

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/19/0417

Land Register Number: DMF9165

**4 Cairn Drive, Lincluden, Dumfries, DG2 0BY
("the House")**

The Parties:-

**Miss Yvonne McLatchie, residing at the property
("the Tenant")**

**Dumfries and Galloway Council, Strategic Housing Services, Municipal
Chambers, Buccleuch Street, Dumfries, DG1 2AD
("the Third Party")**

**Mr Andrew Richardson, 5 Alexandra Drive, Dumfries, DG2 9HX
("the Landlord")**

Whereas in terms of their decision dated 16 April 2019, 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:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) 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.
- (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (v) 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 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 Landlord:-

- (a) To eradicate the dampness in the rear bedroom and to repair or replace all of the damaged plaster in that room to ensure that it is in a reasonable state of repair and in proper working order.
- (b) To repair or replace the damaged ceiling plaster within the kitchen to ensure that it is in a reasonable state of repair and in proper working order.
- (c) To repair or replace the timber door frame of the front entrance door of the house to ensure it is in a reasonable state of repair and in proper working order.
- (d) To re-hang the living room door to ensure it is in a reasonable state of repair and in proper working order.
- (e) To repair or replace the defective and damaged render on the front elevation of the house to ensure it is in a reasonable state of repair and in proper working order.
- (f) To repair or replace the rear boundary fence of the house it is in a reasonable state of repair and in proper working order.
- (g) To produce an Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT registered electrician in respect of the property and to undertake any work which is identified in said report to be of Category C1 or C2.
- (h) To produce a Gas Safe certificate from a Gas Safe registered engineer in respect of the property.
- (i) To install satisfactory smoke and heat provision for the detection of fire ensuring that such detection is located in accordance with current regulations.
- (j) To install satisfactory provision for the detection of carbon monoxide levels ensuring that such detection is located in accordance with current regulations.

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 two pages are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 16 April 2019 in the presence of the undernoted witness:-

P Pryce

N Pryce

 _____ witness  Legal Member
NICHOLAS PRYCE name in full
55 BLYTHSWOOD ST Address
GLASGOW

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/19/0417

**4 Cairn Drive, Lincluden, Dumfries, DG2 0BY
("the Property")**

The Parties:-

**Miss Yvonne McLatchie, residing at the property
("the Tenant")**

**Dumfries and Galloway Council, Strategic Housing Services, Municipal
Chambers, Buccleuch Street, Dumfries, DG1 2AD
("the Third Party")**

**Mr Andrew Richardson, 5 Alexandra Drive, Dumfries, DG2 9HX
("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) in relation to the house concerned, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:-

Patricia Anne Pryce	-	Legal Member
Donald Wooley	-	Ordinary Member (Surveyor)

Background

1. By application comprising documents received on 11 February 2019, the Third Party applied to the First-tier Tribunal (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 by the Third Party stated that the Third Party considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-

- (a) "Penetrating dampness within the rear bedroom.
- (b) A leak from the bathroom has damaged the kitchen ceiling below.
- (c) Wood rot has detached the door screen at the front door.
- (d) Door to the living room is ill fitting and jams in the frame.
- (e) External render is cracked and broken in various places.
- (f) Recently built porch party wall has no plaster coat.
- (g) No Carbon Monoxide (CO) detectors present.
- (h) No smoke or heat detectors present.
- (i) No Electrical Installation Condition Report (EICR) for the property.
- (j) No Gas Safe certificate for the property.
- (k) Rear fence broken."

The Third Party considered that the Landlord is in breach of his duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) 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.
- (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (v) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Although the Third Party did not tick the box on the application form in respect of (iii) above, the Tribunal opined that the complaint about the lack of EICR and Gas Safe Certificate fell within this part of the repairing standard and that the Landlord had received intimation of this specific complaint prior to the present application being raised.

- 3. By Minute dated 11 February 2019 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 Landlord, the Tenant and the Third Party advising that the inspection and hearing would take place on 16 April 2019

at 10 am and 11.30 am respectively. No submissions were received from the Landlord or the Third Party.

The Inspection

5. An inspection and hearing were arranged as noted above. The Tribunal attended at the property. The Landlord did not attend at the property but his mother, Mrs Catherine Richardson attended on his behalf. The Tenant was in attendance at the property, although is an interested party only, and allowed the Tribunal access to the property. Mr Robert Rome of the Third Party attended at the property. The Tribunal noted the following at inspection:-

- There were clear indications of water penetration on the ceiling and on the walls of the rear bedroom which appeared to be historic. However, there was a positive reading for dampness on the wall just below the ceiling. The plaster on the walls and ceiling at the far left corner of the room (as you enter the room) was bossed, cracked and badly damaged.
- The ceiling in the kitchen was damaged by way of water penetration from above.
- The timber frame around the front entrance door to the property was rotten and missing.
- The door to the living room was ill-fitting, stiff to close and open, there was a graduating gap between the top of the door and its surrounding frame and the adjoining wall plaster was damaged as a result of the ill-fitting and poorly hung door.
- The external render to the front elevation of the property was bossed, cracked, damaged and missing.
- The interior of the external wall of the entrance porch, opposite the front entry door, remained unplastered, leaving concrete block-work exposed.
- There was no CO monitor located in the property.
- There was a gas boiler located in the built-in cupboard of the front bedroom. There was no CO monitor.
- There was no EICR in respect of the property.
- There was no Gas Safe certificate made available to the Tribunal in respect of the property.
- There was a battery operated smoke detector in the upper hallway which did not function when tested by the Ordinary Member. There were no other smoke detectors located in the property.
- There was no heat detector located in the kitchen of the property.
- The fence running along the rear boundary of the property was broken.

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

The Hearing

6. Mr Rome and Mr Adam Black, both employees of the Third party attended at the hearing. No one else attended the hearing.

The Tribunal considered that it had sufficient information before it to make a decision and proceeded to make a decision based on its findings at the inspection together with the application.

Summary of the issues

7. 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

8. The Tribunal finds the following facts to be established: -
 - The Tenant remained in the property at the time of inspection.
 - The property is a mid-terrace house of brick and render construction under a flat roof.
 - It comprises a kitchen and living room on the ground floor and two bedrooms and a bathroom on the first floor.
 - There was clear evidence of water penetration on the ceiling and walls of the rear bedroom.
 - The plaster on the ceiling and walls of the bedroom was badly damaged.
 - The kitchen ceiling was damaged by water penetration from above.
 - The timber frame around the front door was rotten and missing in parts.
 - The door to the living room was poorly hung.
 - The external render to the front of the property was cracked and damaged.
 - There was no CO monitor located anywhere in the property, not even near the gas central heating boiler which was located in the cupboard of the children's bedroom.
 - There was no adequate smoke or heat detection within the property.
 - There was no EICR in place in respect of the property.
 - There was no Gas Safe certificate in place in respect of the property.

Reasons for the decision

9. The Tribunal noted that in terms of the present application the Third Party had first notified the Landlord of the repairs in December 2018. Despite attending to some of the issues raised, some of the repairs issues remained.

Given all of the circumstances, the Tribunal is satisfied that:

- the house is not wind and watertight and in all other respects reasonably fit for human habitation as there was a positive reading

for dampness on the wall of the rear bedroom just below the ceiling and the plaster in this room is bossed, badly damaged and cracked;

- the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order as the ceiling in the kitchen is damaged as a result of water penetration, the timber door frame of the front door is rotten and missing, the door to the living room is ill-fitting, the external render on the front elevation of the property is bossed, cracked and missing, the fence running along the rear boundary of the property is broken.
- 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 the Landlord did not produce an EICR nor a Gas Safe certificate in respect of the property and, without this, the Tribunal could not conclude that this part of the repairing standard had been met.
- the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire as there are no functioning smoke or heat detectors within the property.
- the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as there is no CO monitor located in the property.

Decision

10. The Tribunal accordingly determined that the Landlord had not complied with the duty imposed by Section 14 (1)(b) of the Act.
11. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
12. The decision of the Tribunal was unanimous.

Observations

13. The Tribunal noted with real concern at the inspection that the children of the Tenant were sleeping in a bedroom where the boiler is located yet there was no CO monitor. The Tribunal considers this to be an immediate health and safety concern and would urge the Landlord to resolve this as a matter of some urgency. The Tribunal was concerned to note that the boiler appeared to be of some age.
14. The Tribunal noted that the exterior wall of the porch remained without plaster. While this appeared unsightly, the Tribunal did not consider that this breached the repairing standard.

Right of Appeal

15. 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 determinedP Pryce

Signed  Legal Member
Date 16 April 2019 

4 Cairn Drive Dumfries DG2 0BY

Schedule of Photographs taken at the inspection on 16th April 2019



1:- Entrance & External View



2:- Defective wall plaster in rear bedroom



3:- Damp readings (23%) in rear bedroom external wall



4:- Damaged kitchen ceiling plaster



5:- Broken / defective battery operated smoke alarm on landing ceiling



6:- Rotted external timber frame at front entrance door



7:- Damaged internal wall plaster caused by ill fitting living room door



8:- Defective rendering front wall



9:- Defective rendering front wall



10:- Broken rear fence from garden



11:- Broken rear fence from rear path