

# **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/ 2992**

**Land Registration Title Number LAN105737**

**Property at 50 Marleyhill Avenue, Stonehouse, Larkhall, Lanarkshire ML9 3JQ  
("the Property")**

**The Parties:-**

**Miss Angela Ross, residing at 50 Marleyhill Avenue, Stonehouse, Larkhall,  
Lanarkshire ML9 3JQ  
("the Tenant")**

**Ms Debbie Docherty, Housing Advice Team, South Lanarkshire Council,  
Cambuslang Gate, 27 Main Street, Cambuslang G72 7EX  
("the Tenant's representative")**

**Mr John Markey, Murray Markey Partnership, formerly 10 Greystone Place,  
Stonehaven ML10 6NZ and now 7 Wellbrae, Stonehouse, Lanarkshire ML9 3ED  
("the Landlord")**

**Ms Jordan Viola, 93 James Weir Grove, Uddingston, Glasgow G71 7PL  
("the Landlord's representative")**

**NOTICE TO: Mr John Markey ("the Landlord")**

Whereas in terms of their decision dated 20th February 2019, 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 property is wind and water tight and in all other respects reasonably fit for human habitation

- (b) The installations in the house for the supply of water, gas and electricity 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 proper working order;
- (d) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (e) The house has satisfactory provision for giving warnings if carbon monoxide is present in a concentration that is hazardous to health

The tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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) carry out such works as are necessary to ensure the house has satisfactory provision for giving warnings if carbon monoxide is present in a concentration that is hazardous to health, all as required in terms of the Scottish Government Guidance for the provision of Carbon Monoxide alarms in Private Rented Housing; and thereafter carry out such works as are necessary to obtain a Gas Safety Certificate in respect of the house by a Gas Safe registered engineer and provide a copy of the Gas Safety Certificate to the tribunal
- b) Instruct a suitably qualified contractor to undertake such repair or replacement as necessary to ensure that the defective tap at the kitchen sink and trap are in reasonable state of repair and proper working order.
- c) instruct suitably qualified contractors to inspect and repair or replace as necessary (i) the built in oven and grill and ii) the integrated fridge freezer in the kitchen to ensure they are in a reasonable state of repair and proper working order
- d) instruct a suitably qualified contractor to repair or replace the handle of the window in the upstairs back bedroom to ensure the window is in a reasonable state of repair and in proper working order
- e) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and current building regulations; and thereafter carry out such works as are necessary to obtain a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which reports should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor and provide a copies of the EICR and PAT certificate to the tribunal

The tribunal order that the works specified in this Order must be carried out and completed within the period of six 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 are executed by Morag Leck, solicitor, chairperson of the tribunal at GLASGOW on 20th Feb. 2019 before this witness:-

<u>A Thomson</u>	witness	<u>M Leck</u>	chairperson
<u>ABIGAIL THOMSON</u>	name in full		
<u>GLASGOW TRIBUNALS</u>	Address		
<u>CENTRE</u>			
<u>20 YORK STREET</u>			
<u>GLASGOW G2 8GT</u>			

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RP/18/2922**

**Property at 50 Marleyhill Avenue, Stonehouse, Larkhall, Lanarkshire ML9 3JQ  
("the Property")**

**The Parties:-**

**Miss Angela Ross, residing at 50 Marleyhill Avenue, Stonehouse, Larkhall,  
Lanarkshire ML9 3JQ  
("the Tenant")**

**Ms Debbie Docherty, Housing Advice Team, South Lanarkshire Council,  
Cambuslang Gate, 27 Main Street, Cambuslang G72 7EX  
("the Tenant's representative")**

**Mr John Markey, Murray Markey Partnership, formerly 10 Greystone Place,  
Stonehaven ML10 6NZ and now 7 Wellbrae, Stonehouse, Lanarkshire ML9 3ED  
("the Landlord")**

**Ms Jordan Viola, 93 James Weir Grove, Uddingston, Glasgow G71 7PL  
("the Landlord's representative")**

### **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) of the Housing (Scotland) Act 2006 (the Act) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.**

**The Tribunal consisted of-**

**Morag Leck (Legal Member and Chair)  
Kingsley Bruce (Ordinary Member)**

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### Background

By application which comprises documents received between 5<sup>th</sup> and 9<sup>th</sup> November 2018 the Applicant applied to the First-tier Tribunal for Scotland ( 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").

1. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the Property meets the repairing standard and in particular that the Landlord had 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 (as required by section13(1)(d) of the Act);
  - (b) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section13 (1) (f)) of the Act);and
  - (c) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (as required by section13 (1) (g) of the Act).
2. The Third Party Applicant attached details of the following complaints to the application :-
  - 1) *No carbon monoxide alarm*
  - 2) *The oven/grill in Fitted Cooker not working*
  - 3) *Built in fridge/freezer not working*
  - 4) *Leaking tap in kitchen*
  - 5) *Window in upstairs back bedroom needs fixed*
  - 6) *No smoke alarm*
3. By Minute dated 16<sup>th</sup> November 2018, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination. The Minute referred to Mr John Markey and Mr Brian Murray both of the Murray Markey Partnership. Mr Brian Murray is deceased. Accordingly all Tribunal correspondence in respect of the application has been sent to Mr John Markey.
4. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant on 19<sup>th</sup> December 2018. An inspection of the house and a hearing were fixed for 30<sup>th</sup> January 2019.

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5. Following service of the Notice of Referral, no written representations were received from any of the parties. Emails dated 17<sup>th</sup> and 28<sup>th</sup> January 2019 were received from Ms Debbie Docherty of South Lanarkshire Council advising that she would act as the Tenant's representative. The Tenant would provide access for the inspection but would not attend the hearing. Emails from the Landlord were received on 29<sup>th</sup> January advising that he would attend the inspection and his daughter Jordan Viola would attend the hearing on his behalf as he was unable to attend.

### The Inspection

6. The Tribunal inspected the Property on the morning of 30<sup>th</sup> January 2019. The weather conditions were dry and cold following overnight snow showers.
7. The Property is a former local authority property being a terraced house located within a street of similar properties dating from around the 1950s in Stonehouse on the outskirts of Larkhall. The accommodation comprises three bedrooms, living room, kitchen and bathroom. .
8. The Tenant was present at the inspection. The Tenant was supported by Ms Mary McKinnon of South Lanarkshire Council. The Landlord also attended. Ms Amanda Raas, Tribunal Clerk accompanied the Tribunal on the inspection. Photographs were taken and are attached as a Schedule to this decision.

### The Hearing

9. Following the inspection of the Property the Tribunal held a hearing at Glasgow Tribunals Centre, Room 112, 20 York Sreet Glasgow. The Landlord had previously intimated that he would not attend and was represented by his daughter Ms Jordan Viola. The Tenant did not attend as also previously intimated. Her representative Ms Docherty was also not in attendance.
10. The Tribunal Chair explained the procedure to be adopted at the hearing and that the Tribunal would look at each repair issue set out in the application in turn.
11. The Tribunal dealt firstly with the following preliminary issues:-

The Tribunal observed that the application had been made by Ms Angela Ross and noted references in the application to her partner Mr Hendry who it was understood resided at the Property The Tribunal confirmed that Mr Hendry was not a party to the application which had proceeded in the name of Ms Ross.

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The Tribunal also sought clarification of the status of the Murray Markey Partnership from Ms Jordan noting that the Tenant had advised in her application paperwork that her original lease had been with Mr Brian Murray of the Partnership and that he was now deceased. The Tribunal also noted that the Landlord Register entry currently included both Mr Markey and Mr Murray. Ms Jordan confirmed that Mr Brian Murray had died in March 2017 and her father continued to trade at present as the Murray Markey Partnership and was responsible for the tenancy. She advised that the Tenant had entered into a lease of the Property in 2009 and remained in the Property since then. She also confirmed that the Tenant's partner resided with her.

12. Thereafter the Tribunal considered the issues listed in the Application in the following order:-

### 12.1 No Carbon Monoxide Alarm

Ms Jordan accepted this was the position but advised that there had been several attempts to gain access to the Property to rectify this. Access had not been provided. The Ordinary Member of the Tribunal, Mr Bruce queried if there was a Gas Safety Certificate for the Property. Ms Viola was uncertain although she was aware the boiler had been serviced recently. Mr Bruce pointed out that this was a statutory requirement and Ms Viola advised that she would need to look into the matter.

### 12.2 Oven/ Grill in fitted cooker not working properly.

Mr Bruce explained that the Tenant had switched the oven on during the inspection to demonstrate that there was a loud noise when switched on. The Tenant also had stated at the inspection that smoke was coming from the oven. Ms Viola explained that the Tenant had been in touch about the cooker and this had been repaired on 21<sup>st</sup> October 2018. She did not recall mention of the oven and thought it was the hob which had been reported.

### 12.3 Built in Fridge/ Freezer not working

Mr Bruce confirmed that the Tribunal had observed that the integrated fridge/freezer was not in operation. It was being used for storage and the door was off the unit. The Tenant had advised that the freezer was over freezing and the fridge was not cool enough. Ms Viola advised that the electrician had looked at it on 21<sup>st</sup> October but she did not think it was in use at the time. The electrician had suggested defrosting it. Mr Bruce noted from the inspection that the refrigeration elements were quite heavily corroded.

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### 12.4 Leaking tap in kitchen

Mr Bruce noted that the Tenant had complained that the kitchen tap was running continuously. The Tenant had shown the Tribunal a trap below the sink which ran into the wastepipe and that had been wrapped in tape by the Tenant. Ms Viola advised her understanding was that this had not been raised before 19<sup>th</sup> September 2018 and her father had no previous knowledge of the issue. The Tribunal advised that the Tenant's position was that this had been reported to Mr Brian Murray in March 2017 and she did not wish to be disrespectful by raising again shortly after his death and had attempted a repair herself. Mr Bruce pointed out that although the Tenant had stated one issue in her application, there were actually two issues as in addition to the leak at the waste pipe, the tap was also running continuously.

### 12.5 Window in upstairs back bedroom needs fixed

Ms Viola acknowledged this repair was required. She explained that a contractor had called on 20<sup>th</sup> September the day after it was reported to try and repair. She advised that the Tenant was there but would not let him in. He had left a card asking her to call and arrange a suitable time. The Tribunal queried if the Tenant had been given notification of the visit by the contractor and Ms Viola advised that she was not sure if this had been done by a call or text.

### 12.6 No smoke alarm

Mr Bruce noted from the inspection that there was a battery operated smoke alarm which was not working. Ms Viola advised that her father was aware that this issue needed to be attended to straight away.

Mr Bruce also pointed out that the smoke alarm would be included in the Electrical Inspection Condition Report (EICR) and queried if one was in place. Ms Viola was unaware of the position. Mr Bruce pointed out that it was a statutory requirement to have in place a heat detector in the kitchen and smoke detectors in the living room, hall and landing which all required to be hardwired and interlinked.

The Tribunal thereafter noted that the Tenant had written to the Landlord by letter dated 1<sup>st</sup> November 2018 listing all the repairs outstanding.

The Tribunal asked Ms Viola if she had any other comments to make.

Ms Viola stated that the first contact regarding the repairs from the Tenant was on 19<sup>th</sup> September 2018 when she had also advised that she was withholding rent. This was when the Tenant had said about previously informing Mr Murray about the kitchen tap. Ms Viola advised that her father was taken by surprise and he did wish to have all the issues sorted out and rectify defects. He would work with the Tenant at a time that suited to have repairs carried out. However, she pointed out that some of the repairs

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remained outstanding as the Tenant wished these done on her terms. She gave the example of the bedroom window where the contractor had never received a call to go back. She advised that eviction proceedings were underway in relation to the tenancy.

### Summary of the issues

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

### Findings of fact

14. The Tribunal finds the following facts to be established:

- a) The Tenant entered into a Tenancy Agreement with the Landlords which commenced some time during 2009. Whilst no lease has been produced, the Tenant has continued to occupy the Property and pay rent since 2009. Accordingly the Tribunal is satisfied that it has jurisdiction in this matter.
- b) The Landlord of the Property is Mr John Markey of Murray Markey Partnership. The previous joint Landlord Mr Brian Murray died in March 2017 and Mr John Markey has continued to trade as the Murray Markey Partnership since that date.
- c) Mr John Markey and Mr Brian Murray are the registered owners of the Property recorded under Land Certificate LAN105737. Mr Brian Murray died in March 2017.
- d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- e) The Tenant notified the Landlord by letter dated 1<sup>st</sup> November 2018 of all the repair issues detailed in the application.
- f) The Tribunal at its inspection on 30<sup>th</sup> January 2019 carefully checked the items which were the subject of the complaint and observed the following in relation to each item:
  - 1) There was no Carbon Monoxide alarm.
  - 2) The oven and grill were not working properly with a loud noise emanating from the oven when turned on.

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- 3) The built in fridge/ freezer was not operational and being used for storage. The refrigeration elements were heavily corroded.
- 4) The kitchen tap was running continuously and there was a leak at the trap door underneath the sink.
- 5) The window handle on the back bedroom window was not operating and the window would not close properly.
- 6) There was a battery operated smoke alarm in the hall which was not operational and did not meet statutory requirements

### Reasons for the decision

15. The Tribunal were concerned at the state of the Property in general and also noted that no Gas Safety Certificate or EICR were available both of which were relevant to issues which had been included in the application.

The Tribunal had regard to the submissions made by Ms Viola regarding the reporting of repairs and difficulties with gaining access and that there were contrary views expressed by the Tenant as stated in her application and during the inspection as regards steps taken to carry out repairs. In the circumstances the Tribunal were of a view that it was appropriate to base its decision on the state of the Property as observed by the Tribunal during the inspection.

16. The Tribunal considered each of the complaints made by the Third Party Applicant in the application namely :-

#### 16.1 No carbon monoxide detector.

The Tribunal observed that there was no carbon monoxide detector in the property. The Tribunal also noted that no Gas Safety Certificate was available relative to same.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (g)) with regard to the above.

#### 16.2 Oven/ Grill in fitted cooker not working properly

The oven and grill were observed by the Tribunal not to be working properly.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (d)) with regard to the above.

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### 16.3 Leaking tap in the kitchen

The Tribunal observed that the kitchen tap ran continuously and the wastepipe underneath the sink was found to be defective.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (c) and (d)) with regard to the above.

### 16.4 Built in Fridge/Freezer not working

The Tribunal observed that the fridge/freezer was not operational and being used for storage. The refrigeration elements were corroded.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (d)) with regard to the above.

### 16.5 Window in upstairs back bedroom needs fixed

The window handle was observed by the Tribunal to be not operating and in need of repair.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (a) with regard to the above.

### 16.6 No smoke alarm

The Tribunal observed that there was a battery operated smoke alarm in the hall which was not operating. In terms of statutory requirements smoke detectors were required for the living room, hall and upstairs landing and a heat detector required for the kitchen. The detectors should be hard wired and interlinked.

The Tribunal also observed that there was no EICR available relative to same.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (f) with regard to the above.

## **Decision**

16 The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

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

18 The decision of the Tribunal was unanimous.

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### Right of Appeal

**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.

M Leck

Signed

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Date

20/2/19

Chair and Legal Member

glasgow 20/2/19  
This is the Schedule of  
Photographs referred to  
in the foregoing decision.  
M Leck

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

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**Schedule of Photographs:**

**20 Marleyhill Avenue,**

**Stonehouse,**

**Larkhall,**

**Lanarkshire ML9 3JQ**

**30 January 2019**







