

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/18/0632

Property at 3 Cobblebrae Crescent, Bainsford, Falkirk FK2 7QW

Land Register Title Number STG 25485

('the Property')

The Parties:

Miss Tracy Rutherford, previously residing at 3 Cobblebrae Crescent, Bainsford, Falkirk FK2
7QW

('the Tenant')

Mr Jonathan Clough, c/o Liddle and Anderson (Managing Agent), 2 Market Street, Bo'Ness

EH51 9AD

('the Landlord')

Whereas in terms of their Decision dated 2nd October 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 the Landlord has failed to ensure that the property meets the Repairing Standard with reference to the following provisions of section 13 (1) of the Act, as amended:-

- (b) 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) 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) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

The tribunal now requires the Landlord to carry out such work as is necessary for the purpose 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:

- (i) To instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meet current regulatory standards and provide a EICR to the tribunal;
- (ii) To repair or renew the gate from the public road to the driveway of the property, ensuring that the gate is fully operational and in good working order;
- (iii) To complete the current installation of the kitchen ensuring that the fittings are fully functional, operational and in good working order;
- (iv) To repair or renew the radiator in the bathroom and ensure that it is fully functional and operational;
- (v) To renew or replace as necessary the shower cabinet/base within the bathroom ensuring that the unit is completely watertight, fully functional and in good working order; and
- (vi) To replace or renew the broken and badly damaged cupboard door in the rear bedroom cupboard.

The tribunal order that the works specified in this Order must be carried out and completed within the period of one month 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 two preceding pages are executed by Joseph Christopher Hughes, Solicitor Advocate, Legal Member and Chairperson of the Tribunal at Glasgow on 3rd October 2018 in the presence of the undernoted witness :-

J Hughes

I M McClelland

Chairperson

Witness (Ian Mark McClelland, Solicitor)

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 REASONS

Housing (Scotland) Act 2006 Section 24(1) ('the Act')

Chamber Ref: FTS/HPC/RP/18/0632

Property at 3 Cobblebrae Crescent, Bainsford, Falkirk FK2 7QW

Land Register Title Number STG 25485

('the Property')

THE PARTIES:

**Miss Tracy Ratchford, former tenant of 3 Cobblebrae Crescent, Bainsford,
Falkirk FK2 7QW**

('the Tenant')

**Mr Jonathan Clough, care of Liddle and Anderson (Managing Agent) 2 Market
Street, Bo'Ness EH51 9AD**

('the Landlord')

THE TRIBUNAL MEMBERS:

Joseph C Hughes (Legal Member)

Donald Wooley (Ordinary Member/ Surveyor)

SUMMARY OF DECISION:

1. 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, and taking into account of the written documentation submitted by the parties and the parties' oral representations, determined the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act;
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order ('RSEO') as required by Section 24(2) of the Act; and
3. The decision of the Tribunal was unanimous.

BACKGROUND:

4. The Tenant applied to the Tribunal in terms of Section 22(1) of the Act for a Determination as to 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 19th March.
5. The Property has been let to the Tenant for a 6 month term. A copy of the signed short assured tenancy agreement for the Property was lodged with the Tribunal. The tenancy commenced on 1st January 2016. Rent is £550 per calendar month.
6. The original Application by the Tenant stated that she considered that the Landlord had failed to comply with his duty to ensure that the Property meets the Repairing Standard.

7. The Tenant considered that the Landlord is in breach of his duty under the Housing (Scotland) Act 2006 in relation to the Repairing Standard and in particular the Landlord has failed to ensure compliance with the following paragraphs of Section 13(1) of the Act:

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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) 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
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

8. The Application listed the issues which the Tenant considered to be outstanding. By reference to the Application, the following issues were noted to be (in summary):

- (i) Possibility of no Electrical Installation Condition Report ('EICR') or Gas Safety Certificate;
- (ii) Guttering leaking into front garden
- (iii) Mastic point missing from bottom window, ants nesting which in turn allows infestation of bedroom;
- (iv) Small gaps in brickwork;
- (v) Damage to driveway fencing and gate;
- (vi) Draughty windows and draught form chimney/flute and obsolete gas fire;
- (vii) Gap in kitchen where old boiler used to be situated;

- (viii) Parts of fascia of tumble drier missing making loud noise when in operation, dishwasher not working and problem with electrics connected to kitchen ceiling lights;
- (ix) Cupboard doors in kitchen insecure;
- (x) Loose taps at sinks in kitchen and bathroom;
- (xi) Radiators leaking at bathroom;
- (xii) Floor covering raised and water appears to be lying under bathroom floor;
- (xiii) Shower base requires new sealant at join with wall;
- (xiv) Plastic sliding door of rear facing bedroom cupboard split in two parts;
- (xv) Hole in hall ceiling adjacent to light pendant; and
- (xvi) Locking mechanism of front door can be difficult to align with key in order to secure the door.

The Tenant also requested that the bathroom light be unlinked to extractor fan for shower.

9. By Minute dated 21st May 2018 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act and Section 21(8A) of the Act, made a Decision to Refer the Application to a tribunal in terms of Section 23(1) of the Housing (Scotland) Act 2006.

10. On 2nd July 2018 the President of the tribunal intimated a decision to refer the Application to a tribunal for determination under Section 23(1) of the Act. The tribunal served a Notice of Referral, Inspection and Hearing in terms of Paragraph 1 of Schedule 2 to the Act upon the Tenant and Landlord. The original Property Inspection was fixed for 9th August 2018 at 10am with a Hearing at 11.30am in STEP

Stirling. This hearing date was adjourned as the Landlord and his Managing Agent were unable to attend.

11. The Tribunal received intimation from the Landlord that the Tenant had left the Property and accordingly, under Schedule 2 Paragraph 7 (1) of the Housing (Scotland) Act 2006, the Tenant is treated as having withdrawn the Application under Section 22(1) of the Act. The Tribunal considered the Application, and whether the said Application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. Whilst the Landlord indicated that certain works were anticipated/planned the Tribunal decided to continue to determine the Application.

13. The Tribunal inspected the Property on 27th September 2018 at 10am with a Hearing at 11.30am. The Landlord lodged written representations which the Tribunal noted carefully. The Landlord was represented by Mrs Mairi Summers Clough. Ms Debbie Cook also attended from the Managing Agent, Liddle and Anderson.

Mr Alan Kerr facilitated as Clerk to the Tribunal.

THE INSPECTION AND SCHEDULE OF PHOTOGRAPHS:

14. The Tribunal attended at the Property for the purposes of inspection as planned. Mrs Summers Clough and Ms Cook were present together with Mr Andrew Cherrie who is currently carrying out work within the Property. Access was granted throughout the Inspection. An internal and external inspection of the Property took place. We thank everyone for their cooperation throughout the Inspection.

A Schedule of Photographs taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

15. The Property is a ground floor purpose built, self contained cottage flat within a two storey building comprising a total of four similar style properties. Originally built by and on behalf of the local authority, the subjects together with a number of surrounding properties are now in private ownership. The Tribunal was informed by the Landlord's Agent that the flat located immediately above the property remains within the ownership of the local authority. The Property is approximately seventy five years in age and of traditional construction with brick outer walls rendered externally under a pitched roof clad with slates. The accommodation comprises, entrance hall, living-room, three bedrooms, kitchen and bathroom.

16. Externally and specifically at the front elevation, the eaves guttering is of modern PVC design with no apparent defects. (Photograph 2). The guttering connects with PVC downpipes. Towards the base of the downpipe there is evidence of historic staining around a connection approximately 0.3 metres above ground level (Photograph 3). This was completely dry at the time of inspection with no evidence of recent leaking. While the gutters were raised by the Tenant as part of the application the downpipe was not.

17. Areas of flaking mastic pointing were evident around the base of both front bedroom windows. (Photographs 4 & 5) Closer examination identified no significant gaps holes or serious defects and moisture readings taken internally identified no corresponding evidence of water ingress. There was no evidence of infestation by ants.

18. No significant gaps were noted in the brickwork below the bedroom window (Photograph 6).

19. There is a significant gate opening, extending to approximately 4.5 metres, providing vehicular access from the public road to a driveway which forms part of the title to the property. This has a timber gate. The gate is defective and in need of general repair. (Photograph 7).

20. The driveway fencing is of vertical hung timber slats secured to horizontal rails (Photograph 8). There is one broken/missing slat which relative to the size of the fence is insignificant.

21. All of the rooms within the property are fitted with traditional top hung timber double glazed windows. They incorporate separate upper and lower sections each capable of being opened individually. All of the windows display evidence of general wear and tear associated with their age and design. They were generally functional with no evidence of any significant draughts noted during the inspection (Photographs 4, 5 & 9).

22. The gas fire within the living room has been removed and the original opening enclosed (Photograph 10).

23. Around the wall mounted boiler in the kitchen there is a cupboard. There is no door at the cupboard (Photograph 11). It is understood that this is the boiler referred to in the application although there is no obvious 'large gap'. The condition of the boiler does not form part of the original application.

24. At the date of inspection, the kitchen units referred to in the original Application had been removed and new kitchen fittings, including the sink and surrounding base units were in the process of being installed. A number of significant works relating to

the installation remained outstanding. White goods had been removed from the kitchen.

25. There are four recessed ceiling lights in the kitchen two of which require new bulbs with one "hanging loosely" below ceiling level as part of an ongoing repair/replacement which was underway during the inspection.

26. There is a hard wired heat detector attached to the kitchen ceiling (Photograph 12).

27. There are two pendant light fittings in the hall and there is some minor residual damage to the surrounding ceiling plaster. This takes the form of a small hole from a previous, now redundant, screw (Photograph 13).

28. The locking mechanism at the front entry door was functioning satisfactorily.

29. The bathroom radiator had, at time of inspection, been removed for repair and not replaced. (Photograph 14).

30. There are no bathroom floor coverings. The original tongue and grooved timber floor boards are now covered with a layer of plywood suitable as a base for future floor coverings. The flooring was tested and established to be dry.

31. Grouting at the shower tiles and in particular around the base is in need of significant cleaning. Large sections of grouting surrounding the shower base also require substantial repair. Towards the front of the shower there is a noticeable gap

between the base and shower frame/door. This is a potential source of damp and decay to surrounding flooring. (Photographs 15 & 16).

32.The bathroom taps exhibit minor rotational movement where secured to the bath.

33.The bathroom light is linked to the extractor fan and is working satisfactorily.

34.The bi-fold door at the rear bedroom cupboard is badly damaged and in need of renewal. (Photograph 17).

35.At the time of the inspection the property was undergoing a scheme of repair and refurbishment although many items remained outstanding. There is currently no functioning wc, bathroom floor-coverings or wash hand basin. Significant works remain outstanding in the kitchen and it is proposed to replace the boiler. The Tribunal was informed that a comprehensive scheme of redecoration is also planned.

THE HEARING:

36.The Hearing took place at STEP Stirling. Mrs Summers Clough and Ms Cook attended. The Tribunal had before it the Application and all other documentation including the Land Certificate STG 25485 relative to the property which is registered in the name of the Landlord.

We observe that as part of additional documents provided by the Landlord prior to the hearing and inspection a Landlord Gas Safety Certificate was included, dated 10 May 2018. This was prepared by a Gas Safe registered company known as Contract Heating and it identified no significant defects.

37. During the hearing the Landlord's agent provided the Tribunal with a copy of an Electrical Installation Condition Report ('EICR') dated 17 April 2015. This report highlighted a category C2 defect and the overall assessment of the installation is classed as 'unsatisfactory'. A category C2 is described as "potentially dangerous" and in need of 'urgent remedial action'. There is also an apparent misprint in the classification description at the bottom of page 2 of the EICR with category C1 being described as both 'Danger Present' and 'Potentially dangerous'. There is no apparent C2 classification. A re-inspection was undertaken by the contractor in relation to work completed to the electrical installation although no subsequent EICR was made available to the Tribunal. There is no reference within the EICR to confirm the qualifications of the contractor completing the inspection who, under Scottish Government recommendations, should be SELECT or NICEIC registered.

38. Mrs Summer Clough and Ms Cook made oral submissions to support their written submissions. No significantly new information was established at the Hearing.

39. The issue to be determined is whether the Property meets the Repairing Standard as laid down in Section 13 of the Act and whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

FINDINGS OF FACT:

40. The tribunal finds the following facts to be established:

- (a) The Landlord is the registered owner of the Property;
- (b) A tenancy previously existed between the Tenant and the Landlord;

- (c) The Tenant entered into a lease of the Property on 1st January 2016 with a rental of £550 per calendar month. The Tenant vacated the Property in July 2018;
- (d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy;
- (e) There is no satisfactory EICR for the Property;
- (f) The gate leading from the public road to the driveway of the Property requires to be made fully functional;
- (g) A new kitchen is currently being fitted. The installation of the kitchen requires to be completed to ensure the fittings are fully functional, operational and in good working order;
- (h) The radiator in the bathroom has been removed and requires to be repaired or renewed and refitted;
- (i) The shower cabinet/base within the bathroom is not watertight, fully functional and in good working order; and
- (j) The cupboard door in the rear facing bedroom is broken.

DECISION:

41. The Tribunal was satisfied that in respect of a range of issues raised within the Application the Property did not meet the Repairing Standard specified within Section 13 of the Act.

42. Because the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act, in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the repairing standard and have therefore issued a Repairing Standard Enforcement Order all in terms of Section 24(2) of the Act.

43. The decision of the Tribunal is unanimous.

44. The Tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(1) of the Act. 12. The works specified within the RSEO must be carried out and completed within the period of THIRTY DAYS from the date of service of Notice of the RSEO.

REASONS FOR DECISION:

45. The Tribunal considers that the Landlord has had sufficient time to address his duty in respect of ensuring the Property meets the Repairing Standard.

46. The Tribunal considers that the Landlord has failed in his 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. The Tribunal record that the Landlord is currently undertaking substantial improvements within the Property and is thus addressing all the issues highlighted during the Inspection and within the RSEO.

RIGHT OF APPEAL:

47. 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:

48. 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.

J Hughes

'Joseph Christopher Hughes'

Legal Member and Chairperson

Housing and Property Chamber

Dated 3rd October 2018

3 Cobblebrae Crescent, Bainsford, Falkirk FK2 7QW

Schedule of Photographs taken at the inspection on 27th September 2018



1. External View



2. Front PVC guttering



3. Front PVC downpipe



4. Front north bedroom window



5. Front south bedroom window



6. Brickwork below bedroom window



7. Driveway entrance gate



8. Driveway timber fencing



9. Internal timber window frame



10. Livingroom fireplace



11. Boiler Cupboard "gap"



12. Heat detector – kitchen



13. Hall ceiling and light pendant



14. "Missing" bathroom radiator



15. Shower base and cubicle



16. Shower base / tray



17. Rear bedroom cupboard door