

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/RP/17/0117

Title no: MID95377

57F MacBeth Moir Road, Musselburgh EH21 8DQ ("The Property")

The Parties:-

**Ms Anna Kulig, residing at 57F MacBeth Moir Road, Musselburgh EH21 8DQ
("the Tenant")**

**Mr Gary Patrick O'Donnell, residing at 39c Caiystane Gardens, Edinburgh
EH10 6TB ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Susan Napier (Ordinary
Member)**

**NOTICE TO GARY PATRICK O'DONNELL, residing at 39c Caiystane Gardens,
Edinburgh EH10 6TB ("the Landlord")**

Whereas in terms of their decision of even date 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:-

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- Whether 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.
- Whether 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.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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 instruct a roofing contractor to inspect and survey the roof, ridges, chimney and gutterings above the Property and to produce a written report; and, if necessary, to carry out works recommended including any renewals or repairs so as to ensure that there is no water ingress into the Property.
2. To instruct a suitably qualified tradesman to carry out a repair to the front door of the Property so as to ensure that the door can be secured and locked with the use of the main door lock, in addition to the Yale lock provided, by ensuring that the metal doorkeeper affixed to the doorframe is fitted and secured correctly.
3. To instruct a qualified electrician to provide an Electrical Installation Condition Report (EICR) on the condition of the electrics within the Property providing specific commentary upon the installation and safety of the electrical shower within the bathroom and the halogen lights within the front bedroom to the Property; and any work required should be undertaken to ensure that there are no C1 or C2 recommendations.
4. To instruct a suitably qualified tradesman to survey the windows in the Property and to overhaul and repair same; specifically undertaking the following:-
 - i. To ensure that the new window unit installed in the living room of the Property in June 2016 is adjusted or sealed to ensure that there are no draughts around the frame.
 - ii. To repair or replace the double glazed units in the front bedroom of the Property to ensure that they are both wind and waterproof, and to ensure that the windows can be securely locked.
 - iii. To ensure that the glass pane in the bathroom window is suitably sealed along the bottom within the frame.
5. To instruct a suitably qualified tradesman to repair or replace the plug in the bathroom sink so as to ensure that the basin can be filled with water and thereafter drained.
6. To instruct a suitably qualified tradesman to repair or replace the under the counter freezer within the kitchen of the Property.
7. To instruct a tradesman to provide a watertight seal to the white cable which enters the corner of the living room at floor level from the balcony.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the Tribunal.

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.

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(s) are executed by Richard George Mill, solicitor, 69-71 Daly Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 13 June 2017 before this witness:-

R Mill

Legal Member

M Murray

Witness

MARGARET JOHNSTONE MURRAY Name

69-71 DALRY ROAD Address

EDINBURGH

EH11 2AA

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/RP/17/0117

Title no: MID95377

57F MacBeth Moir Road, Musselburgh EH21 8DQ ("The Property")

The Parties:-

Ms Anna Kulig, residing at 57F MacBeth Moir Road, Musselburgh EH21 8DQ ("the Tenant")

Mr Gary Patrick O'Donnell, residing at 39c Caiystane Gardens, Edinburgh EH10 6TB ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Susan Napier (Ordinary Member)

Decision

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. By way of application received on 24 March 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. In the application the Tenant stated that the Landlord had failed to comply with his duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the repairing standard put at issue are those contained within Section 13(1)(a), (b) and(c).
 - Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.

- Whether 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.
- Whether 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.

3. Notices of referral were issued to parties on 5 May 2017.

Inspection

4. The Tribunal inspected the property on 5 June 2017 at 10.00 am. The Tenant was present and invited the Tribunal members into the property. The Tenant directed the Tribunal members around. The Landlord had been invited, but did not attend.

Hearing

5. Following the inspection of the property, the Tribunal convened a hearing later the same day at 11.00 am at Fisherrow Community Centre, South Street, Musselburgh EH1 6AT. The Tenant attended the Hearing personally and made further submissions in support of her application. The Landlord had been invited, but did not attend.

Summary of Issues

6. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.

7. A number of issues were referred to within the initial application. These can be summarised as:-

- The window in the master bedroom was said not to close properly and accordingly is not wind and watertight.
- The window in the living room was said to be fitted with wooden panels which were not wind and watertight.
- It was stated that the roof was leaking causing water penetration. Reference is made to wet panels in the attic area and brown staining on the ceilings of both bedrooms.
- It was stated that there was dampness in both the living room and bathroom.
- It was stated that the casing to the electric shower had a hole in it and was not fixed correctly.

- It was stated that the plug in the bathroom sink was broken.
- It was stated that the door thresholds were not fitted properly causing safety concerns.
- It was stated that the annual Gas Safety Certificate had expired (on 17 November 2016) and was no longer valid.
- It was stated that the freezer was not working as the thermostat was broken.
- It was stated that the lock of the entrance door does not work properly.

Findings in Fact

8. The Tribunal makes the following findings in fact:-

1. The Title to the subjects known as 57F MacBeth Moir Road, Musselburgh EH21 8DQ is held by the Landlord. His interest is registered in the Land Register of Scotland under Title number MID95377 on 29 September 2014.
2. The Property which is the subject of this application is a two bedroomed second floor flat within a block of six being an ex-Local Authority property.
3. The Property comprises of a living room, kitchen, bathroom, hallway and two bedrooms.
4. The Tenant (along with a co-tenant named Miroslaw Adam Gora) entered into a Short Assured Tenancy Agreement with the Landlord on 18 November 2015.
5. In relation to the matters complained of in the application, the inspection by the Tribunal revealed:-
 - i. The roof of the Property seems to be in a general state which requires attention and repair. Vegetation was noted in the guttering above the living room of the Property at a site where the design detail is likely to cause water ingress under the tiles. Ridge tiles were noted to be decayed.
 - ii. The main lock to the front door of the Property cannot be used to secure the door. The lock mechanism functions properly. The door cannot be locked due to the faulty metal keeper plate on the doorframe which is ill-fitting and insecure.

- iii. There is a new window unit in the living room of the Property which was installed in 2016. The window is not windproof at the right vertical side of the window frame.
- iv. The windows in the front bedroom of the Property are somewhat aged. They have timber frames. They are ill-fitting and the frames are not wind and waterproof at the bottom where the opening units meet the external frame. Additionally, the right window lock is broken. It has been fixed in a remedial fashion which is unsatisfactory.
- v. The glass pane within the bathroom window is not adequately sealed along the bottom rail where it meets the timber frame.
- vi. The plastic casing on the electric shower in the bathroom is not secured. Remedial attempts by the insertion of a screw at the top of the plastic unit has been attempted. There remains a sizeable gap at the left of the casing which could allow water into the electrical unit.
- vii. There was evidence of historical water ingress into the Property at the three undernoted sites. Damp meter readings were taken which evidenced that there is no current active water ingress. No dampness was detected in the Property. Weather conditions in advance of the inspection had however been dry.
 - 1. Two patches on the ceiling of the front bedroom of the Property.
 - 2. A patch in the external rear corner of the back bedroom of the Property.
 - 3. Staining in the lower corner of the living room above ground level adjacent to the balcony.
- viii. The staining evidencing previous water ingress to the front bedroom of the Property is close to the electrical halogen light fittings.
- ix. The under counter freezer in the kitchen of the Property does not work.
- x. The plug in the sink in the bathroom is broken.

- xi. The cable entering the living room at ground level in the corner adjacent to the balcony enters via a site which is not waterproof.
 - xii. An up-to-date Gas Safety Certificate dated 27 March 2017 was in the possession of the Tenant. No concerns were noted.
 - xiii. There is one hardwired smoke detector in the Property, situated in the hallway, outside the kitchen and near the front entrance door.
 - xiv. There is a portable carbon monoxide alarm. At the time of the Tribunal's Inspection this was situated within the boiler cupboard. The Tenant moved the alarm to a more suitable site outside the cupboard in the living room.
6. Reference is made to the Schedule of Photographs taken at the time of the Tribunal's inspection which are attached herewith and referred to for their terms.

Reasons for Decision

- 9. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal by the Tenant at the hearing.
- 10. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 5 June 2017.
- 11. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
- 12. The Tribunal has principally based the decision that the Landlord has not complied with his duty and correspondingly proceeded to make a Repairing Standard Enforcement Order based upon the circumstances noted at the time of their Inspection.
- 13. There is clear evidence of historical water ingress into the Property via the roof in the front and back bedrooms. This requires to be investigated. The state of the roof based upon a view of the Property from the ground revealed some obvious concerns regarding the state of repair of the roof and roof fittings.
- 14. Given the location of the former water ingress to the front bedroom and given the comments made by the Tenant to the effect that the halogen

fittings require to be renewed frequently, investigations should be taken regarding the electrical fittings. Similarly, given the obvious ill-fitting plastic casement to the electrical shower, the safety of this installation requires to be explored. An up-to-date Electrical Installation Condition Report (EICR) will enable clarification to be obtained.

15. The Tribunal was satisfied that the front door of the Property is incapable of being locked due to the ill-fitting and insecure metal keeper fitted to the doorframe. The Tribunal was similarly satisfied that the plug in the bathroom is broken and therefore the sink cannot be used fully, and nor does the freezer work due to a faulty thermostat.
16. The Tribunal was not satisfied that the windows in the living room, front bedroom or the bathroom of the Property are wind and watertight.
17. The Tribunal was satisfied that there has been water ingress into the corner of the living room above ground level adjacent to the balcony due to the lack of an appropriate seal to the side of the cable entering the living room from outside.
18. The Tenant had complained of dampness and mould in the Property. Whilst there is evidence of historical water ingress, into the corner of the living room at ground level adjacent with the balcony, there is no current dampness. The provision of a watertight seal to the cable entering the Property at this site will resolve the problem. No active dampness was noted in the bedrooms of the Property where there is evidence of some historical water ingress. A Report on the condition of the whole roof will reveal any problems which may arise in the future. Evidence of mould was seen in the bathroom. The Tribunal was satisfied that this is due to retention of excessive moisture in the absence of adequate ventilation. The bathroom window is fully operative and subject to being opened as required this will substantially resolve the issue. Any residual mould detected in the bathroom should be cleaned using a suitable detergent.
19. The Tenant had complained about insecure door thresholds on the ground which are said to be a safety concern. Two of these in particular were highlighted to the Tribunal at the time of their Inspection. The threshold into the back bedroom is somewhat loose and is fitted with screws. There is a small rail type threshold into the living room which is not working efficiently. The Tribunal concluded that such fittings may not be perfect, but are not of a health and safety concern, and are not in breach of the repairing standard.
20. The Tribunal had regard to the up-to-date Gas Safety Certificate which was available and was satisfied that the gas appliances are satisfactory. The Tenant also complained regarding the topping up of the water from the cistern. This is not required to be done regularly. There is no indication that there is any water leaking from the system.

Water in the cistern required to be routinely topped up in or about November 2016 and again at the time of the Gas Inspection in March 2017. The Tribunal concluded that this is not an issue which breaches the repairing standard and is a routine issue of maintenance for which the Tenant should be responsible.

Decision

21. The Tribunal, having made enquiries 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 their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

Observations

22. The Tribunal noted from the Tenant that there is a lack of communication on the part of the Landlord with her. The Tenant stated that she had never met the Landlord. She does not feel that communications with him have been adequately answered. He has also failed to correspond with her in relation to other matters relating to the Property. She contacted him in relation to the possible installation of smart meters by the energy company supplying the services. The Landlord has not responded. The Tribunal would encourage the Landlord to participate more meaningfully in correspondence and communications with the Tenant in relation to matters regarding the Property. The Tribunal notes that the Landlord has failed to engage in this process to date, failing to make any written representations, and failing to attend both the Inspection and Hearing. This is regrettable.
23. The Tenant did not raise any concerns regarding the provision within the Property for the detection of fire or carbon monoxide. The Tribunal at the time of their inspection routinely considered such matters. It is noted that there is one hardwired smoke detector in the Property and a portable carbon monoxide detector. The Landlord should note however that neither installations are in accordance with the Scottish Government Statutory Guidance for the detection of fire and carbon monoxide. The Tribunal would encourage the Landlord to instruct a suitable contractor to carry out works to rectify this.

Right of Appeal

24. 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.

25. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Daly Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 13 June 2017 before this witness:-

R Mill

Legal Member

Witness

MARGARET JOHNSTONE MURRAY Name

69-71 DALRY ROAD Address

EDINBURGH

EH11 2AA

Property – 57F MACBETH MOIR ROAD, MUSSELBURGH

Inspection Report 5 June 2017 - Photographs

Front Elevation



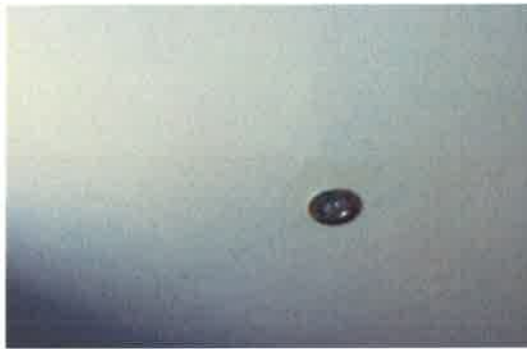
Window in Living Room



Window in Master Bedroom



Ceilings in both bedrooms
Staining round light fitting



Damp in corner



Low damp reading in master bedroom



No damp reading in 2nd bedroom



Dampness in Living room



Dampness in Bathroom wall and ceiling



Bathroom window glazing not sealed



Electric shower installation



Door Thresholds



Freezer



Lock at entrance door



Smoke Detector



Carbon Monoxide Detector

