

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/2350

Property at 21 Cheyne Street, Edinburgh, EH4 1JD
("The House")

The Parties:-

Mr Alastair Hogg, residing at 21 Cheyne Street, Edinburgh, EH4 1JD ("the Tenant")

Mr John Anderson, residing at 31 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mrs Debbie Scott - Ordinary Member

Whereas in terms of their decision date 20 February 2019, 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:-

- (a) 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
- (b) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

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 to:-

- (a) Repair or replace the gas boiler so that it is in a reasonable state of repair and in proper and safe working order;
- (b) Install a carbon monoxide detector in the property in accordance with the Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing;
- (c) Instruct a qualified electrician to inspect the electrical installations and carry out such works as are necessary to ensure they are in a reasonable state of repair and safe working order and produce a clear electrical installation condition report thereafter; and
- (d) Carry out any redecoration required after completion of the above works.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **four weeks** 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.

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(s) are executed by Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39 2GH, chairperson of the Tribunal at Aberdeen on 20 February 2019 before this witness:-
 A Overton R O'Hare

_ witness

ANN OVERTON, C/O ABERDEENSHIRE
 COUNCIL, WOODHILL HOUSE,
 WESTBURN ROAD, ABERDEEN

__ chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/2350

**Property at 21 Cheyne Street, Edinburgh, EH4 1JD
("The House")**

The Parties:-

Mr Alastair Hogg, residing at 21 Cheyne Street, Edinburgh, EH4 1JD ("the Tenant")

Mr John Anderson, residing at 31 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mrs Debbie Scott - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 13th September 2018 the Applicant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (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 in proper working order;
 - (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;
 - (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed;
 - (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
 - (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In summary, the Applicant submitted that the boiler had been broken since June 2018, there were no fire or smoke detectors or carbon monoxide monitors, an electric socket was broken and burnt out, the front door needed attention and there was internal decoration required.
 4. The Tenant subsequently submitted a revised application received 18th October 2018 and confirmed that he was proceeding only on the issue of the boiler, on the basis that the Landlord had not been given formal notification of the remaining issues of disrepair.
 5. The Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, subsequently intimated her decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
 6. Following service of the Notices of Referral the Tribunal received written representations from the Tenant confirming that he wished to attend a hearing.
 7. The Tribunal attended the house on the morning of 25 January 2019. The weather was damp and overcast. The Tenant was present and allowed access. The Tribunal proceeded to inspect the property.

The Inspection

8. During the inspection the Tribunal examined the issues of disrepair highlighted in the application by the Third Party Applicant.

9. The Tribunal examined the boiler which was located a cupboard in the kitchen to the rear of the property. The Ordinary Member tested the boiler with the assistance of the Tenant. It was noted that the boiler did not appear to be functioning adequately. When switched to the hot water setting it did not activate or operate properly. When switched to the hot water and radiator setting, the radiators appeared to heat up however there was no hot water from the kitchen tap and no hot water to the shower. Furthermore, the pressure gauge increased quickly which the boiler was switched on. The Tribunal noted damp patches underneath the boiler, indicating that there was water leaking from the unit. The Tribunal proceeded to view the electricity consumer unit which was located next to the entrance door of the property. The unit was stamped as having last been tested in 2007.
10. Whilst the Tribunal was aware that the remaining matters of disrepair no longer formed part of the application, it did note that there were no smoke and heat alarms, and no carbon monoxide detector in the property. In the living room a plug socket next to the fireplace was burnt and therefore incapable of use. The Tribunal further noted a gas fire in the living room which had been condemned and disconnected from the supply. The entrance door at the front of the property was warped and cracked. The Tenant had hung a curtain over the door to mitigate against drafts.
11. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
12. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

13. The hearing took place at George House, Edinburgh. The Tenant was in attendance. The Landlord did not attend.
14. The Tenant's submissions at the hearing can be summarised as follows;-
 - (a) With regard to the boiler, the Tenant confirmed the findings of the Tribunal's inspection. The hot water didn't work with either setting and there were problems with the pressure gauge. The Tenant advised that the boiler was in working order when he took up the tenancy. Whilst the shower had a gravity feed, the pressure had been good. However there had been a few issues. On one occasion a contractor had come out and fitted new washers. In January 2018 there had been an overflow which had disturbed the neighbour downstairs, resulting in the Tenant's water having to be switched off. A contractor had attended the property to fix the problem and had noted at the time that the copper pipes pertaining to the boiler were eroded and seized. In the view of the contractor the boiler required replaced. The Tenant stressed he had never asked the Landlord to replace the boiler, he just wanted it fixed so that it worked properly.

- (b) With regard to the electrical consumer unit, the Tenant confirmed that it had last been tested in 2007. The fuse would often blow unexpectedly and he would replace it. These incidents were not linked to any particular switch or socket. It was entirely random.
- (c) The Tenant advised that the Landlord often expected him to address any repairs at the property. He had done so from time to time. However he was growing increasingly frustrated with the Landlord's failure to address what were serious issues. It was of particular concern to the Tenant that the gas boiler was not functioning properly and there was no carbon monoxide detector in the property.
- (d) The Tenant confirmed his understanding that the Tribunal could not consider matters which had been in the original application but had since been withdrawn. He did not want to delay a resolution for the boiler any longer and therefore had chosen to proceed on that alone.

Findings in fact

- 15. Having considered all the evidence the Tribunal found the following facts to be established:-
 - a. The tenancy between the Landlord and Tenant is an assured tenancy which commenced on or around July 2006.
 - b. The property is a ground floor flatted dwellinghouse with a bedroom, kitchen/diner, lounge and internal bathroom. The property was converted from a duplex apartment which separated it from the basement flat beneath.
 - c. The boiler is not in a safe condition nor in proper working order.
 - d. The installations in the house for the supply of gas and electricity are not in a reasonable state of repair, nor in proper working order.

Reasons for the decision

- 16. The Tribunal determined the application having regard to the terms of the application, the verbal submissions from the Tenant at the hearing and the findings of their inspection.
- 17. 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. The Landlord had been given the opportunity to attend the inspection and hearing but had failed to do so.
- 18. It was clear from the Tribunal's inspection of the property that the boiler is not in safe working condition nor in a reasonable state of repair. The Tribunal accepted the Tenant's submission that the last gas check had been approximately 8 years ago. There was no gas safety certificate for the property. There was no carbon monoxide detector in the property. The culmination of these issues presented a

serious risk to any occupant. It was wholly unacceptable that the Landlord had been made aware of the problems with the boiler and had yet to take any action. In the view of the Tribunal this amounted to a clear breach of the Repairing Standard. The Tribunal would therefore expect the boiler to be inspected by a GasSafe registered engineer and repaired or replaced as a matter of urgency.

19. The Tribunal had further noted that there was no up to date electrical installation condition report for the property and the consumer unit was marked as having last been inspected in 2007. Whilst this matter was not explicitly referred to in the application the Tribunal was satisfied that there was a sufficient link between the condition of the electrics and the boiler to enable this to be considered as part of the current application. Any repairs to the boiler could be at risk if the electrics were not functioning properly. The Tribunal therefore requires the Landlord to instruct a qualified electrician to provide an up to date electrical installation condition report and to carry out any works highlighted to ensure the system is in safe and working order.
20. The Tribunal therefore concluded that the Landlord had failed to comply with his duties under the Repairing Standard for the above reasons.
21. The Act states that where a Tribunal decide 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".
22. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act. Given the serious nature of the disrepair the Tribunal considered a period of four weeks would be appropriate.
23. For the avoidance of doubt, the Tribunal did not make any determination regarding the matters which the Tenant had withdrawn from the application, namely the front door, the lack of smoke and heat detectors and the plug socket in the living room, although it is likely that any issues with the socket will be addressed through the updated electrical installation condition report. The Tribunal would however wish to point out to the Landlord that the lack of smoke and heat detectors does not comply with current statutory requirements and should therefore be addressed. The Tribunal would also recommend that the Landlord take steps to repair the front door which does not presently appear to be wind and watertight.

Decision

24. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair not in proper working order and the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
25. The decision of the Tribunal was unanimous.

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R O'Hare

Signed

Ruth O'Hare
Chairperson

20 February 2019

21 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
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Front Elevation – Ground Floor flat within a three storey and basement block.

THIS IS THE SCHEDULE OF PHOTOGRAPHS REFERRED TO IN THE DECISION
OF THE TRIBUNAL DATED 20 FEBRUARY 2019 R O'Hare

✓ RUTH O'HARE

21 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
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Gas central heating boiler located in kitchen cupboard



21 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
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Water staining below boiler



View from kitchen window showing rear elevation with external gas vent

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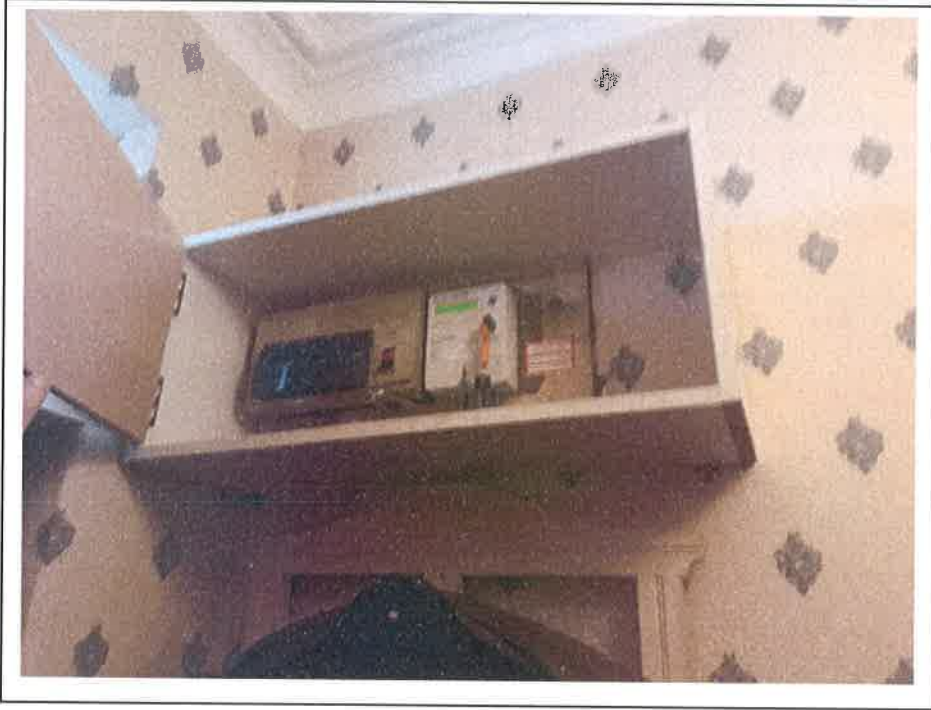


Damaged socket in living room



Damp staining - kitchen ceiling

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Consumer unit located in hallway