FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UH/HIN/2022/0045 (v)**
Property	**:**	**24 Peartree Way, Stevenage, Hertfordshire, SG2 9DZ**
Applicant	**:**	**Dr. Samuel Ngum** **unrepresented**
Respondent	**:**	**Stevenage Borough Council** **Represented by G.R. Hammond, Environmental Health Officer**
Date of Application	**:**	**24th June 2022**
Type of Application	**:**	**Appeal in respect of an improvement notice: ss11 and/or 12 & paragraphs 10-12 of Schedule 1 to the Housing Act 2004**
Tribunal	**:**	**Judge J. Oxlade** **C. Gowman MCIEH**
Date of Hearing	**:**	**2nd November 2022**

DECISION

For the reasons given hereafter

UPON the Appellant giving a personal undertaking to the Tribunal that he will not permit any other person to occupy the premises until completion of the works required to be done to the property as detailed in the improvement notice ("the notice") issued to him on 13th June 2022,

THE appeal against the notice is allowed to the extent of substituting the start and finish dates for the works contained in the notice, to be respectively 14th and 30th March 2023.

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FURTHER, the Tribunal finds that the sum of £420 is payable to the Respondent by the Appellant within 28 days of the date that this decision is sent to the parties

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REASONS

The Background

1. For reasons which will become apparent, it is sufficient to set out the background in a few short paragraphs.

2. The Respondent received a complaint by the occupant of the property as to the condition of the premises, and so undertook an inspection on 28th January 2022.

3. The officer observed that there were no working power points in the kitchen, no working smoke alarms, and was concerned that there appeared to be no evidence of either gas safety records nor electrical safety records. Shortly thereafter, an improvement notice was served on the Appellant on 4th February 2022.

4. On 14th March 2022 a second inspection took place, by which time the Appellant had arranged for new working electrical sockets to be fitted in the kitchen and working smoke alarms were in operation. Subsequently, on 31st March 2022 a gas safety certificate was provided.

4. The Appellant also arranged for an electrical safety certificate ("EICR") to be provided, but on 11th April 2022, it showed defects. The Respondent was concerned for the safety of the occupants in light of the electrical failings identified in the report, and took the step of issuing a prohibition notice; that notice was revoked by the Respondent, the Officer having taken a second opinion and decided to commission a further EICR, which confirmed the findings of that commissioned by the Appellant. On 13th June 2022 an improvement notice was served on the Appellant, having identified a category 1 hazard, requiring works to start on 11th July 2022.

5. In due course a notice demanding payment of £420 was made, pursuant to section 50, for the Respondent's costs incurred in taking action to enforce the Landlord's obligations.

Appeal

6. The Appellant filed a notice of appeal against the improvement notice and demand for payment of £420.

7. In the notice of appeal the Appellant did not challenge the need for electrical works to be undertaken, but identified two challenges: firstly, the impracticality of doing the works with tenants in situate, whom he considered to be destructive; secondly, attempting to address the level of enquiry and engagement generated by the Respondent's involvement, compounded by the Appellant's residence abroad, namely USA, with the ensuing time differences.

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8. Directions were made, and in accordance with them the parties filed evidence.

Hearing

9. The appeal against the improvement notice and demand for payment of £420, came before the Tribunal on 2nd November 2022 for substantive hearing, conducted remotely. The Appellant attended by CVP, as did his witness Juliet Benson by 'phone (who assisted him in managing the premises, and engaging with the Respondent). Mr. Hammond attended on behalf of the Respondent.

10. In light of the Appellant's indication in his notice of appeal that he did not challenge the nature of the remedial works needed, but rather the timescale, the Tribunal clarified whether the issue was as to timescale of starting and finishing the works. The parties accepted that the urgency had dissipated, it being common ground that the occupants had left the premises, which were now unoccupied.

11. The Appellant conceded that the works needed to be done, and that he would indeed comply with the improvement notice; it was a question of securing quotes, and then booking a contractor to do the works; all made harder by the climate generally and the fact that the Appellant was abroad. The Respondent was relaxed about timeframe, in view of the consensus that the premises was now unoccupied and the Appellant's undertaking that they would not be let out or otherwise unoccupied – unless by him, should he make a trip to the UK.

12. The Tribunal explored with the Appellant his willingness to undertake that the premises would remain unoccupied until the remedial works were done; he confirmed that would neither let them nor allow the premises to be occupied, other than by himself. The Tribunal explored timeframes, and these were identified as achievable by the Appellant.

13. The Tribunal has therefore recorded in the decision above, the undertaking given by the Appellant as to the non-letting/restriction of occupation until the works are completed, and the new dates for the start and finish of the works. To this extent the appeal was allowed to vary the dates.

14. The only live issue for determination by the Tribunal is the Appellant's liability for payment of the costs incurred by the Respondent in taking the action to issue an improvement notice.

15. The Appellant made the point that he has a history of letting the premises successfully for 29 years, without any council involvement. He had been "blessed" with destructive tenants this time, whom he had asked to leave on numerous occasions; the occupant who had engaged with the Respondent was intent on making as much trouble as possible, who was not "on" the tenancy agreement, and whose occupation he did not consent to; they were destructive and intent on bypassing the sockets, and when the Appellant put his foot down, the occupants response was "game on", and the next he knew was that the Respondent became involved. His view was that the Respondent had not given him a chance to work in partnership with them. He considered that the Respondent had paid over the odds for replacement of a socket (though it was pointed

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out that the £420 did not include this). Dr. Ngum said that he was not told/invited/given space to enter into negotiations at all.

16. The Tribunal asked for clarification from the Respondent of the breakdown of the costs incurred, which breakdown was provided at page 160. Mr. Hammond made it clear that the costs of the aborted prohibition notice were not included in this figure. The improvement notice was issued because of a failure to have a home which had safe electrics, and which was potentially hazardous to tenants; the defects went beyond the Appellant's complaint that the tenant had misused the property. Had the Appellant obtained the EICR in 2021 - as he should have done - he would have been alerted to the defective wiring, and so been on notice that he should have done something to cure the defects.

17. In reply, Dr. Ngum said that he had a contract with British Gas (but which had not been filed in evidence) to address any problems with gas and electricity. He said that it was incumbent on them to draw this to his attention. They provided a gas safety certificate each year. He was asked about whether they had said that they would do an EICR for the building, but was not clear about whether this was included. It was not included in the documents. He also said that the occupants were obstructive, and prevented it.

18. The Appellant had the benefit of Ms. Benson joining the hearing by 'phone. She spoke of seeking to address the Respondent's concerns, despite the occupants putting up barriers. As to securing certification, the electrician made it clear that the premises being full of possessions made it impossible to undertake the work; if they could not get from room to room, he would not be able to work. The Appellant was willing to get the work done, it had just been impossible with the occupants there.

19. At the end of the hearing the Tribunal reserved its decision.

Decision

20. The Tribunal was invited to determine only one issue, that being the Appellant's liability to pay the Respondent's costs caused by/associated with the issuing of the Improvement Notice of £420.00.

21.We find that the Appellant is liable, for the following reasons.

22. Having received information from the occupants, which gave rise to a statutory requirement to inspect, the Respondent became aware of a category 1 hazard, which by definition, required immediate action to prevent the risk of injury. The Appellant had not obtained an EICR when required, which would have alerted him to the deficiencies, many of which were not caused by the occupants default. There is no issue that there were multiple deficiencies in the premises from compromised electrics – that much is conceded by the Appellant, and borne out in the report that he commissioned in April 2022. Though the Appellant genuinely believed that his contract with British Gas may have covered this, no documents were adduced in evidence which would answer the point; as the statutory requirement is fairly new, and costs of such a report are upwards of £200, there would be an appreciable increase in costs, which would alert a landlord to the providers charging for the work. The works were not undertaken as soon as the report was obtained by the Appellant on 11th April 2022, and whilst we appreciate that

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there were challenges with these occupants and the number of possessions that they had, but we find that the Respondent had no choice but to issue the notice. Hence the costs were incurred.

23. Whilst happily the Appellant agrees not to let the premises until the works are done, and will get the works done, this is too late in the day to have prevented the Respondent from incurring costs.

24. That being so, the Tribunal finds that the Appellant is liable to pay the costs of £420, payable to the Respondent within 28 days of service of this decision on him.

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First-tier Tribunal Judge J. Oxlade
18th November 2022

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