

Housing and Property Chamber
First-tier Tribunal for Scotland



**STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT
ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.**

Chamber Ref: FTS/HPC/RP/23/0653

THE PROPERTY:

37 Tiree Place, Hallglen, Falkirk FK1 2PP

Title Number: STG64408

THE PARTIES:

Ms Rehana Afreen & Mr Youssof Keita, residing at the property. (“the tenants”)

and

Ms Shehnaz Ijaz, residing at 4, Achray Drive, Falkirk, FK1 5UN (“the landlord”)

THE TRIBUNAL:

David M Preston (Convener) and Mr Andrew McFarlane, Surveyor (Ordinary Member)

Decision:

The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as “the Act”) in relation to the property, and taking account of the representations by all parties:

- a. Determines that the landlord has failed to comply with the said duty; and**
- b. Determines to issue a Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Act.**

The tribunal orders that the works specified in the RSEO must be carried out and completed within the period of eight weeks from the date of service of this Notice.

Background:

1. By application dated 27 February 2023, the first-named applicant applied to the First-tier Tribunal, Housing and Property Chamber for a determination as to whether the landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”). By email dated 17 April 2023 the first named applicant intimated the addition of the second named applicant as joint tenant.
2. The application stated that the tenants considered that the landlord had failed to comply with her duty to ensure that the house meets the repairing standard at the start of the lease and throughout its duration and in particular that the landlord had failed to ensure that:-
 - The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order;
 - The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water in a reasonable state of repair and proper working order;
 - The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health; and
 - The house meets the tolerable standard.
3. In particular, the first named tenant complained in her letter dated 8 February 2023 intimating the alleged faults to the landlord that:
 - a. the small bedroom has a leaking roof;
 - b. The middle bedroom has a damp patch on the ceiling;
 - c. the guttering around the roofing on the outside of the house requires repair, particularly at the front; the ceiling in the upstairs bathroom also leaks when it is raining;
 - d. the windows throughout the property are extremely draughty and one of the panes to the kitchen window is cracked;
 - e. all of the windows throughout the house have damp and mould growing on them;
 - f. there are huge draughts coming in from the loft because it needs insulating;
 - g. the kitchen above the cooker does not work;

- h. a fan is needed in the upstairs bathroom;
 - i. the electric wiring in the house needs looking at; a socket upstairs trips the switch when in use and one of the bulb holders is broken;
 - j. a report from a pest control company dated 11 October 2022 contains recommendations which have not been implemented.
4. The Notification letter of 8 February 2023 did not include a reference refer to an issue relating to the detection of carbon monoxide.
 5. By Notice of Acceptance dated 16 March 2023, a legal member of the Tribunal, having delegated power for the purpose, referred the application under Section 23(1) of the Act to the tribunal. In terms of the Note the application paperwork comprises documents received by the Tribunal between 1 and 2 March 2023.
 6. A Notice of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act was served on all parties on 30 March 2023.
 7. Following service of the Notice of Referral, written representations and productions comprising photographs, vouchers and documentation were received from the landlord by emails dated 13, 19 and 23 April 2023. Further written representations and productions were received from the tenants by emails dated 12 and 17 April and 29 May 2023.

Inspection:

8. The tribunal inspected the property on the morning of 1 June 2023. The landlord's daughter, Raeesa, was in attendance in support of her mother. The tenants were present throughout the inspection.
9. A series of photographs was taken throughout the inspection and form the Schedule attached hereto.

Hearing:

10. Following the inspection of the property the tribunal held a hearing at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The landlord and her daughter and the tenants attended in person.
11. At the start of the hearing the convener confirmed the procedure which it was intended to be followed as well as the functions of the tribunal in determining the application. He advised that the tribunal was likely to conclude that the inspection had disclosed that the property currently fails to meet the repairing standard and consequently a Repairing Standard Enforcement Order (RSEO) was likely to be issued. He noted that the tenants' complaints had been intimated to the landlords

prior to the application in terms of section 22(3) of the Act and that the application had been referred to the tribunal for determination.

12. The tenants said that they had reported a number of issues with the property to the landlord during 2022 and referred to a pest control report by Contego Environmental Services Ltd dated 19 October 2022 which contained recommendations which, she claimed remained unimplemented.
13. The landlord said that she had not been made aware of many of the problems which were now the subject of the application prior to the intimation letter. She said that the tenants had made unreasonable demands of her and had not been cooperative in allowing contractors access to have work carried out. She said that she had attended the property in person and had been verbally abused by the first named tenant and was reluctant to engage with her as a result.
14. The landlord referred to her written representations as set out in her email of 13 April 2023. She maintained that the tenant had viewed the property several times before signing the tenancy agreement and moving in, and no issues or complaints had been raised until July 2022. She had provided and fitted new cupboards, drawers and door handles as had been requested by the tenants in April or May 2022. She had replaced the patio doors about which the tenants had previously complained.
15. The landlord said that in November and December, the first named tenant had started a barrage of complaints and had constantly sent messages and calls at all hours to complain about everything. There would be routine calls late at night and over weekends and she was verbally aggressive and abusive to the landlord.
16. In October 2022 the tenants complained that there seemed to be a rodent issue which had never previously occurred in the property, and the landlord arranged for a pest control contractor to deal with the matter. Following their visit, the landlord believed that the matters had been resolved and there were no further issues. The pest control contractor had been told to provide the report to the tenants which had not been passed on to the landlord who had only been aware of a continuing issue following receipt of the intimation letter dated 8 February 2023.
17. The landlord said that prior to receipt of the repairing standard intimation letter on 9 February 2023 when contractors were instructed to attend, the first named tenant would refuse to answer the phone and she seemed to want to deal directly with the contractors. When contractors attended, she would ask them to carry out other repairs beyond those advised.
18. The landlord maintained that a plumber had attended to the leak under the kitchen sink and an electrician had visited regarding the socket and bulb holder. The tenant

had tried to get the electrician to view other items beyond what had been complained of.

19. With regards to the tenants' specific complaints, the landlord relied upon her representations as contained in her email of 13 April 2023. She maintained that the property had been let as unfurnished and without any white goods and that accordingly she was not responsible for the fan above the cooker which she would regard as "white goods" which were not included in the lease. Further she had not previously been advised of this problem. She referred to the particularly bad winter which had resulted in additional fuel and heating bills for everyone and did not regard the problems complained of as being particular to this property. In relation to the fan in the upstairs bathroom she maintained that the tenants had viewed the property before moving in and that they required to accept the property in its condition as seen. She referred to the EICR, copy of which was provided to the tribunal.

Findings in Fact:

20. The property is an end terraced villa with accommodation comprising: Ground Floor Level: Hallway with stair to first floor; WC; Lounge and Kitchen with Dining Area; First Floor Level: 3 Bedrooms; and Bathroom. Roof is of pitched configuration with a concrete tile finish, there are uPVC rainwater goods and dry dash render finished walls with facing brick base courses. Windows are generally aluminium framed with sealed double glazed units whilst doors are of uPVC framing with sealed double glazed units. The property is located in a development of similar properties which appear to have been constructed originally for the local authority, probably approaching 40 years ago.

21. In respect of the items complained of the inspection revealed:

a. Leaking roof in small bedroom and also the bathroom: [Photos 3 & 4] It was dry at the time of inspection and had been for the period before that. Damp readings with an electronic meter were obtained on the ceiling of the "small" bedroom. It was not possible to determine if this was due to current or previous leakage which was still drying out. There were signs of staining around a hole in the bathroom ceiling. Further investigations are required to establish the current position.

b. Damp patch on another bedroom ceiling: [Photo 5] It was dry at the time of inspection and had been for a period before that. Damp readings with an electronic meter were obtained. It was not possible to determine if this was due to current or previous leakage which was still drying out. Further investigations are required to establish the current position.

c. *Guttering around the roofing and leaking draining system outside the property:* [Photos 7 & 8] It was dry at the time of inspection and had been for a period before that. Photographs had been provided by the tenants which appear to show some difficulty of a type often encountered. Further investigations are required.

d. & e. *Cracked window pane in the kitchen needs replacing as do all windows in the property:* [Photos 9 -16] A cracked sealed double glazed unit was noted in one opening sash of the window in the kitchen. This is part of the exterior of the house which is not in a reasonable state of repair as required by the repairing standard s13(1)(b). The windows throughout the property have been replaced previously and there is no provision for trickle ventilation as would have been provided at the time of the original construction. The tolerable standard in s86(1)(c) requires a satisfactory provision for ventilation. This is not met in the case of this property. Seals around opening sashes were found to be missing or defective in a large number of windows in the property. Others are ill fitting. This is part of the exterior of the house which is not in a reasonable state of repair as required by the repairing standard s13(1)(b).

f. *The loft needs to be insulated:* [Photos 17-19] The landlord provided information that the roof void had been cleared. There appeared to be quantities of cardboard packaging in the void although it is not known if this belongs to the tenants. Although a limited inspection could be carried out, a layer of glass wool type insulation was observed in visible areas. There were also rolls of insulation material not put in place. It is not clear if areas are not covered, or an excess of material was obtained.

g. *Kitchen fan above cooker doesn't work:* [Photos 1 & 2] On inspection this was found not to operate. This is an appliance which was fitted within the property at the commencement of the tenancy agreement and as such requires to be maintained in proper working order as required by the repairing standard s13(1)(d).

h. *Fan needed in upstairs bathroom:* There is no fan in the bathroom and the property was constructed at a time when it was not required. There is however no provision for trickle ventilation in the windows leading to the need for the window sash to be opened, as complained of by the tenant. It would appear that this sort of ventilation was omitted when replacement windows were installed. The tolerable standard in s86(1)(c) requires satisfactory provision for ventilation. This is not made in the case of the bathroom in this property.

i. *Electric wiring in the house needs checking:* [Photos 6] It was reported that one socket upstairs in the property when used "tripped" the circuit breaker indicative of a fault. The landlord had sent an electrician who attended and undertook remedial works. During the inspection the tenant intimated a similar fall on a socket

in the lower level of the hallway but could not demonstrate this. Although a current EICR was provided, it is now two years since the last inspection and faults in the electric wiring can develop in properties where there has been rodent infestation. Further investigations are required to establish current position.

j. Implementation of pest control report:

i). Kick boards under kitchen cupboards are missing, they need to be replaced as it allows mice to have a full free run of the kitchen: [Photo 21] These have been replaced by the landlord. There has not been a further inspection by the pest control contractor since the works have been completed.

ii). Leaks from damaged pipe under the sink needs fixing as this is providing a water source for the mice: [Photo 22] No leakage was detected at the time of inspection. Tap was run to test and still no leakage occurred.

iii). The air bricks on the external wall of the property are damaged, this is an entry point for the mice and has not been fixed: [Photos 23-25] One air brick has been cut to allow a gas pipe to pass through. Others where visible are intact. The cut air brick is a part of the exterior of the house which is not in a reasonable state of repair as required by the repairing standard13(1)(b).

iv). Holes inside the property walls and ceiling allow mice to run freely throughout the house: [photos 26 & 27] Works were carried out by a contractor engaged by the landlord. Further holes were pointed out by the tenant in the floor and ceiling to the cupboard off the lower hallway at ground level. There has not been a further inspection by the pest control contractor since works have been completed.

22. In relation to the carbon monoxide detector, during the inspection, the landlord indicated where there was a bracket fixed to the wall in the hallway, but no carbon monoxide detector or alarm was present. As this was not intimated to the landlord prior to the application being made, it cannot form part of an RSEO. The tribunal observes that this is a failure to comply with the repairing standard and recommends that suitable detection devices should be installed in accordance with installation directions..

Reasons for the decision:

23. In reaching its decision the tribunal had regard to the application dated 27 February 2023 and supporting documentation comprising: notification letter dated 8 February 2023; extract pages from Private Rented Tenancy Agreement dated 1 March 2022; emails from the tenants dated 12 and 17 April and 29 May 2022; and emails from the landlord dated 13, 19 and 23 April 2020.

24. The tribunal is required to consider the condition of the property at the time of inspection, regardless of any work which may have been carried out previously to the property. The tribunal did not take account of issues other than those which had been specified in the letter of intimation dated 8 February 2023 and the application dated 27 February 2023.
25. It was clear to the tribunal that the relationship between the landlord and tenant had broken down to a significant degree, but this was not an issue which influenced the tribunal in reaching its decision.
26. In respect of the landlord's contention that the fan in the kitchen did not form part of the tenancy agreement, as outlined above the tribunal determines that all appliances and fittings present within a property at the commencement of the tenancy agreement are supplied by the landlord and require to be maintained at the commencement of the lease and throughout the tenancy in a reasonable state of repair and in proper working order. Section 17 of the Act prohibits the contracting out of the landlord's obligations under the repairing standard.
27. The tribunal had regard to the EICR, but as noted above, it is now two years since the last inspection and faults in electrical wiring can develop properties where there has been rodent infestation as has been the case in respect of this property.
28. The tribunal noted the landlord's concern that the first named tenant requested contractors to carry out work additional to that in respect of which they had been instructed. The tribunal indicated to the first named applicant that she should ensure that all issues about which she was concerned were intimated to the landlord in advance so that she had an opportunity to instruct contractors. She should not issue or attempt to issue further instructions to contractors.

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.

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.

D.Preston

6 June 2023