

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/19/1766

Sasines Description: Property known as and forming ALL and WHOLE Flat B/2, 45 Bentinck Street, Glasgow, G3 7TS which is the righthand house in basement 45 Bentick Street aforesaid, more particularly described in the Disposition by Rengasamy Paneandee and Mitrabye Paneandee dated 9 July 1985 and recorded in General Register of Sasines for the County of Glasgow on 9 July 1985.

**Flat B/2, 45 Bentinck Street, Glasgow, G3 7TS
("the Property")**

The Parties:-

**Ms Penelope Herman-Smith, residing at the property
("the Tenant")**

**Mr Solomen and Mrs Naomi Mingle, beneficiaries in the estate of Wordsworth Mingle, residing at c/o 16 Keats Close, Newport Pagnell, Buckinghamshire, MK16 8DW
("the Landlords")**

Whereas in terms of their decision dated 23 August 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") and in particular that the Landlords have failed to ensure that:-

- (i) 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.

the Tribunal now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the Landlords:-

- (a) To carry out any work identified in the EICR as category C1 or C2.
- (b) Once part (a) is completed, to produce a further EICR showing no C1 or C2 defects, or such other certificate as deemed appropriate by the Tribunal, by a duly qualified and registered electrician.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 21 days from the date of service of this Notice.

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 23 August 2019 in the presence of the undernoted witness:-

P Pryce

N Pryce

_____ witness
NICHOLAS PRYCE name in full
55 BLYTHWOOD ST Address
GLASGOW

 Legal Member

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/19/1766

**Flat B/2, 45 Bentinck Street, Glasgow, G3 7TS
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The Parties:-

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**Mr Solomen and Mrs Naomi Mingle, beneficiaries in the estate of
Wordsworth Mingle, residing at c/o 16 Keats Close, Newport Pagnell,
Buckinghamshire, MK16 8DW
("the Landlords")**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:-

Patricia Anne Pryce	-	Legal Member
Kingsley Bruce	-	Ordinary Member (Surveyor)

Background

1. By application comprising documents received between 7 and 19 June, both 2019, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-

- (a) "An Electrical Installation Condition Report (EICR) revealed various deficiencies with the electrics in the property including C1, C2 and C3 categories."

The Tenant considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) 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.

3. By Minute dated 26 June 2019 the Convener of the Tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal.

4. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords and the Tenant advising that the inspection and hearing would take place on 23 August 2019 at 10 am and 11.30 am respectively. Submissions were received from both parties which the Tribunal took account.

The Inspection

5. An inspection and hearing were arranged as noted above. The Tribunal attended at the property. The Landlords did not attend at the property. The Tenant was in attendance at the property along with her daughter, Ms Charlotte Prime, and allowed the Tribunal access to the property. The Tribunal noted the following at inspection:-

- The property is a basement flat in a four-storey and basement traditional mid-terrace tenement building with two flats per floor.
- There were hard-wired and interlinked smoke and heat detection devices located in the kitchen, hallway and internal room.
- A number of deficiencies and safety issues were immediately identifiable in relation to the electrical installations within the property which appeared to be of mixed age and which did not meet current standards and regulations.
- Defects were noted to power outlets, switch gear, cabling and consumer unit, excessive use of multi-plugs and adapters was evident and earth bonding appeared inadequate.

The schedule of photographs taken by the Ordinary Member of the Tribunal at the inspection is attached to this decision.

The Hearing

6. The Tenant and her daughter attended at the hearing. No one else attended the hearing.

The Tenant submitted that there had been an electrical inspection carried out on the property in January 2019 and this had led to a failed EICR which had been produced to the Tribunal as part of the present application. The Tenant submitted that the electrician was due to start the remedial works on 2 September 2019.

The Tribunal noted the potential danger to life in terms of some of the issues it had noted at inspection and had taken the unusual step of warning the Tenant of its condition at the hearing. The Tribunal was extremely concerned about the safety of the Tenant.

The Tribunal noted that there are no registered Landlords in respect of the property.

The Tribunal considered that it had sufficient information before it to make a decision and proceeded to make a decision based on its findings at the inspection and what it heard at the hearing together with the application and submissions.

Summary of the issues

7. The issue to be determined is whether the repairing standard has been met in light of what the Tribunal viewed at the inspection.

Findings of fact

8. The Tribunal finds the following facts to be established: -
 - The Tenant remained in the property at the time of inspection.
 - The Tenant has resided there since 1987.
 - The Tenant pays £480 per calendar month by way of rent for the property.
 - The property comprises a bedroom, kitchen, hallway, internal room, shower room and W.C.
 - There was an EICR in place in respect of the property which confirmed that there were C1 category issues with the electrical installations within the property, posing an immediate threat to life.

Reasons for the decision

9. The Tribunal noted that in terms of the present application the Tenant had first notified the Landlords of the repairs in January 2019. Despite this, the repairs issues remained unresolved.

Given all of the circumstances, the Tribunal is satisfied that:

- 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 as the electrical installations are unsafe resulting in risk of death.

Decision

10. The Tribunal accordingly determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Act.
11. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
12. The decision of the Tribunal was unanimous.

Observations

13. The Tribunal noted the potential danger to life caused by the electrics and had taken the unusual step of warning the Tenant of its condition. The Tribunal was extremely concerned about the safety of the Tenant.

Right of Appeal

14. 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.

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

P Pryce

Signed
Date

23 August 2019


Legal Member

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of Photographs:

Property: Flat B/2, 45 Bentinck Street, Glasgow, G3 7TS

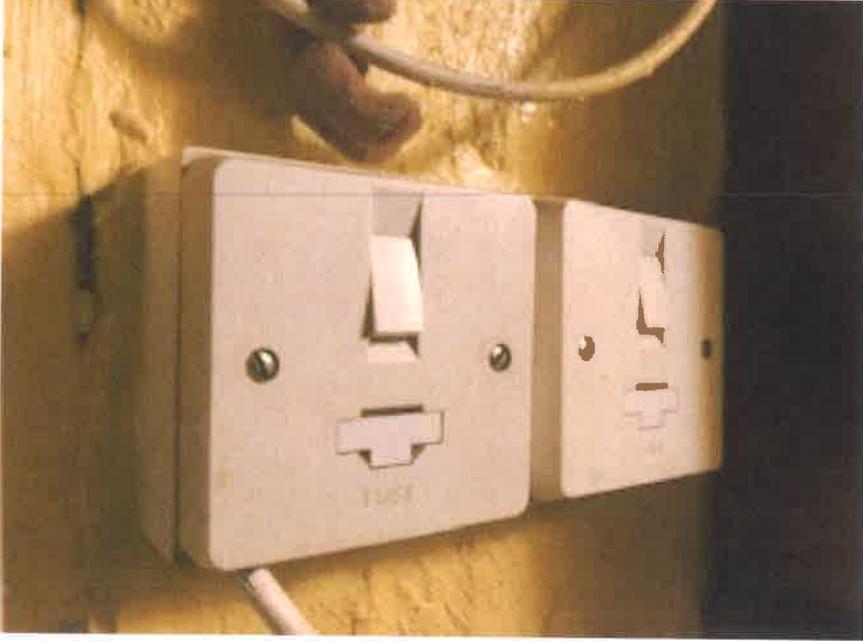
Chamber Reference: FTS/HPC/RP/19/1766

Date of Inspection: 23 August 2019

Photographs of electrical installation













Property	Value
Color	White to light gray
Crystal form	Prismatic, tabular, fibrous, radiating, massive
Streak	White
Hardness	2 to 2.5
Specific gravity	2.65 to 2.90
Diaphaneity	Transparent to translucent
Optical properties	Birefringent
Other characteristics	Efflorescent, soluble in acids

Selenite
This mineral is a form of gypsum, which is a sulfate of calcium. It is found in many parts of the world, including the United States, Canada, and Mexico. It is used in a variety of ways, including as a building material, a fertilizer, and a source of sulfur. It is also used in the production of glass and paper.

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