

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/19/0463

Flat 2/2, 130 Ferguslie, Paisley, PA1 2XP (Title Number REN 19980)
("the property")

The Parties:-

Renfrewshire Council, Community Housing and Planning Services,
Renfrewshire House, Cotton Street, Paisley PA1 1JD
("the third party applicant")

Neda Ghaffar, Luachair Cottage, East Tarbert, Isle of Harris, HS3 3DB
("the landlord")

Akram Ul-Haq, 88 Parkmanor Avenue, Glasgow G53 7ZD
("the landlord's agent")

Tribunal Members:

Adrian Stalker (Chairman) and Donald Wooley (Ordinary Member)

Whereas in terms of their decision dated 14 May 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the landlords had 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 landlords had failed to ensure at all times during the tenancy, that:-

- a) 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 (section 13(1)(c));
- b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d));

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 carry out the following work:

- 1) To produce to the Office of the Tribunal and to the third party applicant, an Electrical Installation Condition Report ("EICR") from a SELECT, NICEIC or NAPIT registered electrician in respect of the property. In the event that the EICR identifies any items specifically categorised as C1 or C2 under "section K" in the report where any part of the electrical installation in the property is not in a reasonable state of repair and in proper working order, the Tribunal requires the landlord to carry out such work as is necessary to put that electrical installation in a satisfactory state of repair and in proper working order,
- 2) To provide to the Office of the Tribunal and to the third party applicant written documentation from a SELECT, NICEIC or NAPIT registered electrician confirming that all portable electrical appliances provided to the tenant under the terms of the lease have the necessary satisfactory PAT (Portable Appliance Test) certification.
- 3) To produce to the Office of the Tribunal and to the third party applicant a satisfactory Gas Safety certificate from a Gas Safe registered engineer in respect of the property and specifically to obtain a report from the engineer in respect of the gas fired central heating confirming that it complies with all statutory regulations, is in a reasonable state of repair and is in good working order. Where any part of the gas installation in the property is not in a reasonable state of repair and in proper working order, the tribunal requires the landlord to carry out such work as is necessary to bring the gas installation into a satisfactory state of repair and in proper working order,
- 4) To instruct a suitably qualified tradesman to inspect the windows and surrounding areas within the bedroom in order to identify the source of the dampness and repair or renew any defective areas or fittings as necessary, ensuring that they are in a reasonable state of repair and in proper working order. Any completed repairs should be supported by invoices, receipts or other appropriate means of vouching provided by the appointed tradesman or contractor.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **six weeks** from the date of service of this Notice.

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 type written on this and the preceding page(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the tribunal at Glasgow on 14 May 2019, before this witness:-

A Stalker

S Dunn

_____witness

Sharon Dunn name in full

20 York Street, Glasgow Address

G2 8AT

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/19/0463

Flat 2/2, 130 Ferguslie, Paisley, PA1 2XP (Title Number REN 19980)
(“the property”)

The Parties:-

Renfrewshire Council, Community Housing and Planning Services,
Renfrewshire House, Cotton Street, Paisley PA1 1JD
(“the third party applicant”)

Neda Ghaffar, Luachair Cottage, East Tarbert, Isle of Harris, HS3 3DB
(“the landlord”)

Akram Ul-Haq, 88 Parkmanor Avenue, Glasgow G53 7ZD
(“the landlord’s agent”)

Tribunal Members:

Adrian Stalker (Chairman) and Donald Wooley (Ordinary Member)

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, to ensure that the property meets the repairing standard under section 13, determined that the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By an application to the Housing and Property Chamber received on 13 February 2019, the third party applicant sought a determination of whether the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application contended that the landlord had failed to comply with her duty to ensure that the property meets the repairing standard under

section 13 of the 2006 Act, and in particular, that the landlord had failed to ensure, at all times during the tenancy, that:-

- 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 (section 13(1)(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 (section 13(1)(d));
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f)); and
3. On 22 February 2019, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier Tribunal. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and the third party applicant by letter dated 15 March 2019.
 4. This is a third party application made by a local authority, under section 22(1A) and (1B) of the Act. The third party applicant provided the Tribunal with a copy of a tenancy agreement, in terms of which the property was let by the landlord's agent to Mr Ahmed Al-Belam, under an assured tenancy, commencing on 15 August 2016.
 5. Following service of the notice of referral, the Tribunal obtained a title sheet for the property, which confirmed that its owner is Neda Ghaffar. The Tribunal received an email from her, dated 18 April. The email states:

My understanding of the matter is that my involvement with the above property have been fully explained by Mr Akram Ul-Haq, my Uncle.
Briefly, I inherited the Flat recently from my Aunt - Ms. Adeeba Faiz. Mr. Akram Ul-Haq is her older brother and when my Aunt was alive she had authorized him to act as her agent in relation to this property. He has been responsible for it ever since it was purchased and has continued in that role to date.
 6. The Tribunal inspected the property on the morning of 24 April 2019. Ms Marion Maxwell, Environmental Health Officer, Renfrewshire Council, was present. Also present was the landlord's agent. His nephew, Mr Tahir Javid, was there to support him. Later that morning the Tribunal held a hearing at the Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow. Ms Maxwell, Mr Ul-Haq and Mr Tahir Javid were also in attendance at the hearing. There was no representation for, or appearance by, the tenant at the inspection or the hearing. However, the Tribunal was advised that he is still living at the property.

Summary of the issues

7. In the application, the third party applicant described outstanding repair issues at the property, as follows:
 - (a) There is exposed electrical wiring at the socket adjacent to the water storage tank in the hall cupboard.
 - (b) No Electrical Safety Certificate
 - (c) No Gas Safety Certificate
 - (d) The gas heating system in the property does not work.
 - (e) There is no smoke detection in the living room, no heat detector in the kitchen, and the smoke alarms located in the hall and landing are not mains wired or interlinked.
 - (f) The microwave oven is defective.
 - (g) The windows are defective in that the tenant has advised that the windows permit rainwater into the property.

Findings in fact

8. The Tribunal finds the following facts to be established: -
 - i. The property is occupied by Mr Ahmed Al-Belam, under an assured tenancy, commencing on 15 August 2016.
 - ii. The landlord's agent, Mr Ul-Haq, is designated as the landlord under the tenancy agreement. However, he has never been the owner of the property. It is currently owned by Neda Ghaffar. She inherited the property from her aunt, Adeeba Faiz, in December 2017.
 - iii. Mr Ul-Haq acted as the agent of the late Mrs Faiz in relation to the letting of the property. He also performs that role, for Ms Ghaffar.
 - iv. The property is a second floor self-contained one bedroomed flat within a three-storey tenement building, in a mixed residential and commercial area of Paisley.
 - v. The building is in the region of 120 years old.
 - vi. Access to the property is taken via a common close and stair shared with the other residential co-proprietors.
 - vii. The outer walls are finished in sandstone and the main roof is pitched, clad externally with concrete tiles.
 - viii. There is within the hall cupboard an insulated hot water cylinder. Immediately above the tank and secured to the rear wall are a number of electrical wires. These have mostly been enclosed within a plastic casing, although immediately below and partially obscured by the hot water cylinder insulation jacket, is an exposed single wire finished with tape/PVC around its exposed end.
 - ix. No Electrical Inspection Condition Report (EICR) has been produced by the landlord to the third party applicant, or to the Tribunal. However, the landlord's agent arranged for the property to be inspected on 22 April, and expects to be able to produce a certificate shortly.
 - x. Space heating within the flat is provided by a "Baxi Bermuda" gas fired back boiler, of dated appearance, situated in the living area

and ventilated into an internal "chimney flue". It serves panel radiators throughout. Within the kitchen there is a "pay as you go" meter. There was no credit within the meter and the gas central heating system was non-operational. The landlord's agent did not make any attempt to switch the heating system on.

- xi. No gas safety certificate has been produced by the landlord to the third party applicant, or to the Tribunal. Again, the landlord's agent has made arrangements for such a certificate to be obtained.
 - xii. Mains wired inter connected smoke detectors have been installed in both the living area and the hallway. These were tested and were functioning satisfactorily.
 - xiii. There was no microwave at the property, on the day of the inspection. However, there are other white goods, in particular the fridge and the washing machine. These have been supplied to the tenant by the landlord's agent. No PAT ("Portable Appliance Testing") certificate was produced by the landlord to the third party applicant, or to the Tribunal.
 - xiv. Both the bedroom and living room are fitted with timber double glazed windows of similar design and age. Each window comprises 2 sections, the upper capable of opening around a central pivot mechanism, the lower being of "deadlight design".
 - xv. Around part of the deadlight area at the living room window some PVC taping has been applied. There was however no visible evidence of recent or historic water ingress and no positive moisture readings were obtained when the surrounding area was tested.
 - xvi. In the bedroom, PVC tape has been applied to the upper section of the windows which are capable of opening. Damp staining, flaking paint and defective plaster was visible above and around the frame. Moisture readings taken above the frame and in the surrounding plasterwork identified a moisture content of 18%. The inspection was undertaken following a prolonged period of dry weather.
 - xvii. Externally the timber window frames for both the living room and the bedroom display evidence of general wear, recent neglect and flaking paintwork.
 - xviii. Despite not having been specifically raised within the third party application to the Tribunal, the landlord's agent has recently installed a CO detector in the living area of the flat.
9. The first three findings follow from the papers obtained by the Tribunal in relation to the application, in particular the tenancy agreement, and the email from Ms Ghaffar. The remaining points were apparent to the Tribunal members during the course of the inspection, or were based on their discussions with Ms Maxwell and Mr Ul-Haq at the inspection and hearing.

Reasons for the decision

10. Of the points (a) to (g) listed at paragraph 7 above, being the complaints made in the application, The Tribunal was satisfied that complaints (a), (b), (c), (d) and (g) were established.
11. In particular, complaints (b) and (c) were established by the fact that the landlord and her agent had not produced the Gas Safety Certificate and EICR by the date of the inspection and hearing.
12. As regards complaint (d) (the gas heating system in the property does not work: during the course of the inspection, the landlord's agent said that the tenant "does not use" the central heating system. However, he did not offer to show that the system was operational, should someone actually wish to use it. The Tribunal understood that the central heating system had not been operated for some time, and the landlord's agent wished to wait until the system had been inspected by a gas engineer, before using it again. Given these factors, and the failure to produce a gas safety certificate, the Tribunal found complaint (d) to be established. It follows that the landlord has not complied with the obligation, under section 13(1)(c), to ensure that the installations in the house for the supply of gas and electricity, space heating and heating water are in a reasonable state of repair and in proper working order.
13. The Tribunal also found point (a) (exposed electrical wiring at the socket adjacent to the water storage tank in the hall cupboard) to be established. Some work has been done to address this point, as indicated in finding viii above. But there is still an exposed wire. In absence of certification, the Tribunal has concluded, on that basis, that the installations in the house for the supply of electricity, are not in a reasonable state of repair and in proper working order.
14. In view of its findings xvi and xvii, the Tribunal also found complaint (g) (the windows are defective - they permit rainwater into the property) to be established, as regards the bedroom window. It follows that the property fails to meet the repairing standard in terms of section 13(1)(d).
15. The Tribunal did not find complaint (e) (smoke and heat detection) to be established. The necessary work has been carried out to address this point. It follows that the landlord is now complying with section 13(1)(f).
16. As regards complaint (f) (microwave oven is defective), there was no microwave at the property. If it has now been removed by the landlord or her agent, that is a matter that may be taken up by the tenant, if it constitutes a breach of the parties' agreement. That is not a matter that can be determined by this Tribunal. However, as it is clear that other electrical white goods have been supplied to the tenant under the lease, the Tribunal will order that the electrical testing to be carried out should include PAT testing.

Decision

- 17. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
- 18. In particular, for the foregoing reasons the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(c) and (d).
- 19. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms. The Repairing Standard Enforcement Order includes a direction to the landlord to produce a gas safety certificate, as is required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998. It also includes a direction to produce an EICR, and a certificate of PAT testing, under sections 19A and 19B of the 2006 Act.
- 20. The decision of the Tribunal was unanimous.
- 21. **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.**
- 22. 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.

A Stalker

Signed

Date 14 / 5 / 19.

130 Ferguslie Paisley PA1 2XP

Schedule of Photographs taken at the inspection on 24th April 2019



1. Front elevation of building.



2. Wiring box at water tank



3. Exposed wiring at water tank



**4. Baxi Bermuda "back boiler"
(Gas fired)**



**5. Baxi Bermuda "back boiler"
(Gas fired)**



6. Non-operational gas tariff meter



7. Mains wired smoke detector in living room



8. Mains wired smoke detector in hallway



9. Bedroom windows with “PVC tape” as temporary draft / damp excluder



10. Staining and flaking paint above window in bedroom



11. Moisture level of 18% above bedroom window



12 General wear and weathering at external window frame