



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/OOFN/HNA/2022/0051**

Property : **33 Dunstall Avenue, Braunstone Town,
Leicestershire LE3 3DP**

Applicant : **Mr Ashwani Kumar Sharda**

Respondent : **Blaby District Council**

Type of Application : **Financial Penalty –
The Electrical Safety Standards in the Private
Rented Sector (England) Regulations 2020**

Date of Hearing : **30th October 2023**

Tribunal : **Judge D Jackson
Mr V Ward FRICS**

Date of Decision : **12 December 2023**

DECISION

1. On 15th November 2023 the Local Authority imposed a Financial Penalty of £3500 under Regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Regulations”)
2. On 13th December 2022 the Applicant appealed to the Tribunal under Paragraph 5 of Schedule 2 to the Regulations.
3. The appeal was heard by way of remote video platform on 30th October 2023. The Applicant attended with his wife Mrs Rekha Shard and was assisted by Mr Pal Korpai. The Local Authority was represented by Louisa Horton (solicitor). Joe Ford, Emily Benson and Philip Fasham (Environmental Health Officers) who have provided Witness Statements for the Local Authority also attended.

Facts

4. The Property is a 3 bedroom detached house in the occupation of the tenant Mr Ravindra Ranatunga. It is common ground that the property is in a poor state of repair with evidence of substantial hoarding.
5. Following a Social Services referral Joe Ford and Emily Benson attended the Property on 29th July 2022. They were allowed access by Mr Ranatunga. The evidence of the Environmental Health Officers is that the Property had no back door, there was evidence of rodent activity, problems with heating and hot water system and trailing electrical wires throughout.
6. On 3rd August 2022 Joe Ford requested, by email, an Electrical Condition Report be made available for inspection within 7 days.
7. On 11th August 2022 Joe Ford, Philip Fasham and Emily Benson attended at the Property. They were met by the Applicant, Mr Sharda and the tenant, Mr Ranatunga. No Electrical Condition Report had been served by that date.
8. On 12th August 2022 the Local Authority served Notice of Remedial action under Regulation 4 requiring the Applicant to remedy breaches within 28 days of the date of the Notice by supplying an Electrical Installation Condition Report. If no report is available, the Notice required the Applicant to employ a competent contractor to carry out an electrical inspection and test. The 28 day period expired on 9th September 2022.
9. On 25th August 2022 Joe Ford and Emily Benson attended at the Property. The Applicant and Mr Ranatunga were present. Also present was the Applicant’s nephew and two contractors carrying out plastering work to the rear kitchen walls.
10. On 13th September 2022 Emily Benson and Philip Fasham attended at the Property. The Applicant and his nephew were present as well as two contractors working in the kitchen/utility area.
11. On 15th September 2022 a Prohibition Order was made in respect of the Property.
12. On 3rd October 2022 Notice of Intent to Issue Financial Penalty was issued. The offence set out in the Notice of Intent reads:

“Regulation 5. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Failure to comply with the requirements of a remedial action notice served on 12th August 2022, under the above Regulations.”

13. Representations were made by the Applicant on 26th October 2022. The Applicant explains that it was impossible for him to comply within 28 days as the tenant prevented access to the Property. Even when access was granted it was limited to certain parts of the Property. Certain rooms were locked by way of coded door entry. The tenant moved the kitchen without permission and in doing so altered the wiring without the Applicant's knowledge or permission. The accumulation of rubbish and hoarding meant that sockets could not be accessed.
14. On 15th November 2022 the Local Authority imposed a Financial Penalty of £3,500. The offence set out in the Final Notice reads:

“Regulation 5. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Failure to comply with the requirements of a remedial action notice served on 12th August 2022, under the above Regulations.”

15. The Applicant's grounds of appeal are that the tenant did not grant access to enable an EICR to be prepared. Although plastering work was carried out this was possible because there was no back door to the property and no need for “internal” access. The tenant only granted access at request of either social services or Environmental Health. The landlord was not allowed access unless an authority was involved. The Applicant relies on text message from an electrician called Aaron who tried but was unable to obtain access on 21st September 2022. Ultimately the Applicant had to apply to the County Court for an Order for Possession which was granted on 18th January 2023. Domestic Electrical Installation Certificate was not obtained until 21st April 2023.

Powers of the Local Authority

16. The powers of a Local Authority to impose financial penalties for breach of duties arise under Regulation 11(1):

“Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.”

17. The “offence” alleged both in the Notice of Intent and Final Notice is failure to comply with Remedial Action Notice under Regulation 5. We find that both Notice of Intent and Final Notice are invalid because they do not specify a breach of duty under Regulation 3. The Local Authority has no power to impose a Financial Penalty for failing to comply with Notice of Remedial Action under Regulation 5.
18. The procedure for and appeals against financial penalties set out in Schedule 2 to the Regulations mirrors the provisions for the imposition of Financial Penalties under section 249A and Schedule 13A of the Housing Act 2004. In particular under paragraph 1(4)(b) of Schedule 2 to the Regulations a Notice of Intent must set out “the reasons for proposing to impose the penalty”. An identical provision is set out in paragraph 3(b) of Schedule 13A to the 2004 Act. Similarly paragraph 3(4)(b) of Schedule 2 to the Regulations provides that Final Notice must set out “the reasons

for imposing the penalty”. That provision is identical to that set out in paragraph 8(b) of Schedule 13A.

19. In **Maharaj v Liverpool City Council** [2022] UKUT 140 (LC) HHJ Hodge said at paragraph 17:

“By paragraph 3(a) of Schedule 13A, the notice of intent must set out “the reasons for proposing to impose the financial penalty”. Those reasons must be sufficiently clearly and accurately expressed to enable the recipient landlord to exercise the right conferred by paragraph 4 to “make written representations to the local housing authority about the proposal to impose a financial penalty”, thereby enabling it to decide whether to impose a financial penalty on the landlord and, if so, the amount of such penalty (as required by paragraph 5). Similarly, by paragraph 8(b) of schedule 13A, the final notice must set out “the reasons for imposing the penalty”. These too must be sufficiently clearly and accurately expressed to enable the recipient landlord to decide whether to exercise the right of appeal to the FTT conferred by paragraph 10 against the decision to impose the penalty or the amount of that penalty. In the Tribunal’s judgment, those reasons must be directly referable to the condition of the licence in relation to which it is said that there has been a failure to comply on the part of the landlord; and those reasons must identify clearly, and accurately, the particular respects in which it is said that there has been non-compliance on the landlord’s part. The Tribunal does not regard the reasons for imposing a financial penalty, or proposing to do so, merely as giving a factual background to the offence; they should be treated as providing particulars of the offence.”

20. Both the Notice of Intent and Final Notice issued by the Local authority fail to provide particulars of the breach of duty under Regulation 3. Neither notice provides a valid reason for imposing a financial penalty. Neither Notice is accurately expressed. Both Notices fail to identify clearly and accurately the particular respects in which it is said that there has been non-compliance or breach of duty under Regulation 3. No particulars of a breach of duty under Regulation 3 have been provided. As conceded by Louisa Horton on behalf of the Local Authority the particulars provided are “detrimental to recipient at very least and does not make it clear what the offence is”.
21. We therefore find that the Financial Penalty purportedly imposed for failing to comply with a Notice of Remedial Action is invalid.

Decision

22. The Final Notice dated 15th November 2022 is quashed pursuant to paragraph 5(5) of Schedule 2 to the Regulations.
23. The Financial Penalty is therefore cancelled.

D Jackson
Regional Judge

Either party may appeal this Order to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.