

# **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: Housing (Scotland) Act 2006  
section 24(2)**

**Chamber Reference FTS/HPC/RP/17/0533**

**Re: property at: 13J North Ellen Street, Dundee, DD3 7DF being the subjects more particularly described in and disposed by Disposition by John Justice and Susan Justice in favour of Ashraf Aboobaker, Aniz Aboobaker and Rizvan Aboobaker recorded in the General Register of Sasines for the County of Angus on 26<sup>th</sup> February 1992 ('the House').**

**The Parties:**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee, DD1 3BS ('the Third Party Applicant')**

**Mr Rizvan Aboobaker, 26 Clayhills Drive, Dundee, DD2 1SX ('the Landlord')**

**Mr Robert Kyle residing at 13J North Ellen Street, Dundee, DD3 7DF ('the Tenant')**

### **NOTICE TO**

**Mr Rizvan Aboobaker, 26 Clayhills Drive, Dundee, DD2 1SX**

Whereas in terms of their decision dated 9<sup>th</sup> April 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that:

1. The House is wind and watertight and in all other respects reasonably fit for human habitation;
2. 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;
3. Any fixtures, fittings and appliances provided by the Landlords under the tenancy 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 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 Landlords to:-

1. Repair or replace the windows throughout the House to ensure that they are in a reasonable state of repair and in proper working order, ensuring that:
  - (a) all windows open and close in a proper manner;
  - (b) all weathered timber components are in a reasonable state of repair;
  - (c) all pointing to the windows is restored;
2. Restore the electrical system within the property to a reasonable state of repair;
3. Produce a satisfactory Electrical Installation Condition Report (EICR) from a suitably qualified and registered SELECT or NICEIC electrical contractor on the installation within the house for the supply of electricity;
4. Repair or replace the cooker to ensure that it is in a reasonable state of repair and in proper working order;
5. Repair or replace the bathroom fan to ensure that it is in a reasonable state of repair and in proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within a 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 typewritten on this and the preceding page are executed by Helen Forbes, solicitor, chairperson of the tribunal at Inverness on Thirteenth April Two Thousand and Eighteen before this witness:-

Margaret  
Forbes

\_\_\_\_ witness

Helen Forbes

\_\_\_\_ chairperson

Margaret Forbes, 67B Glenurquhart Road, Inverness, IV3 5PB

# 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)**

**Case Ref: FTS/HPC/RT/17/0533**

**Re: property at: 13J North Ellen Street, Dundee, DD3 7DF being the subjects more particularly described in and disposed by Disposition by John Justice and Susan Justice in favour of Ashraf Aboobaker, Aniz Aboobaker and Rizvan Aboobaker recorded in the General Register of Sasines for the County of Angus on 26<sup>th</sup> February 1992 ('the House').**

**The Parties:**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee, DD1 3BS ('the Third Party Applicant')**

**Mr Rizvan Aboobaker, 26 Clayhills Drive, Dundee, DD2 1SX ('the Landlord')**

**Mr Robert Kyle residing at 13J North Ellen Street, Dundee, DD3 7DF ('the Tenant')**

**Tribunal Members**

**Ms Helen Forbes (Legal Member)**

**Mr Andrew McFarlane (Ordinary Member)**

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

**Background**

1. By application received on 22<sup>nd</sup> December 2017, the Third Party Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

The Third Party Applicant complained that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard, in that the House is not wind and watertight and in all other respects reasonably fit for human habitation; 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 in proper working order; any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order; any furnishings provided by the Landlord under the tenancy are not capable of being used safely for the purpose for which they are designed. In particular, it was stated:

*"Electrical items/electrics broken and unsafe*

*Windows and front door draughty*

*Shower rail and curtain missing, no tiles on wall, bath seal defective."*

2. The Tenant, with the assistance of the Third Party Applicant, notified the Landlord of the defects on 12<sup>th</sup> October 2016 and 13<sup>th</sup> December 2017.
3. On 22<sup>nd</sup> December 2017, a Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal.
4. The Tribunal members were Ms Helen Forbes (Legal Member) and Mr Andrew McFarlane (Ordinary Member).
5. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 5<sup>th</sup> March 2018.
6. By notice signed on 5<sup>th</sup> March 2018, the Third Party Applicant indicated that they would not be attending the Tribunal set down for 9<sup>th</sup> April 2018.
7. A Notice of Direction was served upon the Landlord on 15<sup>th</sup> March 2018. The Notice was in the following terms:

*The Landlord is required to present a copy of the most recent Electrical Installation Condition Report (EICR) in respect of the Property with the First-tier Tribunal for Scotland (Housing and Property Chamber) 4<sup>th</sup> Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB by 28<sup>th</sup> March 2018.*

*In the event that there is no existing EICR, the Landlord is required to:- 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, and lodge this report as described above.*

*Note: -The Scottish Government has a searchable database containing details for all registered electricians in Scotland.*

8. The Notice was not complied with by 28<sup>th</sup> March 2018. A reminder letter was sent to the Landlord by the Tribunal on 29<sup>th</sup> March 2018, giving a response deadline of 6<sup>th</sup> April 2018. No response was received by the Tribunal, despite Royal Mail trace checks on both items indicating that the Landlord had signed for, and received, the items.

### **Inspection**

9. The Tribunal attended at the House on 9<sup>th</sup> April 2018. The weather was dull, calm and dry. The House is a ground floor flat in a traditional tenement building built around the mid-19<sup>th</sup> Century, with a bed-sitting room, a kitchen and a bathroom. There is no central heating. The windows are double-glazed and timber-framed. The Tenant was present. The Landlord was not present. The Tribunal inspected the alleged defects and found as follows:-

#### **9.1 Electrical items/electrics broken and unsafe**

There were no light bulbs in the pendant light fittings in the hall or the bed-sitting room. The Tenant said that light bulbs inserted into the light fittings would 'blow'. He indicated that the pendant in the bed-sitting room was black as a result of scorching.

There was only one operational electric socket in the bed-sitting room; the other sockets were not working, according to the Tenant. This was demonstrated in respect of one double socket where only one of the outlets was operational. The Tenant said three plasma screen televisions had 'blown' after being plugged into the operational socket.

There were portable electric heaters in the bed-sitting room and the kitchen.

The cooker in the kitchen did not appear to be in working order. The neon lights on the cooker control unit remained lit when the switch was in the off position.

The electric fan in the bathroom was not in working order.

The lights in the kitchen and bathroom were in working order.

#### **9.2 Windows and front door draughty**

The windows in the bed-sitting room, which was to the front of the House, were screwed shut and taped around the edges.

The window in the kitchen could be opened but a metal grille bolted to the exterior of the House restricted opening.

Externally, the pointing around all the windows was in poor condition, as were the timber frames.

The front door had draught strips fitted. The door appeared to close properly, and no daylight or draught was evident around the door.

### **9.3 Shower rail and curtain missing, no tiles on wall, bath seal**

There was a shower rail and curtain in the bathroom. Wet-wall had been fitted around the bath, and the bath had been sealed.

### **9.4 Additional matters**

The Tenant said the House was damp. He pulled the bed away from the wall in the bed-sitting room. There was black mould on the wall.

The Tribunal observed that there were interlinked smoke detectors in the hall and bed-sitting room, and a heat detector in the kitchen.

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

## **Hearing**

10. Following the inspection the Tribunal attended for a hearing at the Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX. Neither the Tenant nor the Landlord was in attendance, therefore, no oral evidence was heard. The Tribunal discussed the matters raised in the Application and at the inspection, and made the following findings in fact:

- (a) No tenancy agreement between the Landlord and the Tenant was lodged with the Tribunal. It appeared from Council Tax records lodged by the Third Party Applicant that the tenancy commenced on 20<sup>th</sup> August 2014.
- (b) The Tenant, with the assistance of the Third Party Applicant, had served a notification of repair letter on the Landlord on 12<sup>th</sup> October 2016, stating: *"Shower rail and curtain missing. No tiles on wall, bath not sealed. Windows draughty. Front door draughty. No smoke detectors."* A further notification of repair letter was served on the Landlord on 13<sup>th</sup> December 2017, stating: *"No tiles on wall, bath not sealed. Windows draughty. Front door draughty."*
- (c) Prior to the service of the notification of repair letter on the Landlord on 13<sup>th</sup> December 2017, a heat detector and smoke detectors were fitted in the House, and a shower rail and curtain fitted in the bathroom.

- (d) Following the service of the notification of repair letter on the Landlord on 13<sup>th</sup> December 2017, wet-wall was fitted around the bath, and the bath was sealed.
- (e) The windows are in a poor state of repair, and are not wind and water-tight. The pointing around the windows is poor or missing.
- (f) The front door appears to be wind and water-tight.
- (g) The installation in the House for the supply of electricity is not in a reasonable state of repair and in proper working order.
- (h) The cooker is not in a reasonable state of repair and in proper working order.
- (i) The bathroom fan is not in a reasonable state of repair and in proper working order.

## Decision

### 11. The Tribunal determined that:

#### **11.1 The House is not wind and water-tight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006).**

The Tribunal determined that the House is not wind and water-tight due to the condition of the windows throughout the House.

The Tribunal determined that the front door is wind and water-tight.

The Tribunal determined that the bathroom was reasonably fit for human habitation in that wet-wall had been fitted on the wall around the bath, and the bath had been sealed.

#### **11.2 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 in proper working order; (Section 13(1)(c) of the Housing (Scotland) Act 2006).**

The installations in the House for the supply of electricity are not in a reasonable state of repair and in proper working order, as evidenced by the condition of the light fittings, the faulty electrical sockets and the cooker control unit.

#### **11.3 Any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order; (Section 13(1)(d) of the Housing (Scotland) Act 2006).**

The cooker is not in a reasonable state of repair and in proper working order. The electric fan in the bathroom is not in a reasonable state of repair and in proper working order.

**11.4 Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed; (Section 13(1)(e) of the Housing (Scotland) Act 2006).**

The Tribunal did not uphold this complaint as there was no evidence of any furnishings provided by the Landlord under the tenancy not being capable of being used safely for the purpose for which they are designed.

The Tribunal observed that there was evidence of damp within the bed-sitting room on the wall adjacent to the mutual close. This had not been notified to the Landlord, therefore, no Order was made in this regard; however, the Landlord would be advised to investigate and address the source of the damp.

### **Decision**

12. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the Tribunal was unanimous.

### **Right of Appeal**

14. 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 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.

  
Helen Forbes

Signed

Legal Member and Chairperson

Date: 9<sup>th</sup> April 2018



Property Address

13J North Ellen Street, Dundee, DD3 7DF

Case Reference

FTS HPC RT 17 0533

## Schedule of Photographs taken during the inspection by tribunal members on 9 April 2018

This is the Schedule of  
Photographs referred to in the  
Opening Statement of Reason  
dated 9th April 2018  
at Cuperness

Helen Forbes

Legal Member and  
Chairperson



1. General view of front elevation



2. Defective socket outlet in Bedsitting Room



3. Defective light fitting in Bedsitting Room



4. Defective light in Hall



5. Defective extract fan in Bathroom



6. Window in Bedsitting Room



7. Second window in Bedsitting Room



8. Window in Kitchen



9. Kitchen window externally



10. Kitchen window externally



11. Bedsitting Room window externally



12. Bedsitting Room window externally

