



**First-tier tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref:** Reference number: FTS/HPC/RP/21/0512

**Property:** 18 Luss Brae, Hamilton, ML3 9UP (“The property”)

**Parties:**

Graham Millar and Denise Millar, residing together at 18 Luss Brae, Hamilton, ML3 9UP (“the Applicants”)

Gary Jamieson, residing at 2 Ryelands Cottage, Strathaven, ML10 6QF (“the Respondent”)

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Nick Allan (Ordinary Member)**

**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, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. On 4 February 2021 the applicants submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the repairing standard. Following a case management discussion on 8 July 2021, the applicants’ then solicitor lodged an amended Form A properly focussing the applicants’ complaint.
2. The applicants say that the respondent 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 property is wind and watertight and in all other respects reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act; and
- (b) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act; and
- (c) The installations in the property 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, in terms of Section 13(1)(c) of the 2006 Act; and
- (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, in terms of Section 13(1)(d) of the 2006 Act

3. On 28 April 2021 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral the Landlord and the applicant made written further representations as the application progressed. At a case management discussion on 8 July 2021, the applicants told us that carbon monoxide and heat alarms have been fitted to the property and that sufficient electrical works have been carried out to enable a satisfactory EICR to be issued on 30 June 2021.

6. For the respondent, Ms McInnes told us that a schedule of works had been agreed with a contractor, and that contractors carried out repair and maintenance work to the property between July and September 2021. A satisfactory EICR was issued on 30 June 2021.

7. In an email dated 8 September 2021, the applicants rehearsed a list of 16 items said to require repairs on 15 July 2021, and said that all but 4 of those items had been attended to by 7 September 2021.

8. Tribunal members inspected the Property during the morning of 19 October 2021. The Tenant was present but was not represented. The landlord was represented by Mrs M MacInnes. During the inspection on 19 October 2021, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

9. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 10am on 1 November 2021. The Tenant was present but was not represented. The landlord was represented by Ms M McInnes.

## **Summary of the issues**

10. The issues to be determined are whether the property meets the repairing standard set out in s.13 of the Housing (Scotland) Act 2006.

## **Findings of fact**

11. (a) The landlord is the heritable proprietor of 18 Luss Brae, Hamilton ML3 9UP("the property"). On 1 March 20012, the landlord's predecessor in title let the property to the tenant.

(b) The property is a two storey, brick built, detached villa with gardens to the front and rear and a driveway to the side (leading to an old wooden garage to the rear of the property). The front door opens onto a central hallway, which provides access to the Kitchen, and the living room/Dining area. Stairs lead to the first-floor landing, providing access to three bedrooms and a bathroom.

(c) On 15 July 2021 the tenant's former solicitors provided a list of 16 items described as "outstanding repairs". At the date of inspection parties agreed that the following works have been successfully completed

(i) The Windows throughout the property have been cleaned and painted. The large windowpane in the picture window to the front of the property has been replaced. The dining room and kitchen windows have had mould removed from them, rotten wood has been replaced and the wooden window surrounds have been painted. All of the windows open and close properly.

(ii) The gutters have been cleaned and maintained

(iii) The extractor fan in the bathroom has been repaired and now works

(iv) The outside drains have been rodded and are no longer blocked. They have been cleaned and are no longer a source of concern.

(v) Maintenance has been carried out to the roof, and the roof is no longer a source of concern

(vi) The plumbing in the bathroom has been repaired and now works properly

(vii) The shower control cord in the bathroom has been satisfactorily replaced

(viii) The extractor fan in the kitchen (which had been fitted into a windowpane) has been removed.

(ix) The bathroom ceiling has been painted

(x) Cosmetic repairs have been carried out in the stair, hallway & upstairs landing.

(xi). Repairs have been carried out to the kitchen ceiling.

(d) The kitchen has a back door which opens out onto the back garden. The back door is of light timber and would more appropriately be used as an internal door rather than an external door. The weather strip below the door has sections of exposed wood which are in danger of rotting. The door does not fit properly. Daylight can be seen around the door.

(e) The windows in the kitchen have been cleaned, repaired, and newly decorated. There is no sign of rot to the timber framework of the Windows. The windows fit properly, open and close, and provide adequate ventilation to the kitchen.

(f) The living area to the front of the property overlooks the front garden. It features a picture window in three sections. The largest windowpane there has been replaced. The windows open properly and are free from defects, but the key for one of the windows is missing.

(g) The windows to the rear of the ground floor of the property and the dining area are free from defects. They have recently been maintained. They all open and close properly.

(h) The bathroom is on the upper floor of this property. It has a white three-piece sanitary suite and a separate shower. The showerhead has recently been replaced. The tiles around the shower have recently been grouted. The shower door closes, but swings open again so that there is not an adequate seal around the shower door.

(i) The extractor fan within the bathroom works. There is no problem with the plumbing serving the bathroom. The shower in the bathroom is a power shower; power is controlled by a cord-controlled switch. The cord has recently been replaced.

(m) The shower riser has been replaced and does not have a fault

(n) The bathroom ceiling has been repainted. There are no signs of condensation in the bathroom. The bathroom ceiling has recessed lights. When the ceiling was painted, the light fittings were painted into the ceiling, making it difficult to replace light bulbs. At the time of the inspection two broken bulbs were noted. Although the light fittings have been painted over, the paint can be scraped away and light bulbs can be fitted.

(o) Decoration works have been carried out in the stair, hallway and the landing, which has covered over marks left when the smoke alarms were renewed. Similarly, decoration works have been carried out in the kitchen to cover cosmetic defects caused by electrical works.

(p) The landlord produced a satisfactory EICR on 30 June 2021.

(q) To the rear of the property there is an old timber garage which is dilapidated and beyond economic repair.

(r) On the outside of the dining area windows and on the outside of the living room windows there are loose tiles on the window sills, but those loose tiles sit on top of a concrete lintel so that, so far, there has been no water ingress.

### **Reasons for the decision**

12. (a) Tribunal members inspected this property at 11:00am on 19 October 2021. It was a damp autumn morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property. The landlord's representative greeted tribunal members and observed the first part of the inspection, but decided to return to her vehicle outside the property before tribunal members climbed the stairs to the bathroom.

(b) The tenant told the tribunal members that various works had already been satisfactorily completed but said that there are still some outstanding repairs.

(c) This case has some procedural history. There have been two case management discussions and the inspection was only managed on a third attempt. The time consumed by the procedural history has been used by the landlord to carry out works to the property to try to address the complaints of the tenant. Both parties have submitted a number of written submissions.

(d) Parties agreed that the list of outstanding repairs, dated 15 July 2021, has been superseded by the landlord's actions. Of the 16 items listed as outstanding repairs. The tenant maintains his complaint in relation to

(i) The windows of the property

(ii) The shower door

(iii) The garage

(iv) The soffits and fascia (which were previously incorrectly referred to as cladding)

(v) Broken slates forming the exterior window sills

(vi) The quality of decorative work to conceal marks made by electrical work.

(e) The combination of the documentary evidence and the tribunal members own observations lead us to the conclusion that there are no defects with the windows to the property. Repairs had been carried out to the windows on the ground floor level. The windows open and close properly. There are no draughts from the Windows. The only lingering problem with the Windows is that keys are missing and one of the small windows to the front of the property is locked shut. The absence of a key does not mean that the house is not wind and watertight and does not mean that there are fittings and fixtures which are not in proper working order.

(f) The shower door in the bathroom is loose and does not close securely. At the hearing on 1 November 2021, Ms McInnes said that she was not aware of the defective shower door, and would instruct a contractor to fix it. On the facts as we find them to be, the shower door is a defective fixture fitting or appliance, and so we make a Repairing Standard Enforcement Order requiring the repair or replacement of the shower door.

(g) The garage to the rear of the property shows signs of rot and collapse and is past its useful life. Ms McInnes told us that she had made arrangements with the Applicant to have the garage taken away, but that the tenants had subsequently resisted attempts to have it demolished. The garage falls within the definition of "House" used in the Housing (Scotland) Act 2006. The most practical remedy is to dismantle and remove the garage. We make a Repairing Standard Enforcement Order requiring that work.

(h) The tenant's complaint in relation to the soffits and fascia is that insects can make their way into the property. There is no reliable evidence that there is a defect to the soffits and fascia. The documentary evidence indicates that maintenance work has been carried out to the roofing & gutters. There is no evidence of water ingress. It will soon be time for some standard maintenance to the soffits and fascia (they could benefit from a new coat of paint), but at the date of the inspection there were no defects in the soffits and fascia.

(i) The defect which prevents this property from being wind and watertight is that a door more appropriate for internal use has been used to form the external back door. Daylight can be seen around the poorly fitting exterior backdoor. There was no evidence of water ingress, but because tribunal members could see daylight around the poorly fitting exterior door, the only realistic conclusion which can be drawn is that the property is not wind tight. We make a Repairing Standard Enforcement Order requiring repair or replacement of the rear door. The landlord will be aware that replacement with a more substantial door will create a lasting solution to the existing problem.

(j) The tenant's remaining complaints are that there are broken slates on the exterior window surrounds and is unhappy with the quality of the decorative work carried out to the hallway, stairs, upstairs landing, and bathroom. None of those are problems which engage the repairing standard set out in section 13 and 14 of the Housing (Scotland) Act 2006.

11. The Tribunal therefore make a repairing standard enforcement order requiring the landlord to

1. Repair or replace the shower door
2. Dismantle and remove the wooden garage
3. Repair or replace the rear door to the property

All within 6 weeks.

## **Decision**

13. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

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

15. The decision of the tribunal was unanimous.

## **Right of Appeal**

**16. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

## **Effect of section 63**

17. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **P Doyle**  
Legal Member

2 November 2021

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref:** Reference number: FTS/HPC/RP/21/0512

**Property:** 18 Luss Brae, Hamilton, ML3 9UP (“The property”)

**Parties:**

Graham Millar and Denise Millar, residing together at 18 Luss Brae, Hamilton, ML3 9UP (“the Applicants”)

Gary Jamieson, residing at 2 Ryelands Cottage, Strathaven, ML10 6QF (“the Respondent”)

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Nick Allan (Ordinary Member)**

Whereas in terms of their decision dated 3 August 2021, 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 in terms of Section 13(1)(a) of the 2006 Act;
- (b) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act; and
- (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, in terms of Section 13(1)(d) of the 2006 Act

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 to



- (a) Repair or replace the shower door
- (b) Dismantle and remove the wooden garage
- (c) Repair or replace the rear door to the property

The tribunal order 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.

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the tribunal at Edinburgh on 3 November 2021 before Emma Doyle, 252 Gorgie Road, Edinburgh

**P Doyle**

chairperson