

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/19/2157

Title no: REN119248

35 Craigbog Avenue, Johnstone, PA5 0LS ('The Property')

The Parties:-

Michael Tarry residing at Flat 0/1, 80 High Street, Johnstone, PA5 8SP ('the Landlord').

Ritehome Letting Limited, 350 Glasgow Harbour Terrace, Glasgow, G11 6EG ('The Landlord's Representatives')

Neill Stewart residing at 35 Craigbog Avenue, Johnstone, PA5 0LS ('the Original Tenant').

Pauline Neill residing at 35 Craigbog Avenue, Johnstone, PA5 0LS ('the New Tenant and the Original Tenant's Representative').

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 Michael Tarry

Whereas in terms of their decision dated 27th November 2019 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 Property is wind and water tight and in all other respects reasonably fit for human habitation 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. Repair the back bedroom windows and surrounds to render them wind and watertight.
2. Repair or replace the front and back door and fascias of the front door to render them in a reasonable state of repair and proper working order.
3. Resolve the source of damp penetration to the wall under the window of the back bedroom and carry out such repairs as necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.
4. Repair or replace the protruding screws/ bolts of the kitchen cupboard doors to render them in a reasonable state of repair and proper working order.

The Tribunal orders that these works must be carried out and completed by 15th January 2020.

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 a 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 Glasgow on 27th November 2019 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Julie McAnulty, 20 York Street, Glasgow. J Taylor

Signed.....

Chairperson

J McAnulty

.....witness

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/19/2157

Title no: REN119248

35 Craigbog Avenue, Johnstone, PA5 0LS ('The Property')

The Parties:-

Michael Tarry residing at Flat 0/1, 80 High Street, Johnstone, PA5 8SP ('the Landlord').

Ritehome Letting Limited, 350 Glasgow Harbour Terrace, Glasgow, G11 6EG ('The Landlord's Representatives')

Neill Stewart residing at 35 Craigbog Avenue, Johnstone, PA5 0LS ('the Original Tenant').

Pauline Neill residing at 35 Craigbog Avenue, Johnstone, PA5 0LS ('the New Tenant and the Original Tenant's Representative').

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 Landlords have 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 Original Tenant leased the Property from the Landlord in terms of the lease between the parties, which had been produced. The Original 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').

The application stated that he considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. He 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 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 any 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 :-

- 1.1 The back bedroom windows need to be repaired.
- 1.2 The wall under the back bedroom window is damp and water is getting through.
- 1.3 The front and back doors need to be fixed.
- 1.4 The kitchen cupboard door needs to be replaced.
- 1.5 The gas pipe from the boiler to the outlet needs to be sealed.
- 1.6 The fence and gate in the front garden are not safe.
- 1.7 The shower is not powerful.
- 1.8 The top part of the back bedroom radiator leaks.

2. Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), having considered the application, comprising documents received between 10th July 2019 and 23rd July 2019, referred the application under Section 22 (1) of the Act to a Tribunal.

3. On 27th August 2019 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 the Third Party, the Landlords and the Original Tenant.

4. On 20th September 2019 Patricia Pryce, the original Legal Member of the Tribunal, determined that the Tribunal would continue with the application even although the tenancy of the Original Tenant had been terminated all in terms of Schedule 2 of Paragraph 7(1) of the Housing (Scotland) Act 2006.

5. The Tribunal attended at the Property on 18th November 2019. Pauline Neill was present at the inspection together with Robert Nixon, the Landlord's representative.

The Property, is an ex local authority lower cottage flat which dates from circa 1950. The accommodation comprises 2 bedrooms, sitting room, lounge, kitchen and bathroom with garden ground to front and rear.

The Tribunal inspected the alleged defects and found as follows:-

5.1 The back bedroom windows need to be repaired.

The gaskets around the window are not secure and they are protruding from the window frames. Foam draught excluders had been fitted but were peeling away from the frames.

5.2 The wall under the back bedroom window is damp and water is getting through.

A section of the plaster of the wall below the back bedroom window was crumbling. Lori Charles tested this section of wall with the damp meter and found that the damp was in the red zone and in excess of 25%.

5.3 The front and back doors need to be fixed.

The gaskets around the doors are not secure. The PVC facing to the front door was loose and silicon sealant is missing. A draught could be felt at the side of the facing strip at the inspection.

5.4 The kitchen cupboard door needs to be replaced.

Repairs had been carried out to the doors of the kitchen cupboard but the screws/ bolts were protruding by over 2 cm which results in them being unsafe.

5.5 The gas pipe from the boiler to the outlet needs to be sealed.

The gas pipe had been repaired.

3.6 The fence and gate in the front garden are not safe.

A wooden side fence and side gate to the front of the Property had recently been installed and were in proper working order. The New Tenant explained that the new gate was not as tall as the original gate.

5.7 The shower is not powerful.

The electric shower was turned on at the inspection and the flow could be described as a medium flow in terms of strength.

3.8 The top part of the back bedroom radiator leaks.

The radiator had been repaired.

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

7. Following the inspection of the Property the Tribunal held a hearing at The Glasgow Tribunal Centre, 20 York Street, Glasgow.

The Landlord's representative Robert Nixon attended the hearing. The Tenants did not attend the hearing and were not represented.

In respect of the matters in the application Robert Nixon advised as follows:

7.1 The back bedroom windows need to be repaired.

Robert Nixon advised the Tribunal that he had believed the repairs to the windows had been carried out but accepted that the foam draft excluders that had been fixed externally to the window gaskets were not sufficient.

7.2 The wall under the back bedroom window is damp and water is getting through.

Robert Nixon confirmed that he had received quotes for repair to the plaster.

7.3 The front and back doors need to be fixed.

Robert Nixon advised that the Landlord has provided funds to enable the repair to be carried out.

7.4 The kitchen cupboard door needs to be replaced.

Robert Nixon acknowledged that the protruding screws/ bolts need to be repaired.

7.5 The gas pipe from the boiler to the outlet needs to be sealed.

Robert Nixon confirmed that the gas pipe had been resealed recently.

7.6 The fence and gate in the front garden are not safe.

Robert Nixon confirmed that the side garden fence and gate had recently been replaced by the Landlord.

7.7 The shower is not powerful.

Robert Nixon accepted the Tribunal's view that the power of the shower is in a normal range.

7.8 The top part of the back bedroom radiator leaks.

Robert Nixon confirmed that the Radiator had been repaired.

8. Decision

As a preliminary matter the Tribunal determined that the seals of the Gas Pipe in the kitchen and the leaks to the bedroom radiator had been repaired and they complied with the repairing standard.

8.1 The issues to be determined are:-

8.1.1 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 condition of the back bedroom windows, the front and back doors and the wall under the back bedroom window results in them not being wind and water tight and in all other respects reasonably fit for human habitation.

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

Whether the condition of the front wooden fence and wooden gate results in them not being in a reasonable state of repair and proper working order.

8.1.3 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).

Whether the shower is in a reasonable state of repair and proper working order.

8.1.4 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 kitchen cupboard is in a reasonable state of repair and proper working order.

8.2 Determinations:

8.2.1 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 defective window gaskets, the defective gaskets to the front and back doors, the defective PVC fascia to the front door and damp in the wall under the back bedroom window results in these items not being wind and water tight or reasonably fit for human habitation.

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

The Tribunal determine that replacement fence and gate to the front of the Property are in a reasonable state of repair and proper working order. No evidence had been provided to the effect that the replacement front gate was smaller than the original gate and therefore the Tribunal were unable to determine if the replacement gate was insufficient.

8.2.3 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 strength of the water flow of the shower was medium and not weak or poor and therefore the shower was in a reasonable state of repair and proper working order.

8.2.4 The fixtures, fittings and appliances provided by the Landlords 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 protruding bolts/ screws from the hinges of the kitchen cupboards results in them not being in a reasonable state of repair and proper working order.

8.3. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Sections 13 (1)(a) and (d)of the Act, as stated.

9. The decision of the Tribunal was unanimous.

Appeal

10. 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

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...Chairperson

27th November 2019

Housing and Property Chamber First-tier Tribunal for Scotland



Date of Inspection – 18/11/19 at 10:00am

Property Reference – FTS/HPC/RP/19/2157

Property Address – 35 Craigbog Ave, Johnstone PA5 0LS

Surveyor – Lori Charles

Weather – Cold

J Taylor

27/11/19

Rear bedroom 1



High moisture readings noted below rear bedroom window. Plasterwork damaged due to water ingress.



Window has been fitted with draft excluder to the external window frame. This requires to be removed and the window fitted with the correct rubber gasket seal to ensure window is wind and water tight.

Kitchen



Hole at gas boiler flue repaired.



The repair to the cupboard hinges are not to a reasonable standard and the protruding screws could be dangerous

External kitchen door



Draft noted at the kitchen door. Seals around the kitchen door and window are ill fitting and require to be replaced with the correct rubber gasket seals to ensure the property is wind and water tight.

Front Upvc door



Seal to front door is detached and causes the locking mechanism to jamb making it difficult to open the door. The front door is not wind and water tight.

Bathroom

The shower pressure was tested and was within a reasonable range.

Bedroom 2



Leak at radiator fixed.

Lori Charles BSc Hons MRICS

Lori Charles

Ordinary Member (Surveyor)

Date 18/11/2019

Schedule of photographs taken by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 18 November 2019.

Reference Number FTS/HPC/RP/19/2157

