal was told that negotiations are continuing for the grant of a new lease to Mr. and Mrs. Ackerman in respect of part of the building only. However, only Mr. and Mrs. Evans have sought to appeal the notice.

3. In their Grounds of Application, the Applicants stated that they were seeking to appeal against the Notice of Improvement (the "Notice") because at no time have they received complaints from their (assured) tenant, Mr. Mark Boettcher of a lack of heating or in respect of the windows and that they are not responsible for the window frames under the terms of their lease. The Applicants stated that they had sought the help of the Respondent, through the Residents Association ("RA") in a letter dated 6 September 2006, in order to try and compel the Ackermans to fulfill their contractual obligations in respect of the common parts. In response to this letter the Respondent contacted Mr. Christodoulou, head of the RA and informed him that access to the building would be required. Neither Mr. Christodoulou nor the Applicants were made aware that access to any individual flat would be required and Mr. Boettcher agreed to provide access to the building as he works nearby.

4. On 19 February 2007, the building was inspected and access to Flat 7 only provided, Mr. Pullen having asked Mr. Boettcher on that day if he could inspect. As a result of his inspection Mr. Pullen served the improvement notice subject to this appeal on the Applicants, the headlessors and the freeholders.

5. In the Respondent's Statement of Reasons, Mr. Pullen stated that he had inspected the subject premises and common parts on 19 February 2007 and found deficiencies in the windows and heating contributing to an excess of cold. Accordingly, a document of consultation was drawn up to ascertain the views of the interested parties, namely Bedford Estates, Mr. and Mrs. Evans and Mr. and Mrs. Akerman, Mr. Boettcher, Allsop Commercial Management Limited and several subsidiary companies of Bedford Estates. There were no representations and the Improvement Notice was served on 13 June 2007 on Mr. and Mrs. Evans and on the Bedford Estates. Copies of the notice were sent to all other interested parties. Mr. Pullen stated that the subject property was in a sufficiently poor state to warrant service of the Notice and the appeal was opposed.

6. The Tribunal also had before it a witness statement of Mr. Pullen dated 1 August 2007 in which he set out the factual matters lading to the service of the Notice and the basis of his calculations to arrive at a hazard rating of " 1" as defined in Schedule 1 Matters and Circumstances of the Housing Health and Safety Rating System (England) Regulations 2005 made under section 250(2)(a) Housing Act 2004. In his statement Mr. Pullen noted also the poor state of the common parts, the lack of lighting and fire protection.

7. In evidence Mr. Pullen told the Tribunal that he believed the notice had been served correctly. He accepted that the lessees had made initial contact in respect of the common parts only and no complaints had been received in respect of Flat 7. He also accepted that there had been no request, written or otherwise, made to the lessees of the flat in accordance with section 239 of the Housing Act 2004 for access to the subject premises. Mr. Pullen stated that he did not believe this irregularity materially affected the validity of the Notice. He also stated that he had not inspected any other residential flat in the building.

8. Mr. Pullen accepted that there was an error on the notice in that the words "common parts" should have been struck through to leave reference only to Flat 7. Mr. Pullen stated that he knew the tenant in Flat 7 was a single but not elderly man who lived in this first floor flat. He stated that the tenant had told him he wanted a more efficient heating system and was advised to talk to his landlord (Mr. and Mrs. Evans) in the first instance. Mr. Pullen stated that when carrying out the inspection it is noted

what is available in the flat and scored under the HHSRS score is based on the state found and the factors laid down for the building at the date of first build, rather than the date of any rebuild. Although he had not noticed excessive cold at the time of his inspection Mr. Pullen stated that the Local Authority based its calculation only on the most vulnerable person likely to occupy or visit the flat. He stated that the Local Authority aims for the ideal solution for any defects although it would accept alternative works that would satisfy the Notice. Mr. Pullen stated that he was of the view that the subject premises were reasonably maintained, although lacks proper thermal insulation even though the secondary glazing at the front of the house does to a certain extent improve the thermal condition. It was accepted that as a listed building there would have to be some negotiations with English Heritage and permissions sought to do the works required by the Local Authority. Mr. Durant told the Tribunal that the Local Authority take a rounded view of hazards and accepted that assessing the likelihood of an event occurring is a subjective assessment using the guidance provided.

9. In evidence, Mr. Evans told the Tribunal that he was not aware of any request for access to his flat by the Respondent. Neither he nor his wife had received any complaints about the property from their tenant. He stated that the Local Authority had not made it clear either to himself or to the tenant of the nature of this inspection or the possible repercussions. Following service of the notice by the Local Authority he had asked Mr. Pullen about alternative works and was told to accept the notice and if unhappy to appeal.

10. Mr. Evans stated he believed the building to be have been rebuilt around 1947, as effectively, a new building had gone up behind the façade and it is no longer effectively the 1920's building categorised by the Respondent. The flat itself is in a middle position in the building and has only two exposed walls. Mr. Evan's queried the Respondent's calculations and stated he believed they were incorrect. He stated that as far as he is aware there is no central heating in he building, hot water is supplied to all flats by a central boiler situated in the basement. Mr. Evans stated that as lessees, he and his wife are responsible for the glass to the windows they are not liable for repairs to the window frames and therefore any works to the windows would require the permission of the headlessor and freeholder, as would the installation of central heating. He referred to the First Schedule to the lease and stated that the Local Authority should have determined responsibilities under the lease before embarking in this process.

11. On inspection the Tribunal found the subject premises in a good state of repair and decoration and situated on the first floor in a modernised block of flats behind a traditional Georgian terrace façade. Heating was by way of four fixed electric storage heaters supplemented with the tenant's own freestanding radiators. Secondary glazing was installed to the front of the building as much to reduce the noise from the busy road outside as to increase thermal insulation. The Tribunal did not find the subject property cold and there was no evidence of condensation. The windows were in reasonable repair and the radiators of a reasonably modern make and model. The Tribunal noted discrepancies between the inspection notes and statement of the Respondent and their findings on inspection of the building.

The Decision

12. Section 239 of he Housing Act 2004 states:

"(3) Where this subsection applies –
(a) a person authorised by the local housing authority (in a case within subsection (1), or
(b) the proper officer (in a case within subsection (2).

May enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises.

(5) Before entering any premises in exercise of the power conferred by subsection (3), the authorized person or proper officer must have given at least 24 hours' notice of intention to do so –

(a) to the owner of the premises (if known), and
(b) to the occupier (if any).

(6) Subsection (7) applies where the local housing authority consider that any premises need to be entered for the purposes of ascertaining whether an offence has been committed under section 72, 95 or 234(3).

(7) A person authorised by the local housing authority may enter the premises for that purpose-

(a) at any reasonable time, but
(b) without giving any prior notice as mention in subsection (5)

13. In this case it is accepted by the local authority that no notice of its intention to inspect Flat 7 was given either on the occupier or the owners of the subject Flat, prior to the actual inspection. Further, Mr. Pullen agreed that prior to the inspection communication had been conducted with Mr. Christodoulou on the basis that entry was required only to the common parts and no mention had been made of the intention to inspect Flat 7 internally. Moreover, no notice at all of this intention was given to the Applicants. The Tribunal finds that the Respondent did not comply with the provisions of section 239(5) of the Housing Act 2004. Although, Mr. Pullen argued that this error does not invalidate the Notice, the Tribunal does not agree. Express provision is made in the Act for urgent situations where entry can be affected without notice. It is not suggested, and the Tribunal does not find that this was such an emergency situation. The Tribunal is also of the opinion that the purpose of section 239(5) is to give a mandatory warning to occupiers and owners of an inspection and some opportunity to deal with it before inspection and the service of a notice. Lack of a warning in this instance deprived Mr. and Mrs. Evans of such an opportunity and in the Tribunal's view has invalidated the subsequent steps taken by the Respondent in serving the Notice and it cannot now be relied upon.

14. Even if the Notice were valid, the Tribunal also considers that the fixed electric storage heaters in the subject premises, although not the latest model are not obsolete but are sound and functioning as evidenced by the lack of any complaint from the tenant. The Tribunal could see no evidence of condensation and the windows were operable and did not appear rusted. Situated in the middle of the block with only two external walls and heat from above and below the Tribunal were not persuaded that the premises presented the hazard of "Excess Cold" as asserted by the Respondent.

15. Further, the Tribunal took the view that the correct age of the building for these purposes is the date of rebuilding as only the façade of the original building remains and behind it stands a more modern block of flats. In this instance the Tribunal is of the opinion that it makes little sense or logic to determine the age of the building as it was first built, as it leads to a disproportionate, misleading and unjustified result. Therefore the Tribunal finds, that the basis on which the scoring and calculations have been carried out by the Respondent to reach the opinion that the premises comprise a Category I Hazard are unreliable.

16. The Tribunal is also of the opinion that the the hazard described by the Respondent is not a Category 1 Hazard but could more properly have been dealt with by the service of a hazard awareness notice. Any necessary works to address such a hazard could, in the Tribunal's opinion be satisfied with the installation of secondary glazing to the remaining windows and the provision of a more efficient slim line electric heating system rather than the wet central heating system proposed.

17. In conclusion the Tribunal finds the Notice invalid for lack of notice to the owners of the subject property before inspection and cannot be relied upon. In any event, the Tribunal is not persuaded of the accuracy of the calculations or that a Category 1 hazard exists at the subject premises for the reasons stated above. Therefore, the Tribunal allows this appeal and awards costs to the Applicant in the sum of £150 to be paid by the Respondent and representing the application fee.

Chairman: L M Taggart

Dated: 16/10/07