

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/18/0195

Re: 66 Glen Avenue, Larkhall ML9 1JL (“the house”)

Land Register Title No: LAN83475

The Parties:-

Miss Nicole McMillan, residing at the house (“the tenant”)

**Mr James Doherty, trading as Excel Property, c/o Concept Property Limited,
12 St. Bryde Street, East Kilbride G74 4HQ (“the landlord”)**

Tribunal Members – Sarah O'Neill (Chairperson); Mike Links (Ordinary (Surveyor) Member)

Decision

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal's decision is unanimous.

Background

1. By application received on 29 January 2018, the tenant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

2. In her application, the tenant stated that she believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13(1) (a) (f) and (g) of the Act. Her application stated that the landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonable fit for human habitation
- 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

3. The tenant included the following complaints in her application form:

1. Shower fixed and passed electrical check- however ongoing issues with poor pressure and limescale continue.
2. Hole in back door covered with cardboard since moving in- no repairs carried out.
3. All windows in house leak; are draughty; the double glazing has failed; there is condensation.

4. The tenant stated in her application that the following work required to be carried out at the house:

1. All windows require either to be renewed or repaired.
2. Shower (only form of washing) needs further inspection to remedy ongoing issues or it needs renewed.
3. Back entrance door needs either repair work or renewed to bring this up to a safe standard.

5. The tenant had ticked the relevant boxes on her application form to indicate that she wished to complain under sections 13 (1) (f) and 13 (1) (g) with regard to provision for detecting fires and for giving warning of carbon monoxide respectively. However, she did not include specific complaints about these two matters on the form. There was also no evidence before the tribunal that she had notified the landlord about these matters in writing, as required in terms of section 14 (3) of the Act. The tribunal was therefore unable to consider these complaints, in terms of any order which it might decide to grant.

6. On 2 February 2018, a Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014, issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork

submitted by the tenant, comprising documents received on 29 January 2018; and intimating her decision to refer the application to a tribunal for determination.

7. The Chamber President wrote to the parties on 13 February 2018, notifying them under and in terms of the Act of her decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 21 March 2018. Written representations were requested by 6 March 2018.
8. Written representations were received from the landlord on 20 and 23 February 2018, and from the tenant on 27 February 2018.

The inspection

9. The tribunal inspected the house on the morning of 21 March 2018. The weather conditions at the time of the tribunal's inspection were cold and overcast. The tenant was present at the house during the inspection. The landlord was also present during the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

The house

10. The house is a terraced former local authority house within a block of 4. It is in the region of 50-60 years old, and comprises: a hallway, living room and kitchen downstairs, and three bedrooms and a bathroom upstairs.

The hearing

11. Following the inspection, the tribunal held a hearing at Hamilton Brandon Gate, Brandon Gate, Ground Floor Block C, Leechlea Road, Hamilton ML3 6AU. The landlord was present and gave evidence on his own behalf. The tenant was also present and gave evidence on her own behalf.

The evidence

12. The evidence before the tribunal consisted of:

- The application form completed by the tenant
- Registers Direct copy of Land Register title LAN83475, which confirmed that the house is owned by Mr James Doherty.
- Tenancy agreement between Excel Property and the tenant in respect of the house dated 8 July 2016, and related paperwork.

- Copy notification emails dated 10 July and 27 November 2017 from the tenant to Concept Property Ltd, the landlord's agent, setting out the repairs alleged to be required, together with email responses from the letting agent.
- The written representations received from the landlord on 20 and 23 February 2018.
- The written representations received from the tenant on 27 February 2018.
- The tribunal's inspection of the house.
- The oral representations of the parties at the hearing.

Summary of the issues

13. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

14. The tribunal made the following findings in fact:

- The house is owned by Mr James Doherty.
- Mr James Doherty is the registered landlord for the house.
- Excel Property, c/o Concept Property Ltd, is named as the landlord on the tenancy agreement.
- Mr James Doherty is a sole trader, trading as Excel Property. He is also a director of Concept Property Letting Ltd.
- The tenant entered into a tenancy agreement with Excel Property on 8 July 2016 to rent the house for six months from that date. The tenant was still resident at the house as at the date of the tribunal's inspection and hearing.

15. The tribunal in its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:

- i. When the electric shower in the bathroom was turned on, the flow of water was very weak. When the shower was turned up to the highest setting, the water flow increased, but the water became very hot.
- ii. When the shower head setting was adjusted, the flow of water was stronger, but the water remained very hot.
- iii. There was a cat flap in the back door of the house. The front of the cat flap (to the outside of the door) was cracked in two places. The cat flap had been boarded and taped up on the inside of the door.
- iv. While the tribunal did not detect any specific draughts coming from the cat flap, it observed that the rear vestibule area between the kitchen

door and the back door was colder than the temperature in the rest of the house.

- v. A number of the double-glazed window units within the house were misted between the panes, indicating that the seals were broken.
- vi. Draughts were observed by the tribunal underneath a number of the windows.
- vii. The tenant had placed towels on the windowsills in the master bedroom. The windows were open in that room. The tenant told the tribunal that there was often severe condensation on the window panes, and that when it rained heavily, rain came in through the windows.
- viii. Smoke alarms had been installed in the living room, hallway and upstairs hallway. The tenant confirmed that these were interlinked and were operational. There was also a heat alarm in the kitchen.
- ix. The boiler was situated in a cupboard in the kitchen, and there was a carbon monoxide monitor sitting on the kitchen windowsill, which had no battery inside it.

Reasons for decision

16. The complaints before the tribunal as set out in the tenant's application, and the tribunal's determinations in relation to each of these, are set out below.

1. The shower

17. The tribunal observed at its inspection that when the electric shower in the bathroom was turned on, the flow of water was very weak. When the shower was turned up to the highest setting, the water flow increased, but the water became very hot. When the shower head setting was adjusted, the flow of water was stronger, but the water remained very hot.
18. It became apparent to both the landlord and the tribunal at the inspection and hearing that the tenant's complaint was not, as it had first appeared from her application, simply that the water flow was weak, but that if the setting was turned up in order to obtain a more powerful flow, the water became very hot.
19. The tenant told the tribunal at the hearing that the shower had 'blown up' a few months ago while her son was using it. At that time, the landlord's agent had sent an electrician to look at the shower, and he had replaced the cord within the power unit for the shower. She said, however, that during the incident in question, there had been a bang from the shower unit itself, rather than the power switch. She said that no-one had ever checked the shower itself, only the power switch. She told the tribunal that the electrician had told her that the

shower 'passed', but that he thought it was unsafe, and that there may be limescale covering the thermometer inside the shower unit. She was concerned that the water flow when the shower was not at its highest setting was not sufficient, but that when it was at its highest setting, the hot water was dangerous and could injure someone.

20. The landlord initially told the tribunal that in his opinion, nothing was wrong with the shower, and that it did work. He took the view that the problem was with the water pressure within the house, which could not be changed, rather than with the shower itself. He expressed scepticism as to whether there could be limescale on the thermostat. He said however that, while he had asked for the shower to be checked with regard to the water pressure, and while the power switch has been fixed, he had not checked the temperature of the water, as he had not previously understood this to be an issue. He told the tribunal that he was happy to have this checked, as he would have expected the temperature to go down when the water pressure increased, rather than to increase. He conceded that there may perhaps be a fault with the shower in this regard.
21. He confirmed to the tribunal that the electrician who had visited the house recently had carried out an Electrical Installation Condition Report (EICR), and agreed to send a copy of this to the tribunal, as requested by the tribunal chairperson at the hearing.
22. A copy of an EICR in respect of the property dated 10 January 2018 was received from the landlord on 23 March 2018. The tribunal notes that the contractor who produced the EICR did not appear to be is a member of a recognised trade body (i.e. either SELECT, NICEIC or NAPIT). There is accordingly some doubt as to whether he is a 'competent person' in terms of the Scottish Government guidance on electrical installations and appliances in private rented properties.¹ Nevertheless, the EICR states: *'the shower is electrically fine but filters for water were almost completely blocked. Suspect water tank full of scale making temperatures unpredictable- risk of scalding. Advise new shower is fitted.'* A copy of the EICR is attached to this decision.
23. In the light of the evidence before it, the tribunal determines that there are issues with the operation of the shower in terms of both water pressure and

¹ Note: The guidance can be found on the Housing and Property Chamber's website (under the heading 'Repairs Application and Guidance') at the following link:
<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016%200.pdf>

temperature, and that it is not therefore in a reasonable state of repair and in proper working order.

2. The hole in the back door

24. At its inspection, the tribunal observed that there was a cat flap in the back door of the house. The front of the cat flap (to the outside of the door) was cracked in two places. The cat flap had been boarded and taped up on the inside of the door. The tenant confirmed that this was the hole in the back door which she was complaining about. She told the tribunal that the cat flap had been boarded up since she moved into the house and she had not touched it since that time.
25. She told the tribunal that she believed there was a draught coming through the cat flap. She said that it was very cold in the rear vestibule between the partition door which separated the kitchen and the rear vestibule even when the rest of the house was warm, and when the back door was closed and locked. She also suggested that the cat flap could raise security issues, as an intruder could possibly force their way into the property through this.
26. The landlord told the tribunal that he had not even been aware of the existence of the cat flap until the tenant raised it as an issue. He said he could not recall, but that he thought it had probably been there, and had been boarded up, when he purchased the property in 2005. He said that he did not believe that it posed any security concerns, but that he could not comment on the other issues.
27. The tribunal agrees that the cat flap is unlikely to raise security issues, given its size and location. While the cat flap was cracked, the tribunal was not convinced that any draught in the rear vestibule was coming from the cat flap, given that it was boarded and taped up internally. While the tribunal noted at its inspection that the rear vestibule area between the kitchen door and the back door was colder than the temperature in the rest of the house, it did not detect any specific draughts coming from the cat flap.
28. The tribunal considers that it is equally possible that any draughts in that area could be the result of a defective draught excluder around the back door. The tribunal is not therefore persuaded that the cat flap is the reason why the rear vestibule is colder than the main house. Even if there were no draughts from either the back door or the cat flap, the tribunal considers it likely that, given its location, the vestibule will always be colder than the main house.
29. The tribunal does not therefore find, on the balance of probabilities, that there is a breach of the repairing standard in relation to the cat flap in the back door.

3. *The windows*

30. The tribunal observed at its inspection that a number of the double-glazed window units within the house were misted between the panes, indicating that the seals were broken. Draughts were observed by the tribunal underneath a number of the windows. The tenant had placed towels on the windowsills in the master bedroom. The windows were open in that room, and the tenant told the tribunal that there was often severe condensation on the window panes, and that when it rained heavily, rain came in through the windows.
31. The landlord agreed that the seals had failed on some of the windows - he considered that five of the double-glazed units required replacement. He also agreed that some of the windows needed to be adjusted as the seals had come away, causing draughts. He said that he had already measured the windows in question, and had got prices for the double-glazing units, which he intended to order.
32. The tribunal determined that, at the time of its inspection, the windows within the house were not wind and watertight.

Observations by the tribunal

33. The tribunal wishes to make observations about two complaints which were raised in the tenant's application form, but which it was unable to formally consider because there was no evidence before the tribunal that she had notified the landlord of these in writing.
34. Firstly, she complained that the house did not have satisfactory provision for detecting fires and giving warning of fire or suspected fire. The tribunal noted at its inspection that smoke alarms had been installed in the living room, hallway and upstairs hallway. The tenant confirmed that these were interlinked and were operational. There was also a heat alarm in the kitchen. The tribunal is satisfied on the basis of the evidence before it that this provision complies with the current Scottish Government statutory guidance for smoke detection in private rented properties.
35. Secondly, the tenant complained that the house did not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The tribunal observed at its inspection that the boiler was situated in a cupboard in the kitchen, and that there was a carbon monoxide monitor sitting on the kitchen window sill, which had no battery inside it.

36. The tribunal draws the landlord's attention to Section 13 (6) of the 2006 Act, which provides that in determining whether a house meets the standard of repair set out in section 13 (1) (g) of the 2006 Act, regard is to be had to guidance issued by Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The current guidance² provides that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
 - a fixed combustion appliance in an inter-connected space, for example, an integral garage
 - a combustion appliance necessarily located in a bathroom.
37. The guidance states that a CO detection system to alert occupants to the presence of CO gas should consist of at least:
- 1 CO detector in every space containing a fixed combustion appliance (excluding an appliance used solely for cooking) and
 - 1 CO detector to provide early warning in high risk accommodation, that is, a bedroom or principal habitable room, where a flue passes through these rooms.
38. It also states that, unless otherwise indicated by the manufacturer, CO detectors should be either:
- ceiling mounted and positioned at least 300 mm from any wall or
 - wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room.
39. The tribunal observes that, at present, the CO monitor within the house does not comply with the statutory guidance, and does not therefore currently meet the repairing standard. The landlord indicated at the hearing that he would provide a new CO monitor and ensure that it was correctly installed within the property. The tribunal hopes that he does so quickly, in order to ensure that the house meets the repairing standard in this respect.

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<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20STATUTORY%20GUIDANCE%20FOR%20THE%20PROVISION%20OF%20CARBON%20MONOXIDE%20ALARMS%20IN%20PRIVATE%20RENTED%20HOUSING.pdf>

Summary of decision

40. The tribunal determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that 1) the house is not wind and watertight and in all other respects reasonable fit for human habitation; and 2) 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.
41. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act. While Excel Property is the landlord identified in the tenancy agreement, Mr James Doherty, a sole trader who trades under the name Excel Property, is the registered owner of the property. The RSEO is therefore issued in the name of Mr James Doherty trading as Excel Property.

Rights of Appeal

42. 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.
43. 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.

S O'Neil

Signed.....

Sarah O'Neill, Chairperson

.....Date..... 29/3/18

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

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

(Hereinafter referred to as "the tribunal")

Case Reference Number: FTS/HPC/RP/18/0195

Re: 66 Glen Avenue, Larkhall ML9 1JL ("the house")

Land Register Title No: LAN83475

The Parties:-

Miss Nicole McMillan, residing at the house ("the tenant")

Mr James Doherty, trading as Excel Property, c/o Concept Property, 12 St. Bryde Street, East Kilbride G74 4HQ ("the landlord")

Tribunal Members – Sarah O'Neill (Chairperson); Mike Links (Ordinary (Surveyor) Member)

NOTICE TO: Mr James Doherty, trading as Excel Property (the landlord)

Whereas in terms of its decision dated 28 March 2018, the tribunal determined that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that: 1) the house is not wind and watertight and in all other respects reasonable fit for human habitation; and 2) 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

The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

The tribunal now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the house meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular, the tribunal requires the landlord to:

1. Engage a suitably qualified plumbing and/or electrical contractor to test and inspect the shower unit and shower installation within the house, and carry out any work necessary to ensure that the shower is working safely, and is in a reasonable state of repair and in proper working order.
2. Instruct a suitably qualified contractor to repair or replace all windows throughout the property, in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.

The tribunal orders 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.

Rights of Appeal

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 Housing (Scotland) Act 2006, 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 preceding page are signed by Sarah Frances O'Neill, solicitor, Chairperson of the First-tier Tribunal (Housing and Property Chamber), at Glasgow on the twenty-ninth day of March, Two Thousand and Eighteen before this witness –

E Johnston

S O'Neil

witness

Chairperson

ERIC JOHNSTON name in full

50 LAUDERDALE address

GARDENS GLASGOW G12 9QT

Housing and Property Chamber

First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

PROPERTY: 66 GLEN AVENUE, LARKHALL ML9 1JL

HPC REFERENCE: FTS/HPC/RP/18/0195

DATE: 21ST MARCH 2018

ALL PHOTOGRAPHS TAKEN ON DAY OF INSPECTION



FRONT ELEVATION



REAR ELEVATION



LIVING ROOM WINDOW



KITCHEN WINDOW



REAR BEDROOM WINDOW



FRONT BEDROOM (1) WINDOW



FRONT BEDROOM (2) WINDOW



SHOWERHEAD



REAR DOOR (EXT) CAT FLAP



REAR DOOR (INT) CAT FLAP



KITCHEN--CO MONITOR