

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

### Statement of Decision under section 25(1)(a) of the Housing (Scotland) Act 2006 ("the 2006 Act")

Chamber Ref: FTS/HPC/RP/18/0302

Property at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU  
("The House")

#### The Parties:-

Ms Kelly Anne Ward, residing at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU ("the Tenant")

Mr Imran Ahmed, residing at 8 Sycamore Place, Motherwell, North Lanarkshire, ML1 5TN ("the Landlord")

North Lanarkshire Council, Public Health and Housing Team, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF ("the Third Party Applicant")

#### The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Ms Lori Charles	-	Ordinary Member

#### Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 23 April 2018 and accordingly made a Rent Relief Order under section 27 of the Act. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated.

#### Background

2. Reference is made to the determination of the Tribunal dated 23 April 2018 which determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that he had failed to ensure the Property met the Repairing Standard. The Tribunal therefore imposed a Repairing Standard Enforcement Order ("RSEO"). The works required by the RSEO were:-

- (a) Repair or replace the gas cooker;

- (b) Repair or replace the radiators in the two bedrooms and ensure they are in proper working order;
- (c) Produce a gas safety certificate by a suitably qualified gas engineer following the works carried out in (a) and (b);
- (d) Instruct a Select/NICEIC qualified electrician to inspect the electrics throughout the house and thereafter to carry out any works required following such an inspection;
- (e) Install smoke and heat detectors in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under section 2 – Fire, sub-section 2.11 Communication;
- (f) Following completion of the works at (d), and (e), produce an electrical installation condition report by a suitably qualified electrician confirming that the electrical installations within the House are in safe condition and in proper working order;
- (g) Repair the waste pipe pertaining to the bath to ensure it is watertight and in a reasonable state of repair;
- (h) Repair the sealant around the bath to ensure it is watertight;
- (i) Carry out such works as are necessary to clear all mould from the house and redecorate the affected areas;
- (j) Carry out any redecoration required after completion of the above works.

The Tribunal required the works be completed within a period of four weeks from the date of service of the order.

3. On 28<sup>th</sup> June 2018 the Ordinary Member carried out a re-inspection of the property. The Tenant was present and allowed access. The Landlord was also present. The Third Party Applicant did not attend.
4. The findings of the re-inspection were as follows:-
  - (a) The kitchen hob had been replaced however the gas over had not been repaired or replaced.
  - (b) The radiators in both bedrooms had been re-hung and were in working order.
  - (c) A gas safety certificate dated 1 June 2018 had been produced by the Landlord. In terms of the certificate the four gas burners and the central heating boiler had been tested. The gas oven had not been tested.

- (d) An Electrical Installation Condition Report had been submitted on 22 June 2018 which listed four items as C2, where urgent remedial action was required and two items as C3 where improvement was recommended.
  - (e) Hard wired interlinked smoke and heat detectors had been fitted as per the Scottish Governments Technical Handbooks 2013.
  - (f) The waste pipe underneath the bath appeared dry with no water visible at the time of the inspection.
  - (g) No repairs had been carried out to the sealant around the bath.
  - (h) No internal redecoration had been carried out.
  - (i) Water was noted on the floor at the front door. The Tenant advised this had appeared after the bath was used. The Landlord advised he would arrange for a plumber to investigate and repair as required.
5. On 14<sup>th</sup> September 2018 the Tribunal held a further hearing. The Landlord was in attendance. The Tribunal heard submissions from the Landlord on the outstanding works. The Landlord indicated that he would ensure these were carried out, in particular the repair to the sealant around the bath and the works required by the EICR. The Landlord did however indicate that he felt some of the works were the responsibility of the Tenant, in particular the repairs to the bath and the redecoration. He stated that he would redecorate the property once the Tenant moved out.

With regard to the gas oven, the Landlord advised this had been replaced with an electric oven. Further, the Landlord confirmed that a plumber had inspected the pipework and found no defects, however he was unable to produce any documentary evidence in this regard.

6. Reference is made to the decision of the Tribunal of 27<sup>th</sup> September 2018 which varied the RSEO for a period of six weeks to carry out the remaining works and to require the Landlord to produce a report from a qualified plumber confirming that the pipework was in proper working order. Whilst the Tribunal was satisfied that the Landlord had taken some steps to comply with the RSEO, there were still a number of items outstanding, some of which caused the Tribunal serious concern. In particular the Tribunal required the Landlord to address the C2 items in the EICR and produced a further EICR thereafter, which would also provide comfort regarding the new electric oven. Further given the findings of the re-inspection and evidence of water ingress, the Tribunal require sight of a report from a qualified plumber regarding the pipework, particularly around the bath. It had been noted that the Landlord had undertaken to carry out works to the sealant around the bath.
7. A further re-inspection was undertaken on 4<sup>th</sup> January 2019. The Tenant was present and allowed access. The Landlord was represented by his wife Nzmalemran Ram.

8. The findings of the re-inspection were as follows:-
- (a) There was no evidence that the C2 items as highlighted in the EICR dated 22 June 2018 had been addressed. No up to date EICR had been provided.
  - (b) No repair had been undertaken to the sealant around the bath. The bath could not drain due to a blockage in the pipe.
  - (c) High moisture readings and water marks on the ceiling underneath the bathroom were noted.
  - (d) No internal redecoration had been carried out.
9. A copy of the re-inspection report is attached herewith. The report was circulated to the parties, however no comments were received. Having regard to the findings of the re-inspection the Tribunal considered it was able to determine the matter without a hearing.

#### **Reasons for Decision**

10. The Tribunal accepted the terms of the re-inspection report. No representations had been received from the Landlord nor the Tenant disagreeing with its content. Having regard to the findings of the re-inspection the Tribunal considered it had sufficient information upon which to make a determination of the application.
11. Despite the Landlord having complied in part with the terms of the RSEO, fundamental works were still outstanding. The Tribunal had particular concern regarding the urgent items highlighted on the EICR of 22 June 2018 as potentially dangerous that had not been addressed. The Landlord had been present at the hearing on 14<sup>th</sup> September 2018 and was fully aware of the importance of ensuring these works were completed. He had given a commitment to the Tribunal in that regard. However, he had apparently done nothing.
12. Similarly, the Landlord had failed to produce a report from a qualified plumber regarding the pipework and it was evident from the re-inspection that no repair had been carried out to the bath sealant. There were clearly on-going problems with the use of the bath, as noted from the damp readings on the ceiling pertaining to the room below, and the lack of drainage due to an apparent blockage. The Landlord appeared simply unwilling to undertake these repairs, and the Tribunal had concerns from comments made at the hearing on 14<sup>th</sup> September 2018 that the Landlord was under the misapprehension these works were the responsibility of the Tenant. Whilst the Landlord had committed to carrying out these works at the hearing on 14<sup>th</sup> September 2018 there had been a reluctance which had been borne out by his failure to take action following that hearing.

13. Given the Landlord's failure to uphold the commitments made at the hearing on 14<sup>th</sup> September 2018, the Tribunal had no confidence that he had any intention of completing the works required timeously. The Tribunal was therefore satisfied that there was no justification for a further variation of the order under section 25(3) of the Act. The Landlord had previously been given the benefit of a variation in order to complete the outstanding works but had failed to take any action. The Tribunal further concluded that in view of the Landlord's failure to comply with the order, notification should be given to the Local Authority in terms of section 26 of the Act.
14. The Tribunal thereafter had regard to section 27 of the Act and whether it should make a Rent Relief Order. The Tribunal was aware that the Tenant was in the process of removing from the property, however as at the date of this decision the Tribunal had not yet had confirmation that the tenancy had been terminated. Accordingly the Tenant remained a party to the action.
15. Taking into account the terms of the order, the Tribunal took the view that the remaining works required were affecting the amenity of the house and therefore affecting the Tenant's enjoyment of the house. However of significant concern was the outstanding electrical works, classed as potentially dangerous, which in the view of the Tribunal could have potentially lethal consequences for the Tenant and her family. The Tribunal therefore determined that a Rent Relief Order was appropriate and that relief at the rate of 70% reflected both the loss of amenity and risk to life. The Tribunal proceeded to make a Rent Relief Order to that effect.
16. The decision of the Tribunal was unanimous.

#### **Comment**

17. The Tribunal is aware that the Tenant is in the process of vacating the property. The Tribunal would therefore remind the Landlord that it is a criminal offence to re-let the property whilst the RSEO remains in place.

**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.

**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.**

R O'Hare

Signed

Ruth O'Hare  
Legal Member

15<sup>th</sup> April 2019

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**RENT RELIEF ORDER in terms of section 27 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/18/0302**

**Property at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU  
("The House")**

**The Parties:-**

Ms Kelly Anne Ward, residing at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU ("the Tenant")

Mr Imran Ahmed, residing at 8 Sycamore Place, Motherwell, North Lanarkshire, ML1 5TN ("the Landlord")

North Lanarkshire Council, Public Health and Housing Team, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF ("the Third Party Applicant")

**The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Lori Charles	-	Ordinary Member

**NOTICE TO:-**

Mr Imran Ahmed, residing at 8 Sycamore Place, Motherwell, North Lanarkshire, ML1 5TN ("the Landlord")

In terms of its decision dated 15 December 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined in terms of section 26(1) of the Housing (Scotland) Act 2006 ("the Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house. The Tribunal therefore determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount equating to **70%** of the monthly rent which would, but for the order, be payable. The rent reduction shall take effect twenty eight days after the last date on which the decision to make the Rent Relief Order may be appealed.

**RIGHT OF APPEAL**

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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ruth O'Hare, Chairperson of the Tribunal at Aberdeen on 15th April 2019 before this witness:-  
R Johnston

R O'Hare

\_\_\_\_\_ witness

\_\_\_\_\_ chairperson

Robert Johnston, 2 Mill O'Forest Grove  
Stonehaven, AB39 2GH



THIS IS THE SCHEDULE OF PHOTOGRAPHS REFERRED TO IN THE  
DECISION OF THE TRIBUNAL DATED 15TH APRIL 2019  
R O'Hare  
HAIKPERSON

## Housing and Property Chamber First-tier Tribunal for Scotland

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Date of Inspection – 4<sup>th</sup> January 2019 at 10.00am

Property Reference – FTS/HPC/RT/18/0302

Property Address – 11 Catriona Way, Holytown, ML1 4NU

Surveyor – Lori Charles

Previous Inspection – 19<sup>th</sup> April 2018 & 28<sup>th</sup> June 2018

Access – Ms Kelly Anne Ward – Tenant

In attendance Ms Kelly Anne Ward and Nzmalemran Ram - Landlord (Wife)

Weather – Dry/Cold

Repairing Standards Enforcement Order (RSEO) dated 23<sup>rd</sup> April 2018

**Works in the Repairing Standard Enforcement Order (RSEO) - In particular the tribunal requires the Landlord:-**

- (a) Repair or replace the gas cooker;
- (b) Repair or replace the radiators in the two bedrooms and ensure they are in proper working order;
- (c) Produce a gas safety certificate by a suitably qualified gas engineer following the works carried out in (a) and (b);
- (d) Instruct a Select/NICEIC qualified electrician to inspect the electrics throughout the house and thereafter to carry out any works required following such an inspection;
- (e) Install smoke and heat detectors in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under section 2 – Fire, sub-section 2.11 Communication;
- (f) Following completion of the works at (d), and (e), produce an electrical installation condition report by a suitably qualified electrician confirming that the electrical installations within the House are in safe condition and in proper working order;
- (g) Repair the waste pipe pertaining to the bath to ensure it is watertight and in a reasonable state of repair;
- (h) Repair the sealant around the bath to ensure it is watertight;
- (i) Carry out such works as are necessary to clear all mould from the house and redecorate the affected areas;

Carry out any redecoration required after completion of the above works

**Variation of Repairing standards Enforcement Order (RSEO) under section 25(1) of the Housing (Scotland) Act 2006 ("the 2006 Act")**

(a) To extend the period allowed for the completion of the work required by the order is by a further six weeks from the date of service of this notice;

and

(b) To instruct the Landlord to provide a report from a qualified plumber confirming that the pipework pertaining to the bath is in a reasonable state of repair and in proper working order.

a) Hob and Gas oven have been replaced and in full working order.



b) Radiators in both bedroom have been re-hung and in working order



c) Gas safety certificate received 22/6/18

APPLIANCE DETAILS		FLUE TESTS		INSPECTION DETAILS	
1	Washing Machine	Gas Pressure	20.0	Flue Gas	20.0
2	Boiler	Gas Pressure	20.0	Flue Gas	20.0
3	Water Heater	Gas Pressure	20.0	Flue Gas	20.0
4	Stove	Gas Pressure	20.0	Flue Gas	20.0
5	Fire	Gas Pressure	20.0	Flue Gas	20.0

Gas Installation: Satisfactory ☒ No ☐ Emergency Control: Satisfactory ☒ No ☐ Satisfactory Gas Pressure: Satisfactory ☒ No ☐ Satisfactory Flue Gas: Satisfactory ☒ No ☐ Satisfactory Working Condition: Satisfactory ☒ No ☐

Give Details of Any Faults: \_\_\_\_\_ Rectification Work Carried Out: \_\_\_\_\_

Next Gas Safety Check must be carried out within 12 months

d) Electrical Installation Condition Report (EICR) received 22/6/18

No.	Description	Code
1	Earthing Conductor - Too Small	C3
2	Double socket in living room needs re-fixed	C2
3	Bottom holder in bathroom is broken	C3
4	Lamp holder (light in kitchen) broken	C3
5	Main Protective Bonding conductors to gas and water - missing	C2
6	5 single sockets upstairs have no switches	C2
7	C.P.C.s missing in upstairs living circuit (needs rewired)	C2

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:

Code C1 - Danger present. Risk of injury. Immediate remedial action required.

Code C2 - Potentially dangerous. Urgent remedial action required.

Code C3 - Improvement recommended.

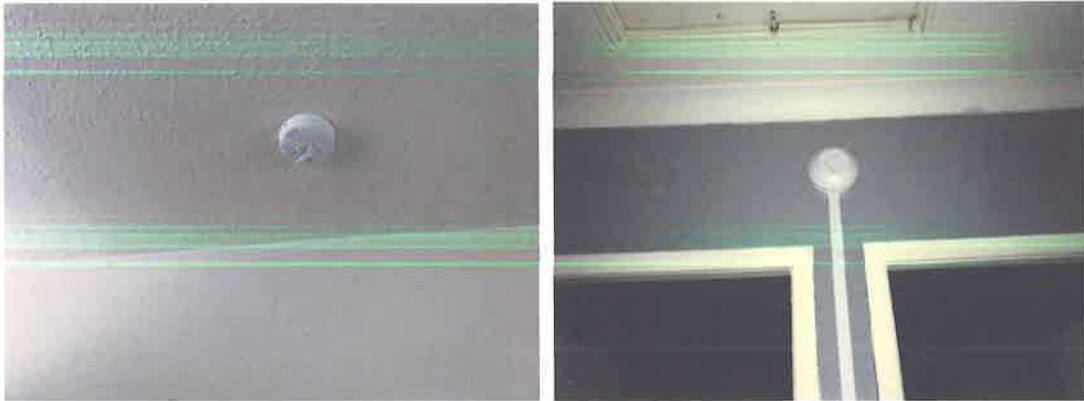
FI - Further investigation required without delay.

Items that require action: 2, 5, 6, 7  
1, 2, 4,

No updated EICR has been received to confirm the items noted above have been carried out.

The EICR received previously noted that 4 items were classed as C2 Potentially dangerous. Urgent remedial action required and 2 items C3 improvement recommended.

e) All Smoke and heat detectors have been fitted



f) See (d) above – no up-dated EICR provided

No photograph

g) Waste pipe under bath appears dry no water visible at time of inspection



h) No repairs to sealant around bath. Bath was full of water as unable to drain away due to blockage in pipe.



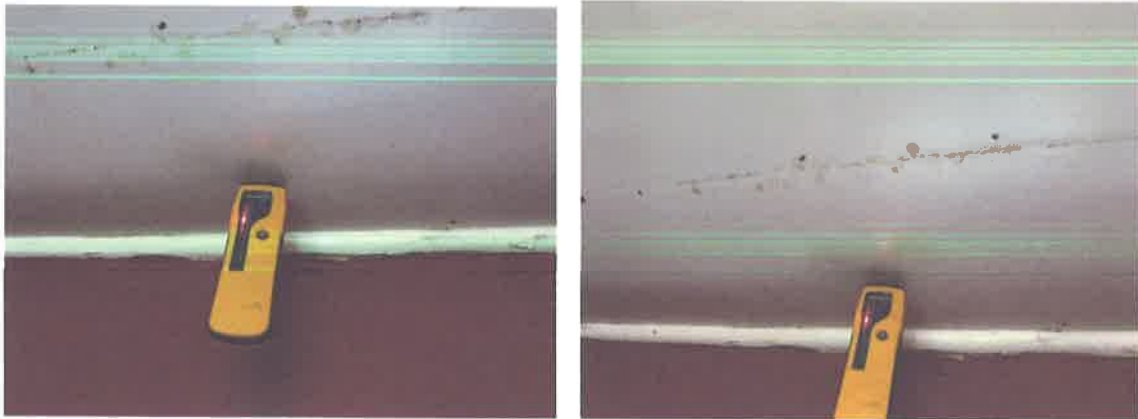
i) Mould on hall ceiling – no change





Variation of Repairing standards Enforcement Order (RSEO) under section 25(1) of the Housing (Scotland) Act 2006 ("the 2006 Act")

(b) To instruct the Landlord to provide a report from a qualified plumber confirming that the pipework pertaining to the bath is in a reasonable state of repair and in proper working order.



Water was noted on the floor at the front door at the re-inspection dated 28th June 2018 that had appeared after the bath was used. The tenant advised that between Christmas and New Year water had leaked through the porch/hall ceiling.

High moisture readings and water marks on the ceiling were noted.

**Comments:** This report will be submitted to the First Tier Tribunal for Scotland (Housing Property Chamber) for their decision.

**Lori Charles BSc Hons MRICS**

**Ordinary Member (Surveyor)**

**Date 04/01/19**

**Schedule of photographs taken during the re-inspection of 11 Catriona Way Holytown by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 04 January 2019 .**

Reference Number FTS-HPC-RT-18-0302