

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(1) ('the Act')

Chamber Ref: FTS/HPC/RP/16/1012

Property at Flat 3/1, 30 Elizabeth Street, Glasgow G51 1AD

Land Register Title Number GLA35978

('The Property')

The Parties:

Ms Laura Harris, former tenant of 3/1, 30 Elizabeth Street, Glasgow G51 1AD

('the Tenant')

Ms Erika Stoskute, 2 Park Hill Road, Liverpool L8 4TF (represented by her agent, Mr Karolis Daujotas, address unknown)

('the Landlord')

Whereas in terms of their Decision dated 25th April 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 the Landlord has failed to ensure that:-

(i) 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.

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:

(a) To investigate the cause of the boiler cutting out every 15-20 minutes, to carry out all necessary repairs, or replacement if necessary, to ensure the boiler meets the Repairing Standard, is 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 of 2 months** 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 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 all 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 Joseph Christopher Hughes, Solicitor Advocate, 1028 Tollcross Road, Glasgow G32 8UW, Legal Chairperson of the tribunal at Glasgow on 25th April 2017 before this witness:-

J Hughes

Witness

Chairperson

Ian Mark McClelland Solicitor

c/o J C Hughes Solicitors,

1028 Tollcross Road,,

Glasgow

G32 8UW

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) ('the Act')

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The Parties:

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('the Tenant')

Ms Erika Stoskute, 2 Park Hill Road, Liverpool L8 4TF (represented by her property agent, Mr Karolis Daujotas, address unknown)

('the Landlord')

The Tribunal Members:

Joseph C Hughes (Legal Member)

Mike Links (Ordinary Member)

DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14(1) (b) in relation to the Property, determined the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act.

Background:

1. By Application dated 4th December 2016 the Tenant applied to the First-tier Tribunal for Scotland (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'). The Application was received on 5th December 2016.

2. The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the Repairing Standard and the Tenant brought forward the following breaches:

(a) the boiler is not working properly resulting in inadequate heating and hot water.

3. The Tenant considers that the Landlord is in breach of her duties under the Housing (Scotland) Act 2006 in relation to the Repairing Standard and 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 and heating water are in a reasonable state of repair and in proper working order.

4. The President of the First-tier Tribunal for Scotland (Housing and Property Chamber) received confirmation from the Tenant that the tenancy of the house had been terminated. By Minute dated 11th January 2017 the President of the Tribunal intimated a decision to continue to determine the Application in terms of Schedule 2, Paragraph 7(3) of the Act. The President stated within said Minute that having regard to the terms of the Application received, the defects therein, if confirmed after inspection, would indicate a property which falls below the Repairing Standard, such that it would not be in the public interest to permit any further tenancies until such time as the necessary repairs have been completed.

5. By Minute dated 11th January 2017 the Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber) made a Decision to Refer the Application to a tribunal in terms of Section 23(1) of the Housing (Scotland) Act 2006.

6. On 27th January 2017 the Tribunal wrote to the Landlord to advise that the Tribunal intended to inspect the property on 7th March 2017 at 10am with a Hearing at 11.30am. The Landlord shortly before the date for this hearing date contacted the Tribunal to indicate that she was out of the country and was unable to arrange for someone to allow entry to the Property. Accordingly the Tribunal postponed the original Inspection and Hearing. On 22nd March 2017 the Tribunal wrote to the Landlord to advise that the Tribunal intended to inspect the property on 13th April 2017 at 10am with a Hearing at 11.30am.

The Inspection:

7. On 13th April 2017, the tribunal attended at the property for the purposes of inspection of the property. The Landlord was not present. The Landlord's agent, Mr Karolis Daujotas, was present along with the current tenant (known as 'Eddie') of the bedroom where the boiler is located. The Tribunal was advised by Mr Daujotas that the bedroom previously occupied by the Tenant is not currently being let.

8. At the inspection the tribunal noted the following points:

(a) The property is a top floor flat operating as a 2 bedroom flat. Each flat has its own kitchenette. There is a bathroom off the hallway. There is no separate useable living room space.

(b) The boiler is located within the smaller rear bedroom occupied by current tenant Eddie. It is housed in a cupboard. Eddie confirmed that he effectively controlled access to the boiler. Both bedrooms are lockable. Eddie confirmed that the boiler did not operate properly and confirmed that it continued to cut out approximately every 15-20 minutes. The boiler controls the central heating and the hot water. The Landlord's agent advocated that the Landlord had made genuine efforts to repair the boiler. Mr Daujotas produced a receipt for work carried out. A copy of this receipt is included in the Schedule attached to this Decision along with several photographs of the property taken by the Ordinary Member (surveyor). Mr Daujotas intimated that due to work commitments he would not be able to attend the Hearing.

The Hearing:

9. No Party attended the Hearing. Accordingly no additional evidence was heard. Four law students from the West of Scotland University attended as Observers. Michelle Owens attended as Clerk to the tribunal.

10. At no time during the inspection did the Landlord's representative dispute the evidence of Eddie that the boiler cuts out approximately every 15-20 minutes. Eddie was a tenant at the property during the time of the Tenant's residence therein. The tribunal is satisfied from our inspection that the boiler is not working properly and fails to meet the required Repairing Standard.

Decision:

11. The tribunal, having visited the property and noting that the boiler continues to cut out, determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

12. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(1) of the Act. 12.

13. The decision of the tribunal was unanimous.

Reasons for Decision:

14. The tribunal considers that the Landlord has had sufficient time to carry out the outstanding repair to the boiler which cuts out approximately every 15-20 minutes.

15. The tribunal considers that the Landlord as failed in her duty under Section 14(1)(b) of the Act and has not complied with the Repairing Standard in terms of Section 13 (1) (c) of that Act.

Observation:

16. The tribunal noted a smoke detector in the hall hanging loose on a wire from the ceiling. The Landlord's representative indicated that someone was dealing with this. There appear to be no smoke detectors and heat detectors installed within the two kitchenettes or in the larger front bedroom which was originally the lounge of the flat. The tribunal expects the Landlord to address these matters in order to legally comply with the Repairing Standard.

Right of Appeal:

17. A landlord, tenant or third party application 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:

18. Where such an Appeal is made, the effect of the Decision and the Order is suspended until the Appeal is abandoned or finally determined.

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.

Joseph Christopher Hughes

Legal Chairperson

Housing and Property Chamber

Dated 25th April 2017

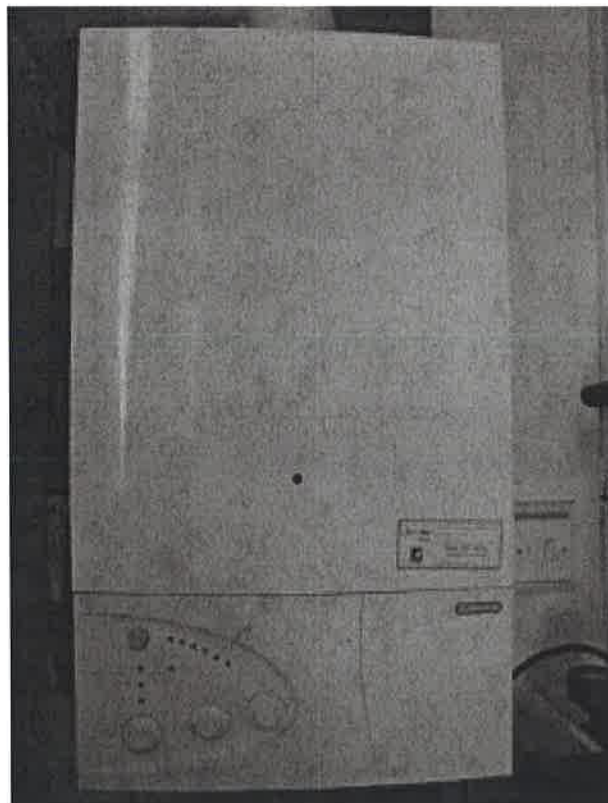
SCHEDULE OF PHOTOGRAPHS

FLAT 3/1, 30 ELIZABETH STREET, GLASGOW G51 1AD

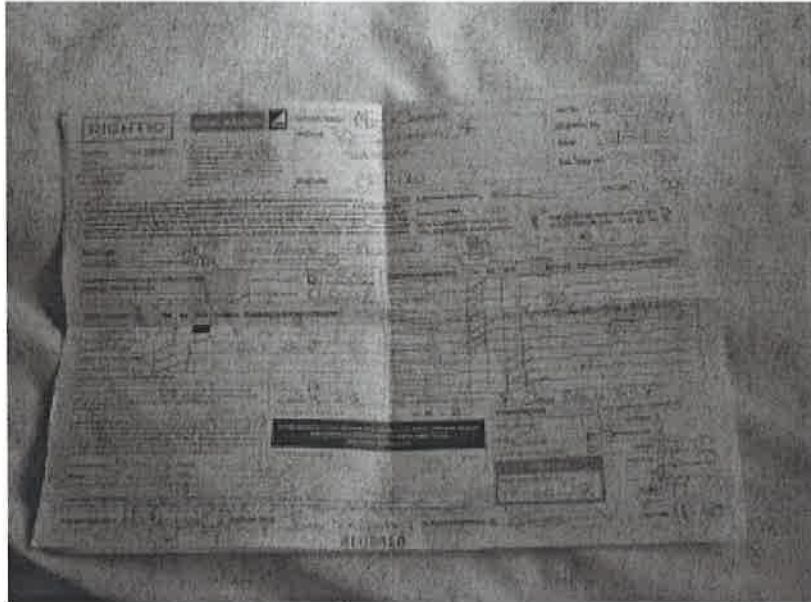
REF: FTS/HPC/RP/16/1012 DATE: 13TH APRIL 2017



FRONT ELEVATION



CENTRAL HEATING BOILER



GAS BOILER SERVICE ACCOUNT