RPT/HA04/S11 Imp/8

RESIDENTIAL PROPERTY TRIBUNAL

HOUSING ACT 2004 – PART 1

SCHEDULE 1 para 10(1)

APPLICANT:	**Mrs J P WILLIAMS**
RESPONDENT:	**MONMOUTHSHIRE COUNTY COUNCIL**
SUBJECT PROPERTY:	**12 PORTHYCARNE STREET USK**
DATE OF INSPECTION AND HEARING:	**28th MAY 2009**

MEMBERS of the TRIBUNAL:	**Mr P H WILLIAMS** **Mr A D MORRIS** **Mr NFG HILL FRICS** **Ms A ASH (Observer)**

12 Porthycarne Street Usk Monmouthshire NP15 1RY
Appeal against an Improvement notice served under part 1 of the Housing Act 2004

1. This is an Appeal,dated the 7th January 2009, by Mrs J.P Williams against an Improvement Notice served by the Local Authority under the Housing Act 2004 (the Act)
2. An inspection by the Tribunal took place on the 28th May 2009 in the presence of the Tenant, Mrs E Weare, her daughter Mrs G Roberts, Mr M J Williams, the husband and designated Agent of the Appellant and the following representatives of the Respondent Authority, namely, Mr Anthony Davies and Mrs Nia Chappell who are Specialist Environmental Health Officers, and Mr I Gealy who is a Solicitor.
3. All the persons mentioned in paragraph 2 above attended the hearing which was held at Sessions House, Maryport Street, Usk.
4. At the Hearing the Tribunal raised two issues under Section 239 of the Act
5. Subsection (9) of Section 239 reads:-

   " An authorisation for the purposes of this section-
   (a) must be in writing and
   (b) must state the particular purpose or purposes for which the entry is authorised "

Under Section 243 of the Act an authorisation is needed, inter alia, pursuant to Section 239 and the power of entry. On the 20th December 2006 the Corporate Director of the Respondent authorised both Mr Anthony Davies and Mrs Nia Chappell to exercise the powers conferred on Local Housing Authorities under Part 1 of the Act.

Subsection (10) of Section 239 reads " A person authorised for the purposes of this Section must, if required to do so, produce his authorisation for inspection by the owner or any occupier of the premises or anyone acting on his behalf "

In evidence both Mr Davies and Mrs Chappell acknowledged that they were not in possession of the Corporate Director's general authority of the 20th December 2006.They did have Identity Cards with them but these do not refer to the said authorisation nor the Act.After a short adjournment to enable the Respondent's representatives to consider this point Mr Gealy conceded that subsection (10) of Section 239 had not been complied with.

The Tribunal determined that this non- compliance meant that the Improvement Notice was unenforceable.However, it went on to address the question of what constituted a valid authorisation for the purposes of Subsection (9) of Section 239. In particular it considered that the authorisation should specifically refer to the subject property and should state the precise reason for wanting to exercise its power of entry.In this case the Tribunal considered that the authority needed to mention 12 Porthycarne Street and its intention to carry out a survey with a view to issuing an Improvement Notice if necessary.The Tribunal did not consider that a general authority, as issued on the 20th December 2006, was sufficient to satisfy subsection (9) (b) of Section 239 and nor was the carrying of an Identity Card sufficient.It should, however, be noted that the authorised Local Housing Authority officers do not have to produce the authorisation unless so requested but that they must have it in their possession on exercising their power of entry.

6. Whilst the determination of the Tribunal is sufficient for the Appeal to succeed we would like to address the second issue that was raised at the Hearing.

   Subsection (5) of Section 239 of the Act reads :

" Before entering any premises in exercise of the power conferred by subsection (3), the authorised person or proper officer must have given at least 24 hours notice of his intention to do so –
(a) to the owner of the premises (if known) and
(b) to the occupier (if any) "

In evidence Mr Davies confirmed that the Landlord was not given notice of the meeting at the premises on the 4th March 2008, and that the Tenant was not given notice of the meeting with Mr Williams which took place at County Hall on the 27th May 2008. As regards the meeting with the Tenant on the 23rd July 2008 Mr Davies stated that he left a message for Mr Williams advising him of the meeting date and asking Mr Williams to contact him.Mr Williams did not respond.The call was to a landline and was timed at 1 minute and 3 seconds.Mr Williams explained that this landline served both his home and a shop owned by his wife which adjoins the subject property. He advised that there was no answering service for this landline so that Mr Davies could not have left a message.He did, however, explain that an incoming call transfers from home to shop after a period which might explain the length of the timed call. Had it not been for our determination under paragraph 5 this

disputed point might have been relevant as we shall explain hereafter but in the circumstances we do not have to decide on whether Notice was given to the Landlord.

Mrs Chappell then explained the Local Housing Authority's policy on Notices and Entry. She said that if the Local Housing Authority was invited into a property by a Tenant then it was considered to be informal and outside of the Act until such time as it was decided that an Improvement Notice or other formal notice was necessary. This explained why Mr Davies did not give Notice to Mr Williams of the meeting on the 4th March 2008. As the meeting with Mr Williams on the 27th May 2008 took place at County Hall, Mr Davies did not consider that Notice to the Tenant was needed as Section 239 (5) only relates to entry onto the subject property. Mrs Chappell stated in evidence that the Local Housing Authority's policy on Entry changed following some English Tribunal cases. Accordingly, she and Mr Davies, decided that the meeting of the 23th July 2008 would be the first step in the formal process and that Notice of Entry should be given to both Landlord and Tenant. She also confirmed that if the Local Housing Authority was initiating an inspection or survey then Notice had to given under Section 239 (5).

For our part the Tribunal is not persuaded on the Local Housing Authority's view regarding informal meetings. Section 4 (1)(a) of the Act states that if the Local Housing Authority is itself reviewing housing conditions under Section 3 and considers that an inspection would be appropriate to determine whether category 1 or 2 hazard exist then it must arrange an inspection. However, under subsection 1(b) if there is any other reason why it should be appropriate then it must also arrange an inspection. We consider that as the Tenant contacted the Local Housing Authority and raised issues over the state of repair of the property then this would fall under this subsection. Accordingly, the power of entry under Section 239 came into effect and that the visit was not informal but rather an inspection and hence the first step under the Act. In our view this also triggered Section 239 (5) and that Notice should have been given to the Landlord for the meeting of the 4th March 2008. It seems clear that Parliament intended that the owner and occupier should be given notice so that they could attend and make representations if necessary because of the potential gravity of the Enforcement powers. The Act does not seemingly prevent unilateral negotiations and hence we can see no objection to the meeting with Mr Williams on the 27th May 2008. Had the first formal step been the 23rd July 2008 then we would have needed to decide on whether Mr Davies or Mr Williams was correct. We take the view that the days of informal meetings are over and that once the Local Housing Authority is aware of a problem which might result in Enforcement powers then any meeting at the property will be an inspection and the Act applies.

In conclusion we recommend that the following procedures be adopted:-

1. If an inspection of a property is deemed necessary by the Local Housing Authority under Section 4 of the Act then notice should be given to the owner and occupier irrespective of whether there is an invitation to enter.
2. If subsequent inspections are considered necessary then Notice should again be given to the owner and occupier

3. An Authority should be carried by the Local Housing Authority's representatives specifically mentioning the subject property and stating the precise reason for the inspection such as wanting to determine whether category 1 or 2 hazard exists or the need to survey for the purposes of an Improvement notice and the like

7 **Decision**

We find ,for the reasons given above, that the Respondent has not complied with the terms of Section 239 (9) and (10) of the Act by not having the necessary authorisation for the inspection of the property 12 Porthycarne Street and that this invalidates the Improvement Notice. We therefore allow the Appeal by the Landlord

CHAIRMAN Pat Williams DATE 11th June 2009