

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/19/1457

Sasines Description: Property known as and forming ALL and WHOLE 2 Clune Cottages, Dores, Inverness, IV2 6TR, more particularly described in the Disposition by Neil Fraser-Tytler dated 1 and 7 April 1997 and recorded in General Register of Sasines for the County of Inverness on 23 April 1997.

**2 Clune Cottages, Dores, Inverness, IV2 6TR
("the Property")**

The Parties:-

**Mr Howard McKee and Mrs Angela McKee, residing at the property
("the Tenants")**

**Mr Magnus Grant, residing at 1 Clune Cottages, Dores, Inverness, IV2 6TR
("the Landlord")**

Whereas in terms of their decision dated 5 September 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord has 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 Landlord has failed to ensure that:-

- (i) The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
- (ii) 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 Landlord 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 Landlord:-

- (a) To ensure the terminal of the immersion heater is fitted with a secure cover and to produce an Electrical Installation Condition Report that confirms that the electrical installation is satisfactory with no C1 or C2 defects noted thereon.
- (b) To replace the damaged tiling around the wash-hand basin.
- (c) To repair or replace all of the windows in the property to ensure that they are all in a reasonable state of repair and in proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 6 weeks 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 5 September 2019 in the presence of the undernoted witness:-


C Pryce witness

CARAGH PRYCE name in full

UNIVERSITY AVENUE, Address
GLASGOW

P Pryce

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/19/1457

**2 Clune Cottages, Dores, Inverness, IV2 6TR
("the Property")**

The Parties:-

**Mr Howard McKee and Mrs Angela McKee, residing at the property
("the Tenants")**

**Mr Magnus Grant, residing at 1 Clune Cottages, Dores, Inverness, IV2
6TR, represented by Mr Angus Brown of Messrs Harper MacLeod,
Solicitors
("the Landlord")**

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 Landlord has 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
Angus Anderson	-	Ordinary Member (Surveyor)

Background

1. By application comprising documents received between 14 May and 27 June, both 2019, the Tenants applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

with, and allowed the Tribunal access to the property. The Landlord did not attend the inspection. The Tribunal noted the following at inspection:-

- The property is a three-bedroomed semi-detached house.
- There was no Electrical Installation Condition Report (EICR) in respect of the property.
- There was a brass electrical socket located at the fireplace in the living room which the Tenant stated was not earthed.
- There were smoke and heat alarms located in the lounge, kitchen, downstairs hall and first floor landing which were tested and found to be interlinked.
- There was a carbon monoxide detector located in the lounge and sounded when tested.
- The consumer unit is located on the first floor landing which is a metal unit with rewirable fuses. Where visible, wiring was sheathed in PVC.
- There was a hot water cylinder located in the front bedroom cupboard. The cover over the electrical terminals was insecure and easily removed exposing live conductors.
- The immersion switch was tested with the indicator light illuminated and the electrical meter rate increasing accordingly.
- The bath was cast-iron and was stained.
- The wash-hand basin had a hairline crack adjacent to the overflow outlet.
- Some of the tiles surrounding the wash-hand basin were cracked and uneven.
- The toilet was flushed and no leak was observed from the waste pipe.
- The surface of the bathroom walls showed some evidence of mould spotting which was tested with a moisture meter. Meter readings were around 20% in the hard-plaster finish.
- The front bedroom window had soft and rotted sills externally and could not be secured as the catch was missing.
- The window of double bedroom at the rear had a broken sash cord and there was loose and missing putty externally.
- The window in the single rear bedroom had the lower sash painted shut. There was cracked and loose putty externally.
- Only the top sash of the stair window opened and there was loose putty externally.
- The lower hall window was painted shut.
- In the lounge, of the four sashes, only the lower right sash of the window could be opened, the remaining painted shut. There was putty missing externally.
- The top half of the kitchen window was painted shut.
- There was a cracked pane of glass in the back door.
- There was no discernible draft or daylight visible at the front door when closed. Externally there was a draught-proof strip in place.
- Although it was a relatively dry at the time of inspection, from ground level the gutters appeared free of vegetation and there

was no evidence of previous/ongoing leakage in the form of green staining or splash marks on the ground or building. There was evidence of surface corrosion.

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, Mrs McKee, attended at the hearing along with her friend who was a supporter. The Landlord, Mr Magnus Grant, and his lawyer, Mr Angus Brown, also attended the hearing.

Parties confirmed that the rent is £400 per calendar month and that the date of entry for the tenancy was July 2002.

The Tenant submitted that she had nothing further to add in relation to the application following the inspection.

Mr Brown submitted that his client was aware that there may be repairing issues with the property. Mr Grant accepts that he has been the landlord for 18 months or so. He registered as the landlord around one week prior to the hearing.

Mr Grant confirmed that he awaited the report from his electrician and builder in respect of potential works required at the property. He accepted that there was no EICR 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 Tenants remained in the property at the time of inspection.
 - The Tenants have resided there since July 2002.
 - The rent is £400 per calendar month.
 - The property comprises a semi-detached house on two floors of traditional brick and slate construction. There are three bedrooms on the first floor and lounge, kitchen and bathroom on the ground floor.
 - There was no EICR in place in respect of the property.

- The property was in the condition as noted by the findings at inspection above.

Reasons for the decision

9. The Tribunal noted that in terms of the present application the Tenants had first notified the previous Landlord of the repairs in September 2016. The Landlord accepted that he was aware of repairs issues at the property and was making some effort to address these. Despite this, some of the repairs issues remained unresolved.

Given all of the circumstances, the Tribunal is satisfied 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 not in a reasonable state of repair and in proper working order as the windows require repair and there is a cracked pane of glass in the rear door.
- 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 there is a loose cover over the terminals of the immersion on top of the hot water cylinder and as there is no EICR in respect of the property, the Tribunal could not determine whether the remainder of the electrical installation met the repairing standard, and there is cracked and uneven tiling around the wash-hand basin.
- The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal noted that the Tenants complained about the state of the bath and the wash-hand basin but the Tribunal determined that these did not breach the repairing standard. Likewise, the Tribunal considered that the gutters and front door met the repairing standard. Dampness in the bathroom was not a live issue at the time of inspection. Elementary testing of the immersion heater indicated that it was drawing current when switched on.

Decision

10. The Tribunal accordingly determined that the Landlord 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.

Right of Appeal

13. 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

5 September 2019

Legal Member