

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order

Housing (Scotland) Act 2006: Section 24

House at 45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB

Case Reference FTS/HPC/RP18/1536

Ms Caroline Lever, 45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB
("the Tenant")

Mr Abdul Rehman, 3 Windsor Street, Glasgow, G20 7NA ("the Landlord")

45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB registered under Title
Number DMB17733 ("the Property").

Tribunal Members: Martin McAllister (Legal Member) and Kingsley Bruce, Chartered
Surveyor, (Ordinary Member)

NOTICE TO

Mr Abdul Rehman

Whereas in terms of their decision dated 8th 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 and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to demonstrate that the house is wind and water tight and in all other respects reasonably fit for human habitation, 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 and that the installations in the house for the supply of electricity and any electrical appliances supplied by the Landlord are in a reasonable state of repair and in proper working order the tribunal now makes a repairing standard enforcement order (RSEO) in the following terms:

The Landlord is to

- (1) Instruct a suitably qualified central heating engineer to provide a report confirming that the hot water system is functioning. (Sections 13 (1) (c) of the 2006 Act).**
- (2) Repair and make good the hole in the bathroom floor. (Section 13 (1) (b) of the 2006 Act).**
- (3) Replace the broken glazing in the porch extension. (Section 13 (1) (b) of the 2006 Act).**
- (4) Repair and replace where necessary the bathroom tiles. (Section 13 (1) (b) of the 2006 Act).**
- (5) Repair and replace defective plasterwork in the front vestibule. (Section 13 (1) (b) of the 2006 Act).**
- (6) Repair the attic hatch. (Section 13 (1) (b) of the 2006 Act).**
- (7) Instruct an appropriately qualified specialist to investigate and repair, where necessary, the dampness in the rear bedroom and provide the Tribunal with a copy of the specialist's report (Section 13 (1) (a) of the 2006 Act).**
- (8) Provide a current Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order within four months of service of it on him and to make good any damage caused by works done to comply with the repairing standard enforcement order.

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 2006 Act.

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.

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.

In witness whereof these presents typewritten on this and the preceding page are executed by Martin Joseph McAllister, solicitor, legal member of the First-tier Tribunal for Scotland at Kilwinning on 8th October 2018 before Kayleigh Guthrie, witness, 83 Main Street, Kilwinning.

K Guthrie

M McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Case Reference FTS/HPC/RP18/1536

Ms Caroline Lever, 45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB
("the Tenant")

Mr Abdul Rehman, 3 Windsor Street, Glasgow, G20 7NA ("the Landlord")

45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB registered under Title
Number DMB17733 ("the Property").

Tribunal Members: Martin McAllister (Legal Member) and Kingsley Bruce, Chartered
Surveyor, (Ordinary Member)

Background

1. By application received by the Tribunal on 26th June 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the Tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act. The Application was accompanied by a number of photographs of the Property.

2. The Application stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the Property 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, 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, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Application refers to specific matters:

1. No hot water for over a month.
2. Hole in bathroom floor because of rotten wood.
3. Broken windows in the extension.
4. The shower button is overheating and smoke billows from it.
5. Bathroom tiles falling off because of mould.
6. Crumbling wall near front door fuse box.
7. Several loose plug sockets that cannot be used because they are unsafe.
8. Broken attic hatch which will not close.
9. Broken kitchen tap.
10. Broken and leaking gutters.
11. Extensive damp in back bedroom.
12. Broken smoke alarm.
13. No carbon monoxide alarm.
14. No electricity or gas safety checks carried out during Tenant's occupation lasting eight years.

3. On 14th August 2018 parties were advised that on 3rd August 2018 the President of the Tribunal had decided to refer the matter to a tribunal for determination. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

4. On 17th August 2018, the tribunal made a Direction requiring the Landlord to produce an Electrical Installation Condition Report and a Gas Safety Certificate. The Direction was served on the Landlord on 20th August 2018.

5. In response to the Direction the Landlord lodged a Gas Safety Record dated 31st August 2018. This indicated that the boiler and cooker were safe to use. An Electrical Installation Condition Report was lodged. This was dated 30th August 2018 and disclosed significant defects and that the electrical system had not been certified as satisfactory.

6. By a letter dated 10th September 2018 TCH Law, agents for the Landlord, made representations. They stated that the Tenancy had been terminated and that the Landlord had only been aware of defects to the Property after a Notice to Quit had been served on the Tenant.

The letter stated that, during the tenancy, Ms Lever had refused the Landlord access to the Property. It states that the Tenant refused access to gas engineers to allow gas safety checks to be carried out.

The letter states that the Landlord intends to have the Property rewired. It also states that the "fire alarm" and carbon monoxide alarm are deemed to be in good working order.

The Letter contains responses to specific matters raised by the Tenant:

6.1 An expert has deemed the boiler to be safe and in good working order.

6.2 Plug sockets have been made safe and any damage to them had been caused by the Tenant.

6.3 The Tenant had damaged the tiles in the bathroom and the Landlord is in process of instructing works for the full renovation of the Property due to the considerable damage caused by the Tenant.

6.4 The Property is to be rewired.

6.5 An expert is to be instructed to inspect the gutters.

6.6 An expert is to inspect the mould.

6.7 Damage to the bathroom floor has been caused by the Tenant.

6.8 An expert is being instructed to inspect the crumbling wall.

6.9 The broken window is due to damage caused by the Tenant.

7. The members of the tribunal attended at the House on 20th September 2018. Mrs Christina Rehman, wife of Mr Asif Rehman was present and allowed access.

8. The Property comprises a detached bungalow.
A schedule of photographs by the ordinary member is attached.

9. Findings on Inspection

The inspection of the Property was undertaken when the weather was dry.

9.1 The tribunal could not determine whether or not there was hot water.

9.2 There is a hole in the bathroom floor beside the bath.

9.3 There is broken glazing in the porch extension at the rear of the property.

9.4 The condition of the shower could not be determined.

9.5 Tiling at the bath is debonded and detached from the wall.

9.6 There is an area at the front vestibule where the wall is crumbling.

9.7 No loose electrical sockets were noted.

9.8 The attic hatch cover is not functioning properly and is in the half open position.

9.9 The kitchen tap is loose and leaking.

9.10 No defects to gutters were noted.

9.11 Dampness was observed in a rear bedroom.

9.12 Adequate provision of smoke alarms, heat detector and carbon monoxide alarms was noted.

10. The Hearing

Following the Inspection, a Hearing took place at the Tribunal Centre in York Street, Glasgow.

Miss McNiven of TCH Law was present as the Landlord's representative.

11. Preliminary Matters

Ms McNiven said that she was relying on Section 14 (4) of the 2006 Act which states:

"The Landlord complies with the duty imposed by subsection (1) (b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required."

Ms McNiven said that the Landlord had not been made aware of any defects in the Property and had been denied access to it.

The tribunal noted that the letter submitted by the Tenant made reference to the Landlord, over a period of years, being advised of defects in the Property. Neither the Tenant nor the Landlord were present and the tribunal did not hear evidence on this matter. Furthermore the tribunal considered that what it had to determine was whether or not the Property met the repairing standard on the date of inspection. Ms McNiven said that her client had made repeated requests to gain access to the Property but she accepted that he had not made an application to the Tribunal under Section 28A of the 2006 Act for assistance in exercising his right of entry to the Property.

The Tribunal considered that it was appropriate to continue to determine the Application before it.

12. The Issues

Sections 13(1) (a),(b),(c), (d), (f) and (g) of The 2006 Act provide that the house must be wind and watertight and in all other respects reasonably fit for human habitation, the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order, that the Property must have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire and that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The specific issues which the tribunal required to address were those detailed in the application.

13. Findings

The tribunal noted that the Application had Mr Abdul and Mr Asif Rehman as the Landlords. The Tenant was unable to produce a copy of the tenancy agreement. At

the inspection Mrs Rehman advised that her husband, Asif, looked after the Property for his father, Abdul Rehman. The registered proprietor is Abdul Rehman and TCH Law in their letter of 10th September 2018 referred to them representing Mr Abdul Rehman as the Landlord. The tribunal considered it appropriate to deal with matters on the basis that Mr Abdul Rehman is the Landlord.

The tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the Property fails to meet it.

13.1 The tribunal found that it could not determine whether or not the hot water was functioning.

13.2 There is a hole in the bathroom floor.

13.3 There is broken glazing in the porch extension.

13.4 Bathroom tiles have debonded from the wall.

13.5 There is a crumbling section of wall in the front vestibule.

13.6 The attic hatch is not functioning properly.

13.7 The kitchen tap is broken.

13.8 There is dampness in the rear bedroom.

13.9 The electrical installation in the Property is not in a satisfactory condition.

14. Reasons

The tribunal had regard to what it had found at the inspection and the terms of the Electrical Installation Condition Report dated 30th August 2018.

15. Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

The Landlord is to

(1) Instruct a suitably qualified central heating engineer to provide a report confirming that the hot water system is functioning. (Sections 13 (1) (c) of the 2006 Act).

(2) Repair and make good the hole in the bathroom floor. (Section 13 (1) (b) of the 2006 Act).

- (3) Replace the broken glazing in the porch extension. (Section 13 (1) (b) of the 2006 Act).**
- (4) Repair and replace where necessary the bathroom tiles. (Section 13 (1) (b) of the 2006 Act).**
- (5) Repair and replace defective plasterwork in the front vestibule. (Section 13 (1) (b) of the 2006 Act).**
- (6) Repair the attic hatch. (Section 13 (1) (b) of the 2006 Act).**
- (7) Instruct an appropriately qualified specialist to investigate and repair, where necessary, the dampness in the rear bedroom and provide the Tribunal with a copy of the specialist's report (Section 13 (1) (a) of the 2006 Act).**
- (8) Provide a current Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order within four months of service of it on him.

Note

The tribunal noted that there were significant defects in the Property which could have been included in the Application. Examples are the dangerous condition of the access path and the condition of the kitchen.

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.

M McAllister

Martin Joseph McAllister,
Solicitor, legal member of
Tribunal.
8th October 2018

8/10/18
This is the schedule of photographs
referred to in Decision of even date
FTS/HAC/RP1 8/1536 M McAllister

Schedule of Photographs

Inspection Date: 20 September 2018

Property: 45 Killermont Road, Bearsden, East Dunbartonshire, G61 2JB

Description:

- Exterior: Front
- Attic hatch
- Shower switch
- Tiling in bathroom- detail (3No.)
- Water damage to bathroom flooring (2No.)
- Smoke/Heat detectors (4No.)
- CO detector (1No.)
- Gas installation, boiler and room heaters (4No.)
- Exterior front and exterior garden walls (4No.)
- Rear Door and decayed timber (2No.)
- Rear exterior wall, in area where possible damp conditions identified internally
- Interior-rear corner, damp conditions (3No.)
- Glazing in side porch/extension (3No.)
- Kitchen tap
- Electricity meter and consumer unit
- Defective plaster work at front entrance area































