

# **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: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/17/0026**

**20 Battles Burn View, The Spinney, Glasgow, G32 8HP  
("the Property")**

**The Parties:-**

**Miss Nicola Brown, formerly residing at the Property  
("the Tenant")**

**Mr George Preston, 278 Church Road, St Annes, Lytham St Annes,  
Lancashire, FY8 3NR  
("the Landlord")**

**The Tribunal**

**Mr Maurice O'Carroll (Legal Member and Chair)  
Mr Nick Allan (Ordinary Member)  
Mr Richard Mill (Legal Member – observing)**

**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, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. By application received on 25 January 2017 the Tenant applied to the 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").
2. The application by the Tenant stated that she considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

The installations in the Property 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 in terms of section 13(1)(c) of Act;

The fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of section 13(1)(d) of the Act; and

The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act.

3. Specifically, the Tenant stated on her application form that: the downstairs toilet was not working properly; the extractor fan and lights in the upstairs bathroom did not function properly; the bedroom lights did not function properly; the boiler and therefore the heating did not function properly and the Gas Safety Certificate relative to the Property had expired.
4. The Convenor of the Housing and Property Chamber intimated a decision to refer the application to the Tribunal on 25 January 2017 in terms of section 23(1) of the Act.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
6. On 8 February 2017, the Tenant intimated that she had vacated the Property and that her tenancy was at an end. In terms of Schedule 2, paragraph 7(1) of the Act the application is treated as having been withdrawn in those circumstances unless the Tribunal elects to continue consideration of it in terms of paragraph 7(3). The Tribunal duly elected to continue the application and served a Minute of Continuation on the Landlord on 1 March 2017.
7. Following service of the Notices of Referral the Tenant made further written representations to the Tribunal setting out matters of repair which she considered to be outstanding in relation to the Property. The Landlord also made written representations concerning arrangements to inspect the Property in light of the Tenant's departure and querying the legal authority of the Tribunal to carry out its functions.
8. The Tribunal inspected the Property at 10am on 20 March 2017. The Tenant was not present. The Landlord was personally present during the inspection. The Ordinary Member took photographs of the Property during the inspection. Also present was Mr Richard Mill, Legal Member of the Tribunal who acted solely as an observer.
9. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Wellington Street, Glasgow at 11.30am. All parties

present at the inspection were again present at the hearing. The Landlord gave evidence and answered questions from the Tribunal. The Tribunal considered the written representations submitted by the Tenant both within and subsequent to her application. These have been outlined above.

10. The Landlord submitted as follows:-

An Electrical Installation Condition Report ("EICR") dated 16 July 2015 had been submitted to the Tribunal. In his view, this was only a five yearly required so it was in date. The lights in the bathroom work properly, although there might be a loose connection which affects the operation of one of the bulbs. An electrician had put a new motor in the extractor fan eight months prior to the inspection so that it functioned correctly. There was no need for an extractor fan in the downstairs toilet. In addition, there was no need for a PAT Certificate as no electrical appliances within the Property are portable: All kitchen appliances, such as fridge, dishwasher, cooker and washing machine are integrated as part of the fitted kitchen.

A new boiler had been installed within the Property on 14 January 2017 and at that time a Gas Safety Certificate ("GSC") had been obtained. He accepted that the Tenant's complaint that there was no GSC in place during her tenancy was correct in respect of the period 19 July 2016 (when the previous one had expired) and 14 January 2017.

The Landlord accepted that the light fitting in the living room did not work, stating that new bulbs were required. He accepted that there was no heat sensor in the kitchen, stating that the Tenant did not wish one to be fitted. He accepted that there was no smoke alarm in the living room, which he considered to be unnecessary. He also accepted that the window locks in the right hand upper window in the kitchen and the right most window in the living room were broken and had not been replaced. He accepted that the carbon monoxide detector in the kitchen was not at the appropriate height, stating that it was usually located next to the refrigerator on the wall of the kitchen.

In summation, the Landlord pointed out that he had de-registered as a Landlord, was in the process of selling the Property and was surprised that the Tribunal was taking the application forward.

### **Summary of the issues**

11. The issue to be determined is whether the Landlord has met his obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal are as stated within the application.

### **Findings of fact**

12. The Tribunal finds the following facts to be established:-

- The tenancy was an assured tenancy which commenced on 11 September 2015 for a period of 12 months. The tenancy thereafter continued on a monthly basis until 10 March 2017. The Tenant had removed all of her personal effects by the time of the inspection.
- The rent was £720 per calendar month.

The inspection of the Property revealed the following:

- The Property is a modern two storey end terraced villa dwelling house within a residential street. As noted above, the Property is currently on the market and was devoid of any furniture at the time of the inspection. The Property has a driveway where cars may be parked. Entry is from a main front door off the driveway.
- Immediately upon entry, there is a short hallway with stairs directly in front giving access to all bedrooms and the bathroom. To right of the hallway is the living room which then gives onto the dining kitchen to the rear of the property. The dining kitchen has French windows which give onto a rear patio area. A walk-in closet on the ground floor has been converted to a downstairs toilet with wash hand basin.
- Upstairs, the Property has two bedrooms and a box room. The smaller of the two bedrooms and the box room are located to the rear of the Property. Between them and the front bedroom is the internal bathroom which consists of a bath with overhead shower, basin and WC. The bathroom has no windows and therefore no natural means of ventilation.
- There are two mains operated smoke detectors in the hallway and upper landing which are inter-connected and were found to function correctly. There was no smoke detector in the living room or heat sensor in the kitchen.
- There was a functioning battery operated carbon monoxide alarm in the kitchen to the left of the cooker.
- The lights in the living room did not function. Nor did a set of LED spotlights which are sunk into the ceiling above the staircase at ground floor level. Not all of the lights in the box room functioned properly.
- The window locks on one window within the kitchen and another within the living room were broken. All windows, however, functioned correctly and could be opened and closed without difficulty.
- The downstairs WC functioned correctly when tested. However, there was no functioning extractor fan within the toilet room itself.
- The heating was tested and found to function correctly with all radiators warming once the boiler had been turned on with the exception of the kitchen radiator which had been turned off.
- The lights in the upstairs bathroom were found to fade after a short period of operation. A visible power surge was seen when other lights upstairs were switched on and off whilst the bathroom lights were on. The extractor fan did function.

13. A schedule of photographs taken at the inspection is appended to this decision.

### **Reasons for the decision**

14. There were a number of difficulties with the electrical installations within the Property as demonstrated by the large number of lights which did not function during the inspection. The Tribunal was not able to verify whether the central lighting in the living room did not function purely because of an absence of light bulbs. There were, however, a number of other lights within the Property which clearly did not work as they should. The power surges which occurred in the bathroom when other lights were turned off and on raised doubts about the isolation of the electrical supply to the bathroom.
15. The Landlord is of the view that an EICR is required only every five years. The Tribunal disagrees with that assertion which does not reflect current guidance. The electrical installations provided cause for concern on inspection, given the numerous issues outlined above. A new EICR is therefore required in order to demonstrate to the Tribunal that the electricity within the Property operates safely and meets current requirements. Whatever the cause of the faulty lighting within the upstairs bathroom, the Tribunal considered that this required to be attended to by a duly qualified electrician in order to ensure that the lighting within a wet area operates safely and satisfactorily. This is a requirement separate from the provision of an up to date EICR and will be reflected in the Repairing Standard Enforcement Order ("RSEO") which will accompany this decision.
16. The Landlord has a duty to ensure satisfactory protection against the risk of fires. In terms of current standards, the Property does not meet that requirement. There requires to be installed a heat sensor in the kitchen and a smoke alarm in the living room. The latter is required in addition to the two smoke alarms within the Property as the living room is the habitual living area within the Property. The smoke alarms and heat detector require to be mains operated and inter-connected. This will also form part of the RSEO. The Landlord has already accepted that the carbon monoxide detector requires to be re-positioned in order to comply with current guidance.
17. The non-functioning of the extractor fan in the downstairs toilet did not form part of the application or the notification to the Landlord and therefore does not feature in the RSEO to follow this decision.

### **Decision**

18. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act in respect of sections 13(1)(c), (d) and (f) of the Act.



19. The decision of the Tribunal was unanimous.

### **Recommendation**

20. Although not the subject of a RSEO, the carbon monoxide detector within the kitchen requires to be placed in an appropriate location in accordance with current guidance.
21. The extractor fan in the bathroom requires to be upgraded in order to expel condensation more effectively. The downstairs toilet should be fitted with an extractor fan as there is no natural means of ventilation.

### **Right of Appeal**

22. **A landlord or tenant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

23. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **M O'Carroll**

Date: 29 March 2017

Legal Member and Chair

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Photograph Schedule

#### Inspection of

**20 Battles Burn View, The Spinney, Glasgow, G32 8HP**

**Case Ref: FTS/HPC/RP/17/0026    20th March 2017**

**WEATHER CONDITIONS** – Sunny and dry.

**PHOTOGRAPHS** – All photographs were taken at the time of the inspection.

**DESCRIPTION OF SUBJECTS** – The subjects comprise an end terraced two-storey villa constructed circa 2000. The internal accommodation extends to 4 apartments, kitchen and bathroom (Lounge, 2 bedrooms + box room). A walk-in kitchen cupboard has also been converted to form a WC.



(Ph1) Front elevation

(Ph2) Rear elevation



(Ph3) WC – Located off Kitchen



(Ph4) Kitchen - window handles



(Ph5) Kitchen window - missing lock



(Ph6) Kitchen - Carbon Monoxide alarm

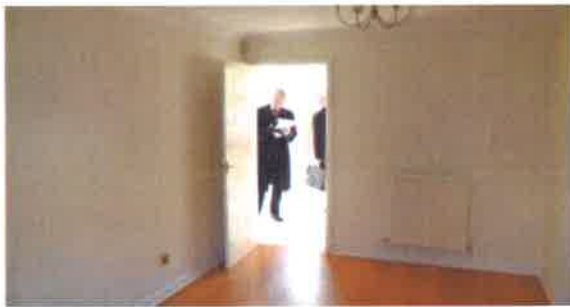




(Ph7) Kitchen – Integrated appliances



(Ph8) Kitchen – Gas Hob



(Ph9) Lounge – View to kitchen



(Ph10) Lounge – Damaged light fitting



(Ph11) Lounge window – Missing lock



(Ph12) Hall – Smoke detector



(Ph13) Stairwell + LED lighting



(Ph14) Landing + Smoke detector



(Ph15) Box room – Radiator



(Ph16) Bathroom – Ceiling light



(Ph17) Bathroom – Extractor fan/light

**Surveyor member**

**20th March 2017**

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/17/0026**

**Title Number: LAN157666**

**20 Battles Burn View, The Spinney, Glasgow, G32 8HP  
("the Property")**

**The Parties:-**

**Miss Nicola Brown, formerly residing at the Property  
("the Tenant")**

**Mr George Preston, 278 Church Road, St Annes, Lytham St Annes, Lancashire,  
FY8 3NR  
("the Landlord")**

Whereas in terms of their decision dated 29 March 2017, 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:-

- (a) the installations in the Property 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 in terms of section 13(1)(c) of Act;
- (b) the fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of section 13(1)(d) of the Act; and
- (c) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act;

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 to:-

- (a) Repair the lighting within the upstairs bathroom so that it functions correctly;

- (b) Obtain an up to date Electrical Installation Condition Report containing no C1 or C2 recommendations in respect of the Property and to provide the Tribunal with a copy of the same;
- (c) Install a heat detector in the kitchen which meets current fire safety requirements; and
- (d) Install a mains operated inter-connected smoke detector in the living room which meets current fire safety requirements.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of thirty days from the date of service of this Notice.

**A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.**

In witness whereof these presents type written on this and the preceding page are executed by Maurice O'Carroll, Advocate, Advocates' Library, Parliament House, Edinburgh, Legal Member and Chair of the Tribunal, at Glasgow on 4 April 2017 before this witness:-

**M O'Carroll**

\_\_\_\_ Chairman

**J Kane**

witness

name in full

40 1 Atlantic Quay Address

Glasgow G2 8JB.