

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/19/2690

Re: Flat 1/01, 12 Lorne Street, Glasgow G51 1DP (“the house”)

Land Register Title No: GLA116934

The Parties:-

Glasgow City Council - Private Housing DRS, c/o 2nd floor, 231 George Street, Glasgow G1 1RX (“the third-party applicant”)

Mr Winston Moodie, residing at the house (“the tenant”) (non-participating party)

Mr Mohammed Nassim Naim, 36 Newark Drive, Glasgow G41 4PZ (“the landlord”)

Tribunal Members – Sarah O’Neill (Chairperson); Lori Charles (Ordinary (Surveyor) Member)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The tribunal’s decision is unanimous. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Background

1. By application received on 28 August 2019, the third-party applicant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In its application, the third-party applicant stated that it believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13 (1) (c) (d) (f) and (g) of the Act. The application stated that the landlord had failed to ensure that:
 - the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order
 - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
 - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
3. The third-party applicant made the following complaints in its application:
 - 1) The gas installation has not been inspected, and no gas safety certificate has been produced.
 - 2) The electrical installation has not been inspected, and no electrical certification has been produced.
 - 3) There is no carbon monoxide alarm installed.
 - 4) There are no hardwired smoke and heat detectors installed.
4. On 9 September 2019, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President under section 96 of the Housing (Scotland). On 25 September 2019, the tribunal administration issued a notice of referral and hearing to both parties, advising that an inspection and hearing would be held on 6 November 2019, and requesting written representations by 16 October 2019. No written representations were received from either party. A completed form was received from the third-party applicant on 8 October 2019, confirming that it did not wish to attend a hearing or to send written representations.

The inspection

5. The tribunal inspected the house on the morning of 6 November 2019. The weather conditions at the time of the tribunal's inspection were dry and overcast. Shortly before the scheduled inspection time, the tribunal office had been contacted by the landlord, to advise that the tenant had been delayed. The tribunal waited outside the house until the tenant arrived. While the tribunal waited, the tribunal clerk visited the landlord's shop, which was very close to the house, to ask the landlord when the tenant was expected. The landlord advised that he had been further delayed and gave to the clerk an original copy of an Electrical Installation Condition Report relating to the house dated 4 November 2019. When the tenant arrived, he provided access to the tribunal for the inspection. Neither the third-party applicant or the landlord was present or represented at the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

The house

6. The house is a first floor flat within a four-storey sandstone Victorian tenement block. It comprises a bedroom, living room, kitchen, bathroom and hallway.

The hearing

7. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. Neither the third-party applicant nor the landlord was present or represented. The tribunal was satisfied that the requirements of rule 24 (1) of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the 2017 rules') regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with.
8. The tribunal noted that the third-party applicant had indicated it did not wish to attend a hearing, and that the landlord was clearly aware that the tribunal's inspection and hearing were taking place. The tribunal therefore proceeded to make a decision on the application on the basis of all the evidence before it, in the absence of the parties, in terms of rule 29 of the 2017 rules.

The evidence

9. The evidence before the tribunal consisted of:
 - The application form completed by the third-party applicant.
 - Registers Direct copy of Land Register title GLA116934, which confirmed that the house is owned by the landlord.

- Various copy notification letters from the third-party applicant to the landlord dated between 7 December 2018, and 28 August 2019, setting out the alleged repairs required, together with proof of sending of the letter dated 28 August 2019 by recorded delivery and proof of delivery.
- Email correspondence from the third-party applicant to the tribunal office dated 29 August 2019 together with attachments.
- The copy EICR for the house dated 4 November 2019 received from the landlord immediately prior to the inspection on 6 November 2019.
- The tribunal's inspection of the house.

Summary of the issues

10. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord have complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

11. The tribunal made the following findings in fact:

- The house is owned by the landlord, who is the registered landlord in respect of the house.
- There was a tenancy in place between the landlord and the tenant. No tenancy agreement was produced by the third-party applicant, which stated in its email of 29 August 2019 that it did not have a copy of the tenancy agreement and was unsure whether any written tenancy agreement existed. The tenant confirmed to the tribunal at the inspection that he had been in the house for more than a year. He was unsure of the exact commencement date of his tenancy, but he confirmed that had no written tenancy agreement.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. A carbon monoxide alarm had been fitted above the boiler.
 - ii. The boiler was the only gas appliance within the house.
 - iii. Ceiling mounted smoke alarms had been fitted in the living room and hallway, and there was a ceiling mounted heat alarm in the kitchen. The alarms were hardwired, and when tested it was apparent that the alarms in the living room and hallway were interlinked, but that the heat alarm was not interlinked to these.

Reasons for decision

12. The tribunal's findings in relation to each of the complaints made by the third-party applicant are set out below.

1. *The gas installation has not been inspected, and no gas safety certificate has been produced.*
13. No gas safety certificate in respect of the house had been provided to the tribunal by the landlord. As the house has a gas supply, the landlord has a duty to arrange for an annual gas safety inspection. In the absence of a gas safety certificate, it is not possible to determine that the gas installation within the house is safe, or whether it is in a reasonable state of repair or in proper working order. The tribunal therefore determines that on the balance of probabilities, in the absence of any evidence to the contrary, that the gas installation is not in a reasonable state of repair or in proper working order.
2. *The electrical installation has not been inspected, and no electrical certification has been produced.*
14. On the morning of the inspection, the landlord provided to the tribunal an Electrical Installation Condition Report (EICR) by Mr Scott Muirhead of Darren Waugh Electrical, Gartcosh, Glasgow dated 4 November 2019. A copy of this EICR is attached to this decision. The EICR showed the electrical installation to be satisfactory and made no observations or recommendations for actions to be taken.
15. Having checked the relevant registers, the tribunal noted that Darren Waugh Electrical did not appear to be registered with NICEIC or SELECT or to be a member of NAPIT. The tribunal noted that Section 13 (4A) of the 2006 Act provides that in determining whether a house meets the standard of repair set out in sections 13 (1) (c) and (d) of the 2006 Act in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to guidance issued by Scottish Ministers on electrical safety standards. The current guidance states (at paragraph 10) that an EICR must be completed by a 'suitably competent person'. It states that this means they must be:
 - Employed by a firm that is a member of a firm that is a member of an accredited registration scheme operated by a recognised body
 - A self-employed member of an accredited registration scheme operated by a recognised body, or
 - Able to complete the checklist at Annex A of the guidance.
16. The guidance goes on to state that this will usually mean a contractor who is registered with NICEIC, SELECT or a member of NAPIT.

17. The EICR dated 4 November 2019, which was provided by the landlords' agent, does not appear to meet these criteria, unless the electrical contractor is able to complete the checklist at Annex A of the guidance. There was no information before the tribunal regarding this.

18. In the absence of an EICR which meets the requirements of the statutory guidance, the tribunal determines on the basis of the evidence before it that, on the balance of probabilities, the electrical installation within the house does not meet the repairing standard in terms of section 13 (1) (f) of the 2006 Act.

3. *There is no carbon monoxide alarm installed.*

19. The tribunal observed at its inspection that a carbon monoxide alarm had been fitted above the boiler. The tribunal noted that the boiler was the only fixed combustion appliance within the house, and that the alarm was situated in accordance with the relevant Scottish Government statutory guidance. The tribunal therefore determines that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

4. *There are no hardwired smoke and heat detectors installed.*

20. The tribunal observed at its inspection that ceiling mounted smoke alarms had been fitted in the living room and hallway, and there was a ceiling mounted heat alarm in the kitchen. The tenant told the tribunal at the inspection that the smoke and heat alarms has been installed two days earlier, on 5 November. The tribunal observed that the alarms were hardwired, and when tested it was apparent that the alarms in the living room and hallway were interlinked, but that the heat alarm was not interlinked to these.

21. In determining whether a house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers. The current Scottish Government statutory guidance states that there should be at least:

- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
- one functioning smoke alarm in every circulation space, such as hallways and landings. or in main room if no landing in upper storey
- one heat alarm in every kitchen
- all alarms should be ceiling mounted

- and all alarms should be interlinked.

22. The tribunal observed that, while the alarms met the requirements in all other respects, the heat alarm did not appear to be interlinked with the other alarms. The smoke detection system does not therefore currently meet all the requirements of the statutory guidance. The tribunal therefore determines that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Summary of decision

23. On the basis of all the evidence before it, the tribunal determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that: 1) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and 2) the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

24. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

25. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

26. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Sarah O'Neill

Signed....

Sarah O'Neill, Chairperson

.....Date.....13/11/19.....

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



1/1 Lorne Street, Glasgow, G51 1DP

FTS/HPC/RT/19/2690

Inspection date – 6th November 2019

Weather – Dry

Surveyor - Lori Charles

*This is the schedule of photographs referred to in the
Gregory decision dated 13 November 2019*

Sarah O'Neill

Lounge



Smoke detector fitted and tested - linked with hall smoke detector but not linked with heat detector in kitchen.

Hall



Smoke detector fitted and tested - linked with lounge smoke detector but not linked with kitchen heat detector.

A Di-log Electrical Installation Condition report was presented at the inspection. No Gas Safety certificate was presented.

ELECTRICAL INSTALLATION CONDITION REPORT

Requirements for Electrical Installations - BS 7671 : 2018 (IET Wiring Regulations Eighteenth Edition)

Page 1 of 2

CERT NO. 820

Di-LOG
...measurably better

SECTION A : Details of the person ordering the report

Name: MOHAMMED NAIM NAIM
Address: FLAT 1/1, 12 LORNE STREET, GLASGOW
Post Code: G51 1DP

SECTION B : Reason for producing this report

ANNUAL INSPECTION
Date(s) on which inspection & testing was carried out: 4-11-2019

SECTION C : Details of the installation which is the subject of this report

Occupier:
Address: 12 LORNE STREET, GLASGOW, FLAT 1/1
Post Code: G51 1DP
Description of premises
Domestic Commercial Industrial Other (include brief description)
Estimated age of wiring system 10 years
Evidence of additions / alterations Yes No Not apparent If yes, estimate age 1 years
Installation records available? (Regulation 651.1) Yes No Date of last inspection N/A (date)

SECTION D : Extent and limitations of inspection and testing

Extent of the electrical installation covered by this report
FULL ELECTRICAL INSTALLATION
Agreed limitations including the reasons (see Regulation 653.2) CABLES CONCEALED IN WALL + CEILING SPACE
Agreed with:
Operational limitations including the reasons (see page no.....)
The inspection and testing detailed in this report and accompanying schedules have been carried out in accordance with BS 7671: 2018 (IET Wiring Regulations) as amended to 2019 BS7671
It should be noted that cables concealed within trunking and conduits, under floors, in roof spaces, and generally within the fabric of the building or underground, have not been inspected unless specifically agreed between the client and inspector prior to the inspection. An inspection should be made within an accessible roof space housing other electrical equipment

SECTION E : Summary of the condition of the installation

General condition of the installation (in terms of electrical safety) GOOD
Overall assessment of the installation in terms of its suitability for continued use SATISFACTORY / ~~UNSATISFACTORY~~* (Delete as appropriate)
*An unsatisfactory assessment indicates that dangerous (code C1) and/or potentially dangerous (code C2) conditions have been identified.

SECTION F : Recommendations

Where the overall assessment of the suitability of the installation for continued use above is stated as UNSATISFACTORY, ~~F~~ we recommend that any observations classified as 'Danger present' (code C1) or 'Potentially dangerous' (code C2) are acted upon as a matter of urgency. Investigation without delay is recommended for observations identified as 'further investigation required' (code F1).
Observations classified as 'Improvement recommended' (code C3) should be given due consideration.

Subject to the necessary remedial action being taken, ~~we~~ we recommend that the installation is further inspected and tested by 4-11-2022 (date)

SECTION G : Declaration

Where the overall assessment of the suitability of the installation for continued use above is stated as UNSATISFACTORY, ~~F~~ we recommend that any observations classified as 'Danger present' (code C1) or 'Potentially dangerous' (code C2) are acted upon as a matter of urgency. Investigation without delay is recommended for observations identified as 'further investigation required'.
Observations classified as 'Improvement recommended' (code C3) should be given due consideration.

Subject to the necessary remedial action being taken, ~~we~~ we recommend that the installation is further inspected and tested by 4-11-2022 (date)

~~We~~ We, being the person(s) responsible for the inspection and testing of the electrical installation (as indicated by ~~my~~ our signatures below), particulars of which are described above, having exercised reasonable skill and care when carrying out the inspection and testing, hereby declare that the information in this report, including the observations and the attached schedules, provides an accurate assessment of the condition of the electrical installation taking into account the stated extent and limitations in section D of this report.

Inspected and tested by:
Name (Capitals) SCOTT MUIRHEAD
Signature [Signature]
For/on behalf of DARREN WADGH ELECTRICAL
Position APPROVED
Address 65 SCALDWAY ROAD, GLASGOW
Post code G69 8LG Date 4-11-19

Report authorised for issue by:
Name (Capitals) DARREN WADGH
Signature [Signature]
For/on behalf of DARREN WADGH ELECTRICAL
Position APPROVED
Address 65 SCALDWAY ROAD, GLASGOW
Post code G69 8LG Date 4-11-2019

SECTION H : Schedule(s)

N/A schedule(s) of inspection and N/A schedule(s) of test results are attached.
The attached schedule(s) are part of this document and this report is valid only when they are attached to it.

This is the EICR referred to in the foregoing decision dated 13 November 2019
Start of winter

ELECTRICAL INSTALLATION CONDITION REPORT

Requirements for Electrical Installations - BS 7671 : 2018 (IET Wiring Regulations Eighteenth Edition)

CERT NO. 820

SECTION I : Supply characteristics and earthing arrangements

Earthing arrangements	Number and Type of Live Conductors	Nature of Supply Parameters	Supply Protective Device
TN-C <input type="checkbox"/>	a.c. <input checked="" type="checkbox"/> d.c. <input type="checkbox"/>	Nominal voltage, U / U ₀ ⁽¹⁾ <u>230/240</u> V	BS (EN) <u>SERIES 3</u>
TN-S <input type="checkbox"/>	1-phase, 2-wire <input type="checkbox"/> 2-wire <input type="checkbox"/>	Nominal frequency, f ⁽¹⁾ <u>50</u> Hz	Type <u>II</u>
TN-C-S <input checked="" type="checkbox"/>	1-phase, 3-wire <input type="checkbox"/> 3-wire <input type="checkbox"/>	Prospective fault current, I _p ⁽²⁾ <u>1.12</u> kA	Rated current <u>100</u> A
TT <input type="checkbox"/>	2 phase, 3-wire <input type="checkbox"/> Other <input type="checkbox"/>	External loop impedance, Z _e ⁽²⁾ <u>2.08</u> Ω	
IT <input type="checkbox"/>	3 phase, 4-wire <input type="checkbox"/>	Note: (1) by enquiry (2) by enquiry or by measurement	
Confirmation of supply polarity <input checked="" type="checkbox"/>			
Other sources of supply (as detailed on attached schedule) <input type="checkbox"/>			

SECTION J : Particulars of installation referred to in the report

Means of earthing	Details of Installation Earth Electrode (where applicable)
Distributor's facility <input type="checkbox"/>	Type
Installation earth electrode <input type="checkbox"/>	Location
	Resistance to Earth

Main Protective Conductors

Earthing conductor	Material <u>COPPER</u>	csa <u>10</u> mm ²	Connection / continuity verified <input checked="" type="checkbox"/>
Main protective bonding conductors to extraneous conductive parts	Material <u>COPPER</u>	csa <u>6</u> mm ²	Connection / continuity verified <input checked="" type="checkbox"/>
To water installation pipes <input checked="" type="checkbox"/>	To gas installation pipes <input checked="" type="checkbox"/>	To oil installation pipes <input type="checkbox"/>	To structural steel <input type="checkbox"/>
To lightning protection <input type="checkbox"/>	To other <input type="checkbox"/>	Specify	

Main Switch / Switch-Fuse / Circuit-Breaker / RCD

Location <u>CUPBOARD @ DOOR</u>	Current rating <u>100</u> A	If RCD main switch
BS(EN) <u>60947-3</u>	Fuse / device rating or setting <u>125</u> A	Rated residual operating current (I _{Δn})
No of poles <u>2</u>	Voltage rating <u>240</u> V	Rated time delay
		Measured operating time(at I _{Δn})

SECTION K : Observations

Referring to the attached schedules of inspection and test results, and subject to the limitations specified at the *Extent and limitations of inspection and testing* section

No remedial action is required The following observations are made (see below):

OBSERVATION(S) Include schedule reference as appropriate

CLASSIFICATION CODE

One of the following codes, as appropriate, has been allocated to each of the observations made above to indicate to the person(s) responsible for the installation the degree of urgency for remedial action.

C1 – Danger present. Risk of injury. Immediate remedial action required

C2 – Potentially dangerous - urgent remedial action required

C3 – Improvement recommended

F1 – Further investigation required without delay

This Report is an important and valuable document which should be retained for future reference.

- The purpose of this Report is to confirm, so far as reasonably practicable, whether or not the electrical installation is in a satisfactory condition for continued service (see Section E). The Report should identify any damage, deterioration, defects and/or conditions which may give rise to danger (see Section K).
- The person ordering the Report should have received the "original" Report and the inspector should have retained a duplicate.
- The "original" Report should be retained in a safe place and be made available to any person inspecting or undertaking work on the electrical installation in the future. If the property is vacated, this Report will provide the new owner/occupier with details of the condition of the electrical installation at the time the Report was issued.
- Where the installation incorporates a residual current device (RCD) there should be a notice at or near the device stating that it should be tested six monthly. For safety reasons it is important that this instruction is followed.

- Section D (Extent and Limitations) should identify fully the extent of the installation covered by this Report and any limitations on the inspection and testing. The inspector should have agreed these aspects with the person ordering the Report and with other interested parties (licensing authority, insurance company, mortgage provider and the like) before the inspection was carried out.
- Some operational limitations such as inability to gain access to parts of the installation or an item of equipment may have been encountered during the inspection. The inspector should have noted these in Section D.
- For items classified in Section K as C1 ('danger present'), the safety of those using the installation is at risk, and it is recommended that a skilled person or persons competent in electrical installation work undertakes the necessary remedial work immediately.
- For items classified in Section K as C2 ('Potentially dangerous'), the safety of those using the installation may be at risk and it is recommended that a skilled person or persons

- competent in electrical installation work undertakes the necessary remedial work as a matter of urgency.
- Where it has been stated in Section K that an observation requires further investigation F1 the inspection has revealed an apparent deficiency which may result in a C1 or C2 and could not, due to the extent or limitations of the inspection, be fully identified. Such observations should be investigated without delay. A further examination of the installation will be necessary, to determine the nature and extent of the apparent deficiency (see Section F).
- For safety reasons, the electrical installation should be re-inspected at appropriate intervals by a skilled person or persons competent in such work. The recommended date by which the next inspection is due is stated in Section F of the Report under 'Recommendations' and on a label at or near to the consumer unit / distribution board.