

Housing and Property Chamber First-tier Tribunal for Scotland



REPAIRING

STANDARD ENFORCEMENT ORDER

Chamber Reference number: FTC/HPC/RP/19/0674

Parties:

1. Ms. Annette McGhee residing at 34, Alloway Grove, Kirkintilloch, G66 2RE ("the Tenant") per her nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Raymond Heath of East Dunbartonshire CAB having a place of business at 11, Alexandra Street, Kirkintilloch G66 1HB ("the Tenant's Representative") and
2. Mrs. Norma Graham Vieira residing at 88, Tamworth Lane, Mitcham, Surrey, CR4 1DA ("the Landlord"), the Landlord and the Tenant together referred to as "the Parties".

Property: 34, Alloway Grove, Kirkintilloch, G66 2RE being the subjects registered in the Land Register for Scotland under Title Number DMB54826 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (Ordinary Member)

Notice to Landlord

Mrs. Norma Graham Vieira residing at 88, Tamworth Lane, Mitcham, Surrey, CR4 1DA
Whereas in terms of its decision dated 15 May 2019, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlords have failed to comply in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c), 13 (1) (d), 13 (1) (f) and 13(1) (g) of the Act and have failed to ensure that the Property is wind and watertight and reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, that the Landlord has failed to ensure that the installations in the Property 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; that any fittings, fixtures and appliances provided under the tenancy are in a reasonable state of repair and in proper working order, that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health, the First-tier Tribunal now requires the Landlord to carry out the following works or other such works as

are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before 30 June 2019:-

1. Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report ("the Gas Report") on the operation and effectiveness of the gas fired heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats. The Gas Report should particularly focus on the aged boiler, programmer and controls. Thereafter, instruct a suitably qualified and Gas Safe registered heating engineer to complete the works recommended by the Gas Report to ensure that the entire system is fully functioning, safe and in proper working order and, on completion of the works as recommended in the Gas Report, provide a copy of the Gas Report and any receipted invoices for work carried out to the Tribunal and deliver a valid CP12 Gas Safety Certificate to the Tribunal, the Tenant and the Tenant's Representative;
2. Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property. Thereafter, instruct a suitably qualified and registered SELECT or NICEIC electrical contractor to complete the works recommended by the EICR to ensure that the entire system is safe and in proper working order. Thereafter, provide a copy of the EICR to the Tribunal, the Tenant and the Tenant's Representative;
3. Provide replacement external electric lights at front and back entrance doors;
4. Repair or replace all kitchen units so that that doors open and close properly, handles/hinges are in intact and the units are fit for purpose. In the event that the units are beyond repair and require to be replaced, replacement should include the worktops and sink top;
5. Repair or replace all UPVC windows so that they are capable of being properly opened and closed, have intact seals and are wind and watertight;
6. Repair and overhaul or replace all internal pass doors so that they are capable of properly opening and closing, are draught proof and free from holes/dents;
7. Overhaul, repair and paint cast iron gutters at front and rear of property so that they are fit for purpose;.
8. Provide interlinked fire detection apparatus in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 and the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Order 2019;
9. Supply and fit a Carbon Monoxide detector compliant with the Scottish Government

Statutory Guidance for the provision of carbon monoxide alarms in private rented housing and

10. Carry out all making good and decoration associated with the completion of the foregoing works. This should include decoration of the water stained kitchen ceiling and walls.

Note to Landlord:-

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.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, 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 Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the three preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 15 May 2019 before this witness, Norman William Moore, solicitor, Muirfield Business Centre, 1A, South Muirhead Road, Cumbernauld G67 1AX

W Moore

K Moore

Witness

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

Chamber Reference number: FTC/HPC/RP/19/0674

Parties:

1. Ms. Annette McGhee residing at 34, Alloway Grove, Kirkintilloch, G66 2RE ("the Tenant") per her nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Raymond Heath of East Dunbartonshire CAB having a place of business at 11, Alexandra Street, Kirkintilloch G66 1HB ("the Tenant's Representative") and
2. Mrs. Norma Graham Vieira residing at 88, Tamworth Lane, Mitcham, Surrey, CR4 1DA ("the Landlord"), the Landlord and the Tenant together referred to as "the Parties".

Property: 34, Alloway Grove, Kirkintilloch, G66 2RE being the subjects registered in the Land Register for Scotland under Title Number DMB54826 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act and that for the reasons set out below.

Background

1. By application received on 4 March 2019 ("the Application"), the Tenant's Representative on behalf of the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard as:-
 - i) Work is required to the painting and decoration throughout the Property;
 - ii) The boiler is in poor condition and is not working properly;
 - iii) The windows throughout the Property do not close properly, are not wind and watertight and having missing seals and insecure handles;
 - iv) There is possible dampness and mould in the kitchen;
 - v) The kitchen ceiling is in a poor condition with cracks and there is poor plastering on the kitchen walls;
 - vi) The cupboards and kitchen fittings are in a poor condition;
 - vii) The doors throughout the Property do not close or shut properly;
 - viii) The electrics in the Property require a full inspection;
 - ix) There is no satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in the Property;
 - x) There is no carbon monoxide detector in the Property and
 - xi) The drainage and guttering are in a poor condition.
3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 7 May 2019 at 10.00 a.m. and 11.30 a.m., respectively.

she had relied on her letting agent to inspect the Property and that she had not attended at the Property herself.

9. The Hearing then proceeded, dealing with each item complained of by the Tenant in turn and with reference to the Inspection.
10. With regard to the complaint that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal advised the Landlord that the windows as inspected are in a poor condition with missing seals and inoperable handles. The Landlord explained that she thought that the windows had been or might have been mistreated by the Tenant's son. The Tribunal advised that the condition of the windows was not consistent with tenant damage.
11. In respect of the complaint that the structure and exterior of the Property, (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal advised the Landlord that the downpipes and gutters as inspected were in a poor condition. The Tribunal advised the Landlord that from the Inspection, the internal doors in the Property are in a poor condition and are ill-fitting. The Tribunal advised the Landlord that from the Inspection, the kitchen ceiling and walls, although not showing evidence of dampness, are in a poor condition with mould and flaking plasterwork. The Landlord advised that she relied on her letting agent who had been unable to carry out a proper service due to ill health and accepted that repairs had not been carried out. Again, the Landlord explained that she thought that the doors had been or might have been mistreated by the Tenant's son.
12. In respect of the complaint that the installations in the Property 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 inquired if there were a current electrical installation condition report ("EICR") and a current Gas Safety Certificate for the Property. The Landlord produced part of a Landlord Gas Safety Record dated 27 March 2019 but she did not know if there was a full Gas Safety Certificate or if a current EICR was in place. The Tribunal advised the Landlord that, at the Inspection, the Tenant had reported problems of the boiler cutting out and that gas engineers were frequently called to the Property and that she also reported radiators not heating properly. Further from the Inspection, the rear and front external lights are not working.

Inspection

4. The Inspection took place on 7 May 2019 at 10.00 a.m. at the Property. The Tenant and the Tenant's Representative were present. The Landlord was not present.

5. The Tribunal inspected the parts of the Property referred to in the Application namely:-
 - i) The painting and decoration throughout the Property;
 - ii) The boiler;
 - iii) The windows throughout the Property;
 - iv) The kitchen ceiling and walls;
 - v) The kitchen cupboards and fittings;
 - vi) The doors throughout the Property;
 - vii) The smoke, carbon monoxide and heat detectors in the Property
 - viii) The external lights at the Property and
 - ix) The downpipes and gutters.

6. At the Inspection, the Tribunal took digital photographs which photographs form the Schedule annexed to this decision.

Hearing

7. Following the Inspection, a Hearing was held at the Glasgow Tribunal Centre, 22, York Street, Glasgow G2 8GT on the same day at 11.30 a.m. The Tenant was not present. The Tenant's Representative and the Landlord were both present.

8. The Landlord explained to the Tribunal that her letting agent, Mrs. A. Gillies, who is the sister of the Landlord, no longer acted on her behalf due to illness and that she acted on her own behalf. The Landlord explained to the Tribunal that, as she lived in England and no longer had an agent, she intended to sell the Property and had instructed her solicitor to begin recovery of possession proceedings. The Tribunal advised the Landlord that the sale of the Property did not affect the Tribunal's powers in respect of the Act and that, in terms of Section 24 (1) of the Act, if a tribunal finds that a landlord has failed in its duty under Section 14(1) of the Act, the tribunal must impose a Repairing Standard Enforcement Order, regardless of a possible sale. The Tribunal accepted the Landlord's position that

Summary of the Issues

18. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

19. Mrs. Norma Graham Vieira residing at 88, Tamworth Lane, Mitcham, Surrey, CR4 1DA is the owner of the Property in terms of Land Certificate DMB54826 and that Ms. Annette McGhee is the tenant by of the actions of the Parties and so that a tenancy, although not necessarily a short assured tenancy or a private residential tenancy, exists between the Parties.
20. The Property is a two storey semi-detached terraced constructed circa [1950]. The Property is brick built with roughcast exterior and a pitched tile roof. The Property comprises a living room, a kitchen, hallway, three bedrooms and a bathroom with garden to the front and rear.
21. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:
 - i) The décor throughout the Property appears to require to be refreshed, although this is not part of the Repairing Standard;
 - ii) The boiler is of an age and although it appears to function, there is no certificate to confirm that it and the radiators are in working order;
 - iii) The windows throughout the Property are in a poor condition, most have damaged or having missing seals and some have insecure handles;
 - iv) The kitchen ceiling is in a poor condition with mould and cracks and there is poor plastering on the kitchen walls. However, there is no reading of dampness;
 - v) The kitchen cupboards are in a poor condition with ill-fitting doors and missing door handles;
 - vi) The internal pass doors throughout the Property do not close properly;
 - vii) There appears to be no current electrical installation condition report ("EICR") for the Property and no gas safety certificate;
 - viii) There are two hard wired smoke detectors in the Property, neither of which function properly;
 - ix) There is no carbon monoxide detector in the Property and
 - x) The gutters and downpipes are in a poor condition and appear to be leaking.

13. In respect of the complaint that any fittings, fixtures and appliances provided under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal advised the Landlord that the kitchen units as inspected are in a poor condition with broken and ill-fitting doors and handles. The Landlord explained, again, that she thought that Property had been or might have been mistreated by the Tenant's son. The Tribunal advised that the condition of the kitchen units was not consistent with tenant damage.
14. In respect of the complaint that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal advised the Landlord that, having tested the hard wired smoke detectors, it found these not to be working and found that there are insufficient smoke detectors to be compliant with the current regulations. The Tribunal also pointed out that there is no heat detector in the kitchen as required by current regulations.
15. In respect of the complaint that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health, the Tribunal advised the Landlord that there is no carbon monoxide detector in the Property.
16. The Tenant's Representative advised the Tribunal that he had written to the Landlord and to her letting agent in February notifying them of the need for repairs to be carried out but had not received any response. He also explained that he had contacted the Landlord's solicitor who was reluctant to discuss any matters with him.
17. The Tribunal indicated to the Parties that, if it was of a mind to make a finding of failure to comply, it must impose a Repairing Standard Enforcement Order (RSEO). The Tribunal then inquired of the Landlord if she had a view in respect of a timescale to carry out any works which might be required. The Landlord again explained that she intended to sell the Property. The Tribunal, taking into account that the Landlord has already had a significant time to instruct works took the view that a period of eight weeks would be appropriate.

27. In respect of the complaint in terms of Section 13 (1) (d) of the Act that any fittings, fixtures and appliances provided under the tenancy are in a reasonable state of repair and in proper working order, the kitchen units as inspected being in a poor condition with broken and ill-fitting doors and missing handles the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
28. In respect of the complaint in terms of Section 13 (1) (f) of the Act that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, there being no compliant smoke or heat detectors in the Property, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
29. In respect of the complaint in terms of Section 13 (1) (g) of the Act that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health, there being no compliant carbon monoxide detector in the Property, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
30. The decision is unanimous.

Repairing Standard Enforcement Order

31. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

Notice to Landlord

32. The Landlord's attention is drawn to the terms of Part 1 at Chapter 4 of the Act and to her specific statutory duties prescribed therein.
33. The Landlord's attention is drawn to the Scottish Government Statutory Guidance issued under the Section 13 of the Act and to the Scottish Government Advice Pack for Private Landlords.

22. From the Hearing, the Tribunal found the Landlord to be straightforward and truthful and accepted her position and submission that she had relied on her sister as her letting agent and that her sister was unable to carry out that duty properly due to ill-health. The Tribunal acknowledged the Tenant's Representative's position that he had written to the Landlord and to her letting agent in February notifying them of the need for repairs to be carried out but no action had been taken.

Decision of the tribunal and reasons for the decision.

23. The Tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.
24. In respect of the complaint in terms of Section 13(1) (a) of the Act that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the poor condition of the windows is such that the Property is not wind and watertight and is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
25. In respect of the complaint in terms of Section 13(1)(b) of the Act that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of the the gutters and the downpipes is such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
26. In respect of the complaint in terms of Section 13 (1) (c) of the Act that the Landlord has failed to ensure that the installations in the Property 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, there being no EICR available, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

34. The Landlord's attention is drawn to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, 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 Repairing Standard Enforcement Order has effect in relation to the house.

Appeal

35. 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.

Signed

K Moore

Karen Moore, Chairperson

15 May 2019

*This is the Schedule of photographs referred
to in the foregoing decision of even date*
K Moore

15 May 2019

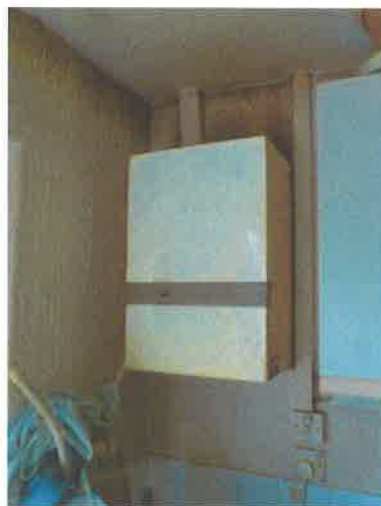
Housing and Property Chamber
First-tier Tribunal for Scotland



34 Alloway Drive, Kirkintilloch, G66 2RE
FTS/HPC/RP/19/0674
Schedule of Photographs - Inspection Date – 7th May 2019
Weather – Dry, overcast



1. The property



2. Gas central heating boiler



3. Central heating programmer



4. Confirmation of boiler servicing



5. Living room rear window



6. Living room rear window showing broken seal



7. Bathroom window



8. Bedroom 1 window



9. Bedroom 2 window



10. Living room/kitchen pass door



11. Living room/lower hall pass door



12. Water staining on kitchen ceiling



13. Sink base unit - kitchen



14. Sink base unit - kitchen



15. Corner base unit - kitchen



16. Corner wall unit - kitchen



17. Wall unit - kitchen



18. Electric meter and consumer unit



19. External light – back door



20. Hard wired smoke alarm (non functioning).