

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/18/0133

Sasines Description: ALL and WHOLE that property known as and forming 27A Dalmeny Street, Leith, Edinburgh, EH6 8PG which is the basement flat being part of the subjects more particularly referred to and described in the Disposition to Music for Pleasure Limited, recorded 18 July 1968 in the General Register of Sasines.

**27A Dalmeny Street, Leith, Edinburgh, EH6 8PG
("the House")**

The Parties:-

**Miss Katie Thomas, residing at the property
("the Tenant")**

Represented by Mr Callum O'Meara, 97 Napier Road, Glenrothes, Fife, KY6 1DT

Mrs Lynne Graham and Mr Ronald Graham, 31 Duddingston Park, Edinburgh, EH15 1JU

("the Landlords")

Represented by Orchard and Shipman, 2 Anderson Place, Third Floor, Sugar Bond House, Bonnington Bond, 2 Anderson Place, Edinburgh, EH6 5NP

Whereas in terms of their decision dated 6 April 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Landlords have 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 Landlords have failed to ensure that:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (iii) 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.
- (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

the Tribunal now requires the Landlords 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 Landlords:-

- (a) To clear the garden of all deleterious materials and overgrown foliage to ensure that it is fit for human habitation.
- (b) To repair or replace the living room window, located to the left of the room from within the property, to ensure that it is in a reasonable state of repair and in proper working order.
- (c) To repair or replace the kitchen floor to ensure that it is free from damp and is in a reasonable state of repair and in proper working order.
- (d) To repair the holes in the walls located in the kitchen and the hallway to ensure that they are in a reasonable state of repair.
- (e) To repair or replace all of the defective electrical installations located within the property including the electric sockets in the living room and the smaller bedroom and the pendant light fittings throughout the property so that they are in reasonable state of repair and in proper working order.
- (f) Once the works in paragraph (e) are carried out, to produce an Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT registered electrician and to undertake any work which is identified in said report to be of Category C1 or C2.
- (g) To repair or replace the coving and ceiling located in the living room to ensure that they are in a reasonable state of repair and in proper working order.
- (h) To replace the cracked and defective floor tiles in the shower room to ensure that they are in a reasonable state of repair and in proper working order.
- (i) To replace the missing lock mechanisms and door handles in the cupboards in the living room to ensure that they are in a reasonable state of repair and in proper working order.
- (j) To repair or replace the washing machine to ensure that it is in a reasonable state of repair and in proper working order.
- (k) To repair or replace the front door to ensure that it 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 21 days 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 two pages are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 6 April 2018 in the presence of the undernoted witness:-

N Pryce

P Pryce

witness

ber

NICHOLAS PRYCE

name in full

55 BLYNSWOOD ST

Address

GLASGOW

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/18/0133

**27A Dalmeny Street, Leith, Edinburgh, EH6 8PG
("the Property")**

The Parties:-

**Miss Katie Thomas, residing at the property
("the Tenant")**

**Represented by Mr Callum O'Meara, 97 Napier Road, Glenrothes, Fife,
KY6 1DT**

**Mrs Lynne Graham and Mr Ronald Graham, 31 Duddingston Park,
Edinburgh, EH15 1JU
("the Landlords")**

**Represented by Orchard and Shipman, 2 Anderson Place, Third Floor,
Sugar Bond House, Bonnington Bond, 2 Anderson Place, Edinburgh, EH6
5NP**

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 Landlords have 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
Mike Links**

**- Legal Member
- Ordinary Member (Surveyor)**

Background

1. By application comprising documents received on 18 January 2018, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlords 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 the Tenant considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-

- (a) "Living room window growing black mould.
- (b) Living room window has ivy growing through it.
- (c) Living room walls need repaired due to mould growing up them.
- (d) Missing door handle from cupboard door.
- (e) Cracked floor tiles in bathroom (sharp edges).
- (f) Water leaking under kitchen floor due to broken washing machine.
- (g) Broken washing machine, not retaining water.
- (h) Floors lifting in kitchen due to washing machine leak.
- (i) Broken plug socket in child's room (hanging out of wall).
- (j) Broken plug socket in main bedroom.
- (k) Light fixtures throughout property not secure and ceiling cracked.
- (l) Front door damaged due to criminal damage.
- (m) Holes in walls throughout property, were there when I moved in.
- (n) Garden needs decontaminated and tended to, (used needles on grounds)."

The Tenant considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (iii) 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.
- (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (v) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed.
- (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.

3. By Minute dated 2 February 2018 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and

Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.

4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords, the Tenant and the Landlords' representatives advising that the inspection and hearing would take place on 6 April 2018 at 10 am and 11.30 am respectively. No submissions were received from the Landlords or their representatives or the Tenant.

The Inspection

5. An inspection and hearing were arranged as noted above. The tribunal attended at the property. Only the Tenant was in attendance at the property along with her representative. One of the Tenant's friends was also present but took no part in proceedings. The Landlords did not attend the inspection nor were they represented at the inspection. The tribunal noted the following at inspection:-
 - The living room window located to the left of the living room from within the property showed no signs of mould. When tested with a damp meter, the reading was green showing no evidence of dampness. There was no ivy growing through it but the Tenant could not close the window once it opened.
 - The two cupboards located in the living room were missing handles and locking mechanisms.
 - Almost every floor tile located within the shower/W.C room was cracked.
 - The floor in the kitchen in front of the washing machine was uneven and warped under foot and tested within the red spectrum for dampness when using a damp meter, indicating that the floor was damp.
 - The seal around the washing machine door had been fixed by the Landlords but water escaped from the drawer in the washing machine.
 - The electric socket located in the child's bedroom had a hole in it where the earth connection was located.
 - The electric socket located in the living room behind the Tenant's television worked intermittently.
 - The pendant light fittings throughout the property were loose and there was bare wiring in one the fittings located in the living room.
 - There was a crack between the living room ceiling and the coving located thereunder.
 - There were two holes located in the walls of the kitchen area and a further hole in the wall located in the hallway beside the shower room.
 - There was a hole located on the upper right side of the outside of the front door of the property.
 - The garden was completely overgrown when viewed from the living room and old furniture and rubbish had been dumped there. The Tribunal could not gain access to the garden as the Tenant

advised that she had never been provided with a key to the garden.

- There was no smoke alarm in the living room.
- There were two detectors in the kitchen, one of which worked intermittently when tested and the other did not function. It was not clear if these were hard wired and interlinked.
- There was a smoke detector located in the hallway which did not function when tested.
- There was a carbon monoxide detector located in the living room.
- There was no Electrical Installation Certificate available in respect of the property.

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 and her representative, Mr O'Meara, attended at the hearing. The Landlords did not attend the hearing nor were they represented at the hearing.
7. The Tenant advised that she lived at the property with her 7-year-old daughter. She is a single mother and does not work but receives benefits. She advised that her rent is £630 per calendar month, of which £600 is paid through housing benefit with the remainder of the £30 being paid by her personally. She had lived in the property for 3 years. She advised that she had told the Landlords' agents about the problems from when she first moved into the property. The problems with the electrics have existed since the start of her tenancy along with the cracked tiles in the W.C., the garden and various other issues. She confirmed that she had removed the handles from the cupboards in the living room as the doors had jammed shut and she needed to access them. There was no locking mechanism in them. The holes in the walls had been there since she moved in. The front door had been damaged by a former neighbour who suffered from mental health problems. She had immediately informed the police about this damage and the Landlords' agents, but it was never fixed. She advised that she had never been able to access the garden despite asking for a key to allow her to do this. She stated that she regularly sees drug addicts enter the garden from the adjoining close and that they inject themselves when in the garden and discard their needles there. She does not have an electrical or gas report or certificate for the property.

The tribunal proceeded to make a decision based on its findings at the inspection together with the submissions of the Tenant at the hearing.

Summary of the issues

8. 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

9. The tribunal finds the following facts to be established: -
- The Tenant entered into a tenancy with the Landlords which was a short-assured tenancy.
 - The Tenant remains in the property and has lived there for around 3 years.
 - The property is a basement flat located within a traditional blonde sandstone tenement which was constructed around 1890.
 - It comprises a hallway, kitchen area with living room off this, two bedrooms, and a shower/W.C room.
 - There are no functioning hard-wired smoke detection devices located within the property.
 - The pendant light sockets in the property are loose and defective.
 - The electrical sockets in the child's bedroom and the living room are defective.
 - There is a crack where the living room ceiling and the coving meet.
 - There are holes in the walls of the kitchen and the hallway.
 - The floor tiles in the shower room are cracked.
 - The living room window to left of the room was defective.
 - There was a hole in the front door of the property.

Reasons for the decision

10. The tribunal noted that in terms of the present application the Tenant had first notified the Landlords of some of the repairs on entry to the property and then again in writing in December 2017. Despite fixing the seal around the washing machine door, almost all outstanding repairs issues remained. The tribunal is extremely concerned that there are insufficient smoke and heat detection devices within the property which poses a potentially serious health risk to any occupant of the property, although it is unfortunate that the Tenant did not notify the Landlords or their agents of this specific complaint and therefore it cannot be considered by the tribunal to be properly part of the present application. The tribunal is, however, of the view that this requires to be rectified as a matter of urgency.

Given all of the circumstances, the tribunal is satisfied that: the house is not wind and watertight and in all other respects reasonably fit for human habitation as the garden was extensively overgrown, full of rubbish and appeared to be unsafe; 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 window located to the left in the living room could not be closed once opened, the kitchen floor was damp and warped after being repeatedly flooded by the washing machine, there were holes located on the walls of the kitchen and the hallway and there was a crack where the coving and the ceiling met in the living room; although this

box was not ticked in part 8 of the application form, the tribunal found that the Tenant had fully outlined her complaints under this heading and had duly notified the Landlords through their agents about this, therefore the tribunal found that 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 are defective electrical sockets located within the living room and the child's/smaller bedroom and the pendant light fittings are defective throughout the property; any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order as the washing machine floods from its drawer, there are missing door handles and lock mechanisms on the 2 cupboards in the living room, the floor tiles in the shower room are cracked and there is a hole on the outside of the front door; any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed as the Tenant did not offer any evidence in relation to this; the tribunal could not consider whether the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire as the Tenant had not notified the Landlords or their agents of this complaint.

Decision

11. The tribunal accordingly determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Act.
12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
13. The decision of the tribunal was unanimous.

Observations

14. The tribunal could not, unfortunately, consider the issue of the lack of sufficient smoke and heat detectors as part of the present application as this issue had not been properly notified to the Landlords or their agents by the Tenant. However, the tribunal would strongly recommend to the Landlords that they resolve this issue as a matter of extreme urgency given that this is a serious health and safety concern for the occupants of the property. The tribunal was also very concerned about the bare wires which were hanging from the pendant light fitting in the living room as this presented a serious potential hazard to the Tenant and her daughter.

Right of Appeal

15. 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

6 April 2018

Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

PROPERTY: 27A DALMENY STREET, LEITH, EDINBURGH EH6 8PG

REFERENCE: FTS/HPC/RP/18/0133

INSPECTION DATE: 6TH APRIL 2018

PHOTOGRAPHS: ALL PHOTOGRAPHS TAKEN ON DAY OF INSPECTION.



FRONT ELEVATION



GREEN "DRY" METER READINGS AT LEFT HAND LIVING ROOM WINDOW



IVY GROWTH AT LR WINDOW



MISSING HANDLE – DOOR IN LR



MISSING HANDLE- KITCHEN AREA



CRACKED TILES IN SHOWER RM



RED “DAMP” METER READINGS AT FLOOR ADJACENT TO WASH MACHINE



CRACKED SOCKET IN SMALL BEDRM



PENDANT LIGHT- LR



PENDANT LIGHT FITTINGS – LIVING ROOM CEILING



PENDANT LIGHT – SMALL BEDRM



PENDANT LIGHT- MAIN BEDRM



CRACK AY COVING – LR



DEFECTIVE PLASTER- KIT WALL



DEFECTIVE PLASTER – KIT WALL



DEFECTIVE PLASTER – HALL WALL



SKOKE/HEAT DETECTORS – KIT



SMOKE DETECTOR – HALL



DAMAGED ENTRANCE DOOR



BACK COURT/GARDEN