

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/19/0770

Title no/Sasines Description: STG57339

8 Gateside Avenue, Bonnybridge, FK4 1AX (“the House”)

The parties:-

Mrs Mary Bailey, formerly 8 Gateside Avenue, Bonnybridge, FK4 1AX (“the former Tenant”)

Mr Syed Shah, 9 The Holding, Longcroft, FK4 1HD; Suite 4/1, 19 Waterloo Street, Glasgow, G2 6AY (“the Landlord”)

Falkirk Council, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”), now treated as having withdrawn the application submitted on behalf of the former Tenant

Whereas in terms of their decision dated 6 November 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 the House meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended:-

- (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;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) 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:-

- (1) To repair or as necessary replace the kitchen floor and walls and install kitchen units, appliances and other fixtures and fittings to ensure that all are in a reasonable state of repair and in proper working order.
- (2) To install a heat detector in the kitchen interlinked to the hard-wired smoke detectors in compliance with current Scottish Government Guidance on Smoke Alarms in Private Lets to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (3) To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke and heat detectors, and a Portable Appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT, NICEIC or NAPIT contractor to ensure that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order.
- (4) To install a carbon monoxide detector in an appropriate location near the gas boiler in the kitchen to ensure that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal order that the works specified in this Order must be carried out and completed by 30 April 2020.

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 typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 6 November 2019 in the presence of the undernoted witness:-

E T Weir

N Weir

witness

___ Legal Member

F. T. WEIR name in full

102 ROWDEN LANE Address

LEITHDON BURGARD

LV7 8GR

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/19/0770

Title no/Sasines Description: STG57339

8 Gateside Avenue, Bonnybridge, FK4 1AX (“the House”)

The parties:-

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Falkirk Council, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”), now treated as having withdrawn the application submitted on behalf of the former Tenant

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 house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised:-

Nicola Weir, Legal Member

Harry Maclean, Ordinary Member

Background

1. By Application submitted with supporting documentation received on 11 March 2019, the Third Party Applicant applied on behalf of the former Tenant to the Tribunal 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”). The Application stated that the applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the following parts of the repairing standard in terms of Section 13 of the Act, namely:-

- (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;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

In particular, the Application alleged no heat detection in the kitchen; kitchen wall coverings, plasterboard, base units, cupboards have been removed and the floor is uneven with damaged concrete; area of damaged plasterwork at top of living room wall (which adjoins the kitchen); no EICR and no EPC.

2. Further documentation/information was requested from and submitted by the Third Party Applicant.
3. On 10 May 2019, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 12 June 2019, requested that any written representations should be lodged with the Tribunal by 12 June 2019. The Inspection and Hearing were set for 29 July 2019.
4. Following service of the Notice of Referral, the Third Party Applicant confirmed by email to the Tribunal dated 13 June 2019 that they wished to attend the Hearing and had no further written representations. By further email dated 26 June 2019, the Third Party Applicant advised that the former Tenant had now moved out of the House.
5. Having deemed the vacation of the House by the former Tenant as a withdrawal of the Application in terms of Schedule 2, paragraph 7(1A) of the Act, the Tribunal then considered whether the Application should continue to be determined or whether it should be abandoned in terms of Schedule 2, paragraph 7(3) of the Act. The Tribunal decided that the Application should continue to be determined as it contained matters which raise health and safety concerns for any future tenants of the House. Accordingly, the Tribunal issued a Minute of Continuation to a Determination dated 2 July 2019.

6. On 3 and 17 July 2019, the Landlord submitted written representations by email to the Tribunal confirming an intention to have the works required carried out in due course, that meantime the House would not be let out and requesting a postponement of the Inspection and Hearing set for 29 July 2019 for these reasons and also due to personal circumstances of the Landlord. The Tribunal decided that cause had been shown and that it was appropriate to postpone.
7. A fresh Inspection and Hearing were subsequently set for 7 October 2019. On 2 October 2019, the Landlord confirmed that access would be granted for the Inspection and the Third Party Applicant also confirmed that he had been in contact with the Landlord for an update and that the House appeared to remain untenanted.
8. The Tribunal inspected the House on the morning of 7 October 2019. In addition to the Members of the Tribunal, a Tribunal Venue Assistant was in attendance. The Landlord was present and provided access to the House and was accompanied by his father, Mr Syed Abbas, in the capacity of supporter.
9. Following the inspection of the house, the Tribunal held a Hearing at STEP Stirling. The same persons who had attended the Inspection attended the Hearing, other than that the Tribunal Venue Assistant was replaced by a Tribunal Clerk, Rebecca Forbes.

The Inspection

10. The Tribunal noted that there were no kitchen units in the kitchen, the previous units having been removed, that wall coverings and parts of the floor had been removed, leaving walls and floor in poor condition and the floor with a very uneven surface. Works appeared to be at an early stage to reinstate the kitchen, with some new plasterboard having been installed and other new plasterboard in the kitchen awaiting installation. There was no heat detector in the kitchen. A gas boiler was situated in the kitchen and the Landlord showed the Tribunal a new Carbon Monoxide detector that he said was to be installed once the kitchen works were complete. In the living room, the Tribunal noted that a repair appeared to have been carried out on one of the walls which backed onto the kitchen, near the ceiling. The cause of the original damage to the wall was unknown to the Landlord. Plaster or filler had been applied to the wall but the repair still required to be made good and repainted. The Tribunal noted that newer linked smoke detectors had been installed adjacent to older battery operated smoke detectors in appropriate areas of the House and these appeared to be in working order. The Tribunal noted that the mains electrical distribution board and some of the wiring and electrical installations in the House required to be upgraded or replaced to meet current standards. A Photographic Schedule taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

The Hearing

11. At the Hearing, the Tribunal had before it the Application and other documentation referred to above. The Tribunal also had before it a copy of Land Certificate STG57339 relative to the house which is registered in the name of the Landlord and confirmation that the house is included in the Landlord's Landlord Registration with Falkirk Council.
12. The Landlord gave evidence and answered questions from the Tribunal Members.
13. The Landlord confirmed that the former Tenant had been the tenant for a number of years. She was elderly and, according to the Landlord, had herself instructed a contractor to replace the kitchen, unknown to him. The contractor had taken out the old kitchen but the works then halted and the contractor left the kitchen as it was. The Landlord thinks that the contractor maybe asked for payment or part-payment up front and when this was not paid, the contractor pulled out of the job. The Landlord confirmed that the former Tenant could no longer manage the stairs in the House and had moved out a few months ago and now had a Council house which is on the one level. The Landlord referred to having a close relationship with the former Tenant (whom he referred to as like a grandmother) and appears still to be in contact with her. It was not really explained by the Landlord, against this background, why or how the situation had ended up with the Third Party Application being made to the Tribunal. However, the Landlord did refer to his personal and family circumstances in recent times having been difficult and that he has been very busy attending to these matters and away from home a lot over the past year or so.
14. The Landlord confirmed that it is his intention to complete the kitchen works as part of upgrading and redecorating the whole House. He may rent out the House again after that but has not finally decided. He estimated that the works may take 6 to 8 months but does not have a definite timescale. He reiterated that he had no intention of letting out the House meantime and also confirmed that he would contact the Third Party Applicant's officer who had submitted the Tribunal application if and when he proposes to let out the House again.
15. The Tribunal discussed with the Landlord their findings on Inspection and the works requiring to be done to meet the Repairing Standard in terms of the matters raised in the Application. The Landlord confirmed that it was his intention to install new kitchen units and fixtures and reinstate the walls and floor in the kitchen. The living room wall repair would also be properly finished off. He reiterated that he has a Carbon Monoxide detector and also said that he had a heat detector, both of which would be installed in the kitchen once the other works were complete. The Tribunal explained that there are guidelines in place as regards smoke and carbon monoxide detection in private lets and that the heat detector requires to interlink with the smoke alarms to conform to the current guidance. It was also explained that the carbon monoxide detector requires to be installed in an appropriate location near a gas appliance such as a boiler and that guidance on these

requirements is readily available. As regards the electrics, the Landlord confirmed that these would be attended to as part of the refurbishment of the House and that an EICR would be obtained and produced to the Tribunal in due course. Although it did not form part of the Application, there was also discussion about the requirement to have a gas safety check every year. It was noted by the Tribunal from the Application that a Gas Safety Certificate had been produced by the Landlord to the Third Party Applicant prior to the submission of the Application and that, if it was some months before the House would be ready for re-let, that an up to date Gas Safety Certificate might be required. If so, the Tribunal indicated they would appreciate sight of that, albeit they could not insist on this.

16. Finally, it was explained to the Landlord that, if a Repairing Standard Enforcement Order ("RSEO") was made by the Tribunal, there would be a timescale for compliance with it and, if the works to the House were not completed within that time, the Landlord could apply to the Tribunal for a Variation of the RSEO to allow him more time which can be granted in appropriate circumstances. The Landlord was also advised that it is a criminal offence not to comply with an RSEO or to let out a property again whilst an RSEO is still in place over that property.

Findings in Fact

17. Reference is made to the Tribunal's findings on Inspection detailed above.
18. The former Tenant occupied the House as tenant for many years, latterly with the Landlord as her landlord when he became the owner of the House.
19. The former Tenant vacated the House in or around June 2019.
20. Prior to the former Tenant vacating, the Third Party Applicant had notified the Landlord of the repairs issues outstanding, prior to submitting an application to the Tribunal.
21. Most of the repair issues identified in the Application remain outstanding and the House does not meet the Repairing standard in those respects.

Reason for decision

22. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations received from the parties and the oral evidence of the Landlord at the Hearing.
23. The Tribunal was not satisfied that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order (Section 13(1)(c) of the Act) and require sight of an EICR in satisfactory terms to satisfy themselves in this regard.

24. Given the present condition of the kitchen, the fixtures, fittings and appliances provided by the Landlord are not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act and repairs/replacement of the various fixtures, fittings and appliances, including the walls and floor require to be carried out to ensure that the Repairing Standard is met.
25. The House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of Section 13(1)(f) of the Act in that a heat detector is not installed in the kitchen, interlinked with the smoke detectors in the rest of the House and requires to be so installed in order that the Repairing Standard is met.
26. The House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health in terms of Section 13(1)(g) of the Act. Although the Landlord showed the Tribunal such a detector, it was not installed and requires to be correctly located and operational to ensure that the Repairing Standard is met.
27. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified above. Given the nature of the required works and the Landlord's submissions in this regard, the Tribunal is of the view that a period of approximately 6 months was an adequate and reasonable timescale for the works to be completed.

Decision

28. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
29. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.
30. The decision of the Tribunal was 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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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.

N Weir

Signed... Date: 6 November 2019
Nicola Weir, Legal Member of the Tribunal

Glasgow, 6 November 2019
This is the Photographic Schedule referred to
in the attached Statement of Decision of
even date herewith.
N Weir Legal Member of the Tribunal

Photographic Schedule –

8 Gateside Avenue

Bonnybridge

FK4 1AX



Site visit on Monday 7th October 2019

FTS/HPC/RT/19/0770



Kitchen – general view showing no wall linings and poor floor



Kitchen – showing where walls taken down and wall linings removed

FTS/HPC/RT/19/0770



Kitchen – poor electrical installation and no wall lining



Top landing – old hard wired mains smoke detector adjacent to newer linked smoke detector



Mains electrical distribution board – requires updating or replacing with appropriate board and EICR



Living room wall – damaged plaster finish at high level – cause unknown.

FTS/HPC/RT/19/0770