

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)

(Hereinafter referred to as "the tribunal")

Case Reference Number: FTS/HPC/RP/18/3171

Re: U/L 6 Barbadoes Road, Kilmarnock KA1 1SY ("the house")

Land Register Title No: AYR73655

The Parties:-

Mr Bobby Brown, residing at the house ("the tenant")

Mr Sam Abercrombie and Mr Jim Davie, Adelphi Engineering and Construction Ltd, Unit 1, Imex Business Park, Lugar KA18 3JG ("the landlords")

Tribunal Members – Sarah O'Neill (Legal Member) and Lori Charles (Ordinary Member, Surveyor)

NOTICE TO: Mr Sam Abercrombie and Mr Jim Davie (the landlords)

Whereas in terms of its decision dated 12 March 2019, the tribunal determined that the landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that the house is not wind and watertight and in all other respects reasonably fit for human habitation

The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

The tribunal now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house meets the repairing standard, and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular, the tribunal requires the landlords to:

1. Instruct a suitably qualified contractor to repair or replace all of the windows in the house, to ensure that all windows are wind and watertight and in proper and safe working order.
2. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal orders that the works specified in this order must be carried out and completed within the period of **6 weeks** from the date of service of this notice.

Rights 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 Housing (Scotland) Act 2006, 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 signed by Sarah Frances O'Neill, solicitor, Chairperson of the First-tier Tribunal (Housing and Property Chamber), at Glasgow on the twelfth day of March, Two

Thousand and Nineteen before this witness –

S Dunn

S O'Neill

___ witness ___

Chairperson

Shannon Dunn name in full

20 York Street, Glasgow, address

G2 8AT

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as "the tribunal")

Under Section 24(1) of the Housing (Scotland) Act 2006 ("the Act")

Case Reference Number: FTS/HPC/RP/18/3171

Re: U/L 6 Barbadoes Road, Kilmarnock KA1 1SY ("the house")

Land Register Title No: AYR73655

The Parties:-

Mr Bobby Brown, residing at the house ("the tenant")

Mr Sam Abercrombie and Mr Jim Davie, Adelphi Engineering and Construction Ltd, Unit 1, Imex Business Park, Lugar KA18 3JG ("the landlords")

Tribunal Members – Sarah O'Neill (Legal Member) and Lori Charles (Ordinary Member, Surveyor)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house, and taking account of all the available evidence, determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The tribunal's decision is unanimous.

Background

1. By application received on 26 November 2018, the tenant applied to the tribunal for a determination that his landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In his application, the tenant stated that he believed the landlords had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13 (1) (a) and (d) of the Act. His application stated that the landlords had failed to ensure that:
 - i. the house is wind and watertight and in all other respects reasonably fit for human habitation
 - ii. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
3. The tenant included the following complaints in his application form:
 1. Single glazing windows throughout the property. They do not open without being jammed in place, and have dropped suddenly.
 2. Plug socket does not work.
 3. Hole around the bathroom light fitting into the attic.
4. The tenant also included with his application form an email dated 20 February 2018 from Mr Sam Abercrombie, one of the landlords, to a representative of DIGS, a charity which had previously been supporting the tenant. This email also mentioned dampness to a wall within the house.
5. The tribunal office wrote to the tenant's representative, Mr Gary Brown, Welfare Reform Worker at East Ayrshire Citizens Advice Bureau, on 5 December 2018. In that letter, the tribunal requested further proof that the repairs in the application had been notified in writing to the landlords. In the letter, it was noted that the landlords under the tenancy agreement were Mr Sam Abercrombie and Mr Jim Davie, rather than Adelphi Engineering and Construction Ltd, as stated in the tenant's application. The letter indicated that the legal convener who had considered the application was satisfied that the landlords had been notified of the issues relating to the windows and dampness to the wall of the property, as evidenced by the email of 20 February 2018 from Mr Abercrombie to a representative of DIGS.
6. The letter noted, however, that the landlords did not appear to have been notified of the issues with the plug socket and the hole around the bathroom light fitting. Mr (Gary) Brown responded on 11 December 2018 to confirm that the tenant did not wish to pursue these matters as part of his application. Neither did he wish to pursue the dampness issue, as this had been resolved.
7. On 21 December 2018, a Convener of the tribunal, with delegated powers under Section 23A of the Housing (Scotland) Act 2014, issued a minute of decision stating that he considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties

at a later date; that he had considered the application paperwork submitted by the tenant, comprising documents received between 26 November 2018 and 14 December 2018; and intimating his decision to refer the application to a tribunal for determination.

8. The tribunal office wrote to the parties on 16 January 2018, notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 25 February 2019. Written representations were requested by 6 February 2019.
9. On 30 January 2019, the tribunal issued a direction to the landlords, requiring them to confirm to the tribunal by 18 February 2019 that the two co-owners named on the title deed to the house, namely Magdalena Teresa Davie and Carolann Abercrombie, were aware of the tenancy agreement between the landlords and the tenant, and had consented to the tenancy being put in place. A response to the direction was received from Mr Abercrombie on 11 February 2019, providing the confirmation requested.
10. Written representations were received from the landlord on 30 January 2019 and from the tenant's representative on 5 February 2019.
11. An email was received by the tribunal administration from Ms Claire Robertson of Adelphi Engineering and Construction Ltd on behalf of Mr Abercrombie on Friday 22 February 2019. The email confirmed that Wilson Window Repairs had been engaged by the landlord to supply and install new windows at the house, and that they were due to attend the house that day to carry out a survey. Attached to the email was a quote from Wilson Window Repairs for the work dated 26 September 2018, which Mr Abercrombie had signed as having accepted on 19 February 2019. The email further stated that due to unforeseen work commitments, Mr Abercrombie was unable to attend the hearing on Monday 25 February, and asked for the hearing to be re-scheduled.
12. The tribunal members did not become aware of this email until the morning of the inspection and hearing, by which time they were already on their way to the inspection. Neither the tenant nor his representative had been made aware of the email. The tribunal noted that the email had been received at a very late stage, and in the circumstances decided to proceed with the inspection and hearing, in the interests of fairness to the tenant and his representative.

The inspection

13. The tribunal inspected the house on the morning of 25 February 2019. The weather conditions at the time of the tribunal's inspection were dry and sunny. The tenant and his representative, Mr Gary Brown, were present at the

inspection. The landlords were neither present nor represented at the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

The house

14. The house comprises an upper flat situated within a two-storey tenement building in the region of 100-120 years old. The accommodation comprises an entrance hallway, living room, two bedrooms, kitchen and bathroom.

The hearing

15. Following the inspection, the tribunal held a hearing at North West Kilmarnock Area Centre, Western Road, Kilmarnock KA3 1NQ. The tenant was present and was represented by Mr (Gary) Brown. The landlords were not present or represented at the hearing. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. It noted that the landlords were clearly aware of the hearing, and that the postponement request had been sent in at a very late stage. It therefore proceeded with the hearing in the absence of the landlords, but it took into account the email and attachment which had been submitted on their behalf on 22 February 2019.

The evidence

16. The evidence before the tribunal consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title AYR73655, which confirmed that the house is owned jointly by James Davie, Magdalena Teresa Davie, Samuel Abercrombie and Carolann Abercrombie.
 - Short assured tenancy agreement between the landlords and the tenant in respect of the house dated 8 June 2017.
 - Various email correspondence between representatives of DIGS and a representative of Adelphi Engineering And Construction Ltd regarding the tenant's complaints dated between 5 October 2017 and 16 May 2018.
 - Email dated 20 February 2018 from Mr Abercrombie to a representative of DIGS regarding the tenant's complaints
 - The letter dated 11 December 2018 from Mr Gary Brown to the tribunal.
 - The written representations received from the landlord on 30 January 2019.
 - The written representations received from the tenant's representative on 5 February 2019.

- The response from the landlords to the tribunal's direction, received on 11 February 2019.
- The email and attachment received from Ms Claire Robertson on behalf of Mr Abercrombie on 22 February 2019.
- The tribunal's inspection of the house.
- The oral representations of the tenant and his representative at the hearing.

Summary of the issues

17. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlords had complied with the duty imposed on them by section 14 (1) (b).

Findings of fact

18. The tribunal made the following findings in fact:

- The house is jointly owned by James Davie, Magdalena Teresa Davie, Samuel Abercrombie and Carolann Abercrombie.
- Mr Abercrombie and Mr Davie are the landlords under the tenancy agreement.
- Mr Abercrombie is the registered landlord for the house.
- Mrs Davie and Mrs Abercrombie were aware of the tenancy agreement between the landlords and the tenant, and consented to the tenancy being put in place
- Mr Abercrombie and Mr Davie are Directors of Adelphi Engineering and Construction Ltd.
- The tenant and the landlords entered into a short-assured tenancy to rent the house from 8 June 2017 for an initial period of 6 months. The tenant was still resident in the house at the time of the tribunal's inspection.
- The tribunal at its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. The windows throughout the house were single glazed with secondary glazed units fitted.
 - ii. The secondary glazed unit in bedroom 1 (front bedroom) was twisted within the frame and was no longer secure.
 - iii. The secondary glazed unit in the lounge was twisted within the frame. It was also damaged at both corners, which the tenant told the tribunal was due to the window dropping suddenly. Parts of the window frame had been taped over.
 - iv. When tested, the top section of the secondary glazed unit in the rear facing bedroom fell suddenly when the lower section was closed.

- v. The small window in the large cupboard off the rear bedroom had been sealed closed with tape.
- vi. Draughts could be felt around the windows.
- vii. There was evidence of dampness staining over a large area of wall in the living room, and a further area of wall in the rear bedroom. Damp readings were taken, but these were within the normal range - there was accordingly no evidence of dampness.
- viii. There was one battery operated smoke detector in the hallway.
- ix. There was no hardwired interlinked fire detection in the house.
- x. There was no carbon monoxide detector adjacent to the boiler.

Reasons for decision

19. The tenant had indicated that he did not wish to pursue his complaint about the dampness, and the tribunal observed at its inspection that this appeared to have been resolved. The tribunal therefore considered only the tenant's complaints regarding the windows in the house. The tribunal's observations during its inspection regarding the windows are set out at paragraph 18 above.
20. The tenant and his representative told the tribunal at the hearing that he had two main complaints about the windows. Firstly, they were not wind and watertight - they let in draughts, and the house was often cold as a result. Secondly, the windows were not safe, as the secondary glazing units could drop suddenly and could cause serious injury - on one occasion, a falling unit had narrowly missed his young daughter's fingers. He confirmed that the window contractor had visited the house the previous Friday and had measured up for new windows. While the tribunal noted that the landlords had now instructed the contractor to replace the windows, it determines that at the time of its inspection the windows within the house were not wind and watertight and were not in proper working order.

Observations by the tribunal

21. While the tenant did not make a complaint about these matters in his application, the tribunal also wishes to make observations about:
- 1) the provision within the house for detecting fires and giving warning of fire or suspected fire, and
 - 2) the provision within the house for giving warning if carbon monoxide is present in a concentration that is hazardous to health
22. Firstly, the tribunal noted at its inspection that there was only one battery operated smoke alarm in the hallway. There were no other smoke alarms in the house, and there was no heat alarm in the kitchen. The tribunal notes that this

provision does not comply with the current statutory guidance for private rented properties.

23. In determining whether a house meets the repairing standard regarding satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers. The current Scottish Government statutory guidance¹ states that there should be at least:

- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
- one functioning smoke alarm in every circulation space, such as hallways and landings.
- one heat alarm in every kitchen
- and all alarms should be interlinked.

24. Secondly, the tribunal observed during its inspection that there was no carbon monoxide (CO) detector adjacent to the boiler. The tribunal notes that Section 13 (6) of the 2006 Act provides that in determining whether a house meets the standard of repair set out in section 13 (1) (g) of the 2006 Act, regard is to be had to guidance issued by Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The current guidance² provides that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:

- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
- a fixed combustion appliance in an inter-connected space, for example, an integral garage
- a combustion appliance necessarily located in a bathroom.

25. The guidance also states that a CO detection system to alert occupants to the presence of CO gas should consist of at least:

- 1 CO detector in every space containing a fixed combustion appliance (excluding an appliance used solely for cooking) and

¹ <https://www.gov.scot/publications/fire-safety-guidance-private-rented-properties/>

²

<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20STANDARD%20TUTORIAL%20GUIDANCE%20FOR%20THE%20PROVISION%20OF%20CARBON%20MONOXIDE%20ALARMS%20IN%20PRIVATE%20RENTED%20HOUSING.pdf>

- 1 CO detector to provide early warning in high risk accommodation, that is, a bedroom or principal habitable room, where a flue passes through these rooms.

26. It also states that, unless otherwise indicated by the manufacturer, CO detectors should be either:

- ceiling mounted and positioned at least 300 mm from any wall or
- wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room.

27. The tribunal noted that the boiler within the house is a fixed combustion appliance, and that there is no CO monitor fitted adjacent to the boiler, as required by the statutory guidance.

Summary of decision

28. On the basis of all the evidence before it, the tribunal determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that the windows in the house are not wind and watertight and in all other respects reasonably fit for human habitation.

29. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

30. 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.

31. 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.

S O'Neill

Signed.....

Sarah O'Neill, Chairperson

.....Date..... 12/3/19

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



U/L 6 Barbadoes Road Kilmarnock KA1 1SY

FTS/HPC/RP/18/3171

Inspection date – 25th February 2019 at 10:45am

Weather – Dry

Surveyor - Lori Charles

*This is the schedule of photographs
referred to in the Foregoing decision
dated 12 March 2019.*

S O'Neill

Bedroom 1 Front facing



Single glazed window with a secondary glazed unit fitted. The secondary glazing unit is now twisted within the frame and is no longer secure.

Lounge Front facing



Single glazed window with a secondary glazed unit fitted. The secondary glazing unit is damaged at both corners due to a sudden drop and sits twisted within the frame. Parts of window frame have been taped over.

Rear facing bedroom with large cupboard



Top section of secondary glazed unit falls suddenly when lower section is closed.

The small window in the cupboard has been seal closed with clear tape.

All windows inspected are not wind and water tight and are not fit for purpose.

Lounge



Dampness had been noted within the lounge and rear bedroom. Moisture readings were recorded within the normal range. Works carried out to the building appear to have rectified this issue.

Observations made during inspection

A battery operated smoke detector was noted in the hall - Not tested.

No hard wired interlinked fire detection was noted within the flat. No CO detector noted at boiler.

