

# 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: PRHP/RP/16/0259**

**Title Number: ELN1941**

**1c Hawthorn Road, Prestonpans, EH32 9QW  
("the Property")**

**The Parties:-**

**East Lothian Council, John Muir House, Haddington, EH41 3HA  
(represented by Mr Ewan Ritchie, Licensing Team Leader)  
("the Third Party Applicant")**

**Ms Nicola Gardner, residing at the Property  
("the Tenant")**

**Mr Mohammed Tariq, 322 Albert Drive, Glasgow, G41 5DZ  
("the Landlord")**

Whereas in terms of their decision dated 29 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") and in particular that the landlord has failed to ensure that:-

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 Act;

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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) Obtain an up to date Electrical Installation Condition Report ("EICR") from a suitably qualified and reputable electrician in standard industry format containing no C1 or C2 recommendations in respect of the Property;
- (b) Implement any and all recommendations contained within the said EICR.

- (c) Provide the Tribunal with a full and complete copy of the said EICR and a note of the identify and qualifications of the electrician who has carried out said Report.
- (d) Obtain an up to date Gas Safety Certificate in respect of the Property carried out by a currently registered Gas Safe engineer.
- (e) Provide the Tribunal with a full and complete copy of the said Gas Safety Certificate and a note of the identity and proof of registration of the Gas Safe engineer providing the said Certificate.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **thirty days** 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.**

**Please note that, separately, it is an offence in terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 to fail to produce something which is required in accordance with Tribunal Rules. On conviction, a person who commits such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or 12 months imprisonment or both.**

In witness whereof these presents type written on this and the preceding page are executed by Maurice O'Carroll, Advocate, Advocates' Library, Parliament House, Edinburgh, Legal Member and Chair of the Tribunal, at Glasgow on 4 April 2017 before this witness:-

**M Ocarroll**

Chairman

**E Barclay**

witness

1 ATLANTIC QUAY address

EWAN BARCLAY

name in full

45 ROBERTSON STREET

G2 85B

# 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: PRHP/RP/16/0259**

**Title Number: ELN1941**

**1c Hawthorn Road, Prestonpans, EH32 9QW  
("the Property")**

**The Parties:-**

**East Lothian Council, John Muir House, Haddington, EH41 3HA  
(represented by Mr Ewan Ritchie, Licensing Team Leader)  
("the Third Party Applicant")**

**Ms Nicola Gardner, residing at the Property  
("the Tenant")**

**Mr Mohammed Tariq, 322 Albert Drive, Glasgow, G41 5DZ  
("the Landlord")**

**The Tribunal:-**

**Mr Maurice O'Carroll (Legal Member and Chair)  
Mr David Lawrie (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 the Landlord 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 29 July 2016, the Third Party Applicant (hereafter "the Applicant") applied to the Private Rented Housing Panel (now 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").

2. The application submitted by the Applicant indicated that after its own inspection of the Property, it considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the Act;

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 Act;

The 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 Act;

The furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed in terms of section 13(1)(e) of the Act;

The Property has 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; and

The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health in terms of section 13(1)(g) of the Act.

3. Specifically, the Applicant stated on the application form that: there was no hard-wired smoke/fire detection system in place; there were issues with the gas boiler; there were cracked and loose electrical sockets; the living room lights were not properly secured to the ceiling; the wiring in the kitchen and other locations was faulty or at least suspect; there was no EICR, PAT or Gas Safety Certificates in place and there was no means of carbon monoxide detection within the Property.
4. The Convenor of the Private Rented Housing Panel (now the Tribunal) made a decision to refer the application to a Committee of the Panel on 16 September 2016 in terms of section 23(1) of the Act.
5. By letter dated 18 October 2016, the Private Rented Housing Panel (now the Tribunal) served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Applicant and the Landlord with a copy to the Tenant as an interested party.
6. The original date set down for an inspection and hearing to take place was 25 November 2016.

7. Following service of the Notices of Referral, on 16 November 2016, the Applicant made further written representations to the Tribunal indicating that certain of the matters contained within the application had now been rectified and requesting cancellation of the inspection and hearing due to take place on 25 November 2016. The Landlord also made further written representations on 7 November 2016 in which it was indicated that the boiler within the Property had been replaced, the electrical sockets had been replaced and provision for smoke and carbon monoxide detection had been made. A receipt for electrical items and what appeared to be three replacement Gas Safety Certificates were attached to the Landlord's written representations and what bore to be an EICR was also subsequently produced. The Landlord also indicated that he would be unable to attend the hearing and inspection due to take place on 25 November 2016.
8. In all the circumstances, the Panel took the decision to postpone that hearing, but to keep the application open until such time as all matters referred to in the application were completely resolved.
9. By email dated 25 January 2017, the Applicant sent an email to the Tribunal informing it that the Tenant doubted the authenticity of the documentation sent in to the Tribunal by the Landlord. The email also stated that there were still necessary repairs outstanding. In the circumstances a new date for a hearing and inspection was fixed for 23 March 2017. A request dated 15 March 2017 to postpone the hearing for four weeks by the Landlord in order to carry out further works was denied by the Tribunal in light of the history of the application. Matters had been outstanding for over a year at the time of that request: the first letter of notification regarding repairs had been sent to the Landlord by the Applicant on 29 January 2016.
10. The Tribunal inspected the Property at 10am on 23 March 2017. Present at the inspection was Mr Ewan Ritchie for the Applicant along with two colleagues from the Environmental Health Department who played no active part in the proceedings. The Landlord was present during the inspection, accompanied by a Mr Najif Jaffri. The Tenant was also present. The Ordinary Member took photographs of the Property during the inspection.
11. Following the inspection of the Property the Tribunal held a hearing at Prestonpans Community Centre, Prestonpans at 11.30am. All parties present at the inspection were again present at the hearing. The Landlord and Mr Jaffri gave evidence and answered questions from the Tribunal. Mr Ritchie and the Tenant also gave evidence at the hearing.
12. The Landlord submitted as follows:-

The Tribunal queried the Electrical Installation Condition Report ("EICR") dated 20 November 2016. The EICR was only two pages long and did not

have the usual listings using the categories of C1, C2 and C3 etc. The Landlord gave evidence that he had obtained the services of a Mr Robert Dalgetty whom he had sourced using the Yellow Pages. Mr Dalgetty had produced the EICR he had submitted and he was unaware of how many pages such a report would normally contain or its usual content. He further submitted that he had attended the Property approximately two weeks prior to the inspection accompanied by a different electrician whom he knew from Glasgow who had considered the works to the electrical system to be satisfactory, despite the condition of the socket in the kitchen which is described further below. There was no explanation why Mr Dalgetty did not attend the Property on the second occasion or why the Glasgow based electrician did not provide the original EICR. The Landlord stated that he had wished to provide an additional socket in the kitchen on the advice of his Glasgow-based electrician but he was not able to obtain the consent of the Tenant to allow the works to be carried out.

In relation to the Gas Safety Certificate reports submitted to the Tribunal, the Tribunal noted that these appeared on sequentially numbered Certificates. Two of them were dated 20 October 2016 and one was undated. The undated Certificate and one of the dated ones referred to the Vokhera boiler which had been installed in May 2016. Another of the dated certificates referred to an Alpha boiler and bore to be a replacement of a Certificate issued on 30 May 2016 which is inconsistent with the evidence of the date of the new boiler having been installed. No explanation was proffered as to the reason why three successively numbered Certificates had been produced. It was maintained that the author of the report (a Mr G Hughes) had been a Gas Safe engineer and the Landlord had simply forwarded to the Tribunal what had been produced to him.

Mr Ritchie for the Applicant gave evidence that he had carried out a search according to the business details on the certificate and could find no Gas Safe business associated with the name G Hughes that appeared on the Certificates. He further noted that in the top left hand corner of the Certificates, the box for the Gas Safe Engineer to enter his registration number had been left blank in all three Certificates. In his view this raised issues of Health and Safety of the Tenant and others living within the Property.

Mr Ritchie also noted concern regarding the extent of loose surface wiring which ran through the kitchen and into the adjoining living room. There was also unsecured wiring in the cupboard in the corner of the kitchen where the old boiler had been located which caused him concern regarding the safety of the electrical provision within the Property.

The Tenant gave evidence that since October 2016, light bulbs within the main bedroom and two in the hallway habitually blew out after a short time and were no longer being replaced as a result. She indicated that she did not allow further electrical works to be carried out to the Property by the Landlord when he attended the Property two weeks prior to the inspection

as she had no faith that the electrician with him was qualified. In any event no certification of that was provided to her.

### **Summary of the issues**

13. The issue to be determined is whether the Landlord has met his obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal are as stated within the application.

### **Findings of fact**

14. The Tribunal finds the following facts to be established:-

- The tenancy is a short assured tenancy which commenced on 1 February 2004. The tenancy has since the end of the initial term continued on a monthly basis.
- The rent is £550 per calendar month.
- The EICR and Gas Safety Certificates provided to the Tribunal by the Landlord cannot be relied upon.

The inspection of the Property revealed the following:

- The Property is an upper flat located above a takeaway food shop and accessed via an external staircase to the rear of the block in which it is located.
- The Property has a total of four bedrooms which are accessed from an L-shaped hallway.
- To the left of the hallway after the first bedroom is the doorway to the living room which gives onto the kitchen which is separated from the living room by a wall with an open archway in the middle.
- At the end of the hallway before it turns to right to a further two bedrooms is the bathroom with shower, basin and WC.
- The living room has recently been replastered. The plastering around the light fitting there has not been entirely completed and there is therefore a gap around it.
- There are smoke alarms in the hallway and the living room with a heat sensor in the kitchen and a carbon monoxide detector. The smoke alarms are mains operated and inter-connected.
- New light switches and electrical sockets have been fitted where they were previously broken.
- Within the kitchen, by the window and behind the washing machine is a large socket. The socket appears to be the sole one feeding all electrical devices within the kitchen by means of ad hoc connections. There are un-housed surface wires lying across kitchen surfaces to the left and right of the socket.
- In particular, the wiring to the left of the socket leads to a hole in the wall to the adjoining living room and the wiring has been raggled through to provide electricity within the living room in addition to that provided to various appliances within the kitchen.

- There are loose lying wires in the cupboard on the wall on the opposite side from the window which formerly housed the boiler.
- There is loose lying and unhoused wiring contained within the loft space to the Property.
- The new boiler is unhoused and located next to the former boiler housing cupboard.
- The Property is generally in poor decorative order.

15. A schedule of photographs taken at the inspection is appended to this decision.

### **Reasons for the decision**

16. It was clear that a number of repairs had been carried out to the Property since the time that the application was made. However, some serious safety issues remain which in the view of the Tribunal require to be remedied as a matter of urgency.

17. Given the state of the wiring within the kitchen and leading into the adjoining living room, the Tribunal was unable to accept as credible the evidence led by the landlord that an EICR had been obtained which passed the state of the electrical installation as being acceptable. It also did not believe that a qualified electrician would have found the state of the electrics to be acceptable when the Property was viewed approximately two weeks prior to the inspection.

18. The Tribunal accepted the evidence of the Tenant that lights within the hallway and main bedroom frequently blew. This supports the impression formed by the Tribunal that the state of the installations for electricity within the Property is unsatisfactory, if not unsafe. The Tribunal was also persuaded that a fresh EICR from a reputable and qualified electrician required to be obtained given the irregular and apparently incomplete format of the one supplied to the Tribunal by the Landlord. This will form part of the Repairing Standard Enforcement Order ("RSEO") to follow.

19. Similarly, the Tribunal was highly sceptical of the Gas Safety Certificates which had been provided to it. This was because of the discrepancies within them as noted above and put to the Landlord without satisfactory explanation. The Tribunal also accepted the evidence of Mr Ritchie that he was unable to establish that the author of the report was a Gas Safe engineer. The substance of that evidence, i.e. that there was no such certified inspection, is also supported by the fact that no Gas Safe registration number is provided in the appropriate box within the purported Gas Safety Certificates. The reason why three certificates all numbered in sequence, one undated, were provided was not answered satisfactorily.

20. In the circumstances, the Tribunal considered that in the interests of the health and safety of the Tenant, it had no option but to require a Gas Safety Certificate to be obtained by the Landlord from a duly registered Gas Safe Engineer with proof of such certification being provided. The



Landlord should be aware that any failure to provide such certification is a criminal offence.

### **Decision**

21. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act in respect of section 13(1)(c) of the Act.
22. The Tribunal proceeded to make a RSEO as required by section 24(1) of the Act.
23. The decision of the Tribunal was unanimous.

### **Right of Appeal**

24. **A landlord or tenant 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**

25. 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

**M Ocarroll**

Date: 29 March 2017

Legal Member and Chair



**PHOTOGRAPHIC SCHEDULE**



**1C HAWTHORN ROAD PRESTONPANS EH32 9QW**  
**PRHP/RP/16/0259**

**Ceilings showing smoke/heat detector provision and renewed light fitting in living room**



**Suspect cabling**

Behind cooker area



Living room socket



Kitchen cupboard



Light fitting roofspace



**DAVID LAWRIE**  
Surveyor  
First-Tier Tribunal  
Housing and Property Chamber

24 March 2017