

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Chamber Ref: FTS/HPC/RT/18/2226**

**Title no: STG 57404**

**63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("The Property")**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG  
("the Third Party")**

**Shirley Kane, 63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry,  
Northern Ireland BT55 7FG ("the Landlord")**

Whereas in terms of their decision dated 6 December 2018, The First-tier Tribunal for Scotland (Housing and Property Chamber) ('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 ("The Act") and in particular that the Landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) 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,
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (f) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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: -

1. To instruct a suitably qualified window contractor to inspect the windows in the kitchen and living room and carry out any necessary repairs to ensure that the windows are in proper working order; or to replace the windows.
2. To repair or replace the defective hot tap on the bath in the bathroom.
3. To re-instate the missing glazed panel to the rear bedroom door.
4. To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property and ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods.
5. To replace the defective front door with a new front door.
6. To instruct a suitably qualified contractor to investigate the cause of water staining on the wall of the front bedroom and carry out all recommended remedial work to rectify the defect and repair the damage.
7. To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance,
8. To instruct a suitably qualified Gas Safe engineer to (a) service the boiler, and carry out any necessary repairs to ensure it is in proper working order (b) carry out an inspection of the gas appliances at the property, and (c) check the location and condition of the CO detector; and provide the Tribunal with a satisfactory gas safety record,
9. To instruct a suitably qualified contractor to repair the damaged roughcast to the front elevation, and
10. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the property after the installation of the new smoke and heat detectors and exhibit a satisfactory EICR to the Tribunal.

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

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 pages are executed by Josephine Bonnar, legal member of the Tribunal, at Motherwell on 6 December 2018 in the presence of the undernoted witness:-

G Bonnar

witness

Gerard Bonnar  
1 Carlton Place, Glasgow

J Bonnar

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/RT/18/2226**

**Title Number: STG 57404**

**63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("The Property")**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG ("the Third Party")**

**Shirley Kane, 63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG ("the Landlord")**

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

**The Tribunal comprised: -**

**Mrs Josephine Bonnar, Legal Member**

**Ms Carol Jones, Ordinary Member**

## Background

1. By application dated 31 August 2018 the Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application states that the Third Party considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party states that the Landlord has failed to ensure that (i) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, (ii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Third Party complains of;- (1) Living room – windows do not open and close properly, handles loose, (2) Bathroom – hot tap is loose, (3) Bedrooms –glass window panel above bedroom door requires to be replaced, (4) Kitchen – windows are insecure and do not close and lock properly, (5) External – gutters leaking, possible water ingress into bedroom from gutter, potential leak from gas boiler, (5) Front door – outer window panel damaged, door does not open and close properly, no key to the front mortice lock, (6) No carbon monoxide detector, inadequate smoke/heat detectors. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenants do not wish to be treated as a party to the application.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection would take place on 5 November 2018 at 3pm and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.
4. The Tribunal inspected the property on the afternoon of 5 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant Shirley Kane was present. The Landlord did not attend.

Thereafter the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2230, 2235, 2229, 2232 and 2227. Mr Paterson attended on behalf of the Third Party. The Tenant attended. Also present were Blair McKie, Emma Jane McLaughlin and Mandy Rushforth, tenants in two of the other applications before the Tribunal. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord states that he does not wish to attend the hearing. He also states that he is in the process of "sorting this all out" and has engaged a new letting agent O'Malley Property, who is in the process of doing all the repairs required to bring the properties up to an acceptable standard. He further states that they have had some difficulty in accessing some of the properties.

## **The Inspection**

5. At the time of the inspection the weather was dry. The Tribunal inspected the property which is a three bedroom mid-terraced former local authority dwellinghouse located in Bannockburn, Stirling. The Tribunal noted the following; - (a) Living Room – left side top light window does not close properly and has gap at the seal, main window to left has defective handle and jams when opening and closing, (b) Bathroom – hot tap to the bath is very loose, (c) Rear bedroom 2 – glazed panel at top of door is missing, (d) Kitchen – right side window does not close, both mechanism and handle are defective, handle missing from left side window, (e ) External – rear gutter leaking at joints and choked with vegetation, front gutter leaking at joints and corroded, front downpipe not connected at top or bottom, roughcast stained and damaged over front door due to water running from overflow (f) Front bedroom – staining to front corner of party wall, moderate (amber) damp meter reading on surface only (g) Glass pane missing from outer side of front door, cracks to PVC outer face of door and no key to mortice lock, (h) Ceiling mounted smoke alarm fittings only in hall and upper landing, missing alarms and exposed wires, no smoke detector in living room or heat detector in kitchen, (i) Wall mounted CO alarm in bedroom located outside boiler cupboard and level with top of cupboard door. A schedule of photographs taken at the inspection is attached to this decision.

## The Hearing

6. At the hearing the Tenant confirmed that although the application indicates that she does not want to be treated as a party, she now wishes to do so. Mr Paterson advised that he wished to amend the application in terms of Regulation 32 of the First tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017, so that the Tenant could be added as a party to the application. The Tribunal considered the request and allowed the application to be amended. The Tribunal then heard evidence from both Mr Paterson and the Tenant.
7. Mr Paterson advised the Tribunal that at the end of March 2018, while dealing with an unrelated complaint involving the Landlord, he became aware of repairs issues at a number of properties owned by the Landlord, including the property which is the subject of the application. He contacted the Landlord and advised that these repair issues required to be addressed. He received a response from the Landlord confirming that action would be taken. However, further enquiries established that the work was not carried out. Between 13 July and 4 August 2018, Mr Paterson carried out full inspections of the 6 properties. Thereafter, he contacted the Landlord by post and email detailing the work which was required and asking the Landlord to provide action plans with timescales. He failed to do so, and no repairs were carried out. In July 2018 Mr Paterson also had contact from O'Malley Property. They indicated that they might be taking over the management of the properties, and also advised that the properties might be sold. Their appointment was not confirmed until last week, when Mr Paterson received an email from the Landlord saying that he has instructed new agents who would be getting the properties back up to standard. Mr Paterson has also become aware that some of the tenants have now received letters from O'Malley Property.
8. Mrs Kane advised the Tribunal that she received a hand delivered letter from O'Malley Property around 4.30 pm on 12 November 2018. This is the first contact she has had from the Landlord, or an agent acting for the Landlord, in connection with the repairs issues. She phoned in response to the letter and Mr O'Malley and a colleague called Holly visited the next day. They came into the property for no more than ten minutes and told Mrs Kane that they wanted to bring the property up to scratch by Christmas and that they would get the gas safety and electrical checks carried out. During the visit Mrs Kane mentioned the kitchen window and the damaged gutters, but they did not stay to carry out a full inspection, saying that they didn't have time. Mr O'Malley concluded the visit by

saying that Holly would be in touch to arrange matters. Holly then phoned on Wednesday 14<sup>th</sup> November and advised Mrs Kane that the gas safety check would be carried out on Thursday 22 November at 1pm and the electrical inspection would be carried out at 8.45am the same day. She told Holly that she had the school run to do so the electrical check would have to be later. Holly said she would re-arrange and let her know but hasn't been back in touch. Mrs Kane then advised the Tribunal that she hasn't had a gas safety check for about 2 years. It was last carried out when the house was re-roughcasted. She has never had an EICR. She confirmed that she is not aware of any problem with the electrics although sometimes the lights make a hissing noise. She also mentioned that when she had a new shower fitted, there was no room on the electrical consumer unit for it and a separate RCD had to be installed. The electrician mentioned that the electrics are quite old. Mrs Kane advised the Tribunal that most of the defects in the property have been in that condition for years. The problems with the kitchen window only started earlier this year and she reported this to the Landlord's sister, who previously dealt with all tenancy related matters for him. No action was taken. Currently the kitchen window cannot be securely closed and is permanently in an open position. Other problems, such as the gutters, the front door and the glass window panel missing from the bedroom door, have been like that since she moved in to the property. The leak from the gutters is particularly bad during heavy rain and the steps at both front and especially the back can be really icy when the water from the leak freezes. Mrs Kane also advised the Tribunal that the water stain on the bedroom wall has been like that since she moved in a few years ago and that she has painted over it a few times, but the stain re-appears. She thinks it is water coming from the gutters during rainfall. She confirmed that she was never provided with a key to the mortice lock in the front door so can't lock the door properly. Mrs Kane also advised the Tribunal that the photo schedule of the property accurately shows all of the current repairs issues. She further advised that the CO detector was fitted by the engineer who carried out the gas check at the time of the roughcasting. The damaged smoke alarms have always been like that, and she once had a small fire in the property but, as there are no functioning alarms, only became aware when she smelled the smoke. Lastly, Mrs Kane confirmed that part of her rent is paid direct to the Landlord by housing benefit, but that she has been withholding the part she pays since July 2018 because of the outstanding repairs.

9. Mr Paterson confirmed that the defects detailed in the photograph schedule accurately reflect the repairing standard issues at the property. He advised that no repairs had been carried out to the



property between his inspection prior to submitting the application, and the Tribunal's inspection. The Tenant has also not been provided with an EICR, gas safety certificate or energy performance certificate, although he conceded that the latter is desirable rather than essential in relation to the repairing standard.

### **Findings in Fact**

10. The property is a three bedroom mid terraced former local authority dwellinghouse located in Bannockburn, Stirling.
11. The windows in the living room and kitchen are defective.
12. The hot tap in the bathroom is loose.
13. The glazed panel at the top of the door of the rear bedroom is missing.
14. The external gutters are damaged and leaking.
15. The front downpipe is not connected to the gutter.
16. There is water staining on the front bedroom wall.
17. There is damaged roughcast above the front door caused by water running from the overflow pipe.
18. There is a glass pane missing from the front door, the outer face of the door is damaged and there is no key for the mortice lock.
19. There are no working smoke alarms in the hall and landing. There are no smoke or heat detectors in living room and kitchen.
20. There is a CO detector next to the bedroom cupboard which houses the boiler.
21. The tenant does not have a copy of a current Gas Safety Record or Electrical Installation Condition Report.

### **Reason for decision**

21. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
22. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of

Section 3 of the 2006 Act “ The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the both the Tenant and the Third Party made the Landlord aware of the repairs issues at the property.

23. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - defective windows in the living room and kitchen, missing glazed panel at top of bedroom door, loose hot tap to bath in bathroom, defective gutters, downpipe and overflow pipe, damaged roughcast to front elevation, water staining in the front bedroom, defective front door and lack of working smoke alarms. These defects were evident at the inspection of the property.

24. From the evidence led at the hearing the Tribunal is also satisfied that as the tenant does not have a key for the mortice lock on the door, the door cannot be properly locked. Also, that the Tenant has not been provided with a gas safety record or EICR. The Tribunal notes that there may be problems with the electrical wiring and this requires to be investigated. Although there is a CO detector installed, this requires to be checked to ensure that it is in working order and the location confirmed as appropriate and compliant with current guidance. The Tribunal is also satisfied that the Tenant was asked for access to the property on 13 November 2018, and provided that access. She also agreed to access on the 22 November for a gas engineer and electrician to attend but the agent did not call back to confirm suitable times. Furthermore, the Tribunal is satisfied that the Landlord's failure to repair the property is not linked in any way to a failure by the Tenant to provide access.

25. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a), (b), (c), (d) (f) and (g). of the Act.

## **Decision**

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

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

28. The decision of the Tribunal is unanimous

## **Right of Appeal.**

**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.**

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Signed **J Bonnar** 6 December 2018  
Josephine Bonnar, Legal Member

6 December 2018

This is the schedule of photographs referred to  
in the decision of the same date

**J Bonnar**

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



Schedule of photographs taken during the inspection of 63 Balfour Street, Bannockburn,  
Stirling FK7 0NG by the First-tier Tribunal for Scotland (Housing and Property Chamber)  
Monday 5 November 2018

Reference Number : FTS/HPC/RT/18/2226



Front Elevation



Living Room - top light window to left side does not close properly - gap at seal



Living Room - main window to left - handle defective/jams when opening/closing



Bathroom - Hot tap very loose/not fixed properly



Rear Bedroom (2) glazed panel at top of door missing



Kitchen - right side window does not close, mechanisms and handle defective



Kitchen - left side window - handle missing



Rear gutter leaking at joints, choked with vegetation



Front gutter leaking at joints and corroded



Front elevation - downpipe sections disconnected at top



Front elevation - downpipe sections disconnected at base



Front Bedroom (1) - staining to front corner of party wall



External - water has been running from overflow - roughcast stained and damaged above canopy over front door



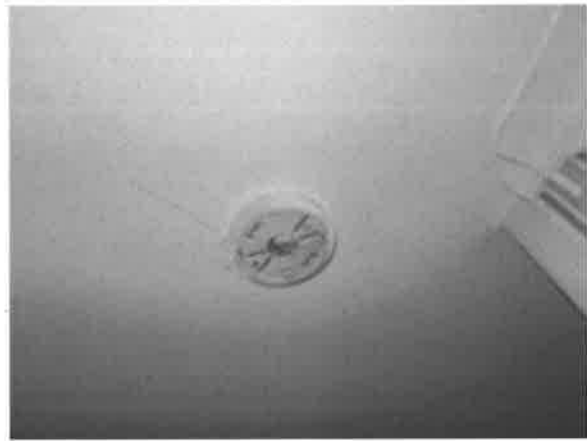
Front Door - external glass pane missing



Front Door - no key for mortice lock, cracks to PVC outer face of door



Ground Floor Hall - ceiling mounted smoke alarm - missing cover/exposed wires



Upper Landing - ceiling mounted smoke alarm - missing cover/exposed wires



Front Bedroom (1) - Carbon Monoxide alarm - wall mounted, level with top of door to cupboard housing boiler