

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/0302

Property at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU
("The House")

The Parties:-

Ms Kelly Anne Ward, residing at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU ("the Tenant")

Mr Imran Ahmed, residing at 8 Sycamore Place, Motherwell, North Lanarkshire, ML1 5TN ("the Landlord")

North Lanarkshire Council, Public Health and Housing Team, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF ("the Third Party Applicant")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Ms Lori Charles	-	Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 9 February 2018 the Third Party Applicant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with their duty to ensure that the house 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; and
 - (c) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. In summary, the Third Party Applicant submitted in the application that there was no Electrical Installation Condition Report nor a Gas Safety Certificate for the house, the smoke and heat alarms did not meet current standards, two gas rings on the hob could not be turned off, the radiator in the second bedroom was hanging off the wall and there was dampness down the wall separating the kitchen and the porch.
 4. By Minute dated 13 February 2018 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, intimated her decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Third Party Applicant.
 5. Following service of the Notices of Referral the Tribunal received no written representations from any of the parties.
 6. The Tribunal attended the house on the morning of 19 April 2018. The weather was dry and overcast. The Tenant was present and allowed access. The Tribunal proceeded to inspect the house.

The Inspection

7. During the inspection the Tribunal examined the issues of disrepair highlighted in the application by the Third Party Applicant.
8. The Tribunal examined the gas hob in the kitchen. The Tenant advised that the Landlord had sent out a gas engineer who had fixed the two controls and they were now operational. The Ordinary Member confirmed this by testing the controls for the cooker hobs. The Tenant advised however that the gas engineer had disconnected the gas oven at the same time, stating it was unsafe. There was no gas safety certificate in the house.
9. The Tribunal further noted evidence of historic water ingress on the kitchen wall adjoining the porch by way of mould and staining. Damp readings taken in the area were shown to be normal.
10. The Tribunal proceeded into the hall. A battery operated smoke alarm was noted on the hall ceiling. The battery had been removed. The Tribunal further noted the

carpet on the hall stairs was loose and threadbare. As a result, significant care had to be taken by Members when traversing the stairs.

11. In the upstairs hall there was a battery operated smoke alarm on the ceiling with no cover and a disconnected battery. The Tribunal proceeded into the main bedroom. The radiator had come off the wall entirely. In the second bedroom, the radiator was loose from the wall. It was noted that the radiator in this room had previously been attached to the wall with a piece of wood.
12. The Tribunal inspected the bathroom. The pipes behind the sink and toilet were inspected and appeared dry. The damp readings taken were found to be normal. The Tribunal inspected the bath. The sealant around the bath had perished allowing water to leak behind the bath. Upon removal of the bath panel, an area of damp was noted below the waste pipe. The light fitting in the bathroom was not working.
13. The Tribunal noted throughout the house the windows had no trickle ventilation and were only capable of tilted opening.
14. Upon exiting the house, the Tribunal noted that external masonry to the rear was in poor condition. In one particular area, large pieces had become dislodged.
15. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place in the Glasgow Tribunal Centre, York Street, Glasgow. The parties did not attend.

Findings in fact

18. Having considered all the evidence the Tribunal found the following facts to be established:-
 - a. The tenancy between the Landlord and Tenant is an assured tenancy which commenced on or around 15 July 2012.
 - b. In the absence of an up to date gas safety certificate the gas appliances within the house cannot be said to be in safe working condition and in a reasonable state of repair. The gas cooker is inoperable. The controls for the gas burners are in proper working order.
 - c. In the absence of an up to date electrical installation condition report, the electrics throughout the house cannot be said to be in safe working condition and in a reasonable state of repair. The light switch in the bathroom is inoperable.

- d. The waste pipe pertaining to the bath is not in a reasonable state of repair.
- e. The sealant around the bath is not in a reasonable state of repair.
- f. There is not satisfactory provision for the detection of smoke and fire within the house.

Reasons for the decision

- 19. The Tribunal determined the application having regard to the terms of the application, representations from the parties and the findings of their inspection.
- 20. The Tribunal is satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application. The Landlord had been given the opportunity to make representations to the Tribunal and to attend the inspection and hearing but had failed to do so. For the avoidance of doubt, the Tribunal is satisfied in the absence of a written tenancy agreement, that the tenancy between the Landlord and the Tenant is an assured tenancy, having considered the evidence from both the Third Party Applicant and the Tenant in this regard.
- 21. The Tribunal notes the faulty controls on the gas hob have been fixed. However the Tribunal accepts that the gas cooker is inoperable and therefore requires replacement or repair. Similarly the radiators in both bedrooms are dislodged or loose from the wall. It was not possible within the confines of the inspection to clarify whether they were in proper working order. These issues will require to be addressed by the Landlord and a gas safety certificate produced thereafter in order to satisfy the Tribunal that the gas appliances and installations throughout the house are in safe working condition.
- 22. The Tribunal further notes the absence of an electrical installation condition report. This is of significant concern to the Tribunal as it was apparent from the inspection that there were issues with the electrics, it being noted that the ceiling light in the bathroom did not work. Accordingly a full inspection of the electrics is necessary to identify any faults and resolve these prior to the production of an up to date electrical installation condition report. The house will also require smoke and heat detectors that conform to current standards.
- 23. Whilst the damp readings taken in the kitchen were normal, there was evidence of leakage from the waste pipe under the bath. Given the location of the bath, it could reasonably be assumed that this is, or was historically, a source of water ingress to the kitchen downstairs. The damage to the bath sealant was also a concern in this regard, in view of the likelihood of water spilling over and behind the bath. Accordingly both defects will require repair in order to address any possible causes of water ingress to the kitchen in future.
- 24. The Tribunal therefore concluded that the Landlord had failed to comply with his duties under the Repairing Standard for the above reasons.

25. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
26. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act. Given the seriousness of the matters highlighted by the Tribunal, it considered it appropriate to fix a short timescale for the works to be carried out to ensure the ongoing safety of the Tenant and the other occupants.
27. In addition the works required by the Repairing Standard Enforcement Order, the Tribunal wishes to highlight a number of areas of grave concern where it would expect the Landlord to take urgent and appropriate action. To the rear of the house the Tribunal noted the masonry is not in a reasonable state of repair and deemed to be dangerous, with loose sections capable of dislodging without warning. This poses the risk of serious injury to any occupant in the rear garden. The carpet on the hall stairs is also in a poor condition and a trip hazard. Any person traversing the stair requires to take extreme care to avoid falls which is wholly unacceptable. Finally it is clear that the house does not have sufficient ventilation. The windows throughout have no trickle ventilation and it could be reasonably assumed that this has been, and will continue to be, a contributor to the mould in the kitchen and the bathroom. The latter in particular has no proper ventilation system as would be expected in a room of that type. These matters cannot form part of the Tribunal's determination in this case as they were not highlighted in the original application but they are nevertheless clear breaches of the Landlord's duties under the Repairing Standard.

Decision

28. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order;
29. In respect of section 13(1)(d) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
30. In respect of section 13(1)(f) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
31. The decision of the Tribunal was unanimous.

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.

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

Ruth O'Hare
Chairperson

23 April 2018

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/0302

Title: Subjects at 11 Catriona Way, Holytown, Motherwell, ML1 4NU registered under Title Number LAN65284 ("The House")

The Parties:-

Ms Kelly Anne Ward, residing at 11 Catriona Way, Holytown, North Lanarkshire, ML1 4NU ("the Tenant")

Mr Imran Ahmed, residing at 8 Sycamore Place, Motherwell, North Lanarkshire, ML1 5TN ("the Landlord")

North Lanarkshire Council, Public Health and Housing Team, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF ("the Third Party Applicant")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mrs Lori Charles	-	Ordinary Member

Whereas in terms of their decision dated 23 April 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 respects reasonably fit for human habitation; and
- (b) The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.

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 to:-

- (a) Repair or replace the gas cooker;
- (b) Repair or replace the radiators in the two bedrooms and ensure they are in proper working order;
- (c) Produce a gas safety certificate by a suitably qualified gas engineer following the works carried out in (a) and (b);
- (d) Instruct a Select/NICEIC qualified electrician to inspect the electrics throughout the house and thereafter to carry out any works required following such an inspection;
- (e) Install smoke and heat detectors in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under section 2 – Fire, sub-section 2.11 Communication;
- (f) Following completion of the works at (d), and (e), produce an electrical installation condition report by a suitably qualified electrician confirming that the electrical installations within the House are in safe condition and in proper working order;
- (g) Repair the waste pipe pertaining to the bath to ensure it is watertight and in a reasonable state of repair;
- (h) Repair the sealant around the bath to ensure it is watertight;
- (i) Carry out such works as are necessary to clear all mould from the house and redecorate the affected areas;
- (j) Carry out any redecoration required after completion of the above works.

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

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 Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39 2GH, chairperson of the Tribunal at Aberdeen on 23 April 2018 before this witness:-

R O'Hare

_____ witness

~~chairperson~~

Anna Towe, c/o Aberdeenshire Council,
Woodhill House, Westburn Road, Aberdeen

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



11 Catriona Way, Holytown, ML1 4NU

FTS/HPC/RP/18/0302

Inspection date – 19th April 2018 at 10am

Weather – Dry



Gas burners on hob have been fixed by landlord all 4 tested at inspection, however the tenant advised gas oven was disconnected from gas supply by gas engineer.



Smoke detectors in hall and first floor landing are battery operated and at time of inspection not in operation. The kitchen had no means of detecting fire.



Dampness in kitchen - moisture reading taken during inspection showed normal reading however historic water ingress was noted. Areas of mould appears to be due to condensation as no trickle ventilation or mechanical ventilation was present.

Areas of mould were noted in the 1st floor hall and bathroom.



Areas around sink and wc appear to be within normal readings however when removing the bath panel an area of water was noted under the waste pipe showing high moisture readings.



Waste pipe under sink is leaking



Radiator in the second bedroom is hanging off wall. Radiator in main bedroom is off wall and sitting on floor still connected to the heating system.

No electrical installation certificate or Gas certificate was available at time of inspection.

Observations made during inspection



External render is loose and requires to be removed as soon as possible.



Hall carpet is badly worn and threadbare.

The property has no trickle vents fitted to the double glazing, this will contribute to the condensation problems within the property.