

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**



**Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006**

**Property: 4 Lanark Avenue, Deans, Livingston EH54 8QL ("the Property"/ "the house")**

**Title No: WLN20372**

**Chamber Reference: FTS/HPC/RP/18/2179**

### **Parties:**

**Louise Kelly, 4 Lanark Avenue, Deans, Livingston EH54 8QL ("the Tenant")**

**Paul Richardson, 270 Sutherland Way, Knightsridge, Livingston EH54 8HT ("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Andrew Murray (Ordinary Member/Surveyor)**

Whereas in terms of their decision dated 24 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"), 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:

- (1) to instruct a suitably qualified plumber to carry out such repairs as are necessary to ensure the water draining from the bath is carried directly to the drainage system and does not emerge through the shower trap;
- (2) to re-seal the side of the bath;
- (3) to repair the damage caused to the ceilings of the storage cupboard and downstairs toilet by water penetration from the bathroom above and to redecorate the affected areas once the repair work has been carried out;
- (4) to carry out such repairs as are necessary to ensure there is no leak at the joint of the overflow pipe and extension pipe above the front door of the Property;

(5) to carry out such repairs as are necessary to ensure the front entrance door of the Property is wind and water tight and closes properly against the frame, leaving no gaps; and

(6) to install mains-wires and interlinked smoke and heat detectors in the Property to comply with the Scottish Government's Building Standard Division Revised Domestic Technical Handbook 2013.

The Tribunal order that the works required by this Order must be carried out within the period of 6 weeks from the date of service of this Order.

### **Right 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 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, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at

Lasswade, on 24 October 2018, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

..Legal Member/Chairperson .

Witness

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006**

**Property: 4 Lanark Avenue, Deans, Livingston EH54 8QL ("the  
Property"/ "the house")**

**Chamber Reference: FTS/HPC/RP/18/2179**

**Louise Kelly, 4 Lanark Avenue, Deans, Livingston EH54 8QL ("the  
Tenant")**

**Paul Richardson, 270 Sutherland Way, Knightsridge, Livingston EH54  
8HT ("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and  
Andrew Murray (Ordinary Member/Surveyor)**

#### **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) of the Housing (Scotland) Act 2006 ("the Act"), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.**

#### **Background**

1. By application received on 24 August 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard.

In particular, the Tenant stated that the Landlord had failed to ensure that:-

- The house is wind and watertight and in all other respects reasonably fit for human habitation
  - 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,
  - any fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and
  - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In her application and its supporting documentation, the Tenant stated that the problem had mostly been with the heating and hot water and leaks into the cupboard and toilet. The Landlord appeared to have no intention of repairing anything and had only advised continuously refilling the pressure in the boiler. The view of the Tenant was that the pressure valve needed to be replaced. The bath had been plumbed in incorrectly, a hole in the ceiling needed to be repaired, there was an illegal pipe outside the front door and the front door needed to be re-set.
  4. On 17 September 2018, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and hearing.
  5. The Landlord made written representations to the Tribunal by e-mail dated 17 October 2018, in which he said the repairs had been completed. The main delay had been the heating system. An engineer had spent considerable time rectifying the problem.
  6. The Tribunal inspected the Property on the morning of 24 October 2018. The Tenant and the Landlord were both present at the inspection and the subsequent hearing.
  7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Andrew Murray (Ordinary Member/surveyor).
  8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

9. Following the inspection, the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. The Parties both attended the hearing and the Tenant was accompanied by a representative, Mrs Lynn McPherson.

10. The Tenant told the Tribunal that she had obtained a quote for replacing the pressure valve, but the Landlord had done nothing. When the bath was being drained, the water backed up through the shower. The seal along the side of the bath did not seem to be working properly. Foam sealant had been put in the front door, but there was a gap at the bottom.
11. The Landlord told the Tribunal that at the end of the day the problem had not been the pressure valve. A qualified plumbing and heating engineer had fixed the problem and the heating was now working fine. He agreed that there had been a problem with the bath plumbing after the shower was put in a couple of years ago and his intention was to get the plumbing sorted out at the end of the tenancy. The Landlord accepted that there were stains on the ceilings beneath this area. This would be attended to after the plumbing was fixed and the bath sealed. The overflow pipe above the front door had been re-routed but the Landlord had noted at the inspection that there was a leak at the new joint, so he would attend to this minor repair. The Landlord stated that the foam sealant on the front door was a temporary fix.
12. The Tenant at this point left the hearing, which continued in her absence. The Tenant's representative remained until the end of the hearing.
13. The Landlord told the Tribunal that he was reluctant to carry out repairs when the Tenant was not paying him the difference between the amount of her housing benefit and the amount of the monthly rent. The tenancy was due to end on 1 February 2019.
14. The Landlord and the Tenant's representative then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

## **Findings of fact**

15. The Tribunal makes the following findings of fact:
  - The Property is a two-storey terraced house .
  - The Tenant is tenant of the Property, in terms of a Short Assured Tenancy Agreement which commenced on 1 February 2017 for a period of one year and, thereafter until either party gives to the other party not less than two months' notice in writing of termination.
  - The bath does not appear to be correctly plumbed.
  - The sealant along the side of the bath is defective.
  - There is a gap between the end of the bath and the shower cabinet.
  - There are no holes in the ceiling of the cupboard and toilet situated beneath that bathroom, but there is evidence of water penetration.
  - An overflow pipe above the front door has been re-routed to prevent it dripping on to the front step, but there appears to be a minor leak at the joint with the plastic pipe.

- There is a visible gap at the bottom of the front door.
- There are no functioning mains-wired smoke or heat detectors in the Property.

### **Reasons for the decision**

16. The Tribunal determined that it was not acceptable for the Landlord to wait until the Tenant had moved out before carrying out repair works. The Tenant was entitled to a property which met the repairing standard throughout the period of her tenancy.
17. There is no evidence that the central heating system is not now working, following on repairs having been carried out by the Landlord.
18. The bathroom does not appear to be correctly plumbed. The Tenant had stated that water draining from the bath then emerged through the shower trap. Plumbing repairs are, therefore, required. The sealant along the side of the bath is defective and, whilst it does not form part of the Repairing Standard Enforcement Order, the Tribunal recommends that the gap between the end of the bath and the shower cabinet should be filled and sealed, to remove another possible risk of water leaking into the rooms below.
19. The areas in the cupboard and toilet downstairs that are affected by water penetration should be repaired and redecorated after the plumbing repairs are carried out and the bath is properly sealed.
20. Repairs are required to make the front door wind and water proof.
21. The joint of the re-routed overflow pipe at the front of the Property should be checked to ensure it is not leaking water on to the front step.
22. Smoke detectors are required in the hallway, upper landing and living room of the Property, together with a heat detector in the kitchen and a carbon monoxide monitor outside the upstairs cupboard which houses the central heating boiler. The door of that cupboard is not vented.
23. The Tribunal is satisfied that the smoke and heat detectors in the Property comply with the Scottish Government's Building Standard Division Revised Domestic Technical Handbook 2013 but would recommend that the Landlord fits a vent in the door of the upstairs cupboard which houses the central heating boiler, in order to comply with current regulations on gas safety.
24. The Tribunal felt that a period of six weeks was a reasonable timescale for carrying out the works required by the Repairing Standard Enforcement Order.

25. The Tribunal noted that the door of the cupboard on the upstairs landing which houses the central heating boiler is not vented and it is recommended that a suitable vent be put in the door.

26. The decision of the tribunal was unanimous.

### **Right 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.**

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**G Clark**

Signed ... Legal Member/Chairperson  
Date: 24 October 2018



*This is the Schedule of Photography  
referred to in the finding  
Statement of Decision  
G Clark*

**Photographic Schedule – 4 Lanark Avenue Livingston EH54 8QL**

**To Accompany Case reference: FTS/HPC/RP/18/2179**

**Date of Inspection: 24 October 2018**

**Tribunal Attendees – Mr G Clark (Legal Member) and Mr A Murray (Ordinary Member)**

*Mr G Clark / Chair  
24 October 2018*



**1 The front elevation 4 Lanark Avenue**



**2 The gap between the shower cubicle and the bath at first floor level**



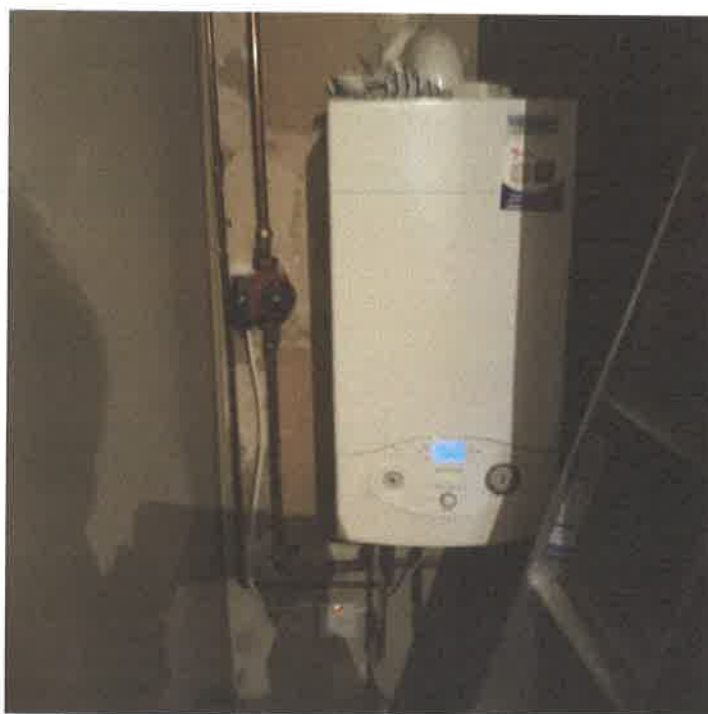
3 The bath at first floor level; panel removed for inspection



4 The damaged ceiling at ground floor level below the bath



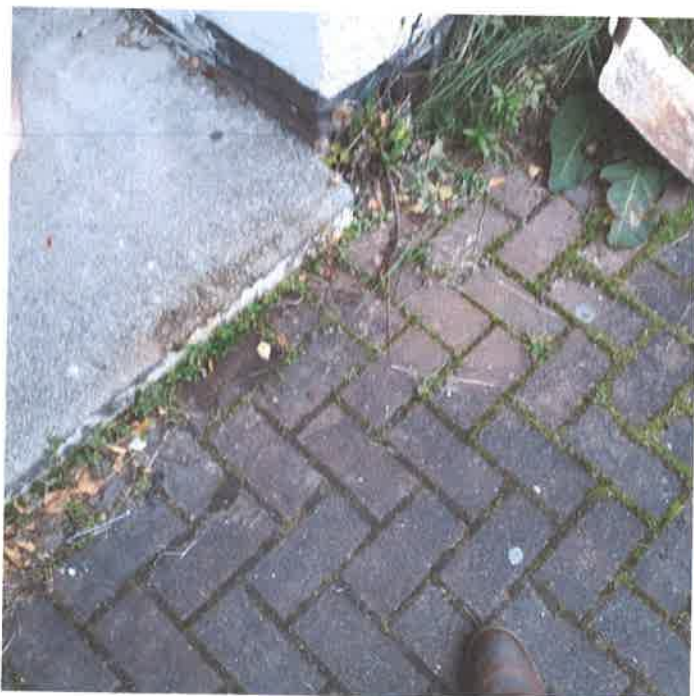
5 The damaged ceiling at ground floor level below the shower



6 The boiler at first floor level



7 The redirected boiler overflow on the front elevation



8 The damp patch on the front entrance step below the above noted boiler overflow