

# **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/18/0034**

**Title No: WLN38625**

**133 Fells Rigg, Livingston, EH54 8PB  
("the Property")**

**The Parties:-**

**Miss Siobhan Deegan and Mr Thomas Mackay, residing at the property  
("the Tenants")**

**West Lothian Council, Housing Needs HCBS, Ground Floor Civic Centre,  
Howden Road South, Livingston, EH54 6FF  
("the Third Party")**

**Mr William Reynolds and Miss Debbie Thompson, 3 Sarazen Court, Livingston,  
EH54 8SW  
("the Landlords")**

**Represented by Mr Des Maguire, Solicitor, Allcourt, Solicitors, 1 Carmondean  
Centre, Carmondean, Livingston, EH54 8PT**

Whereas in terms of their decision dated 27 April 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlords have 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 Landlords have failed to ensure that:-

- (i) 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.
- (ii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.

the Tribunal now requires the Landlords 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 Landlords:-

- (a) To install fire detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
- (b) Once the works in paragraph (a) are carried out, to produce an Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT registered electrician and to undertake any work which is identified in said report to be of Category C1 or C2.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 21 days 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.**

In terms of Section 63 of the Act, 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 Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 27 April 2018 in the presence of the undernoted witness:-

N Pryce

P Pryce

\_\_\_\_ witness

N Pryce \_\_\_\_\_ name in full

55 BLYTHSWOOD ST Address  
GLASGOW

\_\_\_\_ Legal Member

# **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/18/0034**

**133 Fells Rigg, Livingston, EH54 8PB  
("the Property")**

**The Parties:-**

**Miss Siobhan Deegan and Mr Thomas Mackay, residing at the property  
("the Tenants")**

**West Lothian Council, Housing Needs HCBS, Ground Floor Civic Centre,  
Howden Road South, Livingston, EH54 6FF  
("the Third Party")**

**Mr William Reynolds and Miss Debbie Thompson, 3 Sarazen Court,  
Livingston, EH54 8SW  
("the Landlords")  
Represented by Mr Des Maguire, Solicitor, Allcourt, Solicitors, 1  
Carmondean Centre, Carmondean, Livingston, EH54 8PT**

### **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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The tribunal consisted of:-**

<b>Patricia Anne Pryce</b>	<b>- Legal Member</b>
<b>Sara Hesp</b>	<b>- Ordinary Member (Surveyor)</b>

### **Background**

1. By application comprising documents received on/between 8 January 2018 and 8 January 2018, the Third Party applied to the First-tier Tribunal

(Housing and Property Chamber) for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application by the Third Party stated that the Third Party considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-

- (a) "the Landlord has fitted battery operated smoke alarms and heat detector. The Landlord has been advised that to meet the repairing standard those should be hard wired.
- (b) Provide tenants with a copy of the Electrical Installation Condition Report of Electrical Safety Certificate."

The Third Party considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) 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.
  - (ii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.
3. By Minute dated 16 January 2018 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
  4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords, the Tenants and the Third Party advising that the inspection and hearing would take place on 5 March 2018 at 10 am and 11.30 am respectively. The inspection and hearing were postponed due to severe weather. They were re-arranged for 27 April 2018 at 10 am and 11.30 am respectively and parties were advised accordingly.

### **The Inspection**

5. An inspection and hearing were arranged as noted above. The tribunal attended at the property. The Tenants were in attendance at the property along with Miss McLaren and Mr Abercrombie from the Third Party and Mr Maguire, representative of the Landlords. The Landlords did not attend the inspection. The tribunal noted the following at inspection:-
  - There was a smoke detector in the kitchen.
  - There was no heat detector in the kitchen.

- There was a heat detector located in the living room.
- There was no smoke detector in the living room.
- There was a smoke detector located in the hallway.
- There was a smoke detector located in the upper hallway.
- The detectors were interlinked. They were not hard wired and appeared to be battery operated.
- There was a carbon monoxide detector located in the cupboard in the hallway where the boiler was located.
- There was an Electrical Installation Condition Report (EICR) available in respect of the property which was produced by an electrician who was not registered with SELECT, NAPIT or NICEIC. This document referred to one item categorised as a C2 defect which referred to an electrical socket located in the kitchen above the tumble dryer. The Tenants confirmed that the socket tripped when used.

The schedule of photographs taken by the Ordinary Member of the tribunal at the inspection is attached to this decision.

### **The Hearing**

6. The Third Party attended the hearing in the guise of Ms McLaren and Mr Abercrombie. The Tenants attended at the hearing. The Landlords attended at the hearing along with their representative, Mr Maguire. There were two observers at the hearing.
7. The tribunal advised the parties of their findings at inspection as noted above. Mr Maguire invited the tribunal to consider the Scottish Government's proposals in respect of proposed changes in the law which he submitted were due to come into force later in 2018 in respect of smoke detectors. He further advised that Scottish Government Guidance in respect of smoke alarms was just that, guidance which did not require to be followed by his clients. The tribunal reminded Mr Maguire of the terms of Section 13(f)(2) of the Housing (Scotland) Act 2006 wherein Landlords were required to have regard to such guidance. The tribunal invited the Landlords to provide an explanation as to why a lesser form of smoke detection, such as battery-operated smoke and heat detectors, should be accepted. The Landlords confirmed that they had followed the advice of their electrician in relation to this and that they thought that the detection devices were sufficient.

In relation to the EICR, Miss Deegan confirmed that the electrician had come out to the property to fix the electrical socket in the kitchen which is mentioned as a C2 in the EICR. However, he had not fixed it but had replaced the facing on it. As a result, she advised that it continued to trip the electrics in the property if it were used for anything more than a light.

Miss Thompson advised that the electrician had told her that everything had been fixed. When Miss Deegan had complained about the socket, Miss Thompson had been told by her electrician that the socket had been fixed but it appeared that it had not been. Mr Reynolds explained that he had expected the electrician to cover the socket so that it could not be used and was surprised to learn that, at inspection, the socket was still available for use.

The tribunal proceeded to make a decision based on its findings at the inspection together with the submissions of the parties at the hearing.

### **Summary of the issues**

8. The issue to be determined is whether the repairing standard has been met in light of what the tribunal viewed at the inspection.

### **Findings of fact**

9. The tribunal finds the following facts to be established: -
  - The Tenants entered into a tenancy with the Landlords which was a short-assured tenancy.
  - The Tenants remain in the property.
  - The property is an end-terraced, two storey house with cement rendered walls and a concrete tiled roof
  - There are no functioning hard-wired smoke or heat detection devices located within the property. There are only battery-operated devices located within the property.
  - The electrical socket in the kitchen above the tumble dryer is defective.
  - The EICR produced by the Landlords was not completed by a registered electrician.
  - The EICR wrongly states that the electrical socket in the kitchen has been fixed.

### **Reasons for the decision**

10. The tribunal noted that in terms of the present application the Tenants had first notified the Landlords of the repairs in October 2017. Despite obtaining an EICR from their electrician, the EICR was produced by an unregistered electrician and bears to show that the electrical socket in the kitchen had been repaired when it still causes the electrics to trip. The tribunal is extremely concerned that the smoke and heat detection devices within the property are insufficient and inadequate which poses a potentially serious health risk to any occupant of the property. The tribunal is, however, of the view that this requires to be rectified as a matter of urgency.

Given all of the circumstances, the tribunal is satisfied that: 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 as there is a defective electrical socket located within the kitchen which was included in the EICR, which complaint formed part of the present application; the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire as the present detection devices are battery-operated and there is no heat detection device located in the kitchen.

### **Decision**

11. The tribunal accordingly determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Act.
12. 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 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

P Pryce

Signed  
Date

27 April 2018

 Legal Member

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

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**FTS/HPC/RT/18/0034**  
**Schedule of photographs taken during inspection of**  
**133 Fells Rigg, Livingston, EH54 8PB on 27 April 2018**

*Photograph 1: Front elevation*



*Photograph 2: Kitchen – smoke detector*



*Photograph 3: Hallway – smoke detector*



*Photograph 4: Living room – heat detector*



*Photograph 5: Upper hallway – smoke detector*



*Photograph 6: Socket above tumble drier*

