

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/18/1165

Land Register Number: MID82216

**10/4 Dumbryden Grove, Edinburgh, EH14 2QW
("the House")**

The Parties:-

**Ms Shannon Turnbull, residing at the property
("the Tenant")**

**Mr Peter Arokiaraj, 55 Pikes Pool Drive, Kirkliston, Edinburgh, EH29 9GH
("the Landlord") represented by Messrs Orchard Shipman, 2 Anderson Place,
Sugar Bond, Third Floor, Edinburgh**

Whereas in terms of their decision dated 21 August 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 that:-

(i) 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 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 completely replace all of the fixtures and fittings in the bathroom, including the soiled timber flooring, to ensure that it is in a reasonable state of repair and in proper working order.

- (b) To repair or replace the damaged worktop and cupboard door located in the kitchen so that they are in a reasonable state of repair and in proper working order.
- (c) To repair the hole located in the kitchen ceiling so that it is in a reasonable state of repair and in proper working order.
- (d) To repair or replace the floor covering in the kitchen so that it is in a reasonable state of repair and in proper working order.
- (e) To repair the vent located on the window in the kitchen so 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 28 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 page are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 21 August 2018 in the presence of the undernoted witness:-

Patricia Pryce

witness

Legal Member

NICHOLAS PRYCE name in full

55 BLYTHSWOOD 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/18/1165

**Flat 10/4 Dumbryden Grove, Edinburgh, EH14 2QW
("the Property")**

The Parties:-

**Ms Shannon Turnbull, residing at the property
("the Tenant")**

**Mr Peter Arokiaraj, 55 Pikes Pool Drive, Kirkliston, Edinburgh, EH29 9GH
("the Landlord") represented by Messrs Orchard Shipman, 2 Anderson Place,
Sugar Bond, Third Floor, Edinburgh**

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 Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	- Legal Member
Andrew Murray	- Ordinary Member (Surveyor)

Background

- 1. By application comprising documents received on 21 May 2018, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlord 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 Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-**

- (a) "Bathroom flooring requires refitted, tiles full of mould mould issue under the floor.
- (b) Kitchen fittings and fixtures require replaced, work tops and cupboards in bad condition, hole in kitchen ceiling and kitchen floor needs uplifted.
- (c) Most of the windows in the property are broken and so are the vents causing mould."

The Tenant considered that the Landlord is in 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:-

- (i) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - (ii) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. By Minute dated 31 May 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 Landlord, the Landlord's representatives and the Tenant advising that the inspection and hearing would take place on 21 August 2018 at 10 am and 11.30 am respectively.

The Inspection

5. An inspection and hearing were arranged as noted above. The tribunal attended at the property. The Tenant was in attendance at the property. No one else attended at the property. The tribunal noted the following at inspection:-
 - There were defective floorboards on the bathroom floor.
 - There was mould on the bathroom tiles.
 - The stench of urine emanating from the bathroom floor was overpowering.
 - The worktop in the kitchen was damaged.
 - The cupboard door located below the sink was damaged.
 - The vent in the kitchen window was broken.
 - The flooring in the kitchen was damaged and caused a trip hazard.
 - There was a hole in the lowered part of the ceiling of the kitchen located above the kitchen unit near the cooker.
 - All of the windows, apart from the kitchen window, had been repaired.

The schedule of photographs taken by the Ordinary Member of the tribunal at the inspection is attached to this decision.

The Hearing

6. Mr Mohsin Gani, Senior Property Manager for Scotland of Messrs Orchard Shipman attended at the hearing on behalf of the Landlord. The Tenant had advised the tribunal at the inspection that she would not be able to attend the hearing as she required to go to work.
7. The tribunal advised Mr Gani of its findings from the inspection. Mr Gani submitted that he agreed with these findings as he had attended the property around 10 days prior to the hearing. He advised that he was disgusted by the state of the property, in particular the appalling condition of the bathroom. He confirmed that the contractor had visited the property the day before the hearing. The contractor was of the view that the bathroom needed completely replaced and that the kitchen required to be refurbished including replacing the floor covering in the kitchen.
8. Mr Gani advised that the Landlord has been difficult to contact in the past but that he has now made the Landlord aware of his duties in terms of maintaining the property. The Landlord has been advised by the contractor that the Tenant will require to be provided with alternative accommodation for the period within which the works require to be carried out.
9. Mr Gani submitted that he was of view that the works required to be carried out as a matter of urgency and that he was concerned that a vulnerable young single mother of a two year old child was living in such conditions.

The tribunal proceeded to make a decision based on its findings at the inspection together with the application and the submissions made by Mr Gani at the hearing.

Summary of the issues

10. 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

11. The tribunal finds the following facts to be established: -
 - The Tenant had complained about the state of the property since March 2017 and had advised the Landlord of the repairs issues from that time onwards.
 - The property is a first floor flat located within a block of flats constructed of load bearing masonry walls with a roughcast finish.
 - It comprises a hallway, kitchen, living room, two bedrooms and a bathroom.
 - The floor in the bathroom was sodden and smelled of urine and remained uneven.
 - The tiles, the walls, the fittings and the floor in the bathroom were covered in mould.
 - The floor covering in the kitchen was damaged and was a trip hazard.
 - The cupboard door below the sink was damaged.

- The kitchen worktop was cracked and damaged.
- There was a hole in the kitchen ceiling.
- The vent in the window of the kitchen did not function and was jammed in the open position.
- All of the other windows in the property had been repaired.

Reasons for the decision

12. The tribunal noted that in terms of the present application the Tenant had first notified the Landlord of the repairs in March 2017. Despite attending to some of the issues raised, some of the repairs issues remained.

Given all of the circumstances, the tribunal is satisfied that: 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 bathroom from the floor upwards is in a state of complete disrepair and is uninhabitable and the cupboard door, the worktop, the floor covering, the ceiling and the window in the kitchen are all damaged.

Decision

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

Observations

16. The tribunal noted at inspection that the switch for the extractor fan was located too high up in the bathroom for the Tenant to reach it. The tribunal would urge the Landlord to resolve this. Mr Gani could not confirm if there was an EICR of Gas Safe certificate in respect of the property. The Landlord should ensure that these are attended to as a matter of urgency if he has not already done so. The Landlord should ensure that all smoke and heat detection for the property meets current regulations. It would urge the Landlord to complete these as soon as possible to ensure that the property meets the repairing standard.

Right of Appeal

17. 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

Patricia Pryce

Signed
Date

16 August 2018

A handwritten signature in dark ink, appearing to be a stylized 'P' followed by a horizontal stroke.

Legal Member

Photographic Schedule – 10/4 Drumbryden Grove Edinburgh EH14 2QW

To Accompany Case reference: FTS/HPC/RP/1165

Date of Inspection: 21 August 2018



1 The entrance elevation



2 The damp and uneven bathroom floor



3 The mould on the bathroom walls



4 The mould on the bathroom tiling



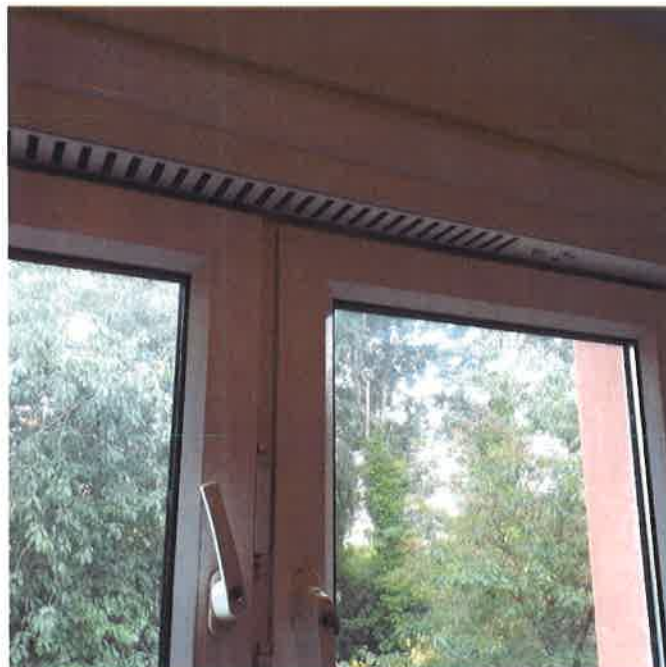
5 The hole in the kitchen ceiling



6 The damaged worktop and unit door in the kitchen



7 The defective flooring in the kitchen



8 The defective window vent in the kitchen