

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act
2006, Section 24(2)**

Chamber Ref: FTS/HPC/RP/18/0455

**26 Mitchell Street, Kirkcaldy, Fife, KY1 1BD
TITLE number FFE106243
("The House")**

The Parties:-

**Miss Brenda Fonweban, 26 Mitchell Street, Kirkcaldy, Fife, KY1 1BD
("the Tenant")**

**Mr Garry Kempself and Mrs Susan Kempself, Schiehallion, Irongray, Dumfries,
DG2 9SF
("the Landlord")**

represented by

**Mr Mark McDonald, Fife Letting Service, 119 Victoria Road, Kirkcaldy, Fife, KY1
1DS
("the Landlord's representative")**

Tribunal members

**Susanne L M Tanner Q.C. (Legal Member)
David Lawrie (Ordinary Member)**

**NOTICE TO Mr Garry Kempself and Mrs Susan Kempself
(the LANDLORD)**

**WHEREAS in terms of its decision dated 24 July 2018 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 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in the following respects:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation, ...

(c) 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,

(d) Any fixtures, fitting and appliances provided by the Landlord under the tenancy are 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 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 ensure that the installations in the house for the supply of water and for heating water are in a reasonable state of repair and in proper working order so that there is adequate provision of hot water to meet the Tenant's daily requirements for showering, bathing and washing.
2. To ensure that any fixtures, fittings and appliances provided by the Landlord are in a reasonable state of repair and proper working order so that the water pressure in the shower and taps is to an acceptable standard (whether by the installation of a pump, replacement of the shower or other method(s)).
3. To produce copies of an up to date gas safety certificate from a Gas Safe Registered engineer and an up to date Electrical Installation Condition Report.

The tribunal orders that the works specified in this Order must be carried out and completed within 30 days from the date of service of this Notice.

Right of Appeal

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 an 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 two preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, Legal Member and chairperson of the tribunal at Edinburgh

S Tanner

____ Chairperson

SUSANNE L.M. TANNER Q.C.

signed on 25 July 2018 (date) at DUNDEE

before this witness:-

V Hammill

____ Witness

VICTORIA J. L. HAMMILL

name in full

20 YORK STREET

Address

GLASGOW, G2 8GT

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

STATEMENT OF DECISION: Housing (Scotland) Act 2006, Section 24(1)

Chamber Ref: FTS/HPC/RP/18/0455

**26 Mitchell Street, Kirkcaldy, Fife, KY1 1BD
TITLE number FFE106243
 (“The House”)**

The Parties:-

**Miss Brenda Fonweban, 26 Mitchell Street, Kirkcaldy, Fife, KY1 1BD
 (“the Tenant”)**

**Mr Garry Kempself and Mrs Susan Kempself, Schiehallion, Irongray, Dumfries,
DG2 9SF
 (“the Landlord”)**

represented by

**Mr Mark MacDonald, Fife Letting Service, 119 Victoria Road, Kirkcaldy, Fife,
KY1 1DS
 (“the Landlord’s Representative”)**

Tribunal members

**Susanne L M Tanner Q.C. (Legal Member)
David Lawrie (Ordinary Member)**

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as are 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 (hereinafter "the 2006 Act") in relation to the House, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

The House

4. The House is the subjects at 26 Mitchell Street, Kirkcaldy, as more particularly described in Land Register Title number FFE106243.
5. The House is a first floor flat with an open plan living room/kitchen, one bedroom, and a bathroom. (See external and internal views in attached **Schedule of photographs**).

Parties and parties' supporters / representatives

6. The Tenant making the application is as designed above. She is a student and lives on her own in the House.
7. The Landlord is as designed above. The Landlord has engaged the Landlord's Representative to manage the tenancy of the House.

The Tenancy

8. The Tenant has a Private Residential Tenancy which started on 18 December 2017.
9. The rent is £400 per calendar month payable in advance.

Procedural Background

10. On 26 February 2018 the Tenant made an Application to the tribunal for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
11. The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard. However, the Tenant did not indicate in the Application which elements of the repairing standard (paragraphs of section 13(1) of the 2006 Act) she thought that the Landlord had failed to comply with. In Section 8, she stated "please see attached documents". In Section 9, she listed the details of the work needed as "damaged shower".
12. The Tenant attached to the Application:
 - 12.1. The Tenancy agreement; and
 - 12.2. Copy correspondence between the Tenant and the Landlord's Representative between 20 December 2017 and 26 February 2018.
13. The correspondence between the Tenant and the Landlord's representative notified the Landlord's Representative of the following repairs issues:
 - 13.1. The main door bell.
 - 13.2. Hot water not working properly from the start of the tenancy / boiler problems.
 - 13.3. The shower pressure is very low.
 - 13.4. Mould developing on the ceiling.
14. On 3 April 2018 the Application, comprising documents received between 27 February and 12 March 2018 was referred to the tribunal for determination. An inspection of the House and a hearing were fixed for 7 June 2018. Parties were advised that any written representations or a request to make oral representations must be made and returned to the tribunal's offices by 29 May 2018.

Directions

15. On 18 May 2018 the tribunal issued Directions dated 17 May 2018 requiring the Tenant to provide further details of the complaint(s) which have been notified and form the basis of the Application, by 29 May 2018.
16. The Tenant did not comply with the tribunal's Directions. The only additional information which was produced by the Tenant within the stipulated timescale was a copy of correspondence with the Landlord's Representative dated 27 May

2018 in which she stated to the Landlord's Representative that the problems with the shower had persisted throughout the tenancy and were ongoing.

Parties' wishes to attend Hearing and Written Representations

17. On 16 May 2018, the Landlord confirmed that he wished to attend the hearing. The Landlord did not submit written representations.
18. On 23 May 2018 the Landlord's Representative confirmed that he did not wish to attend the hearing or to submit written representations.
19. On 27 May 2018 the Tenant submitted the said copy correspondence with the Landlord's Representative. She did not confirm whether she wished to attend the hearing or to submit written representations.

Summary of the Issue to be determined by the tribunal

20. The issue to be determined is whether the House meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

Inspection and Hearing – 7 June 2018

21. The tribunal inspected the House on 7 June 2018. The Tenant was present. The Landlord was present. The Landlord's Representative was not present.
22. A hearing took place thereafter at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy at 11.30. The Tenant attended the hearing. The Landlord attended the hearing. The Landlord's Representative did not attend the hearing.

Inspection and Schedule of photographs

23. The tribunal confined its inspection on 7 June 2018 to the repairs issues detailed within the notification to the Landlord's Representative, as incorporated by reference into the Application.
24. Photographs were taken at the inspection, and a **Schedule of Photographs** is appended to and forms part of this Decision.
25. The weather at the time of the inspection was dry.

26. Schedule of Photographs no. 1 shows an external front views of the building in which the House is situated. The House is a first floor property.
27. The tribunal proceeded with the inspection, in the presence of the Tenant and the Landlord.
28. The inspection revealed the following with reference to each of the Tenant's complaints:

28.1. "The main door bell"

- 28.1.1. The doorbell had been repaired and was operational at the time of the inspection.

28.2. "Hot water not working properly from the start of the tenancy / boiler problems."

- 28.2.1. There is one bathroom in the House. There is a bath with a mains pressure shower fixed to the wall over the bath (**Schedule of photographs, Photograph 2**). There is also a sink in the bathroom with separate hot and cold taps. The boiler is in the kitchen (**Photograph 3**). The controller for the boiler is wall mounted in the kitchen (**Photographs 4 and 5**).

- 28.2.2. The Tenant advised that since she moved into the House on 18 December 2017 there had been no hot water from the shower or the hot water taps in the bath and bathroom sink. She said that the water has never been hot enough to shower, nor could she run a hot bath. The boiler controls are in the kitchen. The controller which was in place at the start of the tenancy was replaced with the present one in about January or February 2018, after she complained again about the ongoing hot water problems. She said that even when the controller was replaced there were still fault codes showing on the panel on the boiler. The Tenant stated that she has not set a timer programme on the controller although she said that she had been advised by the contractor who fitted the controller that he had set it to come on every day.

- 28.2.3. The Landlord advised that there had been a boiler repair in around October 2017. At the time of the boiler repair, the previous manual controller with sliders was retained but that was replaced with the current digital controller/timer in February 2018. The hot water tank is in the attic. The shower is mains pressure. There is an electric switch which

can be used to turn the boiler on and off. The Landlord has had concerns that the Tenant had been switching the boiler off with this switch and that that may have caused a problem with it constantly re-setting.

28.2.4. The tribunal enquired of the Tenant as to whether the timer had been set or turned on during the morning of the inspection and if so, at what time. The Tenant advised the tribunal that the controller had been on that morning between 7.30 and 9.00am, and then stated that she had switched it on by pressing the "advance" button at around 9.30am. The Tenant did not have an instruction manual for the timer although she said that she had been provided with one. The Landlord offered to set the controller on a timer while he was in the House during the inspection but the Tenant refused the offer and stated that she is content to use the "advance" booster switch to operate it as required.

28.2.5. On inspection the tribunal found that the boiler was on. The controller had been switched on using the advance booster switch on the right hand side of the controller (**Photographs 3 and 4**). The water from the shower and taps was tested at the start of the inspection and after around thirty minutes. On both occasions there was no hot water from the shower, the bath tap or the bathroom sink tap. The water was tepid on both occasions. The pressure in the shower and the taps was also very low (see below).

28.3. "The shower pressure is very low"

28.3.1. The Tenant stated that there is water pressure problem with the shower. She stated that when the water is cold the pressure is higher and that when the water is slightly hotter it comes out as drips. Due to the issues with lack of hot water and the low pressure she has been unable to use the shower since moving in. The water pressure in the bathroom taps is also low.

28.3.2. On inspection the tribunal observed that the water pressure in the shower is extremely low as is the water pressure in the hot taps in the House.

28.4. "Mould developing on the ceiling".

28.4.1. The Tenant advised that when she moved in there was mould all over the ceiling in the living/dining area. This has since been decorated on the instructions of the Landlord.

28.4.2. The Landlord advised that there was a roof leak three days before the Tenant moved in as a result of heavy snowfall. The damaged area was left to dry out before redecoration took place in around February 2018.

28.4.3. On inspection the decoration in the living/dining area looked fresh and there was no evidence of a leak or mould on the ceiling.

The Hearing

Attendance at hearing

29. The hearing took place at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT at 11.30am on the same day as the inspection.

30. The Tenant and Landlord both attended the Hearing.

Oral submissions by Tenant

31. The Tenant stated that she moved into the House on 18 December 2017. She had five days to let the agency know if there was any damage. She complained within 48 hours about the shower issue. She asked if somebody could come to fix it. The agent said that they would send someone to inspect the shower and the agent and a number of contractors looked at it. On a number of occasions she was told that something was wrong with it. She said that she has been inconvenienced by the lack of a shower or the ability to run a hot bath throughout the tenancy, especially in the winter. She said that it has been a depressing issue to deal with and has caused her stress.

32. All of her communications with Mark MacDonald of the Landlord's Representative have been by email.

33. On 20 December 2017 she sent an email to Mark MacDonald. She asked for an email address for the landlord. She did not think that a Landlord would know about an issue like this and not do something about it. She spoke to the Landlord in February. She thinks it was after the new controller was fitted. She has only spoken to the Landlord on one occasion. Some time during the conversation the Landlord asked her not to switch off the electrical power to the boiler. The Landlord mentioned he had spoken to Mark MacDonald and asked him to come down to the property to show her how to work the boiler and controller.

34. The Landlord interjected to provide dates, stating that it was on 11 January 2018 that the contractor, L&M, fitted the new timer for the boiler.
35. The Tenant said that she emailed the contractors, L&M. They sent a contractor who came and showed her how to set the old timer. He set the timer for the morning and the evening and it still did not work. Later the following month the new timer was fitted. When the contractor fitted the new timer she was shown how to set it. She asked the contractor to set the timer for morning and evening time and thought that they had done that. They did leave an instruction book but she does not know where it is. She normally uses Google for instruction manuals. She has not tried to change the programme. She has been "boosting" it using the advance switch on the right hand side of the controller. However, nothing happens to the temperature the water. The heating has been fine since the new controller was fitted and can be operated as needed with the advance booster switch on the left hand side of the controller.
36. The Tenant emailed the agent on 27 May 2018. She called the agent and spoke to Helen. Helen told the Tenant that the Landlord would fix the problem with the shower if the Tenant paid her rent. Helen said "I am the boss". The call with Helen was not recorded. The Tenant received various emails from Mark MacDonald saying the same thing. The Tenant stated to the tribunal that her rent is up to date but that she has had arrears during the tenancy. The College pays part of the rent. She was trying to make arrangements with Helen to pay the monthly balance and had various discussions and correspondence with her about that.
37. The Tenant said that the Landlord had made a similar statement to her on the phone, along the lines of "I can't do much until money comes in. I have already spent £2000 on the boiler". This was before the Application to the tribunal was made. The Tenant advised that she had recorded the conversation. The Landlord stated that there was no objection to the recording being admitted. The tribunal decided to allow the recording to be played.

38. Recording of phone call - 23 February 2018 – Tenant and Landlord

39. The tribunal listened to the recording in the presence of the parties. The relevant points are as follows (T=Tenant; LL=Landlord):
- 39.1. LL - I am quite prepared to put a pump in but the rent has to be paid first.
- 39.2. T – I have been complaining for 3 months.
- 39.3. LL – I have had a bill for the timer.
- 39.4. LL - The boiler cost £2000.
- 39.5. LL – switching the boiler on and off at the wall makes the boiler reset.

- 39.6. LL - We will put a pressure pump in but last month was £20 behind in payment.
- 39.7. LL - I am not spending any more money until the rent is paid.
- 39.8. LL - I have spoken to the plumbers but I need this rent sorted out.
- 39.9. T – I moved in on 18 December 2017 and I am wondering when the Agent notified you about repairs.
- 39.10. T – ever since I moved to this property I have been contacting Mark. I have never not paid rent. I have asked Helen how can I go about paying the balance. Helen told me she would contact Mark and get back to me. None of them ever got back to me. If there is any payment outstanding that is not my fault.
40. The remainder of the call related to the rent issue.
41. The Tenant continued her oral submissions. She said that she had first spoken to Helen on the phone on 29th January 2018.
42. Helen emailed the Tenant at the end of February, before the complaint was in [the Application was received 27 February 2018.]
43. Various people from were sent by the letting agency to the House. They wanted another input as to whether the shower worked or not. The Tenant was not in the property when the plumber came on the first occasion. On the second occasion the Tenant communicated with them directly to ask if they would fix it when they were there. On the first visit the plumber checked the boiler and the shower. The plumber said to press the button and boost the hot water. The second visit from the plumbers was to check the shower. The Tenant has no idea if work was carried out.
44. The Tenant emailed the agency to see what work had been carried out. On 5 April 2018, Helen at the agent sent a list of what had been carried out. The Tenant had the email on her phone and there was no objection by the Landlord to the Tenant showing it to the tribunal. The tribunal decided to allow the email to be admitted. It contained a list of repairs which have been carried out at the House but it did not specify what work had been done to the shower.

Landlord's Representations

45. The Landlord advised that on Thursday 21 December 2017 he was phoned by Mark MacDonald at the Landlord's Representative to say that the doorbell did not work, the water was tepid and the shower pressure was not good. The Landlord told Mark to buy a battery for the doorbell.

46. In relation to the water and shower issues, the Landlord said to Mark MacDonald that the hot water was working when the Landlord was out to look at the leak and that the Landlord had put the immersion switch on. Mark MacDonald had said "I take it, it is not a combi, I told her it is a combi". It was not a combi boiler. Mark MacDonald said he would have to phone the Tenant to advise her. The Landlord advised that there is an electrical immersion switch near the wall clock which can be used as a back up.
47. The Landlord did not instruct Mark MacDonald to carry out any repairs. The Landlord left Mark MacDonald to deal with it.
48. The Landlord's next contact was on Friday 22 December in a call from Helen at the Landlord's Representative advising that she had received an email from the Tenant to say that there is no hot water. The Landlord asked Helen whether Mark had gone to the House to show the Tenant how to work the system properly. Helen advised that Mark was on holiday. He had not told the Landlord that he was going on holiday. The Landlord said to Helen that if she could get a phone number for the Tenant he could talk her through setting the hot water. Helen phoned back with a phone number for the Tenant. The Landlord tried to get in touch with the Tenant. He presumed that everything was working because the Tenant was not answering her phone. He also sent texts to say he was trying to call her.
49. The Landlord checked back with the Agents on 27 December 2017. He phoned Helen and said, "I take it everything is OK". Helen said she would get in contact with the Tenant. Helen forwarded an email she sent to tenant. [The Tenant interjected to say that she remembers the email and that she replied to her]. On 27 December, Helen sent an email to the Landlord to advise that they were going to check the system. Helen called the Landlord to say that on inspection, the boiler was switched off. The Agent turned it on, left the House and returned at which time she said the water was hot. Helen did advise that the motorised valve was not closing. The Landlord said that he would contact L&M who fitted the boiler and tested the system after it was fitted.
50. On 28 December 2017, Helen told the Landlord that there was a problem with the Tenant's phone.
51. The Landlord instructed L&M to go back out on 11 January 2018. They reported back to the Agent. They fitted the new clock on 11 January 2018. The Landlord got a call from Mark on the Monday. Mark said to the Landlord that L&M were "cowboys" and had left flat with no heating. The Landlord said that he would phone them and find out what is happening. The Landlord asked Mark to get his plumber to go and look at the problems.

52. L&M went back on the Tuesday 16 January 2018. The boiler was turned off. It was switched on while they were there and they found no fault. They advised that it is not good water pressure but the water did heat. They told the Landlord that it would benefit from a pump being fitted.
53. The Landlord stated that there is an electrical immersion switch near the wall clock which is a back up. In response to a question from the ordinary member, the Landlord confirmed that if the back-up immersion heater is used that heats the water.
54. In response to a question from the ordinary member, the Landlord confirmed the Landlord's Representative has organised a gas safety certificate and an electrical condition report and that copies were given to tenant. He stated that he could get copies from his Agent.
55. After his communications with the Landlord's Representative, the Landlord was left with the view that the only issue was water pressure. He thought that when the complaint came in to the tribunal it related only to the issue of water pressure. He did not actually realise that the hot water issue was not resolved.
56. During the phone call with the Tenant (as referred to above) he advised her that she should not switch the boiler on and off. He accepted that he told her that until the rent is paid he would not look at putting a pump in.
57. The Landlord reiterated that he would like to get the rent resolved before dealing with the pump. He deemed it was not an emergency as it was water pressure. He stated that the tenant has never been up to date with rent and that there are rent arrears now. He has not served or instructed any notice to be served to end the tenancy.
58. No other work has been instructed or is waiting to happen. The last time the Landlord spoke to Mark he said to wait for the tribunal's determination.
59. The Landlord produced a number of emails. There was no objection by the Tenant to them being admitted. The tribunal decided to allow them to be admitted. In one of the emails Helen told the Landlord that there was a problem with the phone number for the Tenant.
60. The Landlord was advised that another visit was carried out by Stuart from the Agents' Head Office. The Tenant called to say that the hot water was not working. This was after the complaint was made. A plumber altered the thermostatic valve on the shower. The plumber did not report back to the Landlord.

61. The Agent was going down about the hot water complaint. The result of that visit was that the boiler was turned off at the mains, they turned it on and while he was waiting on the tank heating up he had a look at the shower and he reported back saying that the hot water is working, the shower is lacking in pressure, the only way to improve would be to fit a pump.
62. The ordinary member asked whether the Landlord had been told that the pump would improve the bath and wash handbasin taps as well as the shower. In response the Landlord said that it is a gravity system.
63. The Landlord said that in February, everything went quiet, I never heard anything much after that. He received a phonecall from Mark to say that they had asked the Tenant to go in to sort out the rent arrears. The last correspondence the Landlord received was from him to arrange a meeting with Tenant to sort out the rent and that he was not getting any feedback. He also got a call from Helen about rent. He has not heard anything since February. It was a surprise to the Landlord when he received the tribunal paperwork.
64. He had been told that six people had inspected the shower, that it did work, although it would benefit from a pump.
65. The Landlord accepted that at inspection earlier that day despite the booster switch being on for a period of time before and during the inspection, the water was not hot and was, at best, tepid.
66. From 27th February the Landlord has said that the immersion switch is there to be used as a back up and every time those inspecting the boiler have said that it is working.
67. The Landlord advised that he has not got the money to do the work without rent. He is re-investing money when he gets it. If the money is not coming in, he has to cover the mortgage. If the rent is paid, then he would lay the money out to fit a pump. Spending money on the flat is something he wants to do. Eventually his hope is that his son can use it. He wants to keep it up to standard.
68. He accepts that hot water is a basic necessity. He had not seen the shower turned on since it was fitted, until the inspection earlier that day. He accepted that the water from the shower and taps was tepid even after the booster switch had been used.
69. The legal member pointed out to the parties that the Landlord's obligations in terms of the repairing standard were separate from any issues with non-payment of rent and that the tribunal would only issue a determination about whether or not the Landlord had failed to meet the repairing standard. The Landlord was told

that he could take separate action regarding unpaid rent if he so wished but it was not a “defence” to this Application.

70. The Landlord thought that the Agents were coming to the inspection and hearing and had not been told that they were not attending.

71. The Landlord said that he intended to phone L&M and get them to come back out again and check it no matter what the tribunal says.

72. The Landlord said he intended to phone his agent to send a contractor to deal with this boiler issue and hot water.

Tenant’s oral submissions in response

73. The Tenant stated that when Mark MacDonald’s boss came to check the water, he told her that the switch had been on for more than an hour and there was no hot water. She said that he sent her an email confirming that there was no hot water on testing. [The Tenant tried to find the email on her phone but was unable to do so].

Reasons for the Decision

74. The tribunal made the following findings-in-fact:

- a. The Landlord is the registered owner of the House.
- b. A private residential tenancy exists between the Landlord and Tenant which started on 18 December 2017.
- c. The Tenant took possession of the House on or about 18 December 2017.
- d. Within a few days of the start of the tenancy, the Tenant contacted the Landlord’s Representative with a list of repairs issues which included the issues which now form the basis of the Application to the tribunal.
- e. The Tenant continued to complain about the repairs issues to the Landlord’s Representative by email and telephone. The Landlord’s Representative has been notified of all the issues that form the basis of the Application.

- f. The Tenant spoke to the Landlord about the issues on one occasion and the Landlord has been aware since that time that there is an issue with water pressure from the shower.
- g. The boiler controller has been replaced during the tenancy, in around January 2018. The controller is digital and includes a timer and an advance booster switch for hot water.
- h. There is no hot water from the shower at the property even when the boiler is switched on by use of the booster switch. The water was tepid on inspection.
- i. There is no hot water from the bath and sink taps in the property even when the boiler is switched on. The water was tepid on inspection.
- j. There is insufficient pressure in the water coming from the shower to have an acceptable shower, even were there a provision of sufficient hot water to the shower.
- k. There is insufficient pressure in the water coming from the bath and sink taps even were there provision of sufficient hot water to the taps.
- l. The replacement works to the boiler and controller have not resolved the issues with water temperature or water pressure in the shower or taps.
- m. The doorbell is functional.
- n. There is no visible mould in the living room of the House and the décor appears relatively fresh.

75. The tribunal is satisfied that in respect of the following items in the Application, as notified to the Landlord's Representative, the House does not meet the repairing standard:

75.1. The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the 2006 Act).

75.1.1. There is no provision of hot water to the shower or taps in the House. The Tenant has been unable to take a shower or have a hot bath since the start of the tenancy.

75.2. The installations in the House for the supply of water and heating water are not in a reasonable state of repair and in proper working order (Section 13(1)(c) of the 2006 Act.

75.2.1. The boiler, water tank and shower do not operate in a way to heat the water required for showering, bathing and washing, even with the use of the advance booster switch. The shower does not provide a flow of hot water. The water pressure in the shower is unacceptably low. The water pressure in the taps in the bath and sink is unacceptably low.

75.3. The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and working order.

75.3.1. The boiler, water tank and shower do not provide a flow of hot water from the shower with an acceptable water pressure. The taps do not provide a flow of hot water with an acceptable water pressure.

76. In respect of the remaining complaints in the Application, no order was made for the following reasons:

76.1. The front door bell was operational at the time of inspection.

76.2. The damp and mould in the living room have been treated and the ceiling has been redecorated.

77. Because the tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the repairing standard and have therefore issued a Repairing Standard Enforcement Order in terms of Section 24(2) of the 2006 Act.

Repairing Standard Enforcement Order (RSEO)

78. The tribunal made a RSEO.

79. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 30 days having regard to the length of time for which these works have been outstanding, since the first day of the tenancy

Right of Appeal

Effect of section 63

81. 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.

S Tanner

SignedSusanne L M Tanner, Queen's Counsel
Chairperson of the tribunal

Date 24 July 2018

Housing and Property Chamber

First-tier Tribunal for Scotland



This is the Schedule of Photographs
referred to in the foregoing decision
of the tribunal dated 24 July 2018

S Tanner

Signed
SUSANNE L.M. TANNER Name
24 July 2018 Date

PHOTOGRAPHIC SCHEDULE

26 Mitchell Street Kirkcaldy KY1 1BD
HPC/RP/18/0455



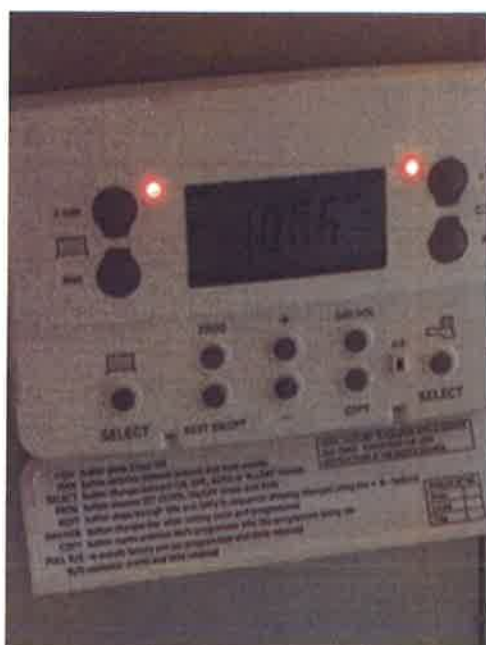
1. Front elevation



2. Shower



3. Boiler in kitchen



4. Boiler control panel in kitchen



5. Close up of boiler control panel in kitchen including hot water booster switch

DAVID LAWRIE

Ordinary/Surveyor Member
First-tier Tribunal
Housing and Property Chamber

8 June 2018