

# 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/RP/18/0080

Title no: ABN18830

House at Denmill Lodge, Peterculter, Aberdeen, AB14 0PS  
("The Property")

The Parties:-

Mr Kaleem Khan and Mrs Erum Niaza, Denmill Lodge, Peterculter, Aberdeen, AB14 0PS  
("the Tenants")

Mr Anthony James Scott and Ms Deborah Morgan, c/o Aberdeen Considine, 420-424  
Union Street, Aberdeen, AB10 1TQ  
(represented by Aberdeen Considine, 420-424 Union Street, Aberdeen, AB10 1TQ)  
("the Landlords")

Whereas in terms of their decision dated 10 May 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have 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 have failed to ensure that:-

The installations in the Property 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.

the tribunal now requires the Landlords 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 Landlords to carry out the following works:-

- (a) Engage appropriate specialists to examine and test the underfloor heating system in the lounge of the Property to establish why an area is not heating and prepare a report detailing the necessary works. A copy of that report is to be provided to the tribunal.
- (b) To carry out all works deemed necessary to repair or renew underfloor heating to leave fully operational.

- (c) Test and commission entire underfloor heating system and obtain a Certificate from an appropriate person to confirm entire system fully operational. A copy of the Certificate is to be provided to the tribunal.
- (d) Carry out any and all making good and decoration associated with the foregoing works.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 pages are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 10 May 2018 before this witness:-

J Lynch

G Buchanan

\_\_\_\_\_ witness

\_\_\_\_\_ Chairperson

J Lynch

\_\_\_\_\_ name in full

THORNTONS LAW LLP

\_\_\_\_\_ Address

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# 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/RP/18/0080**

**Title no: ABN18830**

**House at Denmill Lodge, Peterculter, Aberdeen, AB14 0PS  
("The Property")**

**The Parties:-**

**Mr Kaleem Khan and Mrs Erum Niaza, Denmill Lodge, Peterculter, Aberdeen,  
AB14 0PS  
("the Tenants")**

**Mr Anthony James Scott and Ms Deborah Morgan, c/o Aberdeen Considine,  
420-424 Union Street, Aberdeen, AB10 1TQ  
(represented by Aberdeen Considine, 420-424 Union Street, Aberdeen, AB10  
1TQ)  
("the Landlords")**

**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 Landlords have complied with the duty imposed by Section 14(1)(b) in relation to the Property determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. By application, which application comprises documentation received between 11 January 20018 and 8 February 2018, ("the Application"), the Tenants applied to the Housing and Property Chamber for a determination of whether the Landlords 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 Tenants considered that the Landlords had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure 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.
  - (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.
3. By letter dated 13 February 2018 the Convenor of the Housing and Property Chamber intimated a decision to refer the Application under Section 22(1) of the Act to a tribunal.
4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords and the Tenants.
5. Following service of the Notice of Referral the Tenants responded by letter dated 3 April 2018 indicating their intention to attend the hearing on the application and the Landlords' representative, Katy Neithercut of Aberdeen Considine, made written representations to the tribunal by email dated 9 April 2018, which email included a copy of an email of 9 April 2018 sent by her to the Tenants and a copy of an invoice of Andrew Smith Boiler Services Limited dated 22 January 2018.
6. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Mr Andrew McFarlane, Ordinary Member inspected the Property on the morning of 26 April 2018. The Tenant, Mr Kaleem Khan, was present. The Landlords were neither present nor represented. Photographs were taken and are attached.
7. It was dry and bright during the inspection.
8. Following the inspection of the Property the tribunal held a hearing at Ferryhill Community Centre, Albury Road, Aberdeen, AB11 6TN. The Tenants, Mr Kaleem Khan was present. The Landlords were not present but were represented by Ms Katy Neithercut of Aberdeen Considine.
9. The Tenant, Mr Kaleem Khan, made the following submissions:-
  - a. That the Tenants had first complained about the underfloor heating not working properly in April 2017;
  - b. The area of the tiled floor situated to the left of the main entrance door and near the dining table had always been cold.
  - c. That he had turned on the underfloor heating during the evening prior to the inspection.

- d. That the temperature will increase by about 3 degrees in a period of around 8 hours.
  - e. That the temperature will be around 16 degrees when the underfloor heating is turned on and will rise to around 19 degrees by the time the Tenants arrive home from work.
  - f. That during the holidays the underfloor heating is left on during the night.
  - g. That as a result of the underfloor heating not operating correctly, during the colder months extra money has required to spent on keeping the house warm
  - h. That no-one had ever attended to inspect the are of unheated flooring complained about.
  - i. That the hot water tap in the ensuite bathroom off the master bedroom had been repaired and now operated correctly.
  - j. That as a consequence of the boiler previously breaking down there was no heating in the house for 5 days and condensation built up on the ceiling of the ensuite bathroom off the master bedroom.
  - k. Following the repair of the boiler the heating was turned up high and the condensation largely disappeared. The Tenants wiped off whatever water was left thereafter.
  - l. Stains had been left on the ceiling.
  - m. The entire supply of logs for the log burner were used within a week.
10. The Landlords' representative made the following submissions:-
- a. That the majority of the underfloor heating is operating as it should.
  - b. That the Landlords have given no instructions to carry out repairs.
  - c. That the Landlord's representative had not inspected the flooring.
  - d. That the Landlords had not personally inspected the Property.
  - e. That the Landlords had previously lived in the Property but had not done so since at least November 2016.
  - f. That the invoice from Andrew Smith Boiler Services Limited dated 22 January 2018 was not concerned with the underfloor heating.
  - g. That the repair of the boiler was separate to the condensation on the ensuite ceiling and could not be said to be related.

- h. Any alleged stains on the ensuite ceiling had not been reported and had not been noted in the routine inspection report carried out in February 2018 by Stuart Ord of Aberdeen Considine.
- i. The Property has no history of dampness.

### **Summary of the issues**

11. The issues to be determined are:-

- a. Whether the underfloor heating system is in a reasonable state of repair and in proper working order.
- b. Whether the hot water tap in the ensuite bathroom off the master bedroom is in a reasonable state of repair and in proper working order.
- c. Whether the ensuite ceiling of the bathroom off the master bedroom is in a reasonable state of repair.

### **Findings of fact**

12. The tribunal finds the following facts to be established:-

- (a) That the Landlords are the heritable proprietors of the Property.
- (b) That the Tenants are the tenants of the Property in terms of a Lease dated 19 November 2016.
- (c) That the Tenants were the tenants of the Property as at January 2018 when the Application was made.
- (d) That the large lounge entered from the main entrance door of the Property has a tiled floor.
- (e) That with regard to the required repairs intimated by the Tenants:-
  - (i) That at the time of the tribunal's inspection the underfloor heating system was operating and had been operating from the previous evening.
  - (ii) That where the underfloor heating was operating the temperature of the tiled floor was around 28 degrees.
  - (iii) That to the left of the entrance door into the lounge there was a large area of the tiled floor which was cold and not being heated by the underfloor heating. The temperature of that area of the tiled floor was around 21 degrees.

- (iv) That at the time of the tribunal's inspection, the hot water tap in the ensuite bathroom off the master bedroom had been replaced and the Tenants were content that the tap now operated correctly.
- (v) That the ceiling in the ensuite bathroom off the master bedroom had very minor staining.

### **Reasons for the decision**

13. The Property is a former agricultural building converted to provide residential accommodation for a single family unit. The main outer walls are of stone under a pitched slate clad roof with modern windows and doors with sealed double glazed units. The walls and ceilings internally are finished with plasterboard. The ground floor is of concrete construction. The main heat source is an oil fired boiler. Heat is distributed by hot water conveyed in pipes buried in the ground floor slab.

The Property was occupied and furnished at the time of the tribunal's inspection.

On arrival the Tenant, Mr Khan, reported to the tribunal that he had switched on the underfloor heating the previous night. The tribunal inspected the tiled flooring of the substantial lounge using a non-contact thermometer. The tribunal established readings generally across the floor of 27/28 degrees. However, to the left of the main entrance door near the dining table, there is a large area of the flooring that is cold and reached only 20/22 degrees in temperature. That area of the floor was very cold to the touch. The tribunal was not satisfied that the underfloor heating system was in a reasonable state of repair and in proper working order. It is not possible to determine from a visual non-disruptive inspection why part of the system is not operational. There is a risk in carrying out works to one section of the system this will have an impact on other sections as the whole system needs to be balanced.

In the ensuite bathroom off the master bedroom, Mr Khan indicated to the tribunal that the hot water tap had been replaced along with the entire wash hand basin and vanity unit. He was therefore satisfied that the tap was now operating correctly.

In the ensuite bathroom off the master bedroom the tribunal noted the ceiling to be dry with very minor staining. The tribunal was satisfied that the ceiling was in a reasonable state of repair.

### **Decision**

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

15. The decision of the tribunal was unanimous.

## **Right of Appeal**

- 16. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

## **Effect of section 63**

17. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G buchanan

Signed.....

..... Chairperson & Legal Member

Date 10 May 2018





Property Address

Denmill Lodge, Peterculter, Aberdeen AB14 0PS

Case Reference

FTS HPC RP 18 0080

## **Schedule of Photographs taken during the inspection by tribunal members on 26 April 2018**



1. General View of property from access road



2. General view of Lounge from main entrance door



3. General view of area of Lounge where underfloor heating not working



4. New wash hand basin, tap and vanity unit in En-suite off Master Bedroom



5. Area of staining to ceiling in En-suite off Master Bedroom



6. Area of staining to ceiling in En-suite off Master Bedroom