

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/18/2865

Title: Subjects at 2 Laurencecroft Road, Stirling, FK8 1AQ registered under Title Number STG64555 ("The House")

The Parties:-

Mr Jismon Mathew, residing at 2 Laurencecroft Road, Stirling, FK8 1AQ ("the Tenant")

Mr Tissan Thomas, residing at 49 Weir Street, Stirling, FK8 1FH ("the Tenant's Supporter")

Mr John Murphy, residing at Ardnaglen, Glen Road, Dunblane, FK15 0HR ("the Landlord")

Slater Hogg and Howison, 2nd Floor, 26 Springfield Court, Glasgow, G1 3DQ ("the Landlord's Representative")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Whereas in terms of their decision dated 15th January 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 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 to:-

- (a) Repair or replace the toilet seat in the bathroom to ensure it is in a reasonable state of repair and in proper working order;
- (b) Repair or replace the kitchen units, fixtures and fittings to ensure they are in a reasonable state of repair and in proper working order; and
- (c) 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 **ten 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 15th January 2019 before this witness:-

Ruth O'Hare

Ann Overton

____ witness

____ chairperson

Ann Overton, c/o Aberdeenshire Council,
Woodhill House, Westburn Road, Aberdeen

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/18/2865

**Property at 2 Laurencecroft Road, Stirling, FK8 1AQ
("The House")**

The Parties:-

Mr Jismon Mathew, residing at 2 Laurencecroft Road, Stirling, FK8 1AQ ("the Tenant")

Mr Tissan Thomas, residing at 49 Weir Street, Stirling, FK8 1FH ("the Tenant's Supporter")

Mr John Murphy, residing at Ardnaglen, Glen Road, Dunblane, FK15 0HR ("the Landlord")

Slater Hogg and Howison, 2nd Floor, 26 Springfield Court, Glasgow, G1 3DQ ("the Landlord's Representative")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Robert Buchan	-	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 24th October 2018 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 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 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; and
 - (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. In summary, the Tenant submitted that the kitchen required refurbishment, the bath was leaking and the toilet seat required to be replaced. There was also mention in the application paperwork of issues with the windows and the front doorbell.
4. A Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, subsequently intimated his 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, the Tenant, the Landlord's Representative and the Tenant's Supporter.
5. Following service of the Notices of Referral the Tribunal received written representations from the Landlord and the Landlord's Representative. In summary, the representations advised that works to the bathroom had been completed and refurbishment of the kitchen had now been instructed. The Tribunal also received written confirmation from the Tenant that he would be attending the inspection and hearing.
6. The Tribunal attended the house on the morning of 14 January 2019. The weather was dry and sunny. The Tenant was present together with the Tenant's Supporter. The Landlord was represented by Scott Syme Meaghan Thomas and Lisa Carlton-Scott from the Landlord's Representative. The Tribunal proceeded to inspect the house.

The Inspection

7. During the inspection the Tribunal examined the issues of disrepair highlighted in the application by the Tenant.
8. The Tribunal examined the kitchen. It was noted that several of the kitchen units and fittings were in a state of disrepair. In particular, some cupboard doors were hanging off the hinges, another was damaged with a large gash in the front and another door was missing entirely from the cupboard unit. The Tribunal noted that water ingress had previously been present from the bathroom upstairs however upon testing the ceiling with a damp meter the Tribunal found the readings to be normal thereby indicating the area was dry.
9. The Tribunal proceeded to inspect the bathroom. The bath had recently been replaced and appeared to be in good condition. The Tribunal noted the toilet seat had become loose and was not in a reasonable state of repair.
10. The Tribunal did not inspect the windows throughout the property nor the doorbell following confirmation from the Tenant that these were not to form part of the application. The Tribunal was aware that whilst these had been mentioned in correspondence submitted with the application, they were not specifically referred to in the application itself therefore the Tribunal was content to proceed on the Tenant's assertion that they should not be included.
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 STEP Stirling, Stirling Enterprise Park. The Tenant and the Tenant's Supporter were both present. Mr Syme, Ms Thomas and Ms Carlton-Scott were present on behalf of the Landlord's Representative.
14. The verbal submissions from the parties can be summarised as follows:-

14.1 The kitchen

The Tenant advised that he had rented the property since 2 July 2018 and had been requesting that works be carried out to the kitchen since that date. He had gone on holiday to India in July and had requested that the works be done in time for his return in August however this had not happened. He was frustrated at the lack of progress despite his repeated calls and visits to the Landlord's Representative. The condition of the kitchen units posed a hazard to his two young children and was unacceptable.

Mr Syme on behalf of the Landlord advised that he accepted the kitchen was in disrepair and was aware of the issues. Mr Syme then circulated an email from a kitchen contractor Ashley Ann Kitchens and Bathrooms together with plans for the kitchen refurbishment. The plans were passed to the Tenant for comment. Mr Syme explained that the works were due to start in February however it was not possible to give a definite date as the contractor was waiting for a response from the supplier. Mr Syme stated that the Tenant had requested the refurbishment however this was denied by the Tenant who stated he had never said a refurbishment was required, simply repairs to the kitchen units.

Mr Syme then advised that the Landlord had offered to reduce the rent to £450 as a gesture of goodwill and in light of the ongoing issues at the property. The Tenant confirmed that this offer had been made but only on the condition that he withdraw his application to the Tribunal. Mr Syme denied any such condition and explained that he was sure the offer still stood, although he would have to take instructions from the Landlord on this point.

14.2 The bathroom

The Tenant confirmed that works to the bathroom had been carried out. He had initially complained about the leak in September 2018, and the works had been completed in November 2018. Again, he expressed frustration regarding the delay in completion of the works. There were no ongoing issues with water ingress however the toilet seat required to be fixed.

Mr Syme confirmed that the works to the bathroom had been carried out in November 2018 which had resolved the leak. He conceded that the toilet seat required to be fixed and that this could be arranged.

The Tenant concluded by stating that he had felt ignored by the Landlord and his representative since the commencement of the tenancy. He felt there were ongoing delays due to the Landlord's failure to give instructions to his representative.

Mr Syme concluded by advising that he would take the Tenant's complaints regarding communication on board and could take these forward as a formal investigation, however he stressed that the Tenant had not made any formal complaint in line with his firm's complaints policy.

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 a private residential tenancy which commenced on 2 July 2018.
- b. The property is a two storey terraced dwellinghouse with kitchen and lounge downstairs and bathroom and bedrooms upstairs.
- c. The kitchen units, fixtures and fittings are not in a reasonable state of repair nor in proper working order.
- d. The toilet seat in the bathroom is not in a reasonable state of repair nor in proper working order.
- e. Following works to the bath and its fittings, the bath is now in a reasonable state of repair and in proper working order.

Reasons for the decision

- 16. The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, the verbal submissions 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. Both parties had taken the opportunity to attend the hearing to make verbal submissions on the matters raised in the application.
- 18. It was clear from the Tribunal's inspection of the property that the kitchen units, fixtures and fittings are not in a reasonable state of repair. That was accepted by the Landlord's Representative at the hearing and was reflected in the written representations received in advance from both the Landlord and the Landlord's Representative. The Tribunal has noted the Landlord's intention to replace the kitchen and plans were produced at the hearing to evidence this.
- 19. The Tribunal would therefore expect the replacement of the kitchen to commence at the earliest possible opportunity and in accordance with the timeline outlined by the Landlord's Representative at the hearing. It was of some concern to the Tribunal that the issues with the kitchen had been known to the Landlord's Representative shortly after the Tenant had taken up occupation but as yet no progress had been made. The Tribunal considers the kitchen as fundamental to the Tenant's enjoyment of the property and accordingly the disrepair should be addressed as a matter of urgency. The Tribunal would further expect the Landlord or his representative to ensure the Tenant has access to adequate cooking and washing facilities during the period of any works.
- 20. With regard to the bathroom, although the Tenant was again frustrated with the length of time it had taken, he accepted that the leak had now been addressed through the works that had been carried out. This reflected the findings of the Tribunal at the inspection where no water ingress could be detected. The Tribunal was therefore satisfied that the bath and its fixtures and fittings were now compliant with the Repairing Standard. The Tribunal was not however

satisfied from its inspection that the toilet seat was in proper working order. It required to be repaired or replaced, a fact that had been conceded by the Landlord's Representative at the hearing.

21. The Tribunal therefore concluded that the Landlord had failed to comply with his duties under the Repairing Standard for the above reasons.
22. 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".
23. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act. Given the proposed timeline for completing the kitchen replacement, the Tribunal considered a period of ten weeks would be appropriate.

Decision

24. In respect of section 13(1)(d) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
25. The decision of the Tribunal was unanimous.

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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.

Ruth O'Hare

Signed

Ruth O'Hare
Chairperson

15th January 2019

FTC/HPC/RP/18/2065 - THIS IS THE SCHEDULE OF PHOTOGRAPHS
REFERRED TO IN THE DECISION OF THE TRIBUNAL DATED 15
JANUARY 2019

Photographs taken during the inspection of
2 Laurencecroft Road, Stirling, FK8 1AQ



Front



Broken kitchen unit doors

Photographs taken during the inspection of
2 Laurencecroft Road, Stirling, FK8 1AQ



Missing drawer fronts



Repaired bath

Photographs taken during the inspection of
2 Laurencecroft Road, Stirling, FK8 1AQ



Resealed bath surround and new tiling



Bathroom seat