

# 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/RP/18/1891**

**Title no: PTH10521, 40B Darnhall Drive, Perth PH2 0HF**

**40B Darnhall Drive, Perth  
("The Property")**

**The Parties:-**

**Ms Sonia Stewart, 40B Darnhall Drive, Perth PH2 0H  
("the Tenant")**

**Mrs Annette Redpath or Marshall, North Baldutho Farm, Pittenweem,  
Anstruther, Fife KY10 2RY  
(represented by their agent Struan Baptie Property Management Ltd, 1A  
Victoria road, Dundee DD1 1EL  
("the Landlord")**

Whereas in terms of their decision dated 9 October 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 the property is:-

- (a) wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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;
- (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

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:-

- (a) to instruct a reputable gas engineer to report and reinstate the gas fire in the living room of the property, ensuring that the flue is functional and free from debris falling through the chimney space, that any draught issues are resolved and that the fire is in proper working order. Alternatively, in the event of the gas engineer recommending the removal of the gas fire or the Landlord deciding to remove it to board up the existing fireplace and cap and ventilate the chimney space and provide the tenant with a replacement coal or log effect electric fire that is in proper working order;
- (b) to instruct a Gas Safe registered engineer to inspect the gas installations in the property and to exhibit to the Tribunal a current Gas Safety Certificate with confirmation that there are Carbon Monoxide alarms present in all required areas in the property; and
- (c) to repair the seal to the kitchen tap and to put it into reasonable state of repair and proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of two months 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 page(s) are executed by Graham Harding, solicitor, 20 York Street Glasgow, chairperson of the tribunal at Glenrothes on 9 October 2018 before this witness:-

A Rees

G Harding

\_\_\_\_\_ witness  
 AMANDA REES name in full  
 20 YORK STREET Address  
 GLASGOW

\_\_\_\_\_ Chairperson

# 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/18/1891**

**40B Darnhall Drive, Perth  
("The Property")**

**The Parties:-**

**Ms Sonia Stewart, 40B Darnhall Drive, Perth PH2 0H  
("the Tenant")**

**Mrs Annette Redpath or Marshall, North Baldutho Farm, Pittenweem,  
Anstruther, Fife KY10 2RY  
(represented by their agent Struan Baptie Property Management Ltd, 1A  
Victoria road, Dundee DD1 1EL  
("the Landlord")**

**Tribunal Members**

**Graham Harding (Legal Member)**

**Geraldine 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) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application dated 26 July 2018 the Tenant applied to the Housing and Property Chamber 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 by the Tenants stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-**

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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;
- (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; and
- (d) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Specifically, the Tenant complained that The Chimney flue needed blocking; the gas boiler needed to be repaired; the extractor fan in the kitchen required to be vented out through the wall, the gas cooker required repair, the smoke alarms were sounding unnecessarily, the fridge temperature was too high and the seal at the kitchen tap was broken.

3. By Minute of Decision 3 August 2018, a Convenor of the Housing and Property Chamber with delegated powers determined to refer the application under Section 23 (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 both the Landlord and the Tenant.
5. The Tenant (by letter dated 15 August 2018), made written representations to the tribunal. The Landlord (by email dated 27 September 2018), made written representations to the Tribunal.
6. The Tribunal inspected the Property on the morning of 3 October 2018. The Tenant and the Landlord's representative Mr Struan Baptie were present during the inspection. A schedule of photographs taken by the Ordinary Member of the Tribunal at the inspection is attached to this decision.
7. Following the inspection of the Property the Tribunal held a hearing at Inveralmond Business Centre, Auld Bond Road, Perth and heard from both the Tenant and her Landlord's representative.
8. At the commencement of the Hearing the Tribunal expressed its concern that despite the Landlord being issued with a Direction that clearly stated that it required a Gas Safety Certificate and Electrical Installation Condition Report both dated after 30 August 2018 the documents supplied by the Landlord's representatives were both dated prior to 30 August. Whilst the Tribunal were less concerned about the EICR as it was still valid the Gas Safety report was over a year old and the Landlord was therefore in

breach of her obligations to provide an annual certificate. The Landlord's representative apologised to the Tribunal and undertook to instruct an up to date Gas Safety Certificate.

9. The tenant submitted as follows:-

- a) The gas boiler had been repaired.
- b) The fridge had been repaired.
- c) The extractor fan had been vented to the outside and this had resolved the issues with the smoke alarms which were now operating satisfactorily.
- d) The cooker and oven had been repaired and were working satisfactorily.
- e) The living flame gas fire in the living room was inoperative but the chimney was not blocked off. This resulted in a cold draught coming down the chimney and also soot and debris came down every day and the Tenant had to sweep this up. The Tenant said that when she saw the property prior to taking on the lease she had assumed the gas fire was in working order. It was only after she had entered into the lease that she discovered that the fire had been condemned and a red "do not use" notice had been put on it. She was of the view that either the fire should be replaced with one in working order and steps taken to prevent the draught and the soot from coming down or the fire should be removed altogether and the chimney properly blocked off.
- f) The tenant also explained that the seal at the base of the kitchen tap had broken and she was concerned that water would leak into the cupboard below the sink and cause damage.
- g) The Tenant also referred to issues with regards to the maintenance of the garden that were outwith the terms of her application to the Tribunal and could not be considered.

10. The landlord's representative submitted as follows:-

- a) The repairs referred to by the Tenant had been carried out.
- b) The gas fire in the living room had not been working for a number of years and had been disconnected and had therefore not formed part of the gas safety report. The Landlord's representative had not been aware of the fire not being operative at the time the property was let to the Tenant. He was of the opinion that it would benefit the property if the fire was replaced rather than having the chimney blocked off. There would need to be some work carried out to deal with the soot issue and the draught. He thought that a cap on the chimney may assist with the draught issue. He accepted that if the Tenant thought that she was renting a property that had a gas fire in the living room then she was entitled to have a fire in the living room.
- c) The Landlord's representative acknowledged that the seal at the base of the kitchen tap required to be replaced and that it would be in the Landlord's interest to have this done to prevent any water damage.

- d) Although not part of the Tenant's complaint to the Tribunal the Landlord's representative arranged to discuss with the Tenant her issues over the maintenance of the garden.

### **Summary of the issues**

11. The issues that remain to be determined by the Tribunal following it being confirmed that the Tenant's complaints with regards to the smoke alarms, the extractor fan, the gas cooker and the fridge had been resolved were:
- a) Was the house wind and watertight and in all other respects reasonably fit for human habitation?
  - b) Were 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?
  - c) Were any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order?
12. The specific issues for the Tribunal to consider were the gas fire in the living room not working, the draught from the chimney in the living room, the soot and debris coming down the chimney there and also the broken seal at the kitchen tap.

### **Findings of fact**

13. The Tribunal finds the following facts to be established:-
- The tenancy is a private residential tenancy.
  - Prior to the inspection and hearing the Landlord carried out repairs to the property that resolved the Tenant's complaints in respect of the Gas boiler, the gas cooker, the extractor fan, the smoke alarms and the fridge.
  - At the commencement of the lease the Tenant believed that the gas fire in the living room would be in working order.
  - The gas fire had in fact been condemned and had been disconnected some years prior to the commencement of the tenancy but left in place.
  - The Tenant is unable to use the gas fire.
  - There is soot and debris coming down the chimney in the living room on a regular basis.
  - There is a cold draught from the chimney entering the living room.
  - The house is not wind and watertight.
  - The installations in the house for space heating are not in a reasonable state of repair nor in proper working order.
  - The seal at the base of the kitchen tap is worn and needs to be replaced.

- The installations for the supply of water are not in a reasonable state of repair.
- There is no current Gas Safety Certificate in respect of the property.
- The house does not meet the Repairing Standard.

### **Reasons for the decision**

14. The Tenant and the Landlord's representative were in agreement as to the extent of the repairs that had been carried out prior to the inspection and hearing. It was also agreed that the Tenant had been entitled to expect that the gas fire in the living room was in working order at the commencement of the lease as the Landlord's representative had not been made aware that it had been disconnected until after the tenancy had commenced. The Tribunal was satisfied from the evidence of the Tenant and from its findings at the inspection that there was a draught coming from the chimney into the living room and also that soot was regularly falling down the chimney. The Tenant's evidence in this regard was not challenged by the Landlord's representative. The Tribunal therefore concluded that as the gas fire was in situ at the commencement of the lease it would be reasonable for it to be replaced. The Tribunal acknowledged however that the Tenant was not insisting on this as long as the issues with regards to the soot and the draught were addressed. That being the case the Tribunal felt that it could also give the Landlord an alternative option of blocking off the chimney with appropriate vents and replacing the existing gas fire with an electric equivalent.
15. With regards to the seal at the base of the kitchen tap it was evident from the inspection that this had failed and required to be replaced and the Landlord's representative undertook to attend to this.
16. As the property has gas central heating and a gas cooker and oven it is imperative that annual gas safety checks are carried out. The Tribunal was very concerned to note that despite specifically directing that a Gas Safety Certificate dated after 30 August 2018 be provided prior to the hearing this had not been carried out.

### **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. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
19. The decision of the tribunal was unanimous..

### **Right of Appeal**

**20. 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**

21. 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 Harding

Signed ..... 

Date ..... 9 October 2018

Chairperson





# 40b Darnhall Drive, Perth PH2 0HE

Inspection and Hearing 3 October 2018

Appendix - photos

Photo sheet 1: Chimney and gas fire



Chimney over gas fire: no capping to chimney pots



Gas fire: debris falls from chimney into grate

## Photo sheet 2: fire alarms

Kitchen heat detector



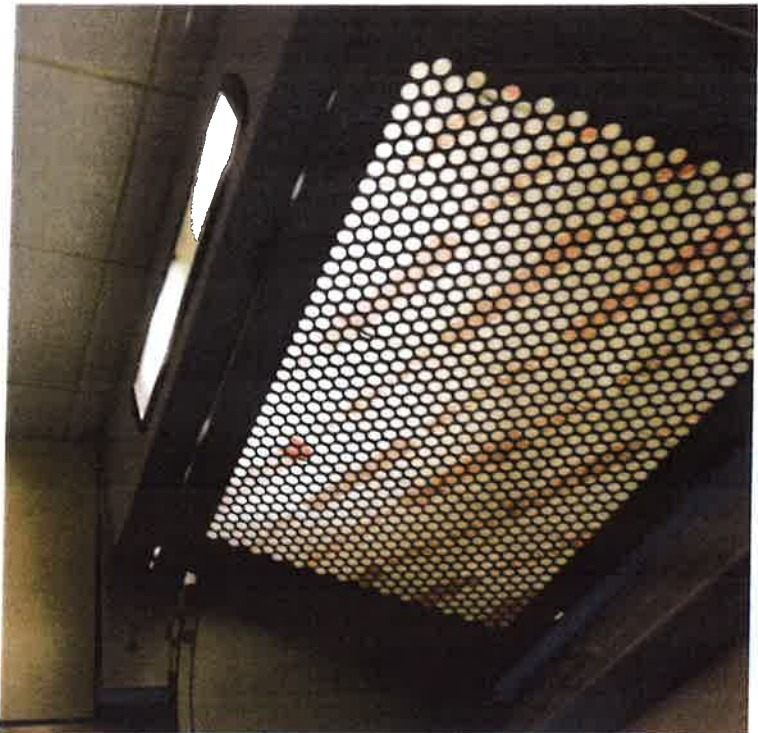
Hall smoke detector



Sitting room smoke detector



Photo sheet 3: Kitchen



New extraction system



Damaged seal to kitchen tap