

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/18/1994

Title no: INV1735 68 HILTON COURT INVERNESS IV2 4JW

**Ms Paulina Lopaszynska, 68 Hilton court, Inverness IV2 4JW
(represented by her representative Ms Alison Marley, Acair House, 51 High
Street, Invergordon IV18 0DG)
("the Tenant")**

**Mr Abbas Hudda and Mrs Nazneen Hudda, 4 Towerhill Close, Cradlehall,
Inverness IV2 5GY
("the Landlord(s)")**

Tribunal Members

Graham Harding (Legal Member)

Sara Hesp (Ordinary Member)

Whereas in terms of their decision dated 17 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:-

- (a) 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
- (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.

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 firm of electricians to ensure that the hot water cylinder immersion heater is in a reasonable state of repair and in proper working order and is capable of being used safely;
- (b) To remove and replace the rotten kitchen window sill with a new wooden sill and paint as required and ensure that the kitchen window opens and closes properly.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 30 days 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 Glasgow on 17 October 2018 before this witness:-

J Devlin

G Harding

witness

Chairperson

Jordan Devlin name in full
20 York Street Address
Glasgow

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/18/1994

**68 Hilton Court, Inverness IV2 4JW
("The Property")**

The Parties:-

**Ms Paulina Lopaszynska, 68 Hilton court, Inverness IV2 4JW
(represented by her representative Ms Alison Marley, Acair House, 51
High Street, Invergordon IV18 0DG)
("the Tenant")**

**Mr Abbas Hudda and Mrs Nazneen Hudda, 4 Towerhill Close, Cradlehall,
Inverness IV2 5GY
("the Landlord(s)")**

Tribunal Members

Graham Harding (Legal Member)

Sara Hesp (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 31 July 2018 the Tenant 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 by the Tenant stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the house**

meets the repairing standard and in particular that the Landlords 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;
- (c) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
- (d) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Specifically, the Tenant complained that there was no service history in respect of the electrical installations in the property particularly the water heater. There was no fire detection system in place. The electric oven was not working and the kitchen window was jammed and/or warped.

3. By Minute of Decision dated 14 August 2018 a Convenor with delegated powers considered the application and decided 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 Tenants.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Tribunal other than her original application dated 31 July 2018. The Landlord (by emails dated 28 and 31 August and 19 September 2018), made written representations to the Tribunal.
6. The Tribunal inspected the Property on the morning of 5 October 2018. The Tenant, the Tenant's representative and the Landlord 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 the Spectrum Centre, 1 Margaret Street, Inverness and heard from both the Tenant's representative and the Landlord. The Tenant was represented by Ms Alison Marley.
8. It was a matter of agreement between the parties that the Landlord had following the submission of the Tenant's application to the Tribunal installed hard-wired heat and smoke detectors in the property and repaired

the electric oven and immersion heater. There had also been an Electrical Installation Condition Report prepared.

9. Ms Marley advised the Tribunal that following the repairs being carried out she had been concerned to see that the immersion heater had still been faulty and showing signs of burning around the terminals. The Tenant had also had problems with the heater that had resulted in her having to frequently re-set it to get hot water. Ms Marley was aware that the Tenant had contacted the Landlord and that further repairs had been carried out.
10. For the Landlords Mr Hudda advised the Tribunal that his electrician had attended at the property on 1 October and replaced the corroded terminals at the immersion heater and he believed it to be working properly. The Tribunal pointed out to Mr Hudda that at the inspection there was no cover over the terminals to the immersion heater and bare wires were visible, raising a safety issue. Mr Hudda accepted that this was the case.
11. Mr Hudda confirmed that it was the same firm of electricians who had carried out the Electrical Installation Condition Report as had repaired the immersion heater. The Electricians had carried out their inspection of the property on 6 September 2018 and the EICR had been issued on 15 September 2018. The problem with the immersion heater had occurred after this date. Mr Hudda could not explain why there was no cover over the terminals on the immersion heater but advised the Tribunal that he intended to raise the matter with his electrician.
12. Ms Marley on behalf of the Tenant voiced her concern at the lack of a cover on the terminals as she thought it posed a significant fire risk as there were young children in the property and the cupboard housing the immersion heater was full of material that could catch fire.
13. Ms Marley explained to the tribunal that when she had first visited the property she had observed externally water damage to the kitchen window that had come from a leak from the property above. She did not think the window was fit for purpose. It could perhaps be opened but she was concerned that the window might then not close. She had seen worms and slugs coming through the window frame and as a result the tenant was keeping the window shut. This was leading to mould growth as the kitchen was not being properly ventilated.
14. Mr Hudda told the Tribunal that in his opinion the reason the kitchen window was not opening was due to the tenant having installing a blind at the kitchen window that was impeding the window opening. He did not think there was any mould. Mr Hudda acknowledged that there was external damage to the window sill that had been caused by a leak from the property above. The leak had now been repaired and he was in discussion with the owner of the property above who had agreed to meet the cost of repairing the window sill. Mr Hudda did not know when the repair would be carried out but intended to be in contact with the other owner's joiner to have a date confirmed. Mr Hudda said that he did not

think the window frame itself was warped and that the problem with the window opening was due to the tenant's blind. He suggested that he would arrange with the tenant to have the blind removed or re-sited so that the window could open properly.

15. Mr Hudda acknowledged that he ought to have had smoke and heat detectors installed in the property and was not offering any excuse for his failure to attend to this prior to the Tenant bringing the matter to the Tribunal's attention.
16. The Tribunal observed that there was vegetation growing out of the gutters adjoining the property and to the side of the kitchen window. Mr Hudda confirmed that this had not been the source of the damage to the window. Mr Hudda advised the Tribunal that the maintenance of common areas such as the gutters were overseen by a property factor and that he would contact the factors in order that they could instruct them to be cleaned out.

Summary of the issues

17. Following it being agreed that the Landlords had provided a current satisfactory Electrical Installation Condition Report and the property now had functioning hard-wired smoke and heat alarms and the oven had been repaired the issues that remained to be determined are;
 - a) whether the immersion heater in the property is in a reasonable state of repair and in proper working order and
 - b) whether the kitchen window is in a reasonable state of repair and in proper working order.

Findings of fact

18. The tribunal finds the following facts to be established:-
 - The tenancy is a short assured tenancy.
 - Prior to the Tenant applying to the Tribunal there was no system or detecting fires or for giving warning in the event of fire or suspected fire in the property.
 - Following the Tenant's application being made and prior to the inspection the Landlords had an appropriate fire detection system installed in the property.
 - The Landlords also had repairs carried out to the oven and the immersion heater and obtained a satisfactory Electrical Installation Condition Report.
 - At the time of the inspection, although in working order there was no cover over the terminals of the immersion heater rendering it unsafe.
 - The blind at the kitchen window prevents it from opening.
 - The kitchen window sill is rotten and requires to be replaced.
 - There are no gas installations in the property.

Reasons for the decision

19. The Tribunal was satisfied that the Landlords had taken steps to address the Tenant's concerns with regards to the electrical installations in the property particularly by installing a hard-wired heat and smoke detection system. The Electrical Installation Condition Report supplied by the Landlords in advance of the hearing was satisfactory. The Tenant confirmed that the oven was now working satisfactorily.
20. The Tribunal remained concerned, following the inspection, at the condition of the wiring to the immersion heater particularly as it appeared that it had been repaired only a few days prior to the hearing. Without a cover over the terminals the immersion heater did appear to the Tribunal to be in an unsafe condition particularly given the articles being stored in the cupboard beside the water cylinder and that there were young children in the property. The Tribunal noted however that the Landlord had been unaware of the condition of the immersion heater and had undertaken to contact his electrician after the hearing for an explanation. The Tribunal was unable to determine from the facts presented to it who had removed the terminal cover or when this had been done. It was clear however that it required to be repaired.
21. It was apparent to the Tribunal that the blind which had apparently been fitted by the Tenant was obstructing the kitchen window preventing it from opening. As a result, the Tribunal was unable to determine conclusively if there was a significant issue with the kitchen window otherwise opening and closing. There was however obvious water damage to the external sill of the kitchen window which had caused significant rot.
22. The Tribunal accepted that the cause of the rot may have come from a leak from the property above the Landlord's property but it remained the Landlord's responsibility to ensure that the property met the repairing standard.
23. As there were no gas or other combustible installations in the property the Tribunal was satisfied that the Landlord did not need to provide any carbon monoxide detectors in the property.
24. The Tribunal was of the view that because of the safety issues around the wiring to the immersion heater and the damage to the kitchen window sill and its inability to open and close that the property did not meet the repairing standard and that it was therefore necessary to make a Repairing Standard Enforcement Order.

Decision

25. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
26. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
27. The decision of the tribunal was unanimous.

Right of Appeal

28. 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

29. 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

17 October 2018

Chairperson

**Housing and Property Chamber
First-tier Tribunal for Scotland**



**FTS/HPC/RP/18/1994
Schedule of photographs taken during inspection of
68 Hilton Court, Inverness, IV2 4JW
October 5 2018 at 10.00 am**

Photograph 1:



External front elevation

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11/10/18

Photograph 2: Kitchen window – opened to maximum extent



Photograph 3: Kitchen window – positioning of blind



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Photograph 4: Hall cupboard: hot water cylinder tank



Photograph 5: Kitchen: heat detector



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Photograph 6: Living room: smoke detector



Photograph 7: Hall: smoke detector



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Photograph 8: Kitchen window sill: exterior view



Photograph 9: Side elevation: kitchen window



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