

Housing and Property Chamber

First-tier Tribunal for Scotland



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/18/2230

Title no: STG 49369

4 Duke Street, Bannockburn, Stirling, FK7 0JQ ("The Property")

The Parties: -

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

Mandy Rushforth, 4 Duke Street, Bannockburn, Stirling, FK7 0JQ ("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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (b) 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,
- (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (d) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and

(e) 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 instruct a suitably qualified window contractor to inspect the windows in the living room, downstairs bedroom and upstairs front bedroom and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows.
2. To repair or replace the defective doors and door handles in the living room, downstairs bedroom, upstairs front bedroom and hall cupboard.
3. To replace missing and defective thermostatic radiator controls in the living room, kitchen and hall.
4. To re-instate missing bath panels.
5. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation in the property, carry out any necessary remedial work, and exhibit a satisfactory EICR to the Tribunal.
6. To provide the Tribunal with evidence from a suitably qualified registered electrician that the smoke and heat detectors in the property are hard wired and interlinked, in proper working order, and comply with current regulations and guidance.
7. To repair the damaged kitchen units and re-instate missing handles; or replace the kitchen units.
8. To re-instate the missing kitchen door.
9. To replace the damaged letterbox.
10. To replace the defective hot water tap in the downstairs toilet.
11. To instruct a Gas Safe registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory gas safety record.
12. To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property, and ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods, and

13. To install a carbon monoxide detector in the property to comply with current regulations and guidance.

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:-

G Bonnar witness

Gerard Bonnar
1 Carlton Place, Glasgow

J Bonnar Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/18/2230

Title Number: STG 49369

4 Duke Street, Bannockburn, Stirling, FK7 0JQ ("The Property")

The Parties: -

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

Mandy Rushforth, 4 Duke Street, Bannockburn, Stirling, FK7 0JQ ("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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, (ii) 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, (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iv) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vi) 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) Living room – windows do not open and close properly and handles loose, door handle and keeper not working, thermostatic radiator valve (TRV) missing from radiator, (2) Bathroom – no bath panel, TRV missing from radiator, (3) Downstairs bedroom – window does not open, door handle and keeper not working, (4) Bedroom upstairs (right hand side at top of stairs) – door needs renewed, window safety catch broken, (5) Kitchen – warning stickers on sockets, tenants experience electrical shocks, kitchen units handles missing and poor state of repair, TRV missing from radiator, no kitchen door, (6) External – back and front gutters leaking, (7) Downstairs toilet – hot water tap not in proper working order, (8) Hallway – TRV missing from radiator, cupboard door broken, (9) Front door – letterbox broken, (10) No CO detector and inadequate provision of smoke/heat detectors. 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 12 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 12 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant was present. 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, 2226, 2229, 2232 and 2227. Mr Paterson attended on behalf of the Third Party. The Tenant attended. Also present were Shirley Kane, Blair McKie and Emma Jane McLaughlin, tenants in two of the other applications before the Tribunal. 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 4 bedroom, semi-detached former local authority dwellinghouse located in Bannockburn, Stirling. The Tribunal noted the following; - (a) Living Room – Left side window mechanisms defective and handles loose, defective door handles and missing ball catch, TRV missing from radiator, (b) Bathroom – no bath panels, small single radiator with no TRV, (c) Bedroom 1 (ground floor) - window does not open and handle defective/loose, door handles defective/loose, door hinges defective/loose, (d) Bedroom 4 (upstairs, front) - outer side of door damaged, door ball catch plate at jamb missing, right hand side window mechanism defective, water stain and damage to wallpaper under window with moderate (amber) damp meter readings, (e) Rear vestibule (utility area) – warning label on socket saying "do not use", (f) Kitchen –

single and double socket covers loose/wires exposed, wall mounted units misaligned and some handles missing, TRV missing from radiator, door between kitchen and hall missing, (g) Exterior – gutters at front and back defective, leaking at joints and choked with vegetation, loose tiles on roof at verge, (h) Ground floor toilet – hot water tap not fixed properly and no hot water, (i) Hall – TRV missing, cupboard door not secured to hinges, letter box defective and not secure, (j) Ceiling mounted smoke alarm on landing, not working when tested, ceiling mounted smoke alarm in hall - alarm missing, only fitting in place, (k) Boiler – in upstairs bedroom 3 cupboard, CO detector also in cupboard, not working when tested. During the inspection the Tenant advised the Tribunal that she received a text message from the Landlord's sister, who previously dealt with all tenancy related matters, to contact O'Malley Property. She did so, and they indicated that an engineer would come to do a gas safety check on 7th November 2018. She was home all day, but they did not attend. She also advised that no gas safety inspection has been carried out for at least three years since the new boiler was installed. She advised that some of the radiators in the property don't heat up properly. In the rear vestibule (utility area) located off the kitchen, the Tenant advised that the warning sticker on the socket was put there by an electrician who installed her tumble drier and who told her that the wiring in the room is faulty. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

6. At the hearing both the Tenant and Mr Paterson gave evidence. Mr Paterson 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, including the property which is the subject of the application. 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. Mr Paterson has also become aware that some of the tenants have now received letters from O'Malley Property.

7. The Tenant advised the Tribunal that she did not receive a letter from O'Malley Property but was told by Shirley Kane about the letter which had been sent to some tenants advising that they had taken over the management of the properties. She then contacted O'Malley Property and advised them about the outstanding repair issues. They told her that an engineer would come out on the 7th November 2018 to do the gas safety check, but no one appeared. On 13 November, John O'Malley came to the property to carry out an inspection. However, he was only in the property for a few minutes and only went into the living room and kitchen. She was contacted that evening by Holly from O'Malley Property who said that an electrician would come the following day to fit alarms and fix the sockets. In fact, he did not come until the 15th November. He installed smoke alarms in the living room, hall and landing and a heat detector in the kitchen. He fixed the defective double socket and replaced the defective single socket with a double socket in the kitchen. He then told the Tenant that the whole of the downstairs needs to be re-wired and that he would be providing the Landlord with a quote. Meantime, the sockets in the utility area should not be used. The tenant then advised the Tribunal that the living room window has been broken since the summer of 2018. She notified the Landlord's sister, who said she would send someone out to fix it, but no one has come. Most of the other defects have existed since she moved into the property four years ago. The Landlord's sister took a note of them at the time but did not then arrange for them to be fixed. These included the radiators, lack of bath panel, damaged doors, kitchen units, windows and gutters. The toilet tap did work at one time but was broken by the Landlord's repair man who came to fix a problem with the toilet. It has not worked since that time. No EICR has ever been provided by the Landlord. The Tenant also confirmed to the Tribunal that all of the furniture and free-standing appliances in the property belong to her. Lastly, she advised the Tribunal that half of her rent is paid by housing benefit and is still in payment. However, the half that she is due to pay has been withheld since July 2018, due to the failure by the Landlord to carry out essential repairs.
8. Mr Paterson confirmed that the defects detailed in the photograph schedule accurately reflect the repairing standard issues at the property. He advised that he is not aware of any repairs being carried out to the property, other than those mentioned by the

Tenant in her evidence. He is unable to confirm whether the smoke and heat detectors which the Tenant says have been installed comply with current regulations and guidance. The Tenant has also not been provided with an EICR, gas safety certificate or energy performance certificate, although he conceded that the latter is desirable rather than essential in relation to the repairing standard.

Findings in Fact

9. The property is a four bedroom semi detached former local authority dwellinghouse located in Bannockburn, Stirling.
10. The mechanisms of the left side window in the living room, ground floor bedroom and upstairs front bedroom are defective, and handles are loose.
11. The thermostatic radiator valves are missing from radiators in the living room, kitchen and hall.
12. The doors in the living room, downstairs bedroom and upstairs front bedroom are defective.
13. There is no bath panel around the bath.
14. There is water staining and damage to wallpaper in the upstairs front bedroom under the window.
15. Electrical sockets in the utility area off the kitchen have warning stickers on them.
16. Kitchen units are misaligned and have handles missing.
17. There is no door between kitchen and hall.
18. The external gutters are damaged.
19. The hot water tap in the downstairs toilet is defective.
20. The cupboard door in the hall is defective and not secured to hinges.
21. The letter box is defective
22. New smoke and heat detectors have been installed at the property on 15 November 2018.
23. The gas boiler is located in a cupboard in an upstairs bedroom. There is a CO detector in the cupboard.
24. The Tenant has not been provided with an up to date EICR or Gas Safety Record.

Reason for decision

24. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
25. 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 both the Tenants and the Third Party made the Landlord aware of the repairs issues at the property.
26. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - defective windows, lack of bath panels, defective doors, defective kitchen units, lack of kitchen door, damaged gutters, defective tap, defective cupboard door and letterbox, and missing TRV from radiators in the living room, kitchen and hall. These defects were evident at the inspection of the property.
27. From the inspection and evidence led at the hearing the Tribunal is satisfied that there is a potentially serious problem with the wiring at the property, particularly in the utility area off the kitchen. The Tribunal is also satisfied that no gas safety record or EICR have been provided. There is a CO detector in the property however it does not appear to the Tribunal that it is in working order or that it complies with current guidance in terms of its location within the cupboard housing the boiler.
28. The Tribunal notes from the Tenant’s evidence that the damaged sockets in the kitchen have been repaired or replaced and that smoke and heat detectors have now been installed. However, no minor works certificate for the electrical work or evidence has been provided by the Landlord that the smoke and heat detectors are in working order or are regulation compliant. Furthermore, the Tribunal is satisfied from the Tenant’s evidence that the electrics and wiring in the kitchen and adjacent utility are defective, and possibly dangerous, and that a breach of the repairing standard has therefore been established with regard to same. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1) (b), (c), (d), (f) and (g). of the Act. As there are no furnishings listed in the application, and in any event as all of

the furnishings belong to the Tenant, the Tribunal does not find a breach of section 13(1)(e) to be established.

29. The Tribunal notes that the small single panel radiator in the bathroom appears to be intact, and that it is unlikely ever to have been fitted with a TRV. Accordingly, no order is made in relation to same. The Tribunal also makes no order in respect of the small water stained area under the bedroom window as this appears to be related to the defective window and is likely to resolve when the window is fixed. Lastly, the Tribunal noted loose roof tiles during the inspection. As these are not included in the application, no order is made in relation to same. However, the Tribunal recommends that the Landlord take action to address this repair issue. Lastly, the Tribunal is not persuaded that access to the property by the landlord or agent has contributed to the failure to carry out repairs.

Decision

30. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

31. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

32. 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.

Signed.. **J Bonnar** 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

J Bonnar

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 4 Duke Street, Bannockburn,
Stirling FK7 0JQ by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Monday 12 November 2018

Reference Number : FTS/HPC/RT/18/2230



Front Elevation



Living Room - Window to left side - defective mechanisms/loose handles/gaps



Living Room - Window to left side - defective mechanisms/loose handles/gaps



Living Room - Defective door handles, missing ball catch



Living Room - Thermostatic control valve to radiator part missing



Bathroom - no bath panels



Bathroom - small single panel radiator



Bedroom (1) - GF to front - window does not open, handle defective/loose



Bedroom (1) - GF to front - door handles defective/loose



Bedroom (1) - GF to front - Door hinge to base defective/missing/broken screws



Bedroom (1) - GF to front - Door hinge at top defective/missing/broken screws



Bedroom (4) - UF to front - Outer side of door damaged



Bedroom (4) - UF to front - Outer side of door damaged



Bedroom (4) - UF to front - Door - ball catch plate at jamb missing



Bedroom (4) - UF to front - Window to right side defective mechanisms



Bedroom (4) - UF to front - Window to left side defective mechanisms



Bedroom (4) - UF to front - water stain and damage to wallpaper under window



Bedroom (4) - UF to front - External wall - amber damp meter reading (search mode) under window



Rear vestibule/utility area - Warning label "Do not use" on right side of double socket above worktop



Kitchen - single socket cover loose/wires exposed



Kitchen - double socket cover loose/wires exposed



Kitchen - Wall mounted units misaligned and several handles missing



Kitchen - Wall mounted units - handle missing



Kitchen - Base corner unit unit - some handles missing



Kitchen - Base units - some handles missing



Kitchen - Thermostatic control valve to radiator part missing



Kitchen/Hall - door missing



Rear external elevation - gutter defective/leaking at joints and choked with vegetation



Rear external elevation - gutter defective/leaking at joints and choked with vegetation



Rear external elevation - gutter defective/leaking at joints and choked with vegetation



Front external elevation - gutter defective/leaking at joints and choked with vegetation



Front roof pitch - loose roof tiles at verge
(Observation)



Ground floor toilet - Hot water tap not fixed properly/defective/no hot water



Hall - Ground Floor - Thermostatic control valve to radiator - part missing



Hall - Ground Floor - cupboard under stairs - door defective/not secured to hinges



Hall - Front door - letter box defective/ not secure
- external view



Hall - Front door - missing flap to letter box -
internal view



Upper Floor Landing - ceiling mounted smoke alarm



Upper Floor Landing - site of former ceiling mounted smoke alarm - removed



Ground Floor Hall - ceiling mounted smoke alarm



Bedroom (3) UF to rear - Gas Boiler housed in cupboard



Bedroom (3) UF to rear - CO alarm wall mounted within boiler cupboard