

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/19/0105

Flat 1, 76 Regent Quay, Aberdeen, AB11 5AR Title Number ABN90145
("The property")

The Parties:-

Ricky McCombie, residing at Flat 1, 76 Regent Quay, Aberdeen, AB11 5AR
("the Tenant")

**St Andrews Estates (Scotland) Ltd, c/o Lotus Property, The Factory, 184 Newry
Road, Banbridge, BT32 3NB**
("the Landlords")

**Stonehouse Lettings, Osborne House, 27-30 Carden Place, Aberdeen, AB10
1UP**
("the Letting Agents")

Whereas in terms of its decision dated 11 April 2019, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the respondents had 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 respondents had failed to ensure at all times during the tenancy, that:-

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
- 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 (section 13(1)(c));

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 to:

1. Fit draft proofing strips at the leading edge of the door to the Property.

2. To repair or replace the lounge windows so as to make them wind and watertight.
3. To rake out the existing pointing at the kitchen window, and repoint.
4. To repair or replace the existing electrical storage heater in the lounge of the property, such as to provide a heater in the lounge which is in a reasonable state of repair and in proper working order.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **eight weeks** from the date of service of this Notice.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the Tribunal at Stirling on 11 April 2019, before this witness:-

V Hammill

_____ witness

A Stalker

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)

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

Chamber Ref: FTS/HPC/RP/19/0105

Flat 1, 76 Regent Quay, Aberdeen, AB11 5AR Title Number ABN90145
(“The property”)

The Parties:-

Ricky McCombie, residing at Flat 1, 76 Regent Quay, Aberdeen, AB11 5AR
(“the Tenant”)

St Andrews Estates (Scotland) Ltd, c/o Lotus Property, The Factory, 184 Newry Road, Banbridge, BT32 3NB
(“the Landlords”)

Stonehouse Lettings, Osborne House, 27-30 Carden Place, Aberdeen, AB10 1UP
(“the Letting Agents”)

Tribunal Members:

Adrian Stalker (Chairman) and Andrew Murray (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) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By an application to the Housing and Property Chamber received on 11 January 2019, the Tenant sought a determination as to whether the

Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application contended that the Landlord had failed to comply with his duty to ensure that the property meets the repairing standard under section 13 of the 2006 Act, and in particular, that the Landlord had failed to ensure, at all times during the tenancy, that:-
 - the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(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 (section 13(1)(c));
3. On 5 February, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier tribunal. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both parties by letters dated 7 February 2019.
4. After service of the notice of referral, some correspondence took place between the Letting Agents and the Tribunal clerk. The Letting Agents initially indicated that the limited company St Andrews Estates (Scotland) Ltd, the owners of the property, had been sold to the Lotus Group plc, and that they were no longer instructed to manage the property. However, the Letting Agents' email of 13 March 2019 confirmed that they had been reinstructed in the matter by Lotus Group, and would arrange for a member of staff to attend the inspection of the property by the Tribunal members. That was also confirmed in an email from Mr Roger Craig, of the Lotus Group, dated 13 March 2019.
5. The Tribunal members inspected the property on the morning of 28 March 2019. Present at the inspection were:
 - The Tenant
 - Lauren Cowling, the Letting Agents' Senior Portfolio Manager
 - Stewart Carnie, the Letting Agents' Lettings Director
 - Erin Saddler, the Letting Agents' Property Manager
6. Later that morning, the Tribunal held a hearing at the Credo Centre, 14-20 John Street, Aberdeen. Again, the Tenant, Ms Cowling, Mr Carnie and Ms Saddler were all present.

Summary of the issues

7. In the application, the Tenant described outstanding repair issues at the property, as follows:

“Windows and door are allowing too much cold air in;
living room cannot be heated in cold weather times;
Also hail stones were getting inside
Space Heaters do not work well enough, if at all”

8. In this part of the application, the Tenant also made reference to an “Early Termination Letter” he had sent to the Letting Agents (see paragraph 10)

9. In question 9 of the application form (“Nature of the work which needs to be done”), the Tenant had entered: “Windows need to be replaced. Heating appliances need to be fixed.”

10. A copy of the Tenant’s “Early Termination Letter”, addressed to the Letting Agents, and dated 7 December 2018, is attached to the application. This indicates the Tenant’s intention to leave the property, because of the disrepair. In particular, the letter further states that, during the winter:

- “There was absolutely no way to heat the living room as the windows allow too much cold air in, and there is a broken mini-vent atop the left window.”
- “The last occasion there were hailstones, I found that there was hailstones get in from the bottom right corner of the kitchen window and eventually mold started forming in the corners/edges of both bedroom and kitchen windows.”
- “The bedroom window is the least problematic, yet not great do to the quick condensation forming on the windows and the room require constant heat to stay warm (I have experimented with timing settings on my heater to no avail).”
- “The space heaters at the property are storage heaters that I still do not know if they are faulty or there is too much cold getting in for the heaters to be effective.”

11. Written representations were received from the Letting Agents by email dated 21 March 2019. These included the following points:

Firstly, further to our initial response we wish to submit R&D Services' engineer report as proof an engineer has attended to investigate the functionality of the heaters to the property which Mr McCombie reported as not working. No fault was found with the heaters, indeed the heaters were turned off at the time the visit took place. With no fault found it has been determined the heaters are in full working order and that the Mr McCombie must make use of the heaters should he wish to heat the property sufficiently.

In regards to the windows in the property the Landlord, Lotus Property, have requested two further quotations be obtained. Quotes have been instructed with Crest Glazing and Bon Accord Glass; both have confirmed they will be able to attend to quote by end of next week at the latest. In support of the above we attach for reference copies of the two quotations received at this time and works orders for the newly instructed quotation. We aim to have a further update by the time of the inspection/hearing.

12. The Tenant's response, by email dated 22 March, contains the following statement:

Heaters; an "engineer" did recently attend but only concluded that the heaters were drawing in the correct amount of electricity, not the functionality. He advised that if the heat output is still poor then a particular component may need replaced (a boost/booster I think he called it). So far I've had better luck with the bedroom heater though it's rather unpredictable. The living room one is still absolutely terrible, I attempted to use it again for a few nights after inspection and I decided to keep it off as I'm not prepared to waste electricity on something that's not working correctly.

Inspection

Doors

13. The Tenant's application indicates the "windows and door are allowing too much cold air". The Tribunal found that there was a gap at the bottom of the front door to the building. This had recently been fitted with a draft excluder at the foot of the door, internally. However, this would still allow the wind to penetrate at the foot of the door. That problem could be alleviated by fitting a weather bar at the foot of the door, externally.

14. At the door to the flat, there was a noticeable gap between the leading edge of the door, and the door surround. This would allow a draught to get through. An ad-hoc “stick-on” draught strip has been fitted but this is not effective. This problem could be addressed by fitting a draught excluder.

Windows

15. *Windows in lounge.* The lounge has two large windows. The unusual shape and design of the windows is as shown in the photographs attached to this decision. Draught excluders have been fitted round the frames. The windows do not open. They are single glazed. There are trickle vents at the top of one window, but not the other. Ms Cowling advised the Tribunal members that any replacements for these windows would have to be timber framed, not PVC, as the windows are “listed”.
16. The Tribunal understood it to be accepted by the Landlords that the windows in the lounge are not “wind and water tight”, and that this problem requires to be addressed. The Letting Agents’ email of 21 March indicates that these windows are to be replaced by the Landlords (see the last paragraph of the quotation at paragraph 11 above). At inspection, it was confirmed that the new windows will be timber, and double glazed.
17. *Window in kitchen.* The Tenant complained that this window was draughty. On one occasion, hailstones had come in through one of the bottom corners, even though the window was closed (as indicated in bullet point 2 at paragraph 10 above). Ms Cowling indicated that the Letting Agents could, on behalf of the Landlords, look at also replacing this window. However, it appeared to the Tribunal that the problem could also be addressed by raking out the existing pointing, and repointing the window, so as to remove any gap between the window and the surround.
18. *Bedroom window.* As indicated at paragraph 10 above, the Tenant complained that this window was subject to condensation. Ms Cowling indicated that the Letting Agents had had this issue checked by a dampness specialist. He had stated that the problem was due to the Tenant not ventilating the room properly. The Tribunal noted that there is an operational trickle vent at top of the window. The Ordinary Member advised the Tenant that this should be opened. The Tribunal was not satisfied that there was any defect with this window.

Heating

19. There are wall mounted electrical storage heaters in the lounge and the bedroom. There is a wall mounted an electrical convection heater in the

kitchen. The Tenant confirmed that his complaint is restricted to the storage heaters, particularly the heater in the lounge, as indicated at paragraphs 10 and 12 above.

20. The Tribunal noted that all of the heaters were switched on, and appear to be at least operational. The heaters also appeared to be adequately rated in respect of Kw input, based on the room volumes and glazed areas. However, the storage heaters are at least 30 years old, and may be considered past their operational life expectancy. The heaters are of a type that store thermal energy in bricks at night, and release the heat during the day as required. However, it appeared, from the Tenant's comments, that the lounge heater does not store enough energy to provide heat throughout the day.

Hearing

21. The Tribunal clarified with the Tenant that his reference to "door" in the application had been to the door to his flat, rather than the external door. It explained that could not make a Repairing Standard Enforcement Order ("RSEO") in relation to door to the building, but would make a recommendation in accordance with its observations, as described at paragraph 13.
22. It was accepted by Ms Cowling that the current lounge windows were not wind and water tight. They are due to be replaced. Reference was made to the quotations from contractors recently produced to the Tribunal. The Landlords were to make a decision about which contractor to use. There was a possibility that the replacement of the windows might require planning permission, which could take several months to obtain. The cost of replacement was relatively high, due to the fact that the windows had to be timber framed, and were an unusual shape. The Tenant complained that the Landlords had been saying, for some time, that these windows would be replaced. Ms Cowling explained that there had been a delay, due to the change in ownership of the Landlord company.
23. It was agreed that the kitchen window can be opened. The Ordinary Member explained his view that this window could to be repointed, rather than replaced. The Tribunal also confirmed that it had been unable to detect any fault with the bedroom window, and it was likely that the condensation problem could be addressed by proper ventilation, and in particular, by the Tenant using the trickle vent at the top of the window.
24. The Tenant reiterated his complaint that the storage heaters in the bedroom and the lounge did not function properly. There was some

discussion as to manner in which the heaters were being used by the Tenant. He explained that the heater in the bedroom could be made to work, using certain settings, but was unpredictable. The lounge heater simply did not work properly, even if he used the same settings that were successful with the bedroom heater. He had effectively given up on that heater, because he was concerned that he was wasting money putting it on.

25. The Tribunal pointed out that the storage heaters were old, and past the expected operational life for heaters of that type. That factor tended to support the Tenant's evidence as to the poor functionality of the lounge heater.

Findings in fact

26. The Tribunal finds the following facts to be established: -

- i. The property is ground floor flat in a traditional end terraced granite built 4 storey tenement building, over ground, first, second and attic levels. The property principally comprises a lounge, kitchen, bedroom and bathroom.
- ii. The landlords, and owners of the property, are St Andrews Estates (Scotland) Ltd, now c/o Lotus Property, The Factory, 184 Newry Road, Banbridge, BT32 3NB.
- iii. The parties entered into a short assured tenancy on 16 June 2017.
- iv. There is a gap at the bottom of the front door to the building. This has recently fitted been fitted with a draft excluder at the foot of the door, internally. However, this still allows the wind to penetrate at the foot of the door. That problem could be alleviated by fitting a weather bar at the foot of the door, externally.
- v. At the door to the flat, there is a clear gap between the leading edge of the door, and the door surround. This allows a draft to get through the gap. This problem could be addressed by fitting draft proofing strips to the door.
- vi. There are two large windows in the lounge of the property. They are single glazed. They cannot be opened. They are not wind and watertight.
- vii. The Landlord intends to replace both of those windows.
- viii. There is no apparent defect with the bedroom window. It has, in the past, been subject to a build-up of condensation. This can be addressed by proper ventilation and the use of the trickle vent at the top of the window.

- ix. The fitting of the window in the kitchen is not satisfactory, and it is not wind and watertight. This can be addressed by repointing the window externally to ensure that there are no air gaps.
- x. The electric storage heater in the lounge is not in proper working order. It cannot be controlled so as to heat the room adequately. It is past the expected operational life for heaters of that type

27. These findings are derived from the Tribunal members' observations during the course of the inspection, or were based on their discussions with the Tenant and the Letting Agents' representatives at the inspection and hearing, as described above.

28. The Tribunal did not make any finding in fact in relation to the storage heater in the bedroom. It was not satisfied, given the content of the Tenant's evidence, that it had been established that the heater was not "in a reasonable state of repair and in proper working order" for the purposes of section 13(1)(c) of the 2006. In particular, it appeared that, following the visit of the Letting Agents' contractor (as described in parties' emails quoted at paragraphs 11 and 12 above), the Tenant was able to operate the heater so that it worked satisfactorily.

29. A schedule of photographs is attached to this decision.

Reasons for the decision

30. It follows from findings in fact v, vi, vii, ix and x at paragraph 26 above that the property falls below the repairing standard, and that it is necessary to make an RSEO, under section 24(2) of the Act.

31. It should be noted that the Tribunal does not make an RSEO in relation to the fitting of a weather bar to the door to the building (see paragraph 13 and finding in fact iv at paragraph 26). This was not part of the Tenant's application. However, it recommends that this work be carried out.

Decision

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

33. In particular, the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(a) and (c).

34. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.

35. The decision of the Tribunal was unanimous.

Post-hearing representations

36. On 28 March, the Tribunal clerk received further representations from the Tenant, and on 5 April, further representations from the Letting Agents. These representations were not sought by the Tribunal. They cannot be considered by the Tribunal, after the hearing takes place. They have not been taken into account, in arriving at this decision.

37. Parties are reminded that apart from, and in addition to, the right of appeal described below, parties may also ask the Tribunal to review its decision, if it is in the interests of justice to do so. This right is set out in rule 39 of the Procedure Rules. An application for review must be made in writing, and intimated to the Tribunal and the other party, within 14 days of the date on which this decision was sent to the parties.

Right of Appeal

38. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

39. 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.

A Stalker

Signed

Date 11 April 2019

Chairperson