

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/18/0396

Title no: LAN25956

7 Belmont Street, Coatbridge ML5 2LJ ("The House")

The Parties:-

- **Mr Mark MacDonald Belmont Street, Coatbridge ML5 2LJ, ("the Tenant")**
- **Mr John Campbell and Mrs Louise Campbell, 11 Torrance Wynd, East Kilbride G75 0RY ("the Landlord")**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Nick Allan	-	Ordinary Member

Whereas in terms of their decision dated 21st June 2018 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: -

- (a) that the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) that 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
- (c) that 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; and
- (d) that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tribunal now requires the Landlord 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 Landlord:-

- (a) To provide smoke detectors in the upstairs hall, downstairs hall and living room and a heat detector in the kitchen to ensure that the house has satisfactory provision for detecting fire and for giving warning in the event of fire or suspected fire. This should be in accordance with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government.
- (b) To replace and make good the sliding door at the front entrance to the House.
- (c) To replace and make good the kitchen window.
- (d) To replace, repair and make good the remaining rear windows.
- (e) To repair and replace all fascia and soffit boards to ensure that they are in good order and fit for purpose.
- (f) To clean and repair the gutters and downpipes to ensure that any water in the gutter is able to run freely and does not overflow,
- (g) To replace the boiler with a new boiler and ensure that the new boiler is appropriately located and fully working with all the appropriate certification.
- (h) To repair or replace and make good the handrail at the front entrance of the property.
- (i) To provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.
- (j) To provide a Gas Safety Certificate for the House from a Gas Safe Registered Engineer addressing the working order, condition and safety of the gas installation and the Boiler and issued within the last six months and should also address whether there is a carbon monoxide alarm which complies with the statutory guidance in the House;

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months 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 pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Dundee on 21st June 2018 in the presence of the undernoted witness: -

I B Stirling

G Miller

witness

chairperson

IAIN BOYD STIRLING name in full

Calendonian House Address

Greenmarket, Dundee.

Housing and Property Chamber

First-tier Tribunal for Scotland



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**Decision and Statement of Reasons: Housing (Scotland) Act 2006
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- **Mr John Campbell and Mrs Louise Campbell, 11 Torrance Wynd, East Kilbride G75 0RY ('the Landlord')**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Nick Allan	-	Ordinary Member

Decision

1. 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 and taking account of the evidence led by the Tenant and 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

2. By application received 11th December 2017, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by Tenant stated that he considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing

standard in that House is not wind and watertight and in all other respects reasonably fit for human habitation, the structure of the exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the house for the supply of the 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 and that the House does not have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. In particular, the complaints consisted of:-

- a) The fire alarms are not functioning;
 - b) The rear windows are in poor condition;
 - c) The sliding front door does not fully close;
 - d) The gutters are in a poor state;
 - e) There are fascia and soffit boards are missing sections;
 - f) The boiler is not working properly and needs replaced; and
4. The Tenant emailed the Housing and Property Chamber on 21st March 2018 to amend the complaint namely to remove the issues regarding the fire alarms but to add that the handrail on the external wall was not properly secured to the external wall.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant dated 16th April 2018.
6. Between 7th August 2017 and 20th January 2018 the Landlord and Tenant had been corresponding by text message. Copies of these text messages had been provided to the Property and Housing Chamber. The text message related to the lease and issues that the Tenant had with the House, namely a leak in the shower and problems with the boiler.

The Inspection

7. The Tribunal attended the House on the morning of 25th May 2018. Only the Tenant was present. The Tribunal had expected the Landlord to attend the hearing so waited outside the House for 10 minutes to allow him to attend. At 10.40am the Landlord was not present so the Tribunal commenced the inspection. The Tenant let the Tribunal into the House.
8. The House comprises a two-storey end terraced property, constructed of brick with a roughcast finish. The House has a shallow pitched and tiled roof. The House was furnished and there were floor coverings in place.
9. The sliding door to the entrance of the House was inspected first. The door is the front door to the House. There is a small vestibule to the rear of the door and another door leading into the House. The operation of the door was demonstrated by the Tenant. The door was difficult to open and close and when doing the door frame started to separate and break apart. The Tenant confirmed that the door was not able to be locked. He confirmed

standard in that House is not wind and watertight and in all other respects reasonably fit for human habitation, the structure of the exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the house for the supply of the 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 and that the House does not have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. In particular, the complaints consisted of:-

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that the door leading into the House was able to be locked. He did not pull the door to the fully shut position.

10. A set of steps lead up to the sliding door at the front of the House. To the left of the steps was a metal handrail. It was not satisfactorily secured to the exterior wall. The fixing into the wall was notably loose and the handrail was not steady.
11. At the front of the House the fascia and soffit boards were visually examined. It was noted that one was missing from the gable end of the front of the House. It was further observed that the fascia and soffit boards were in poor condition.
12. The Tribunal then attended the back garden to inspect the windows. The kitchen window was in very poor condition with a rotten wood frame. The Tenant informed that he could open the kitchen window but he was not comfortable doing so. The remaining windows on the rear elevation were observed to be in poor condition. The fascia and soffit boards were also visually inspected. None were missing but they were seen to be in poor condition.
13. The kitchen window was inspected from the inside. The Tenant opened the window. It was seen to be operable but due to the condition of the timber frame as noted in (13) above, it should be kept closed.
14. The fire alarms were inspected. There was no heat detector in the kitchen. There was a battery fire alarm in the downstairs hall. It was beeping for the duration of the inspection. The Tenant confirmed that it had been beeping for some time. The fire alarm was tested but did not work. There was not a fire alarm in the living room. In the upper hall there was the remains of the wiring for a wired fire alarm. The unit was absent.
15. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place at the Glasgow Tribunal Centre, 20 York Street, Glasgow. The Tenant and Landlord were both present.
18. The list of complaints was discussed one by one.
19. The fire alarm and smoke detectors were discussed first. The Ordinary member noted that the smoke detector in the downstairs hall was battery operated. It was not working and was beeping constantly. The Landlord had been unaware that it was not working. There was no smoke detector

upstairs. There was the fitting of a hardwired smoke detector in the upstairs hall. The smoke detector unit was not in place. There was also not a smoke detector in the living room nor a heat detector in the kitchen. The Landlord was not aware of the status of the fire alarms. He was also unaware of his legal requirements in respect of fire alarms.

20. The sliding front door was discussed next. The Ordinary Member noted that the door does not slide open or closed. It is badly broken and does not function correctly because parts of the door are falling off and are dangerous. The Tenant had demonstrated to the Tribunal the extent to which he was able to open and close the door. The door did not open correctly and the frame broke away from the door. The Landlord stated that the door was "completely useless" and needs replaced or removed. The Landlord confirmed that he had known that the door needed repaired or replaced since the last tenant was in the House. The Landlord noted that he was unaware of when the glass doors were last cleaned. The Ordinary Member told the hearing that he did not believe that the cleanliness of the door was relevant to poor state of repair of the door. The Tenant had nothing further to comment.
21. The rear windows were discussed next. The Ordinary Member noted that the windows were in a visibly poor condition. The kitchen window was the most easily accessible window. The Landlord told the Tribunal that the windows needed replaced. He had wanted to pursue a government scheme. The Ordinary Member noted that any replacement windows should not be exact replica units, but instead be modern equivalents units, to meet current industry performance standards for windows. The Tenant stated to the Tribunal that he was asked by the Landlord to contact energy schemes in relation to the windows but they were only looking to replace the glass and not the frames. The Ordinary Member noted that the windows on the front elevation were also in a visibly poor condition are problems.
22. The fascia and soffit boards were discussed next. The Ordinary Member noted that they were in bad condition and one was missing towards the gable end of the House. The Landlord was aware of the missing one at the gable end. He last painted the soffits 10 years ago when he purchased the House. The Tenant had nothing further to comment.
23. The gutters were discussed next. The Ordinary Member noted that they were inspected from street level and the rear garden and looked intact albeit dirty. There was no evidence of leaks though it was a dry day following an extended dry period of weather. There was no obvious evidence of water staining on the roughcast. The Tenant told the Tribunal that the downpipe on the front elevation was prone to overflowing during periods of heavy rainfall. He stated that it would overflow from the gutter down the outside of the downpipe and onto the front step. The heavier the rain, the greater the issue. He was not aware of any issue with the guttering on the rear elevation. The Landlord was not aware of this but had concerns should the extra water freeze on the front step, during winter,

that this would be dangerous. It was agreed that the water overflowing could be caused by the gutters being blocked. The Tenant noted that a neighbour had a similar problem due to a bird's nest being in the gutters. The Landlord confirmed that the gutters and downpipes had not been checked or cleared of debris for a period of 10 years. Neither party had anything further to comment.

24. The boiler was discussed next. The Ordinary Member noted that there was a lot of paperwork in the file relating to gas engineers calls outs and inspections of the boiler. He asked whether there was a valid gas safety certificate. The Landlord confirmed that there was not and that he has never had one in the 10 years that he had rented out the property. The Ordinary Member then asked if there was a current EICR (Electrical Installation Condition Report) in place for the property. The Landlord confirmed that there was not. The Tenant told the Tribunal that he needed to restart the whole gas boiler system every fortnight. The Scottish Gas engineer had noted that the boiler was not safe on 7th January 2018. This included a safety warning notice. This point was put to the Landlord. The Landlord was not satisfied by the motivations of the Scottish Gas engineer and believed that they were looking to profit from the negative report. He informed the Tribunal that the boiler was 17 years old. The Tenant told the Landlord that the system needed to be flushed at a cost of £1000 (told to him by a Scottish Gas engineer). The Landlord was of the view that this confirmed his belief that there was a focus on profit. The Tenant raised the issue that due to the issues of the boiler and heating system as a whole this had lead to inefficiencies of the system that had a cost implication on him.
25. The bathroom was discussed next. The Tribunal observed that the ceiling light fitting above the shower in the bathroom is not a sealed unit, and therefore inappropriate for this location. The Tenant was asked to turn the bathroom light on and it was noted that it did not work. The other light in the bathroom was noted to be in working order. The Landlord accepted this point. It was also raised by the Ordinary Member that there was a section of damaged flooring in the bathroom beneath a loosely laid laminate flooring covering. The floorboard was rotten. The Landlord stated that he has not been in the bathroom in some time and was not aware of this issue.
26. When in the House the Tribunal noted that there were a few flies and the Tenant reported insects in the carpet to the Tribunal during the inspection. The Tenant stated that the flies had been in the House since the start of the tenancy. He believed that the flies were due to the tree directly outside the House. There was a discussion regarding this and the insects in the carpet. The Landlord suggested that the bugs were an issue for the Tenant to address, as they had not been there at the start of the Tenancy. Neither party wanted to comment further on this point.
27. The handrail was discussed next. The Ordinary Member stated that the handrail was inspected and was very loose and that it needs to be firmly

and securely fixed to the wall again. The Landlord stated that it needs to be moved and repositioned to the wall as it has been fixed and caused the place where it is attached to make a bigger hole where the handrail was screwed into the roughcast wall. The Landlord asked if it was a requirement to look at the handrail as it was not an original feature of the House and the House only has two steps. It was pointed out to the Landlord that it is there as a fixture and was not safe to be used.

28. The parties were asked for any further comments. The Landlord informed the Tribunal that there had been issues with gaining access to the House to facilitate matters. He found that he had no response to messages and could not gain access. A discussion followed between the Landlord and Tenant about whether the Landlord needed to contact both the Tenant and the Tenant's partner when making arrangements. The Landlord also stated that he had been unaware of his obligations. He was of the view that he had kept the rent very low in order that the Tenant lived independently without a large involvement from him. He noted to the Tribunal that he was not making profit from the Tenancy and in fact was subsidising the Tenants when the cost of the mortgage, gas maintenance contract and repairs were taken into account. The Tenant queried if the Landlord was a registered landlord. The Landlord confirmed that he was and would forward details of this registration to the Housing and Property Chamber. (It should be noted that this was done prior to the completion of this decision).

Summary of the issues

29. The issues to be determined are: -
- a) Whether there the fire alarms are functional,
 - b) Whether the rear windows were in poor condition,
 - c) Whether the front sliding door could be operated safely and with ease,
 - d) Whether the gutters and downpipes were in a poor state,
 - e) Whether the fascia and soffit boards comprising the roofline, were intact, in reasonable condition and fulfilling their function,
 - f) Whether the boiler was in good working order.

Findings of fact

30. Having considered all the evidence, the Tribunal found the following facts to be established: -
- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 25th May 2017.
 - b) The fire alarms in the House were not in operable order. The downstairs fire alarm was battery operated but the battery had run out. The upstairs fire alarm had been a wired fire alarm but the fire alarm unit had been removed and not replaced. There was no smoke alarm in the living room nor a heat detector present in the kitchen.
 - c) The sliding glass door at the front of the House was not able to be used as it was broken.
 - d) The kitchen window frame was completely rotten.

- e) The remaining windows in the House were in poor condition.
- f) The fascia and soffit boards were in a poor condition through, and one section on soffit board was missing from the front elevation.
- g) The gutters appeared intact from visual inspection but it was noted that they had not been checked or cleared for 10 years. During periods of heavy rain, it is probable that the rainwater will over flow from the gutters onto the down pipe and spill over onto the front steps.
- h) The boiler has been deemed as not working by a Scottish Gas engineer on 7th January 2018 and had issued a safety warning notice.
- i) The handrail at the front of the House is very loose and is not securely fitted to the wall.
- j) The Landlord has never had either a gas safety certificate or EICR for the 10 years that he has owned the House.

Reasons for the decision

- 31. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Landlord at the hearing.
- 32. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
- 33. The Tribunal was in no doubt, from its inspection, that the House did not meet the Repairing Standard.
- 34. There was clear evidence there were no operable fire alarms in the House. The House should be in accordance with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government. The Tribunal has concerns for the Health and Safety of any tenant in the House without these regulations being met.
- 35. There was clear evidence that the external sliding glass door to the front of the House was not operable and in such a poor condition that it was dangerous should it be used.
- 36. The rear windows are in a poor condition. While the kitchen window did operate the frame was in such a poor condition that there was a risk of the glass falling out of the frame.
- 37. The fascia and soffit boards were in a poor condition with one section of soffit board missing from the front elevation. The purpose of the fascia and soffit boards is to protect the juncture of the roof and walls. The Tribunal was of the view that the property may not be wind and watertight.
- 38. There was evidence from the Tenant that the gutters on the front elevation were overflowing down the downpipe and onto the front step. The likelihood of this occurring is supported by the Landlords confirmation that

the gutters and downpipes have not been inspected or cleared for a period of 10 years.

39. There was clear evidence that the boiler fails to function correctly. The Tribunal did not accept the Landlord's position that it was the maintenance engineers trying to profiteer which generated successive reports stating that the boiler was not working. The Tribunal were of the view that the boiler was not safe.
40. The issues with the flies and insects was not a concern for the Tribunal. The Tenant accepts that the flies were from the tree outside the window of the House. The insects were not a matter arising from the Landlord's obligation with the Repairing Standard.
41. There was clear evidence that the handrail was loose and dangerous. The Tribunal considered this to be a health and safety issue and did not accept that because it was not an original feature that it need not be a part of the repairing standard.
42. The Tribunal did not accept that it was sufficient of the Landlord to say that he was not aware of requirements for a gas safety certificate and EICR.
43. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
44. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
45. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

46. The Tribunal would wish to point out that the light fitting above the shower should be replaced with an appropriate sealed unit, and that the floor boards in the bathroom should be fixed or replaced.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale

(c) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chair

21st June 2018

Housing and Property Chamber
First-tier Tribunal for Scotland



Inspection - Photograph Schedule
7 Belmont Street, Coatbridge, ML5 2LJ

Case Reference: FTS/HPC/RP/18/0396

Date of inspection: 25/05/2018

Time of inspection: 10.30 am

Weather conditions: Dry and sunny

Present: Miss Gabrielle Miller – Legal Member
Mr Nick Allan – Ordinary Member
Mr Mark MacDonald – Tenant



Photo 1 – Front elevation



Photo 2 – Broken external sliding door



Photo 3 – Insecure handrail



Photo 4 – Soffit and facings – poor order



Photo 5 – Soffits and facings - poor order



Photo 6 – Missing soffit board



Photo 7 – Rotten kitchen window frame



Photo 8 – Location of boiler in living room



Photo 9 – Boiler unit in cupboard



Photo 10 – Flue pipe detail



Photo 11 – Exposed flue pipe in bedroom



Photo 12 – Light fitting above shower



Photo 13 – Damaged bathroom floor

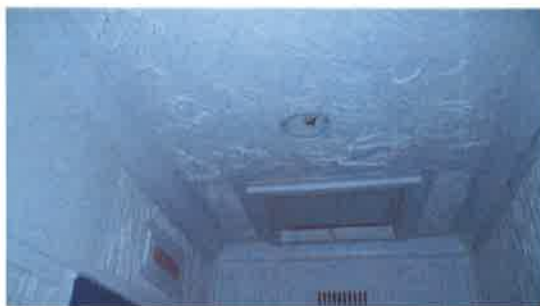


Photo 12 – Missing smoke detector



Photo 12 – Rear elevation

Nick Allan FRICS
 Surveyor – Ordinary Member
 First-tier Tribunal
 Housing and Property Chamber - 8th June 2018