

# **Housing and Property Chamber**

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



### **Repairing Standard Enforcement Order** **Ordered by the First-tier Tribunal for Scotland** **(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/RP/18/2454**

**Title no: LAN120501**

**44 Knockburnie Road, Bothwell, Glasgow, G71 8LW being the subjects registered in the Land Register of Scotland under Title Number LAN120501 ('The Property')**

#### **The Parties:-**

**Nighat Nazir Ferguson residing formerly at 4 Gryffebank, Houston and now at care of Manak, 1 Princes Gardens, Glasgow, G12 9HP ('the Landlord').**

**Miss Monica Quigley residing at 44 Knockburnie Road, Bothwell, Glasgow, G71 8LW ('the Tenant').**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Lori Charles (Ordinary Member).**

#### **NOTICE TO** **The said Nighat Nazir Ferguson**

Whereas in terms of their decision dated 12<sup>th</sup> December 2018 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 the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order and the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes 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 to:

1. Exhibit a valid current and compliant EICR Certificate for the Property.
2. Exhibit a valid current and compliant Gas Safety Certificate for the Property.

3. Repair or replace the defective roof covering of the garden shed.
4. Repair or replace the defective guttering at the rear extension to render it in proper working order.
5. Repair the defective rendering around the front bedroom window and the front door.
6. Replace the missing temperature control of the front bedroom radiator.
7. Install a radiator in the kitchen or adapt/ repair/ replace the capped off pipes from the former radiator in the kitchen to render them in a safe condition.
8. Repair or replace the defective window latches of the windows in the front bedroom

The Tribunal orders that these works must be carried out and completed by 28<sup>th</sup> February 2019.

**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 and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement 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 subscribed at Irvine on 12<sup>th</sup> December 2018 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Keirsten Byrne, 65, High Street, Irvine.

J Taylor

Signed.....

Chairperson  
..... K Byrne

.....witness

# **Housing and Property Chamber**

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

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**Statement of decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006 ('the Act').**

**Chamber Ref: FTS/HPC/RP/18/2454**

**Title no: LAN120501**

**44 Knockburnie Road, Bothwell, Glasgow, G71 8LW being the subjects registered in the Land Register of Scotland under Title Number LAN120501 ('The Property')**

### **The Parties:-**

**Nighat Nazir Ferguson residing formerly at 4 Gryffebank, Houston and now at care of Manak, 1 Princes Gardens, Glasgow, G12 9HP ('the Landlord').**

**Henry Forbes and Miss Monica Quigley residing at 44 Knockburnie Road, Bothwell, Glasgow, G71 8LW ('the Tenants').**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Lori Charles (Ordinary Member).**

### **Decision**

**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 Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

### **Background**

1. The Tenants lease the Property from the Landlord in terms of the Short Assured Tenancy between the parties. The Tenant 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 Housing (Scotland) Act 2006 ('the Act').

2. The application stated that she considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard. She advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; 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 and proper working order and the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order.

In particular the application stated:-

- 2.1 No gas safety or electrical safety.
- 2.2 Shed roof has blown off. The roof of the outbuilding is damaged and has had a makeshift repair done.
- 2.3 The guttering for the removal of rainwater on the extension at the rear of the property is disconnected.
- 2.4 Outside wall is crumbling due to render and the render and silicon sealant around the front door is damaged.
- 2.5 Window latches need to be fixed. The handles on the windows of the master bedroom and second bedroom are broken.
- 2.6 No RCD Unit or Isolation switch.
- 2.7 No controls for the radiator. The radiator controls of the radiator in the downstairs hall and master bedroom appear to be broken.
- 2.8 No vent from the kitchen. The vent at the rear of the Property has been taped over.
- 2.9 No radiator in the kitchen. The radiator in the kitchen has been capped off.
- 2.10 Mould in bathroom.
- 2.11 Kitchen needs to be repainted and new flooring installed due to the leak. There is evidence of previous water penetration into the kitchen as areas of the kitchen ceiling are discoloured.
- 2.12 All ceiling lights upstairs are not working.

3. Maurice O'Carroll a Convenor of the Private Rented Housing Panel, having considered the application, comprising documents received on 26<sup>th</sup> September 2018, referred the application under Section 22 (1) of the Act to a Tribunal.

4. On 19<sup>th</sup> October 2018 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. The Tribunal attended at the Property on 6<sup>th</sup> December 2018. The Tenants were present at the inspection. The Landlord was also present at the inspection and she was accompanied by her solicitor, Lynn Murdoch of Ruthven, Keenan, Pollock solicitors and also by her builder Mo Manak.

The Property, 44 Knockburnie Road, Bothwell, Glasgow, G71 8LW is a mid terraced former local authority property which dates from circa 1950. The accommodation comprises 2 bedrooms, livingroom/ dining room, extension/ conservatory, kitchen and bathroom. There are areas of garden ground to the front and rear.

The Tribunal inspected the alleged defects and found:-

5.1 No gas safety or electrical safety.

This matter was considered at the hearing held after the inspection.

5.2 Shed roof has blown off. The roof of the outbuilding is damaged and has had a makeshift repair done.

The shed in the rear garden is a brick built shed with a wood and felt roof. The wooden roof was rotten. A temporary repair had been carried out by covering the roof with a tarpaulin and placing slabs on top.

5.3 The guttering for the removal of rainwater on the extension at the rear of the property is disconnected.

The rainwater pipe from the rear extension is not connected to the existing downpipe.

5.4 Outside wall is crumbling due to render and the render and silicon sealant around the front door is damaged.

There are areas of cracked and loose rendering and missing masonry around the front bedroom window and the front door.

5.5 Window latches need to be fixed. The handles on the windows of the master bedroom and second bedroom are broken.

The window latches of the two windows of the front bedroom are broken and do not operate properly. Also the closing mechanism of the right hand window (facing the windows from inside the bedroom) is broken as it does not provide any resistance.

5.6 No RCD Unit or Isolation switch.

The Tenants advised that the consumer unit had been replaced in September 2018 and a new RCD unit had been installed.

5.7 No controls for the radiator. The radiator controls of the radiator in the downstairs hall and master bedroom appear to be broken.

The radiator control on the hall radiator had been repaired. However the radiator control was missing from the front bedroom radiator.

5.8 No vent from the kitchen. The vent at the rear of the Property has been taped over.

The vent had been repaired.

5.9 No radiator in the kitchen. The radiator in the kitchen has been capped off.

There was no radiator in the kitchen and no evidence of any wall fixings. However there was a copper pipe which had a radiator control attached to it and it had been made into a loop to connect to the central heating circuit.

5.10 Mould in bathroom.

There was black mould around the tiles and the ceiling above the corner bath and also above the window.

5.11 Kitchen needs to be repainted and new flooring installed due to the leak. There is evidence of previous water penetration into the kitchen as areas of the kitchen ceiling are discoloured.

There was evidence of damp staining to the kitchen ceiling. The laminate top of the sink unit is cracked. The laminate flooring in the kitchen had also been affected by water damage.

5.12 All ceiling lights upstairs are not working.

The lights were not tested at the inspection.

Photographs were taken during the inspection and are attached as a Schedule to this report.

6. Following the inspection of the Property the Tribunal held a hearing at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.

The Tenants and the Landlord and her solicitor attended the hearing.

As a preliminary matter the Landlord's solicitor advised that her client was not a registered Landlord but they have made an application to be registered. However the Council had advised that they require the safety certificates to support the application before they can consider the application further. She also advised that she was not in a position to disclose her clients residential address due to conflict between the parties and asked the tribunal to accept the Landlord's address as being care of her office. The Tribunal adjourned to consider the position.

When the hearing reconvened the Landlord's solicitor advised that her client was happy to provide a care of residential address of care of Manak, 1, Princes Gardens, Glasgow, G12 9HP, which was accepted by the Tribunal.

The Landlord's solicitor also advised that the repairs referred to in the application had not been carried out as access had not been made available. She also advised that no application has been made to the First-tier Tribunal for assistance in gaining access. The Tenants advised that after the application had been submitted to the Tribunal they had not provided access as they had previously spent many hours waiting for the Landlord's contractors to arrive at the Property and they could not take any more time of work.

The Tribunal considered the parties representations and determined that if the Landlord had experienced difficulties in obtaining access to the Property to carry out necessary repairs she should have made a prompt application to the First- tier Tribunal for assistance in gaining access. Repairs had been carried out to the Property in September 2018, and access had been made available at that time. The Tribunal do not accept that the difficulties experienced by the Landlord in obtaining access should be reason for the Tribunal not to deal with the Tenants' application, especially given that the Landlord is not a registered Landlord and many of the items in the application are health and safety concerns.

In respect of the matters in the application the parties advised as follows:

6.1 No gas safety or electrical safety.

The Landlord's solicitor provided the Tribunal and the Tenants with a copy of the Gas Safety Certificate dated 14<sup>th</sup> September 2018 which stated that the Protective Equipotential bonding was not satisfactory. She advised the Tribunal that compliant Gas Safety and EICR certificates will be provided.

6.2 Shed roof has blown off. The roof of the outbuilding is damaged and has had a makeshift repair done.

The Landlord's solicitor advised that the shed roof would be repaired.

6.3 The guttering for the removal of rainwater on the extension at the rear of the property is disconnected.

The Landlord's solicitor advised that the necessary repair would be carried out.

6.4 Outside wall is crumbling due to render and the render and silicon sealant around the front door is damaged.

The Landlord's solicitor confirmed that the necessary repair would be carried out.

6.5 Window latches need to be fixed. The handles on the windows of the master bedroom and second bedroom are broken.

The Landlord's solicitor confirmed that the necessary repair would be carried out.

6.6 No RCD Unit or Isolation switch.

The Tenants confirmed that the RCD Unit and Isolation switch had been repaired in September 2018 and this item of the application was withdrawn.

6.7 No controls for the radiator. The radiator controls of the radiator in the downstairs hall and master bedroom appear to be broken.

The parties acknowledged that the radiator control for the radiator in the downstairs hall had been repaired. The Landlord's solicitor confirmed that the necessary repair would be carried out to the bedroom radiator control.

6.8 No vent from the kitchen. The vent at the rear of the Property has been taped over.

The Tenants confirmed the repair had been carried out and this item of the application was withdrawn.

6.9 No radiator in the kitchen. The radiator in the kitchen has been capped off.

The Tenants advised that there had been no radiator in the kitchen at the start of the tenancy and the pipes that had been capped get very hot as they are connected to the central heating system. The Landlord's solicitor confirmed that a radiator would be installed.

6.10 Mould in bathroom.

The ordinary member of the Tribunal explained that the black mould in the bathroom was caused by a build up of condensation as a result of moisture going to cold spots in the bathroom. The Landlord's solicitor advised that if the bathroom window was opened the condensation would be reduced. However she advised that if the Tribunal ordered an extractor fan to be installed this would be attended to by her client.

6.11 Kitchen needs to be repainted and new flooring due to the leak. There is evidence of previous water penetration into the kitchen as areas of the kitchen ceiling are discoloured.

The Landlord's solicitor advised that the water damage had been caused by a leak from the bathroom and the repair had been arranged by the letting agent. Her client

intends to submit an insurance claim for the repairs that are required and consequently she requested a reasonable time for these repairs to be carried out, allowing time for the claim to be processed.

6.12 All ceiling lights upstairs are not working.

The Tenants confirmed that the ceiling lights upstairs had been repaired and this item of the application was withdrawn.

Therefore the issues to be determined are:-

7.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the black mould in the bathroom and associated condensation results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

7.2 The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

Whether the condition of the roof of the garden shed, the guttering at the rear extension, the rendering around the front bedroom window and the front door results in them not being in a reasonable state of repair and proper working order.

7.3 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 and proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1988 requires landlords to have a Gas Safety Certificate carried out for all gas installations within their rental properties annually.

The Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

Therefore the Tribunal have to consider if valid Gas Safety Certificates, EICR and PAT certificates been provided. They must also consider whether the condition of controls to the front bedroom radiator and the capped off pipes, from the former radiator in the kitchen, result in them not being in a reasonable state of repair and proper working order.



7.4 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

Whether the condition of the window latches result in them not being in a reasonable state of repair and proper working order.

## **8. Decision**

8.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determine that the black mould in the bathroom is the result of condensation and the Tenant's use of the Property. Consequently the presence of the black mould does NOT result in the bathroom not being wind and water tight.

8.2 The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine that the defective roof of the garden shed; the defective guttering at the rear extension and the defective rendering around the front bedroom window and the front door DOES result in the structure and exterior of the Property not being in a reasonable state of repair and in proper working order.

8.3 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 and proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Tribunal determine that the Landlord had not provided the Tenant with a valid Gas Safety Certificate, EICR Report or a PAT test.

The Tribunal also determine that the missing temperature control of the front bedroom radiator and the capped off pipes from the former radiator in the kitchen, which are a concern as they become very hot, result in them not being in a reasonable state of repair and proper working order.

8.4 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

The Tribunal determine that the defective window latches result in them not being in a reasonable state of repair and proper working order.

## **Decision**

9. The Tribunal accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13(1)(b), 13(1)(c) and 13(1)(d) of the Act, as stated.

10. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Landlord's solicitor asked the Tribunal to defer issuing the RSEO pending completion of the works by the Landlord. However the Tribunal advised that this was not competent in terms of the Act. Section 24(2) of the Act provides that where the Tribunal decide that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act they must make a RSEO.

11. The decision of the Tribunal was unanimous.

### **Appeal**

**12. 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.

J Taylor

.....Chairperson

12<sup>th</sup> December 2018

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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J Taylor

12/12/18

### Schedule of Photographs



44 Knockburnie Rd, Bothwell, G71 8LW

FTS/HPC/RP/18/2454

Inspection date – 6<sup>th</sup> December 2018

Weather – Cold/Dry

## External – Rear Garden



Outhouse roof appears to have been constructed with timber with a felt covering. The timber has rotted and the felt has been replaced with a tarpaulin. The structure is no longer water tight.



External vent to kitchen repaired



Rain water pipe at the rear extension is disconnected at the existing downpipe rain water is discharging into neighbouring garden

## Front Elevation



Render at the front door, lounge and bedroom window is loose, missing and brickwork is visible.

## **Kitchen**



Water damage to kitchen ceiling and vinyl flooring from the upstairs bathroom due to a previous repair by the property factors contractor.



Damage to worktop at kitchen sink



No radiator has been fitted within the kitchen, however, the pipe work and TRV is in situ and forms part of the central heating system causing a potential hazard



### Hall and bedrooms



Radiator control missing from downstairs hall and front bedroom radiators.



Window handles in front bedroom back bedrooms are broken and fail to lock. The windows are no longer wind and watertight and fail to secure the property.

### **Bathroom**



Evidence of condensation/mould is visible within the bathroom. I would advise that adequate heating and ventilation is required to address this matter.

### **Under stair cupboard**



A new consumer unit has been fitted along with an isolating switch.

### **Comments**

At the hearing the landlord's solicitor submitted an Electrical Installation Condition Report on Edzell Property Management headed paper. An up to-date electrical certificate by a SELECT or NICEIC registered electrician is required.

The Landlord Gas safety certificate submitted by the tenant dated 14/09/18 it has one Fail – Is the Protective Equipotential bonding satisfactory.