

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order

Housing (Scotland) Act 2006: Section 24 (2)

Chamber Ref: FTS/HPC/RP/22/0875

83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX registered in the Land Register of Scotland under Title Number LAN165295 (“the Property”)

The Parties:-

Mrs Donna-Leona O’Donnell, 83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX (“the Tenant” and “the Applicant”)

Citizens Advice Bureau, 61A Stirling Street, Airdrie, Lanarkshire, ML6 60A (“the Applicant’s Representatives”)

Mr Fergus McCrossan, 93 Drumlegagh Road South, Omagh, Northern Ireland, BT78 4TW (“the Landlord” and “the Respondent”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Nick Allan, Chartered Surveyor (Ordinary Member)

NOTICE TO

Mr Fergus McCrossan

Whereas in terms of their decision dated 7th June 2022, 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 tribunal now makes a repairing standard enforcement order (RSEO) in the following terms and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and

that any damage caused by the carrying out of any work in terms of this Order is made good.

The tribunal determined to make a repairing standard enforcement order in the following terms:

The Landlord is required to:

1. produce to the Tribunal a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.
2. produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.
3. The Landlord is required to repair the hole in the kitchen ceiling and make good the décor as required.
4. The Landlord is required to repair or replace the units and worktop in the kitchen including replacement of inadequate sealant.
5. The Landlord is required to install interlinked heat and smoke detectors to comply with current standards.
6. The Landlord is required to provide a carbon monoxide detector.
7. The Landlord is required to repair the floor tiles and the threshold plate in the bathroom so as to eradicate a trip hazard, and to allow the bathroom door to open and close correctly.

The Landlord is required to complete the works required by the RSEO and to produce to the Tribunal the gas safety certificate and electrical installation condition report before 22nd July 2022.

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.

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 typewritten on this and the two preceding pages are executed by Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland at Saltcoats on 7th June 2022 before Alan Muirhead, 12 Blackshaw Drive, West Kilbride.

M McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RP/22/0875

83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX registered in the Land Register of Scotland under Title Reference LAN165295 (“the Property”)

The Parties:-

Mrs Donna-Leona O’Donnell, 83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX (“the Tenant” and “the Applicant”)

Citizens Advice Bureau, 61A Stirling Street, Airdrie, Lanarkshire, ML6 60A (“the Applicant’s Representatives”)

Mr Fergus McCrossan, 93 Drumlegagh Road South, Omagh, Northern Ireland, BT78 4TW (“the Landlord” and “the Respondent”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Nick Allan, Chartered Surveyor (Ordinary Member)

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24(2) of The Housing (Scotland) Act 2006.

Background

1. By application dated 24th March 2022, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)

2. The Applicant and Respondent are parties to a short assured tenancy in respect of the Property. It is dated 26th October 2016. The term of the tenancy was for a period of six months commencing on 26th November 2016 and thereafter on a month to month basis until terminated by either party.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected fire, that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and that the Property does not meet the tolerable standard. Specifically, the application states that the Landlord has failed to repair kitchen units, that bathroom floor tiles have come loose and are dangerous because of a trip hazard, that the kitchen ceiling has a hole in it and that there are no smoke and heat detectors.
4. On 5th April 2022, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

Property Inspection

5. The members of the tribunal inspected the Property on 1st June 2022 and a copy of the Ordinary Member's inspection summary and schedule of photographs is attached to this Decision.

The Hearing

6. A Hearing was held by audioconference on 7th June 2022. The Applicant was present and was represented by Mr Condi of the Applicant's Representatives. The Respondent was present.
7. Parties acknowledged that they had received a copy of the inspection summary and schedule of photographs ("inspection summary").
8. Mr Condi said that the terms of the inspection summary reinforced what was stated in the application and demonstrated that repairs required to be carried out in the Property.
9. The Respondent said that he had no particular issue with the inspection summary and accepted that "small repairs" required to be carried out. He said that he wanted the Applicant out of the Property and that, if she was not happy with the condition of the Property, she could move.

10. In answer to questioning, the Respondent appeared not to be aware of his obligations under the Act to maintain the Property to the repairing standard. He said that he owned other properties in Scotland.

11. The Respondent said that he knew nothing about a gas safety certificate or electrical installation condition report for the Property.

12. Findings in Fact

12.1 The Tenant and Landlord are parties to a tenancy for the Property.

12.2 The Landlord is required to have a satisfactory and current electrical installation condition report and a current and satisfactory gas safety certificate in respect of the Property.

12.3 The Property does not contain satisfactory provision for detecting fires and for giving warning in the event of suspected fire.

12.4 There is a missing threshold plate in the entrance to the bathroom and loose floor tiles.

12.5 There is a hole in the kitchen ceiling.

12.6 There are faults with the kitchen units: there are defective doors, a loose and worn work top, inadequate sealant between the worktop and the wall tiles and loose fitments.

Reasons

13. The tribunal had inspected the Property and had seen no evidence of the required gas and electrical certification.

14. It is a requirement of landlords to comply with the regulations in relation to gas and electrical systems because of the clear health and safety implications. In the case of the Property, the members of the tribunal were concerned not only at the apparent lack of certification but the Respondent's apparent ignorance of the requirement for them to be in place.

15. The tribunal relied on what it had ascertained at the inspection and as detailed in the inspection summary.

Disposal

16. The tribunal determined that a repairing standard enforcement order (RSEO) be made in the following terms;

The Landlord is required to:

- 1. produce to the Tribunal a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2**

category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.

2. produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.
3. The Landlord is required to repair the hole in the kitchen ceiling and make good the décor as required.
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M McAllister

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
7th June 2022