

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006**

**Property: 5 Royal Crescent, Edinburgh EH3 6PZ (“the Property”)**

**Sasine Description: ALL and WHOLE the westmost dwellinghouse on the first flat above the street flat of the tenement entering by the common passage and stair Number 5 (formerly 12) Royal Crescent, in the City of Edinburgh and County of Midlothian, being the subjects more particularly described in Disposition in favour of Alexander Jervis, recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh (now Midlothian) on 17 May 1881.**

**Chamber Reference: FTS/HPC/RT/18/3063**

**Mr Ian Osborne, 5 Royal Crescent, Edinburgh EH3 6PZ, represented by Harmony Care and Support Service, 142A Ferry Road, Edinburgh EH6 4NX (“the Tenant”)**

**Freeworld Holdings Limited, incorporated under the Companies Acts (SC187349) and having its Registered Office at 13 Castle Terrace, Edinburgh EH1 2DP (“the Landlord”)**

**Third Party Applicant: City of Edinburgh Council**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)**

Whereas in terms of their decision dated 20 March 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord:

(1) to carry out such works as are required to ensure that the provision of smoke detectors and heat detectors within the Property complies with the Fire Protection in Rented Properties Guidance published by the Scottish Government on 7 February 2019, effective 1 March 2019 and available on the Scottish Government website.

(2) to restore the door entry phone system in the Property to a good state of repair and proper working order.

(3) to carry out such repairs to the windows in the master bedroom, office and kitchen of the Property as are necessary to ensure they are wind and watertight, in a good state of repair and in proper working order.

(4) to carry out such repairs as are necessary to restore the dishwasher to proper working order.

(5) to replace the vinyl flooring in the kitchen.

(6) to carry out such work as is necessary to ensure the light under the kitchen wall units is in proper working order, including repairing the baton holder in the kitchen cupboard and

(7) to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, containing no C1 or C2 items of disrepair and covering the dishwasher and the smoke and heat detectors in the Property, the Report to be issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT and, in the event that the dishwasher in the Property is deemed to be a portable appliance and not covered by the Electrical Installation Condition Report, to exhibit to the Tribunal a satisfactory PAT Test report in respect of the dishwasher.

The Tribunal order that the works required by this Order must be carried out within the period of two months from the date of service of this Order.

### **Right 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 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, typewritten on this and the two preceding pages, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 20 March 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

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.....Legal Member/Chair ..

.....Witness ..

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006**

**Property: 5 Royal Crescent, Edinburgh EH3 6PZ (“the Property”/ “the house”)**

**Chamber Reference: FTS/HPC/RT/18/3063**

**Mr Ian Osborne, 5 Royal Crescent, Edinburgh EH3 6PZ, represented by  
Harmony Care and Support Service, 142A Ferry Road, Edinburgh EH6  
4NX (“the Tenant”)**

**Freeworld Holdings Limited, incorporated under the Companies Acts  
(SC187349) and having its Registered Office at 13 Castle Terrace,  
Edinburgh EH1 2DP (“the Landlord”)**

**Third Party Applicant: City of Edinburgh Council**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Sara  
Hesp (Ordinary Member/Surveyor)**

#### **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’), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.**

#### **Background**

1. By application dated 12 November 2018, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard.

In particular, the Tenant stated that the Landlord had failed to ensure that:-

- the house is wind and watertight and in all other respects reasonably fit for human habitation,
- 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 and
- any fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

3. In the application and its supporting documentation, the Third Party Applicant listed the following alleged defects:-

“Missing smoke detectors

Entry phone casing damaged

Window in master bedroom, top sash falls when opened (so can't open)

Dishwasher broken

Damaged flooring in kitchen

Lights under kitchen cabinets broken

Sash cords in kitchen window broken

Gas Safety Certificate evidence that carried out

EICR and PAT electrical safety certificates need to be carried out if not in place

Office window too stiff to open and window cracked

Shutters in son's bedroom broken

Door to son's bedroom will not stay shut.”

4. On 10 January 2019, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and hearing.
5. The Tribunal inspected the Property on the morning of 27 February 2019. The Tenant was not present at the inspection or the subsequent hearing but was represented by Ms Dalia Jimenez of Harmony Care and Support Services and by Mr Martin Geary of Citizens Advice Scotland. The Third Party Applicant was represented at the inspection by Mr David Ross, Enforcement Officer, but did not attend the hearing. The Landlord was not present or represented at the inspection but was represented at the hearing by Mr Jonny Nisbet of Nisbet, solicitors.
6. The Tribunal comprised George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/surveyor).
7. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

## **The Hearing**

8. Following the inspection, the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. On 26 February 2019, the Landlord had advised the Tribunal that he had just returned from a period abroad and had found the Tribunal's letter of 10 January, which had arrived in his absence and was the first indication he had of the application. Mr Nisbet confirmed to the Tribunal that this was the case and requested that the proceedings be continued. He stated that the landlord had told him that the Tenant had been extremely difficult to deal with, that contractors had been turned away when they called to carry out work and that many of the issues in the application had, in any event, been attended to. Mr Geary accepted that in the interest of fairness to the Parties, it would not be appropriate to object to the motion to continue but did emphasise that the matters complained of in the application had been going on for more than a year.
9. The Tribunal continued the Hearing to 20 March 2019, advising the Landlord's representative that it would require to see a satisfactory Gas Safety Certificate, a current Electrical Installation Condition Report and, if not covered by the EICR, PAT test certificates for all portable appliances provided by the Landlord under the tenancy.
10. The Tribunal reconvened on the morning of 20 March 2019. The Third Party Applicant was not present or represented. The Tenant was not present but was represented by Ms Jimenez and by Mr Ian Girot of Citizens Advice Scotland. The Landlord was not present but was represented by Mr Nisbet.
11. Mr Nisbet provided the Tribunal with a Gas Safety Certificate issued on 16 May 2018 and an Electrical Installation Condition Report dated 23 December 2017, both issued by Contract Heating Limited, Edinburgh.
12. Mr Nisbet told the Tribunal that the Landlord had been trying to obtain access to the Property to carry out the repairs. He tabled copies of correspondence with Harmony Care and Support Services, including an e-mail from his client to Harmony Care and Support Services dated 7 March 2019 and a letter of 11 March 2019, in which Mr Nisbet had stated that his client had an experienced contractor ready to enter the Property to assess and then programme necessary works, all at fairly short notice. This letter had been followed up by an e-mail on 15 March 2019, but Harmony Care and Support Services had not responded. The Landlord's position was that access was being frustrated. Mr Nisbet asked the Tribunal to continue the case.
13. Mr Girot, on behalf of the Tenant, reminded the Tribunal that the landlord had had more than a year to sort out the repair issues and contended that

a Repairing Standard Order should be made, as, given the track record, matters might otherwise fizzle out again.

14. After a short adjournment, the Tribunal advised the parties that it would be determining the application rather than continuing it and that it would be making a Repairing Standard Enforcement Order, as the Tenant had already been occupying the Property for more than a year without any working smoke detectors.
15. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

### **Findings of fact**

16. The Tribunal makes the following findings of fact:

- The Property is a first floor flat in row of terraced houses in Edinburgh's New Town.
- The Tenant is tenant of the Property, but the Tribunal has not seen a copy of the Tenancy Agreement.
- The covers on the smoke detectors in the hallway, office and living room and kitchen are all missing. There is no heat detector in the kitchen.
- The entry phone within the Property is damaged and its facings are missing.
- The sash cord in the window in the master bedroom is not in proper working order and is not holding the lower pane.
- The Tribunal is not able to determine whether the dishwasher is working or not. It appears to have been PAT tested at some time, but not in the recent past. The front panel of the dishwasher is missing.
- There are two holes in the vinyl flooring covering in the kitchen, one in the main part of the floor area and one near the fridge-freezer.
- One of the strip lights under the kitchen units is not working.
- The sash cord of the kitchen window is broken.
- The window in the room described as an office is too stiff to open and the lower pane of the right-hand side of the window is cracked.
- The shutters in the Tenant's son's bedroom are in working order. There is a slight gap in the middle when they are shut.
- The door of the Tenant's son's bedroom was opening and closing properly at the time of the inspection.
- The Tribunal has seen a satisfactory current Gas Safety Certificate in respect of the Property, issued by a Gas Safe registered contractor.
- The Tribunal has seen a current Electrical Installation Condition Report in respect of the Property, issued by a NICEIC listed contractor. It does not include the dishwasher and includes on C2

item, namely that the baton holder in the kitchen cupboard is damaged. The general rating of the installation is "Unsatisfactory".

### **Reasons for the decision**

17. The Tribunal was of the view that the systems for detecting fire and for giving warning in the event of fire do not comply with current Guidance issued by the Scottish Government. In particular, the covers on the smoke detectors are missing and there is no heat detector in the kitchen. Repairs are clearly required to the entry phone system. Repairs are required to the windows in the master bedroom, kitchen and office, to ensure they are wind and water tight and in proper working order. There is a gap in the middle when the window shutters in the Tenant's son's bedroom are closed, but the Tribunal did not consider this merited inclusion in the Repairing Standard Enforcement Order it proposed to make. The Tribunal was of the view that the dishwasher should be included in the EICR or, alternatively, that a satisfactory PAT test certificate for it should be produced. The kitchen flooring presents a tripping hazard. The Tribunal noted that one of the strip lights beneath the kitchen wall units was not working. This might be due to the matter identified in the EICR, namely that the baton holder in the kitchen cupboard was damaged. The Tribunal requires to see an EICR, supplied by a competent contractor, showing the general rating of the installation as "Satisfactory".

18. The decision of the tribunal was unanimous.

### **Right 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.**

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G Clark

Signed,

Legal Member/Chairperson Date: 20 March 2019



*This is the Schedule of Photographs  
referred to in the judgment  
of the Sheriff*  
G Clark

*15 Jan / 20 Feb 2019*

# Housing and Property Chamber First-tier Tribunal for Scotland



**5 Royal Crescent, Edinburgh, EH3 6PZ  
FTS/HPC/RT/18/3063  
Schedule of photographs taken on 27 February 2019**



*Photograph 1: Office: Smoke detector*



*Photographs 2 and 3: Office: window*



*Photographs 4, 5 and 6: Hallway: entry phone*



*Photograph 7: Hallway: Smoke detector*



*Photograph 8: Son's bedroom: door*



*Photographs 9 and 10: Son's bedroom: shutters*



*Photograph 11: Living room: Smoke detector*



*Photographs 12 and 13: kitchen floor*



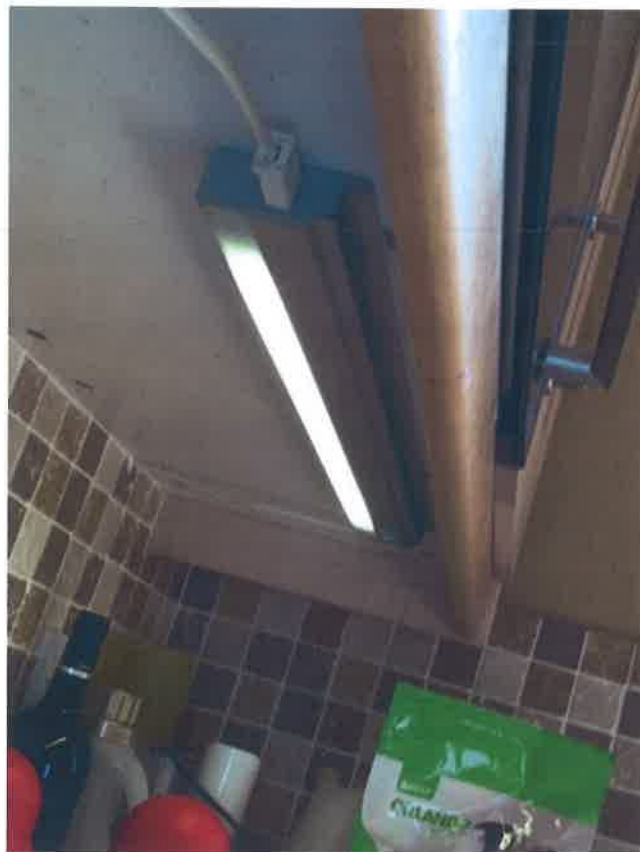
*Photograph 14: smoke detector*



*Photograph 15: carbon monoxide detector*



*Photographs 16 and 17: Kitchen: strip lights below wall units*







*Photograph 18: Kitchen: Window*



*Photograph 19: Kitchen: Dishwasher*



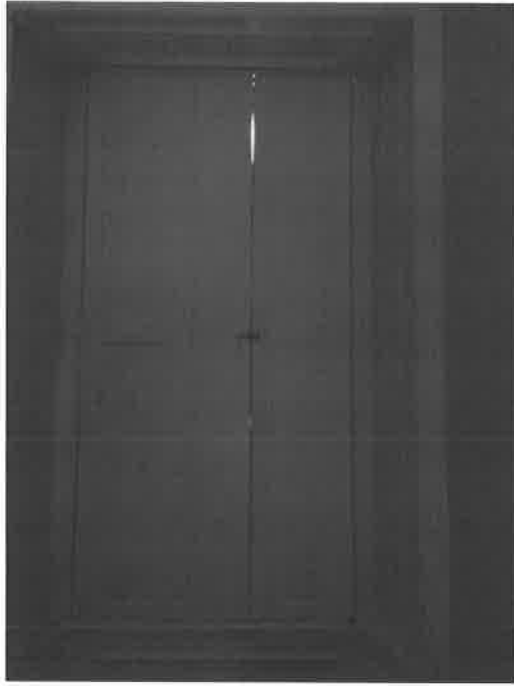
*Photograph 20: Kitchen: Dishwasher*



*Photograph 21: Kitchen: General view*



*Photographs 22 and 23: Master bedroom: Window*



*Photograph 24: Master bedroom: Window shutters*