

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order **Ordered by the First-tier Tribunal for Scotland** **(Housing and Property Chamber)**

NOTICE TO

Chamber Ref: FTS/HPC/RP/18/2993

Title no: LAN87646

2 Reid Grove, Motherwell, ML1 2DQ being the subjects registered in the Land Register of Scotland under Title Number LAN87646 ('The Property')

The Parties:-

Lloyd Robert Swan residing at 9 Darngaber Gardens, Quarter, Hamilton, ML3 7XX ('the Landlord').

Independent Estates, 97 Main Street, Wishaw, ML2 7AU ('The Landlords' Representatives').

Miss Louise Abel ('the Former Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Andrew McFarlane (Ordinary Member).

The said Lloyd Robert Swan

Whereas in terms of their decision dated 24th January 2019 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. In particular the Landlord has failed to ensure, contrary to Section 13 (1)(b) and (d) of said Act, that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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:

1. Replace the missing bedroom window handle to enable the window to be made secure and locked.
2. Repair the back door to enable it to be opened and closed properly without binding on the sill.

3. Repair or replace the broken and cracked bathroom tiles.
The Tribunal orders that these works must be carried out and completed by 8th March 2019.

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 a landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement 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 typewritten on this and the preceding page are subscribed at Irvine on 24th January 2019 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Keirsten Byrne, 65, High Street, Irvine.
J Taylor

Signed.....

Chair K Byrne

.....witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

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The Parties:-

Lloyd Robert Swan residing at 9 Darngaber Gardens, Quarter, Hamilton, ML3 7XX ('the Landlord').

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Miss Louise Abel ('the Former Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Andrew McFarlane (Ordinary Member).

Decision

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 Property, determined that the Landlord failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. The Tenant leased the Property from the Landlord in terms of the Short Assured Tenancy between the parties which commenced in May 2016. The Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act') by application received by the Tribunal on 5th November 2018.

2. The application stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She advised

that the Property is not wind and water tight and reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order and the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order.

In particular the application stated:-

- 2.1 No lock/handle on child's bedroom window.
- 2.2 Doors (back and front) have dropped.
- 2.3 Toilet system has come away from fixtures.
- 2.4 Tiles are falling off the walls.
- 2.5 Mice infestation in the Property.

3. On 14th November 2018 Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), having considered the application, comprising documents received on 5th November 2018, referred the application under Section 22 (1) of the Act to a Tribunal.

4. On 14th November 2018 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

The Inspection

5. The Tribunal attended at the Property on 15th January 2019. The Tenant was not present at the inspection. She had vacated the Property on 7th January 2019. The Landlord was not present at the inspection and was represented by Gary Hughes and Collette Lloyd of Independent Estates, 97 Main Street, Wishaw, ML2 7AU.

6. The Property 2 Reid Grove, Motherwell is a modern end terraced villa which dates from circa 1990. The accommodation comprises 2 bedrooms, living room, kitchen, and internal bathroom. There is off street parking to the front and a garden to the rear of the Property.

The Tribunal inspected the alleged defects and found:-

6.1 No lock/handle on child's bedroom window.

The windows are wooden framed double glazed windows with an opening sash. One locking handle from the right hand (when viewed from the inside) was missing. The missing handle meant that the window could not be locked securely.

6.2 Doors (back and front) have dropped.

The front door appeared off level but operated correctly. The rear door was off level and was binding on the lower sill when operated. This makes it difficult to close and lock the door as it is necessary to lift the door slightly to close it.

6.3 Toilet system has come away from fixtures.

The cistern was slightly loose as a screw securing it to the wall was unscrewed. However the cistern was secured to the toilet pan and did not solely rely on being attached to the wall.

6.4 Tiles are falling off the walls.

There is one small broken tile and a cracked tile above on the bathroom wall at the shower above the bath.

6.5 Mice infestation in the Property.

There was no evidence of mice infestation at time of the inspection.

Photographs were taken during the inspection and are attached as a Schedule to this report.

The Hearing

7. Following the inspection of the Property the Tribunal held a hearing at The Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT.

8. The Tenant did not attend the hearing. The Landlord's representatives Gary Hughes and Collette Lloyd attended the hearing.

9. In respect of the matters in the application the Landlord's representatives advised as follows:

10. The Tenant had vacated the Property and they have not arranged any further repairs to be carried out as they wanted the Tribunal to see the Property as the Tenant had left it.

10.1 No lock/handle on child's bedroom window.

They consider the bedroom windows to be airtight and secure. Collette Lloyd explained that she had tried to source a replacement lockable handle but they are obsolete.

10.2 Doors (back and front) have dropped.

Collette Lloyd advised that she considered the front and back doors to be wind and water tight. She acknowledged that the back door stuck a little when it was being closed but no brute force was required to close and lock it.

10.3 Toilet system has come away from fixtures.

Collette Lloyd explained that even although the screw fixing the toilet cistern to the wall was loose the cistern was secure.

10.4 Tiles are falling off the walls.

Collette Lloyd advised that she considered the cracked and broken tiles to be cosmetic and they do not prevent the tiles in the bathroom from being in a reasonable condition overall. She further indicated that tradesmen had examined this area on her instructions and conceded that some silicone sealant could have been added.

10.5 Mice infestation in the Property.

Collette Lloyd advised that she had arranged for a pest control company to inspect the property but the Tenant had not given access.

Findings in fact

11. The Tribunal made the following findings in fact:-
There was no evidence of mice infestation at the Property.

Issues to be determined

12. Therefore the issues to be determined are:-

12.1 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

Whether the condition of the missing lock/ handle to the window of the child's bedroom and the said condition of the front and back doors results in them not being in a reasonable state of repair and proper working order.

12.2 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

Whether the said condition of the toilet cistern and tiles in the bathroom results in them not being in a reasonable state of repair and proper working order.

Reasons for Decision

13. The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

13.1 The Tribunal finds that the missing lock/ handle to the window of the child's bedroom results in the window not being secure and lock fast. The missing lock/ handle also results in the window not being in proper working order. Consequently the Tribunal determine that the said window is not in a reasonable state of repair and proper working order.

13.2 The Tribunal finds that (1) the front door, whilst being slightly off level operates properly and (2) the fact that the back door cannot be closed and locked easily and it is necessary to lift up the door slightly to enable it to be closed and locked results in the back door not being in proper working order. Consequently the Tribunal determine that the back door is not in a reasonable state of repair and proper working order.

14 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

14.1 The Tribunal finds that the toilet cistern, whilst being slightly loose, is in a reasonable state of repair and proper working order.

14.2 The Tribunal finds that broken and cracked bathroom tiles can result in water ingress behind the tiles and consequently they are not in a reasonable state of repair and proper working order.

Decision

15. The Tribunal accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(b) and (d) the Act, as stated.

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

17. The decision of the Tribunal was unanimous.

Appeal

18. 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.

J Taylor

..... ✓Chairperson

24th January 2019



Property Address

2 Reid Grove
Motherwell
ML1 2DQ

Case Reference

FTS HPC RP 18 2993

Schedule of Photographs taken during the
inspection by tribunal members on 15 January
2019

24/1/19
J Taylor

Housing and Property Chamber

First-tier Tribunal for Scotland



1. General View from Road



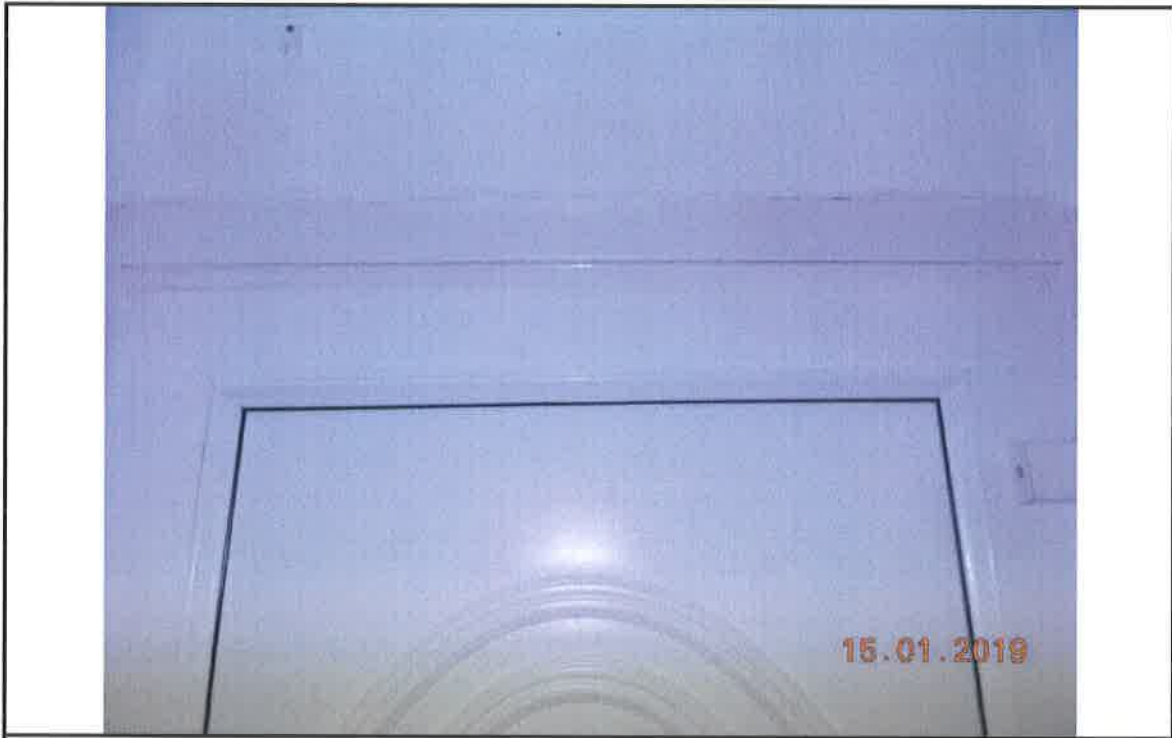
2. Right hand (viewed from inside) window in upper floor Rear Bedroom



3. Left hand (viewed from inside) window in upper floor Rear Bedroom



4. Front door from outside



5. Front door from inside



6. Rear door from outside



7. Cill of rear door with score marks at opening edge



8. WC and Cistern



9. Loose fixing screw to cistern



10. Damaged tile at bath/shower

