FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2016/0015**
Appellant:	**Pennine Properties & Lettings Ltd**
Respondent:	**Burnley Borough Council**
Judge:	**Angus Hamilton**

DECISION NOTICE

Legislation

1. Regulation 4 of the Smoke & Carbon Monoxide Alarm (England) Regulations 2015 provides that:

> (1) A relevant landlord in respect of a specified tenancy must ensure that—
> (a) during any period beginning on or after 1st October 2015 when the premises are occupied
> under the tenancy—
> (i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
> (ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
> (b) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
>
> (2) For the purposes of paragraph (1)(a), a bathroom or lavatory is to be treated as a room used as living accommodation.
>
> (3) For the purposes of paragraph (1)(b), a tenancy begins on the day on which, under the terms of the tenancy, the tenant is entitled to possession under that tenancy.
>
> (4) In this regulation—

"new tenancy" means a tenancy granted on or after 1st October 2015, but does not include—

(a) a tenancy granted in pursuance of an agreement entered into before that date;

(b) a periodic shorthold tenancy which arises under section 5 of the Housing Act 1988 on the coming to an end of a fixed term shorthold tenancy;

(c) a tenancy which comes into being on the coming to an end of an earlier tenancy, under which, on its coming into being—

(i) the landlord and tenant are the same as under the earlier tenancy as at its coming to an end; and

(ii) the premises let are the same or substantially the same as those let under the earlier tenancy as at that time;

2. Regulation 5 provides that: -

(1) Where a local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the authority must serve a remedial notice on the landlord.

(2) A remedial notice must—

(a) specify the premises to which the notice relates;

(b) specify the duty or duties that the local housing authority considers the landlord is failing or has failed to comply with;

(c) specify the remedial action the local housing authority considers should be taken;

(d) require the landlord to take that action within 28 days beginning with the day on which the notice is served;

(e) explain that the landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served;

(f) specify the person to whom, and the address (including if appropriate any email address) at which, any representations may be sent; and

(g) explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which a local housing authority may impose.

(3) The local housing authority must serve a remedial notice within 21 days beginning with the day on which the authority decides it has reasonable grounds under paragraph (1).

3. Regulation 6 provides that: -

(1) Where a remedial notice is served on a landlord who is in breach of one or more of the duties under regulation 4(1), the landlord must take the remedial action specified in the notice within the period specified in regulation 5(2)(d).

(2) A landlord is not to be taken to be in breach of the duty under paragraph (1) if the landlord can show he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

4. Regulation 8 provides for Penalty Charge Notices (PCNs) to be served on landlords who fail to take remedial action: -

(1) Where a local housing authority is satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty under regulation 6(1), the authority may require the landlord to pay a penalty charge of such amount as the authority may determine.

(2) The amount of the penalty charge must not exceed £5,000.

(3) Where a local housing authority decides to impose a penalty charge, the authority must serve notice of that fact on the landlord ("a penalty charge notice") within six weeks beginning with the day on which the authority is first satisfied under paragraph (1).

5. Regulation 9 sets out what must be included in any penalty charge notice: -

(1) A penalty charge notice must state—

(a) the reasons for imposing the penalty charge;
(b) the premises to which the penalty charge relates;
(c) the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;
(d) the amount of the penalty charge;
(e) that the landlord is required, within a period specified in the notice—
(i) to pay the penalty charge, or
(ii) to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;
(f) how payment of the penalty charge must be made; and
(g) the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

(2) A penalty charge notice may specify that if the landlord complies with the requirement in paragraph (1)(e)(i) or (ii) within 14 days beginning with the day on which the penalty charge notice is served, the penalty charge will be reduced by an amount specified in the notice.

(3) The period specified under paragraph (1)(e) must not be less than 28 days beginning with the day on which the penalty charge notice is served.

6. Regulation 10 makes provisions for a landlord to a local authority to review a PCN: -

(1) Paragraph (2) applies if, within the period specified under regulation 9(1)(e), the
landlord serves a notice on the local housing authority requesting a review.

(2) The local housing authority must—

(a) consider any representations made by the landlord;

(b) decide whether to confirm, vary or withdraw the penalty charge notice; and
(c) serve notice of its decision to the landlord.

(3) A notice under paragraph (2)(c) confirming or varying the penalty charge notice must also state the effect of regulation 11.

7. Finally, Regulation 11 enables a landlord who is dissatisfied with a local authority's review to appeal, in certain circumstances, to the First Tier Tribunal (FTT): -

(1) A landlord who is served with a notice under regulation 10(2)(c) confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

(2) The grounds for appeal are that—

(a) the decision to confirm or vary the penalty charge notice was based on an error of fact;
(b) the decision was wrong in law;
(c) the amount of the penalty charge is unreasonable;
(d) the decision was unreasonable for any other reason.

(3) Where a landlord appeals to the First-tier Tribunal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

The appeal

8. The appellant, Pennine Property & Lettings Ltd, appeals against a final notice dated 26 May 2016 from the Burnley BC, imposing a penalty charge of £2500 in for failing to comply with a Remedial Notice dated 8 March 2016. That Remedial Notice related to a failure to install a smoke alarm at 265 Colne Road, Burnley. Following representations from the appellant, the Council confirmed the charge at £2500.

9. This matter was considered, with the agreement of the parties, on the papers only on 25 October 2016. No party or representative appeared before me. I would say immediately that I was concerned by the poor preparation of the bundle of relevant papers that was provided to me. The responsibility for the preparation of the bundle lies with the local authority and they really must do better than this in relation to future appeals. Written guidance is provided by the Tribunal's administrative centre in Leicester and that guidance must be followed. The documents in the bundle instead of being provided in a logical chronological order, were presented in a quite random fashion. Documents submitted by the Appellant appear unnecessarily at 2 points in the bundle. I was also concerned that behind the tab marked "Appellant's Reply" was one page of emails between

the Respondent and the Appellant which related to a property at 39 Whalley St., and was self-evidently not the Appellant's Reply. I felt nonetheless that I was able to consider the appeal for the following reasons:

a) The Appellant had made detailed representations in his original appeal
b) The Appellant had raised no complaint about the state of the bundle
c) I was able, from the response to the reply, to infer that if there was any formal reply from the Appellant then it only raised issues relating to the Appellant feeling harassed by the Respondent and considering that other of the Appellant's properties had been targeted by the local authority when there was no complaint from tenants. This was not a matter which I could properly take into account when considering the merits of the appeal.

10. In the grounds of appeal the Appellant stated that when they received the remedial notice on 8 March 2016 they subcontracted the relevant work to a company called Al Syed Maintenance and Planning. The appellant asserted that this company tried to get access to the property on a number of occasions but was unable to do so. The appellant also asserted that to the best of their knowledge they were not allowed to enter the property without the tenant's explicit permission which had not been given. The appellant also asserted that they had attended the property as well and that they had also written to the tenant seeking access. They stated that their subcontractors had finally been able to gain access on 3 May 2016 and had partly completed the work relating to the smoke alarm with a plan to complete it on 7 May 2016 although on this latter date the tenant again was not present to enable access. In a typed note attached to the grounds of appeal the Appellant further asserted that their sub-contractors had been unable to gain access to the property on four occasions and had only been able to access the property and to carry out the works on the 5th occasion.

11. The typed note also stated that the Appellant also provided a letter from the tenant in question which stated that the smoke alarm had been installed on 3rd May 2016. The Appellant asserted that the local authority's contention that they attended the property on 6th May 2016 and found that the smoke alarm had not been installed cannot be correct. The Appellant again asserted in the typed note that their subcontractors did everything possible to access the property and that if they entered the property without the tenant's consent that would amount to 'breaking the law'.

12. The Appellant submitted copies of various documents to support these assertions. These are referred to more specifically below in my consideration of the local authority's response to the appeal.

13. The local authority provided written submissions in response to the appeal. These appear at page 39 in the bundle submitted to the Tribunal. The points raised fell into two categories: first, the chronology of the matter and secondly

specific responses to the appeal points. The local authority's points can be summarised as follows:

a) The relevant Regulations, dating from 2015, are relatively new but it is a landlord's responsibility to ensure that he complies with all statutory obligations.
b) The local authority had in any event been proactive in supplying newsletter and other training to landlords in its area during October 2015.
c) The relevant tenant at 265 Colne Road moved into the property (and by inference a new tenancy agreement was entered into) on 19 October 2015 after the relevant Regulations came into force. The Regulations, summarised, make it clear that the new tenancy should not have started and the tenant should not have been permitted to occupy the premises before the landlord had complied with the obligations in relation to smoke alarms. The landlord not having provided evidence that there were working smoke alarms on the ground and first floor of the premises as at 19 October 2015 there was a compelling inference that there were no functioning smoke alarms on those floors at that date. There was consequently an immediate breach of the Regulations upon the commencement of the tenancy on 19 October 2015.
d) The local authority inspected the premises on 1 March 2016 and found that the ground floor smoke alarm was not working and that there was no smoke alarm fitted on the first floor of the premises.
e) A Remedial Notice was sent to the Appellant on 8 March 2016 requiring the necessary remedial work to be undertaken by 7 April 2016. The Appellant did not make any representations in response to this notice.
f) A re-inspection of the property by the local authority took place on 26 April 2016. The smoke alarm on the ground floor was still not working and there was still no smoke alarm fitted on the first floor. The Penalty Charge Notice (PCN) was then served on 12 May 2016.
g) In accordance with its obligations the local authority then made its own arrangements for the remedial work to be undertaken. In connection with this the local authority visited the property again on 6 May 2016 to seek the tenant's consent for the remedial works. On this date the tenant confirmed that the smoke alarms had not been repaired or fitted and agreed that the local authority's contractors would attend on 12 May to carry out the works.
h) On 16 May 2016 the local authority received a request to review the PCN from the Appellant. The local authority conducted a review but confirmed the PCN

14. In response to the specific points raised in the appeal the local authority stated:

a) The Appellant had still not provided any explanation as to why the necessary smoke alarms had not been fitted prior to the commencement of the relevant tenancy on 19 October 2015.
b) As part of the appeal (but not the representations made to the local authority) the Appellant had submitted a letter from their contractors Al Sayed Maintenance stating that they had made 4 unscheduled visits to the property in relation to the smoke alarms on 15 March 2016, 25 March 2016, 9 April 2016 and 25 April 2016. The local authority pointed out that the Appellant was subject to a statutory obligation to give a tenant at least 24 hours' notice before visiting the property (Housing Act 1988). These unscheduled visits appeared to be in breach of this obligation. Additionally, the local authority questioned the efficacy of the contractors attending for unscheduled visits and questioned the veracity of the contractor's assertion that they had waited for 'hours' on the tenant's doorstep. The local authority pointed out that 2 of the unscheduled visits took place after the expiry of the Remedial Notice.
c) The local authority noted that the Appellant's assertion that the remedial works had been carried out on 3 May 2016 was in direct conflict with their employee's information regarding the visit on 6 May 2016 - that the works had not been done. The local authority did not seek to press the point regarding this clear contradiction but chose to emphasise that if correct the Appellant's assertion still meant that the remedial works were carried out some 24 days after the expiry of the Remedial Notice.
d) Again as part of the appeal (but not the representations made to the local authority) the Appellant had submitted copies of 4 letters which the Appellant says were sent to the Appellant requesting access to the property. The local authority pointed out that no evidence was provided by the Appellant to show when these letters were created or sent to the tenant – e.g. proof of recorded delivery. The local authority pointed out that the 'first' of these letters is actually dated 12 August 2016 – a date which, at the relevant time, had not occurred. The second is dated 25 March 2016 but gives no specific time or date for the tenant to attend an appointment. The third and fourth letters bear dates after the expiry of the Remedial Notice (15 April 2016 and 29 April 2016).
e) The local authority also asserted that prior to the service of the PCN they had had no difficulties arranging access to the property with the tenant for the purposes of its inspections. The local authority did acknowledge that that tenant became less co-operative after the service of the PCN. Again as part of the appeal (but not the representations made to the local authority) the Appellant submitted a letter from the tenant stating that he had been away for part of the time when the Appellant was trying to gain access to the property. The tenant did not, however, give any dates for his absence.

Decision

15. The issues in this case appear to me to be clear cut and this allows me to keep my analysis fairly simple and confined to a limited number of points:

a) The obligation on landlords to comply with the obligations created by the 2015 Regulations is a serious obligation. Failure to comply has a direct and significant impact on the risks to the health and safety of tenants.
b) There is a compelling inference that the Regulations were not being complied with in relation to 265 Colne Road when the new tenancy began on 19 October 2015. There is a possibility that the ground floor smoke alarm was working on this date but it strikes me as highly improbable that the required first floor alarm was in place on this date and then removed. Certainly the Appellant has done nothing to rebut this inference (for example by producing records of relevant inspections or works) although the Appellant has had ample opportunity to do so.
c) The Appellant's rectification of this unacceptable situation has been marked with delays and poor management – even on the Appellant's account working smoke alarms were not installed until 3rd May – more than 6 months after the commencement of the tenancy. Poor management is demonstrated by the delegation of the works to a sub-contractor who then made unscheduled visits to the property without the tenant being given prior notice. When the Remedial Notice was served the Appellant failed to take the necessary remedial action or to offer any explanation to the local authority in relation to any claimed difficulties the Appellant was facing.
d) I very much doubt the Appellant's assertion that entering the property without the permission of the tenant would be 'against the law'. I have not been provided with a copy of the relevant tenancy agreement but a properly drafted tenancy agreement would ordinarily allow the landlord to enter the property to carry out essential inspections and works upon giving proper notice to a tenant and not upon the tenant giving express permission. The reasons for this are self-evident if one thinks about the situation of a tenant going away of holiday and leaving a sink overflowing. I would say however that even if the tenancy agreement here only allowed the landlord access with the express permission of the tenant I would still reach the same conclusion in this appeal because of the three preceding points.

16. There are no grounds for finding that the local authority's decision was based on an error of fact – where there is a clear clash between the Appellant's version of events and the local authority's (e.g. over the local authority's visit on

6 May when it was observed that the necessary smoke alarms had not been installed when the Appellant insists that the work was done on 3 May) the local authority, to remove contentious issues, has adopted the Appellant's version of events. The decision was certainly not wrong in law as there is no argument that the Appellant was in breach of the 2015 Regulations and had failed to take the necessary remedial action within the proscribed time.

17. Bearing in mind the points I have made at paragraph 15 I am rather surprised that the penalty charge imposed upon the Appellant was as modest as it is. I do not consider it to be unreasonable at all. I do not however have the power to increase a penalty charge - only to confirm, quash or reduce it. I therefore confine myself to confirming the penalty charge.

18. This appeal is accordingly dismissed.

Angus Hamilton

Tribunal Judge

Dated 11 November 2016

Promulgation Date 15 November 2016