

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/RT/18/2229

Title no: STG 49503

37 Park Crescent, Bannockburn, Stirling, FK7 0EN ("The Property")

The Parties: -

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

**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 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,
- (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (d) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (e) 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 living room and all bedrooms and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows.
2. To repair or replace the defective gas fire and ensure that the fire surround is securely fixed to the wall.
3. To replace the front door of the property with a new front door.
4. To complete the re-plastering of the kitchen ceiling and paint the ceiling.
5. To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance.
6. To install carbon monoxide detectors at the property to comply with current regulations and guidance.
7. To instruct a Gas Safe registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory gas safety record.
8. 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 in the property, after the installation of the new smoke and heat detectors, carry out any necessary repairs, 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



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

Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RT/18/2229

Title Number: STG 49503

37 Park Crescent, Bannockburn, Stirling, FK7 0EN ("The Property")

The Parties: -

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

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 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) 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, (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 – gas fire does not work, window does not open or close properly and is not secure, (2) Hallway – front door window is broken, obsolete warm air unit in downstairs cupboard should be removed/evidence of asbestos, (3) Bedrooms – all bedroom windows not opening or closing properly, (4) Kitchen – section of plasterwork to ceiling missing/requires repaired, (4) No CO detector, inadequate smoke/heat detectors. The application further states that the Tenant does 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 11.30am 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 morning of 5 November 2018. There was no attendance on behalf of the Third Party. The Tenant 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, 2226, 2235, 2232 and 2227. Mr Paterson attended on behalf of the Third Party. Also present were Blair McKie, Emma Jane McLaughlin, Shirley Kane and Mandy Rushforth,

tenants in three of the other applications before the Tribunal. The Landlord did not attend and was not represented. The Tenant did not attend. 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 3 bedroom end terraced former local authority dwellinghouse located in Bannockburn, Stirling. The Tribunal noted the following; - (a) Living Room – gas fire surround free standing and not fixed to wall, left side window seal defective and corrosion/defects to mechanisms, window does not open or close properly, (b) Hall – front door decorative glazed panel broken, internal letter box cover missing, (c) Rear bedroom (1) - window does not open or close properly/defective mechanisms/ hinge corroded/ seal to double glazing defective (condensation forming between panes), (d) Rear bedroom (2) – window does not open/close properly, defective mechanism, (e) Front bedroom (3) left and right side windows do not open and close properly/defective mechanisms, (f) Kitchen – large patch of damaged plaster on ceiling, (g) Ceiling mounted smoke alarms in hall and landing, did not appear to be working when tested, (h) Window on landing does not open. During the inspection the Tenant advised the Tribunal that the gas fire has never worked during her occupation of the property. She also advised that the front door lock frequently sticks and has to be removed and re-instated. She confirmed that there is no CO detector in the property, that she has not been provided with a gas safety certificate or EICR. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

6. At the hearing the Tribunal only heard evidence from Mr Paterson.

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. Mr Paterson confirmed that the defects detailed in the photograph schedule accurately reflect the repairing standard issues he noted at the property during his inspection. He stated that the reference in the application to an obsolete warm air unit and possible asbestos is an error and related to another property. He advised that he did not test the gas fire but was advised by the tenant that it is not working. He confirmed that there is no heat detector in the kitchen or smoke alarm in the living room. There is no CO detector although there is a gas fire and boiler. He also advised the Tribunal that the Tenant has recently been in touch with him to advise that there now appear to be problems with dampness in the kitchen. He advised that he understands that no repairs had been carried out to the property since the Tribunal's inspection and that the Tenant has not been provided with 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

9. The property is a three bedroom end terraced former local authority dwellinghouse located in Bannockburn, Stirling.

10. The gas fire in the living room is defective and not fixed to the wall.
11. The windows in the living room and three bedrooms are defective.
12. The front door to the property is damaged and the lock does not work effectively.
13. Plaster on the kitchen ceiling is damaged.
14. There is no CO detector in the property, heat detector in the kitchen or smoke alarm in the living room. The smoke detectors installed at the property do not work.
15. The tenant does not have a copy of a current Gas Safety Record or Electrical Installation Condition Report.

Reason for decision

15. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
16. 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 Third Party made the Landlord aware of the repairs issues at the property.
17. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - gas fire not fixed to wall, defective windows in the living room and bedrooms, damaged and defective front door, damaged kitchen ceiling and lack of smoke/heat and CO detectors. These defects were evident at the inspection of the property.
18. From the information provided by the tenant and evidence led at the hearing the Tribunal is also satisfied that the gas fire is defective and that no gas safety record or EICR have been provided. No CO detectors have been installed at the property, although there is a gas fire and a gas boiler. The fire detection provision does not meet current guidance as there is no smoke detector in the living room, no heat detector in the kitchen. The smoke detectors which are installed do not work. The Tribunal is not persuaded that the Tenant has

failed to provide access to the property, as suggested in the written representations, as no evidence was presented in support of this claim.

19. The Tribunal noted during the inspection that the landing window is also defective and cannot be opened. As this does not form part of the application before the Tribunal, no order is made in relation to same. However, the Tribunal recommends that this window is repaired. The Tribunal also notes that the reference to an obsolete warm air unit in the application was an error, and as there is no such unit within the property, no finding is made in relation to same.

20. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(c), (d), (f) and (g) of the Act. The Tribunal is also satisfied that the defective windows in the property also give rise to a breach of section 13(1)(a) of the Act.

Decision

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

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

23. 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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be treated as having effect from the day on which the appeal is abandoned or so determined.

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 37, Park Crescent, Bannockburn,
Stirling FK7 0EN by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Monday 5 November 2018

Reference Number : FTS/HPC/RT/18/2229



Front Elevation



Living Room - gas fire and surround



Living room - fire surround freestanding - not fixed to wall



Living Room - Window



Living Room - left side window seal defective



Living Room - Left side window corrosion and defects to mechanisms, does not open/close properly



Hall - Front Door - glass broken to decorative glazed panel



Hall - Front Door - glass broken to decorative glazed panel



Hall - Front Door - lock sometimes sticks/ possible defect (observation)



Hall - Front Door - internal letter box cover missing (observation)



Rear Bedroom (1) Window - defective mechanisms - does not open/close properly



Rear Bedroom (1) Window - hinge corroded



Rear Bedroom (1) Window - double glazing seal broken - condensation between panes



Rear Bedroom (2) Window -defective mechanisms - does not open/close properly



Front Bedroom (3) Left side Window -defective mechanisms - does not open/close properly



Front Bedroom (3) Right side Window - defective mechanisms - does not open/close properly



Kitchen Ceiling - large patch of damaged plaster, incomplete repair



Ground Floor Hall - ceiling mounted smoke alarm



Upper floor landing - ceiling mounted smoke alarm