

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/17/0004

Title no/Sasines Description: FFE68141

5 Cherrybank, Dunfermline, Fife KY12 7RG

("the property")

The Parties:-

Mr Kristian Dela Cour, residing at 5 Cherrybank, Dunfermline, Fife KY12 7RG

("the Tenant")

Mr John Jenkins, 23 Fodbank View, Dunfermline KY11 4UA and 158 Halbeath Road, Dunfermline KY11 4LB

("the Landlord")

Your Move, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ

("Agent for the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') comprised: -

Susan Christie - Legal/Chairing Member

David Godfrey - Ordinary Member

Whereas in terms of their decision dated 13 March 2017 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") in that the landlord has failed to ensure that the property meets the repairing standard whereby: -

(a) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d));

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: -

(a) To instruct a suitably qualified and reputable contractor to repair or replace the shower situated in the upper Shower Room of the property so as to ensure adequate temperature and pressure are consistently maintained during ordinary use and ensure the shower is in a reasonable state of repair and in proper working order; and in the event that the works carried out include replacement of the central heating boiler in the property, the Landlord shall in addition exhibit to the Tribunal an unqualified Gas Safety Certificate.

The tribunal order that the works specified in this Order must be carried out and completed within the period of **six weeks** from the date of service of this Notice.

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 are executed by Susan Christie, solicitor, chairperson of the Tribunal at Glasgow on 13 March 2017 before this witness: -

S Christie

witness

Legal Member

George Harvey Christie name in full

Address

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/17/0004

Title no/Sasines Description: FFE68141

5 Cherrybank, Dunfermline, KY12 7RG

("The Property")

The Parties:-

Mr Kristian Dela Cour, residing at 5 Cherrybank, Dunfermline, Fife KY12 7RG

("the Tenant")

Mr John Jenkins, 23 Fodbank View, Dunfermline KY11 4UA and 158 Halbeath Road, Dunfermline KY11 4LB

("the Landlord")

Your Move, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ

("Agent for the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') comprised: -

Susan Christie - Legal/Chairing Member

David Godfrey - 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. By application received on 6 January 2017 the tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 (“the Act”) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. The application by the tenant specifically stated that the tenant considered that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard and that the landlord had failed to ensure that: -
 - (a) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

This was made with reference by the tenant to the shower fitting in the Shower Room of the property which it was claimed was faulty, with insufficient power to initialise and maintain pressure and there being no indication of it having thermostatic control over the temperature of the water. The tenant alluded to the possibility of his complaint being resolved by either the existing shower being removed from the mains feed and being replaced with an electric power shower or the boiler in the property being upgraded.

3. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 26 January 2017 the tenant, landlord and landlord’s agent were notified that the President of the Housing and Property Chamber had decided to refer the application to a tribunal for determination.
4. Thereafter the Landlord made written representations to the Tribunal on 10 February 2017 and the tenant made no further written representations to the tribunal beyond the original application received on 6 January 2017. Both intimated their intention to attend the hearing. The landlord’s agent did not give any indication of its intentions.

The Inspection

5. On the morning of 8 March 2017, the tribunal inspected the shower in the property in the presence of both resident tenants Mr Kristian Dela Cour and

Ms Caroline Scott. The commencement of the inspection was slightly delayed to allow the landlord to arrive, should he wish to be in attendance, but ultimately proceeded in his absence.

6. The tenant operated the shower before the tribunal to no effect. He then placed the shower head onto the base of the shower tray and made a further attempt. After a short delay a sound was heard then water appeared. Once the shower head was replaced onto its cradle in the usual operating and showering position the water soon ceased. The temperature ring was also manoeuvred by the tenant with no discernible effect.
7. The tenant produced a copy Gas Safety Certificate dated 3 March 2017 relating to the property which had been provided to him by the landlord's agent which was consistent with the written representation of the landlord who had stated that it was due to be renewed by 4 March 2017. This incidental matter was simply noted for discussion at the hearing.

The Hearing

8. Following the inspection of the property the tribunal held a hearing at St Leonards Church hall, 2 Brucefield Avenue, Dunfermline KY11 4SX and heard from the landlord Mr Jenkins, the applicant tenant Mr Dela Cour and the second tenant Ms Caroline Scott. The Landlord was accompanied by Jim Cassells who was an observer.
9. The tenants and the landlord agreed that the lease agreement they had was a Short-Assured Tenancy for an initial duration of 6 months with an option of a longer term let as advertised. The landlord had since served a Notice to Quit and that the tenancy was due to end on 24/ 25 April 2017, stated by the landlord / the tenants. The tenants indicated their intention to quit at a date suitable to them and still to be identified between 15 April 2017 and 24/25 April their having obtained another tenancy.
10. The tenants generally submitted that they had expected the shower to work in a normal fashion. They had been left with a note of instruction by the landlord that required the shower head to be repeatedly placed in the shower tray until sufficient pressure built up. That this required to be repeated several times to achieve pressure and that it did not always produce results and could cut out three to four times when in use. They did concede that occasionally it had worked reasonably well and cited an example of a shower that had been taken on one occasion for six minutes. The shower worked from the hot water in the property and that there was an immersion heater, however it could not cope with heat and that also caused it to switch off. They could not identify whether the shower had any thermostatic control. The immersion heater produced water that could be "spitting hot" but that would not be the temperature at the shower head.

11. The landlord submitted that he had lived there for six years and he knew there were pressure issues with the shower but that it could be corrected by placing the shower head down in the shower tray. He had intended to replace the existing boiler with a combi boiler in 2017. He had accepted a quotation from his plumber Mr Brown to replace the boiler and the date of installation was still to be identified when the plumber could accommodate him. He accepted there was a pressure issue with the shower and that the shower head could not be left on its cradle to initialise.
12. The landlord was then asked to confirm his position on the Gas Safety Certificate dated 3 March 2017, produced during the inspection and that had been brought to the hearing. He read the document and agreed it was a proper copy of the original. The landlord was asked if he had any objection the Certificate being lodged at the hearing and referred to for its terms, given the lateness of its production. He agreed for it to be received and considered given its very recent date of issue. A copy of the said certificate is attached and signed as relative hereto. Both parties were advised by the tribunal that whilst the kitchen cooker was not an issue in the application made, it was not deemed to be safe to use, as per the Certificate. The landlord was asked about the tribunal's *observation* that the kitchen cooker was not deemed to be safe. He accepted that that was what the Certificate stated. He was prepared to undertake to attend to and resolve this safety issue as soon as possible but indicated that access to the property had been an issue when he had attended at the property when sending the plumber there. The tenants agreed to facilitate early access for this to be attended to and whilst there was a difference of opinion as to a past request for access, the tribunal noted that both parties showed willingness to attend to this matter voluntarily and facilitate access for repairs generally, with reasonable notice being given by the landlord to the tenant, until such times as the lease comes to an end.

Summary of the issues

13. The only issue in the application relates to whether the shower complained of is in a reasonable state of repair and whether it is in proper working order.

Findings of fact

14. The tribunal finds the following facts to be established: -
- I. The shower complained of is situated in a Shower Room on the upper level of the property, formed in the attic space. The room is accessed from the upper landing. The shower works on a gravity feed system.
 - II. The applicant tenant lives at the property along with the second tenant Ms Caroline Scott and their daughter.
 - III. The tenancy is a Short-Assured Tenancy and is due to end on 24/25 April 2017.

- IV. The tenant raised the issue of the shower with the landlord prior to the current application being made.
- V. The shower is not capable of being turned on and producing adequate and continuous water flow, pressure and temperature whilst the shower head is in position in its cradle on the shower wall fixture, for use by a tenant.
- VI. The shower being a fixture fitting and appliance as referred to in Section 13(1)(d) of the Act is not in a reasonable state of repair and not in proper working order.

Reasons for decision

- 15. The tribunal viewed the shower at the inspection and noted that it was not capable of being turned on and producing adequate and continuous water flow, pressure and temperature whilst the shower head is in position in its cradle on the shower wall fixture. It could attain a degree of pressure when placed in the shower tray but did not easily maintain pressure for any duration when placed in the shower head cradle. The temperature ring did not appear to operate with any discernible effect. The landlord accepted at the hearing that he knew the water pressure was an issue at the shower. The landlord had made representations that the shower was a gravity feed system and on inspection this was verified.
- 16. It was the view of the tribunal that there had been a minor issue with access. The Landlord and tenant did ultimately agree on future access being sought and given, to resolve outstanding matters, with reasonable notice to be given to the tenant.

Observation

- 17. Whilst the kitchen cooker did not form part of the application and was not an issue to be determined by the tribunal, given the information contained in the Gas Safety Certificate dated 3 March 2017, the tribunal deemed it appropriate to raise the matter with the parties. The tribunal was satisfied with the undertaking given by the landlord to attend to making it safe to use and the agreement by the tenant to allow access.

Decision

- 18. The tribunal accordingly determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 19. The tribunal proceeded to make a repairing standard Enforcement Order as required by Section 24(1) of the Act.
- 20. The decision of the tribunal was unanimous.

Right of Appeal

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.

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Signed

Date 13 March 2017

Legal Member Susan Christie

Housing and Property Chamber

First-tier Tribunal for Scotland



PHOTOSHEET



Property: 5 CHERRYBANK, DUNFERMLINE KY12 7RG

Ref no: FTS/HPC/RP/17/0004

Tribunal: Susan Christie and David Godfrey

Inspection: The property was inspected at 10.00 am Wednesday 8th March 2017.

Access: Mr Kristian Dela Cour (Tenant) was present and provided access to the property.

Photographs

1. Shower fitting
2. Central heating boiler
3. Gas safety certificate
4. Kitchen cooker



Shower fitting



Central heating boiler

Domestic Landlord Gas Safety Record

Page No 1 of 2
No. of Appliances Inspected 7
Gas Safe Reg No. 650704

Inspection Date: 3 March 2017 Unique Serial No. 10288 1488 2241 8794

| Landlord / Agent Details | | Tenant Details | | The Gas Safe Register Details | |
|--------------------------|-------------------------------------|----------------|--------------------------|-------------------------------|--------------------------|
| Name: | Yous Wang | Name: | Scott | Name: | David Conner |
| Address: | 31a North Bridge Street Bathurst | Address: | 6 Chantry Lane Durham | Address: | 14 Rye Water Road Rye |
| Postcode: | BA14 6PL | Postcode: | | Postcode: | KN12 8PP |
| Telephone: | 01223 444444 | Telephone: | | Telephone: | 01223 444444 |

| Location | Appliance Type | Make | Model | Flue Type (L, C, D, P, R, S, T) If S, T, P, R, S, T | Landlord's Appliance is registered Yes / No / NA | Appliance Inspected | Operating pressure at start of test mbar | Safety device checked Yes / No / NA | Ventilation checked Yes / No / NA | Gas pressure checked Yes / No / NA | Flue gas temperature checked Yes / No / NA | Appliance safe to use Yes / No / NA | Appliance safe to use Yes / No / NA |
|----------|----------------|---------------------|-------------|---|---|------------------------|--|---|---|---|--|---|---|
| | | | | | | | | | | | | | |
| 1 | Combi-boiler | System Boiler (Gas) | Space Saver | RS 40 | Yes | Yes | 9.8 mbar | Yes | Yes | Yes | Yes | Yes | Yes |
| 2 | Kitchen | Cooker | Belling | PL | Yes | Yes | 20 mbar | No | Yes | Yes | Yes | Yes | Yes |

| Defects identified | Remedial Action Taken | Timing of next inspection (as advised by) | Remedial Action Taken | | | | | | | | | | |
|--------------------|-----------------------|--|-----------------------|-----|----|----|----|----|----|----|----|----|----|
| | | | CO | CS | CS | CS | CS | CS | CS | CS | | | |
| 1 | | | NA | Yes | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| 2 | | | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |

See attached detailed defects / remedial sheet

| Final Checks | | Sign off | | File Types PDF | |
|---|-----------------------------|---|--------------|---------------------------------|--|
| Gas tightness test initial value: 20 mbar | TT final value: 20 mbar | This Safety record is issued by: Signed | | FL - Flammable | |
| Domestic gas tightness test Yes/No/NA | Yes | Gas Operative | David Conner | CS - Corrosive | |
| Gas installation conforms satisfactory visual inspection Yes/No | Yes | Operative ID No | 203704 | RS - Rotten smell (rotten fish) | |
| Emergency Control satisfactory Yes/No | Yes | Received by: Signed | | MS - Fridge | |
| Main Protective Equipment Working satisfactory Yes/No | Yes | | | MS - Fridge | |
| CO alarm present? Yes | CO alarm working? Yes | | | MS - Fridge | |
| Smoke alarm present? Yes | Smoke alarm(s) working? Yes | | | MS - Fridge | |

This inspection is for gas safety purposes only in accordance with the Gas Safety (Installation and Use) Regulations. Flues were visually inspected and checked for satisfactory operation of products of combustion. A detailed thermal inspection of the flue integrity, construction and lining has not been carried out.

Name: Scott Postcode: Tonsard Date: 3 March 2017

NEXT SAFETY CHECK DUE BEFORE 3 March 2018

This certificate was produced using The Water Gas App Copyright Gas Safety Yorkshire Ltd

1 March 2017

Gas safety certificate



Kitchen cooker

David Godfrey, MRICS
8th March 2017