

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RT/18/2227**

**Title no: STG 35276**

**100 Springfield Road, Stirling, FK7 7QW ("The Property")**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG  
("the Third Party")**

**Ms Taylor Monaghan, 100 Springfield Road, Stirling, FK7 7QW ("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry,  
Northern Ireland BT55 7FG ("the Landlord")**

Whereas in terms of their decision dated 6 December 2018, 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 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) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (f) 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 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: -

1. To complete the repair to and re-decorate the living room ceiling.
2. To replace loose and damaged flooring in the hall and ensure that there are no gaps and that the flooring is in a reasonable state of repair.
3. To instruct a suitably qualified plumber to investigate the cause of the leak from the bathroom and carry out any necessary remedial work to prevent further leaks.
4. To replace the seal around the bath, install a new properly fitting bath panel and replace poorly fitting boxing around the pipes in the bathroom.
5. To instruct a registered Gas Safe engineer to carry out all necessary repairs and service the boiler and ensure that it is in proper working order.
6. To instruct a competent licensed contractor to investigate the presence of asbestos within and around the entire obsolete warm air heating system in the property. Thereafter, remove the heating unit in the living room and any identified materials containing asbestos and, if required, provide evidence of proper removal and disposal under current Waste Management Regulations.
7. To instruct a report from a suitably qualified damp proofing and condensation specialist to investigate the cause of dampness and/or condensation in the bedrooms, exhibit a copy of the report to the Tribunal, carry out any recommendations identified in the report and repair all damage.
8. To repair the holes in the rear bedroom ceiling.
9. To replace the damaged socket cover in the rear bedroom.
10. To instruct a suitably qualified contractor to investigate the cause of water penetration in the kitchen, carry out any recommended works to prevent further water penetration/leaks and repair and redecorate the damage to the ceiling and all affected plasterwork above the window.
11. To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property to ensure that they do not leak and are in a

reasonable state of repair; or to replace the rainwater goods.

12. To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance.
13. To install a CO detector in the property to comply with current regulations and guidance.
14. To instruct a suitably qualified Gas Safe engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory Gas Safety Record, and
15. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property after the installation of new smoke and heat detectors, carry out any necessary repairs or alterations, and exhibit a satisfactory EICR to the Tribunal.

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

In terms of Section 63 of the Act, 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 pages are executed by Josephine Bonnar, legal member of the Tribunal, at Motherwell on 6 December 2018 in the presence of the undernoted witness: -

Mr Gerard Bonnar  
\_\_\_\_\_ witness

Gerard Bonnar  
1 Carlton Place, Glasgow

Ms Josephine Bonnar  
\_\_\_\_\_ . Legal Member

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RT/18/2227**

**Title Number : STG 35276**

**100 Springfield Road, Stirling, FK7 7QW ("The Property")**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG ("the Third Party")**

**Ms Taylor Monaghan, 100 Springfield Road, Stirling, FK7 7QW ("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG ("the Landlord")**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("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) of the Housing (Scotland) Act 2006 ("the Act") 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.**

**The Tribunal comprised: -**

**Mrs Josephine Bonnar, Legal Member**

**Ms Carol Jones, Ordinary Member**

## Background

1. By application dated 31 August 2018 the Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application states that the Third Party considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party states that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (v) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vii) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Third Party complains of;- (1) Incomplete ceiling repair in living room, (2) Loose/poorly fitted floorboards in hallway, (3) Leak from bath/waste trap and poorly fitted bath panel in bathroom, (4) Boiler losing pressure and obsolete warm air unit with evidence of asbestos, (5) Water penetration or damp in two bedrooms and broken socket face plate and hole in ceiling in one bedroom, (6) Mould spores and damaged plasterwork in kitchen from bathroom leak, (7) Leaking and damaged gutters, (8) Insufficient number of smoke detectors and not hardwired (9) No carbon monoxide detector. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenant wishes to be treated as a party to the application.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection

would take place on 5 November 2018 at 10am and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.

4. The Tribunal inspected the property on the morning of 5 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant's mother, Heather Monaghan, was present on behalf of the Tenant, who was in hospital. The Landlord did not attend. Thereafter the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2235, 2232, 2229, 2226 and 2230. Mr Paterson attended on behalf of the Third Party. Also present were Blair McKie, Emma Jane McLaughlan, Shirley Kane and Mandy Rushforth, tenants in three of the other applications before the Tribunal. The Tenant was not present. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord states that he does not wish to attend the hearing. He also states that he is in the process of "sorting this all out" and has engaged a new letting agent, O'Malley Property, who is in the process of doing all the repairs required to bring the properties up to an acceptable standard. He further states that they have had some difficulty in accessing some of the properties.

### **The Inspection**

5. At the time of the inspection the weather was dry. The Tribunal inspected the property which is a 3 bedroom, end terraced former local authority dwellinghouse located in Braehead, Stirling. The Tribunal noted the following; - (a) Living Room - Section of exposed plasterboard on ceiling, obsolete warm air heating system in living room cupboard with some damage to the wall lining of the cupboard (b) Hall - Gaps in laminate floor covering around skirting boards and threshold to living room, uneven sections of laminate flooring, exposed pipes in corner (c) Bathroom - Poor quality boxing of pipes, defective bath seal and poorly fitted/loose bath panel (d) Gas boiler - located in cupboard in bedroom 2 upstairs, (e) Bedroom 1 upstairs (rear) - holes in ceiling (one covered by tenant), black spot mould in rear corner at gable wall with moderate (amber) damp meter readings, damaged socket cover, (f) Bedroom 2 (front) - wallpaper peeling and black spot mould to front corner at gable wall with moderate (amber) damp meter readings, (g) Kitchen - Ceiling water stained and plaster damaged, hole above window, (h) Exterior -

gutter broken and vegetation growth at rear, mortar missing and gaps/possible rot to fascia boards to verge on gable, gutter leaking and vegetation growth at front, (i) Ceiling mounted smoke alarms in hall and landing, appeared to be working when tested. No smoke detector in living room, heat detector in kitchen or CO detector in property. During the inspection the Tenant's mother advised that the damage to the kitchen ceiling seems to be as a result of a leak from the bathroom and that water continues to come through whenever the bath is used. She also indicated that the boiler doesn't work properly, has to be constantly topped up and makes a banging noise. The Tribunal was also advised that the Tenant has received notification of eviction proceedings. A schedule of photographs taken at the inspection is attached to this decision.

### **The Hearing**

6. At the hearing the Tribunal only heard evidence from Mr Paterson. He advised the Tribunal that at the end of March 2018, while dealing with an unrelated complaint involving the Landlord, he became aware of repairs issues at a number of properties owned by the Landlord. He contacted the Landlord and advised that these repair issues required to be addressed. He received a response from the Landlord confirming that action would be taken. However, further enquiries established that the work was not carried out. Between 13 July and 4 August 2018, Mr Paterson carried out full inspections of the 6 properties. Thereafter, he contacted the Landlord by post and email detailing the work which was required and asking the Landlord to provide action plans with timescales. He failed to do so, and no repairs were carried out. In July 2018 Mr Paterson also had contact from O'Malley Property. They indicated that they might be taking over the management of the properties and also advised that the properties might be sold. Their appointment was not confirmed until last week, when Mr Paterson received an email from the Landlord saying that he has instructed new agents who would be getting the properties back up to standard. He has also become aware that some of the tenants have now received letters from O'Malley Property.
7. Mr Paterson advised the Tribunal that he spoke to the Tenant at the beginning of the week. She told him that she was now out of hospital. She stated that she had been in bed resting one day last week when she heard someone at the door. She didn't get up to answer and then heard keys in the lock, someone trying to get in, unsuccessfully. She advised Mr Paterson that she thinks it might have been someone from O'Malley Property as there had been a

letter. Mr Paterson advised her to contact them. He also stated that he has contacted the Landlord to advise that the agents should not be letting themselves into the properties, using keys in their possession, without permission but should either make an appointment with the Tenant to inspect after providing proper notice or seek assistance from the Tribunal if access is refused. Mr Paterson advised the Tribunal that part of the Tenant's rent is paid by way of housing benefit. The Tenant has been withholding the remainder of rent since the summer, due to the failure by the Landlord to carry out essential repairs. He also advised the Tribunal that he has been told that, since he spoke to the Tenant, she may have moved out of the property. He has not been able to confirm this.

8. Mr Paterson confirmed that the defects detailed in the photograph schedule accurately reflect the repairing standard issues at the property. He advised that no repairs had been carried out to the property between his inspection prior to submitting the application and the Tribunal's inspection. Neither the Tenant nor the Landlord/Landlord's agent have advised him of any changes since that inspection. He advised that from the location of the 2 rooms, it appears likely that the damage to the kitchen has been caused by a leak from the bathroom, although he has not been able to conclusively establish that this is the case. He was able to confirm that he has witnessed water coming through the ceiling in the kitchen. He confirmed the central heating at the property seems to be working, although the Tenant reports issues with the boiler. He advised that he is particularly concerned about the obsolete heater in the living room cupboard. A colleague has advised him that the cupboard is almost certainly lined with asbestos, and on inspection it is evident that the lining is damaged. He is concerned that this poses a threat to the health of the occupiers of the property. Lastly, he advised that the Tenants have not been provided with a gas safety certificate or EICR and that the smoke/heat detectors do not comply with current guidance. There is no CO detector in the property. The tenants have also not been provided with an energy performance certificate, although he conceded that this was desirable rather than essential in relation to the repairing standard.

### **Findings in Fact**

9. The property is a three bedroom end terraced former local authority dwellinghouse located in Braehead, Stirling.



10. There is exposed plasterboard on the living room ceiling.
11. There are gaps and uneven sections of laminate flooring in the ground floor hallway.
12. There is poor quality boxing of pipes, a defective bath seal and poorly fitted bath panel in the bathroom.
13. There is an obsolete warm air heating system in a cupboard in the living room.
14. The boiler in the property requires to be repaired and/or serviced.
15. There are holes in the ceiling in the rear bedroom of the property.
16. There is black spot mould in both the rear and a front bedroom situated on the gable wall.
17. There is a damaged wall socket in the rear bedroom
18. The ceiling and area above the window in the kitchen are water stained and damaged
19. The external gutters are defective and choked with debris and vegetation and there is some damage to the roof.
20. There is no carbon monoxide detector in the property.
21. There are smoke detectors in hall and landing. There is no smoke detector in the living room and no heat detector in the kitchen.
22. The tenant does not have a copy of a current Gas Safety Record or Electrical Installation Condition Report.

### **Reason for decision**

21. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
22. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 3 of the 2006 Act " The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it" The Tribunal is satisfied that the Third Party made the Landlord aware of the repairs issues at the property and that none of the notified repairs have been carried out.

23. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - exposed plasterboard/incomplete previous ceiling repair in the living room, defective and loose laminate flooring in the hall, boxing in of pipes, loose bath panel and defective bath seal in bathroom, holes in rear bedroom ceiling, damaged socket in rear bedroom and possible dampness/condensation/black spot mould in the bedrooms on the gable wall and damaged and defective guttering. These defects were evident at the inspection of the property.
24. From the evidence led at the hearing the Tribunal is also satisfied that an investigation is required into the water damage in the kitchen. The Tribunal were unable to establish if there is a leak from the bathroom, although this seems likely. In any event the Tribunal is satisfied that significant damage has been caused and that the leak is an ongoing issue. The Tribunal is also satisfied that there are problems with the gas boiler, that no gas safety record has been provided and that there is no CO detector in the property. The Tribunal notes that the Third party has not provided any conclusive evidence that the lining of the cupboard housing the obsolete heating unit does contain asbestos but is satisfied that this is a possibility that requires investigation. Furthermore, the heating unit should be removed. The Tribunal also notes that there appears to be no up to date Electrical Installation Report for the property. The Tribunal notes that the fire detection provision does not meet current guidance as there is no smoke detector in the living room or heat detector in the kitchen.
25. The Tribunal noted during the inspection that there are exposed pipes in the hall. The tenant's mother advised that these become hot and care must be taken that the children do not go near. As this is not part of the application, the Tribunal makes no order regarding same. However, the Tribunal recommends that the Landlord takes steps to box in these pipes which could lead to injury in their current condition. Lastly, the Tribunal was not persuaded that there had been a failure by the Tenant to provide access to the property to the landlord for repairs to be carried out.
26. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a), (b), (c), (d), (f) and (g) of the Act. As the application does not relate to any furnishings within the property and provided by the Landlord the Tribunal does not find a breach of section 13(1)(e) to be established.

## Decision

27. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
28. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
29. The decision of the Tribunal is unanimous

## Right of Appeal.

**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.**

In terms of Section 63 of the Act, 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.

**Ms Josephine Bonnar**

Signed..... 6 December 2018

Josephine Bonnar, Legal Member

6 December 2018

This is the schedule of photographs referred to  
in the decision of the same date  
Ms Josephine Bonnar

**Housing and Property Chamber  
First-tier Tribunal for Scotland**



Schedule of photographs taken during the inspection of 100 Springfield Road, Braehead,  
Stirling FK7 7QW by the First-tier Tribunal for Scotland (Housing and Property Chamber)  
Monday 5 November 2018

Reference Number : FTS/HPC/RT/18/2227



Front Elevation



Living Room - Repair to ceiling incomplete/new section of plasterboard exposed/no decoration



Living Room - Repair to ceiling incomplete/new section of plasterboard exposed/no decoration



Hall - Gaps in laminate floor covering around skirting boards



Hall - Gaps in laminate floor covering at threshold to living room



Hall - Uneven laminate floor



Bathroom



Bathroom - poor quality boxing of pipes/bath seal defective



Bathroom - poor quality boxing of pipes/bath seal defective



Bathroom - poor quality boxing of pipes under wash hand basin



Bath panel poorly fitted, loose and gaps. Bath seal defective



Front Bedroom (2) Boiler housed in cupboard



Living Room - obsolete warm air heating system





Living Room - some damage to wall lining in cupboard housing obsolete warm air heating system



Rear Bedroom (1) Hole in ceiling



Rear Bedroom (1) Hole in ceiling covered by tenant



Rear Bedroom (1) Black spot mould rear corner at gable wall



Rear Bedroom (1) Damp meter reading amber - rear corner at gable wall



Rear Bedroom (1) Damp meter reading amber - gable wall at ceiling



Rear Bedroom (1) Damaged socket cover



Front Bedroom (2) - Wallpaper peeling and black spot mould to front corner at gable wall



Front Bedroom (2) - Damp meter reading - amber to front corner at gable wall



Kitchen - Ceiling water stained and plaster damaged



Kitchen - plaster damaged/hole above window



Rear Elevation - gutter broken in several places and vegetation growth





Rear Elevation - 2 roof tiles replaced



Verge on gable towards rear elevation -mortar missing and gaps/possible rot to fascia boards



Front Elevation - gutter leaking and vegetation growth



Front Elevation - gutter leaking, dripping into planter



Verge on gable - mortar missing towards corner of front elevation



Front pitch of roof



Hall - Ceiling mounted Smoke Alarm



Landing - Ceiling mounted Smoke Alarm



Hall - Exposed pipes (observation)