

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/15/0267

Re: Property at 78 Drip Road, Raploch, Stirling FK8 1RE ("the Property/the house")

Title No: STG39465

The Parties:-

Miss Janice Martin, residing sometime at 78 Drip Road, Raploch, Stirling FK8 1RE ("the Tenant")

Athar Almass Firdous, residing at 32 Alpin Drive, Dunblane FK15 0FQ ("the Landlord")

Tribunal Members: Mr George Clark (Legal Member/Chair) and Mrs Sara Hesp (Ordinary)(Surveyor) Member

Whereas in terms of their decision dated 16 August 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"), 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:

- (1) exhibit to the Tribunal a current Gas Safety Certificate in respect of the Property, issued by a Gas Safe registered engineer and
- (2) exhibit to the Tribunal a current Electrical Installation Condition Report, issued by an electrical contractor who is registered either with NICEIC or with SELECT.

The tribunal order that the reports specified in this Order must be obtained within the period of 4 weeks from the date of service of this Order.

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.

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 George Barrie Clark, solicitor, Chairperson of the Tribunal, at Lasswade, on 16 August 2017, before this witness, Valerie Elizabeth Jane Clark, Droman House, Lasswade, Midlothian.

____ **G Clark** _____ Legal Member/Chair person
____ **V Clark** _____ Witness

Housing and Property Chamber First-tier Tribunal for Scotland



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

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The Parties:-

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FK8 1RE ("the Tenant")

Athar Almass Firdous, residing at 32 Alpin Drive, Dunblane FK15 0FQ
("the Landlord")

Tribunal Members: Mr George Clark (Legal Member/Chair) and Mrs Sara
Hesp (Ordinary)(Surveyor) 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) of the Housing (Scotland) Act 2006 ("the Act"), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application dated 2 October 2015, received on 7 October 2015 the Tenant applied to the Private Rented Housing Panel 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(b) 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,

(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, and

(e) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.

3. The Tenant stated in the application that there were three broken windows at the Property, several windows were not wind and water tight and window frames required maintenance, the external door was not wind and water tight, the gas central heating boiler had not been serviced since the tenancy commenced in March 2013, the heating and hot water system had been faulty since the Tenant moved in, there were bare wires in the kitchen and holes in the kitchen walls, several electrical sockets did not work and some were cracked, the lights in the living room, bedrooms and kitchen were faulty, all internal doors were ill fitting, had handles missing and did not close properly, the kitchen units were ill fitting and some of the doors were missing and there were no hard-wired, interlinked smoke detectors in the Property.
4. By letter dated 10 December 2015, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
6. Following service of the Notice of Referral, the Parties made no further written representations to the Committee, but the inspection and hearing, scheduled for 1 February 2016, were postponed at the request of the Landlord, as he had been sequestrated on 15 September 2015 and the Accountant in Bankruptcy had been appointed to be the Trustee in the sequestration. This was confirmed by the Landlord in a letter dated 3 February 2016. He also, by e-mail dated 29 January 2016, advised the Private Rented Housing Panel that the Tenant had vacated the Property.

7. As the Tenant had vacated the Property, she was treated, in terms of Schedule 2, paragraph 7(1) of the Act, as having withdrawn the application and was, therefore, no longer a party to the proceedings, but, for ease of reference, is referred to throughout this Statement of Decision as "the Tenant".
8. The Committee, comprising Mr George Clark (chair) and Mrs Sara Hesp (surveyor member), decided, in terms of Schedule 2, paragraph 7(3)(b) of the Act to continue to determine the application, notwithstanding the fact that the Tenant had vacated the Property, as the complaints made by her, if substantiated, represented a health and safety risk to any future tenant of the Property. This decision was intimated to the Landlord.
9. On 6 April 2016, the Landlord wrote to the Private Rented Housing Panel, contending that because of the sequestration, it would have been illegal for him to be involved in any business or management activities.
10. On 7 April, 2016, the Private Rented Housing Panel received a letter, dated 5 April 2016, from Wylie and Bissett, 105 Bath Street Glasgow, enclosing a copy Award of Recall of the sequestration of the Landlord dated 21 January 2016.
11. The Committee, having received that letter, continued its determination of the case and intimated to the Landlord a new date for inspection and hearing, namely 21 June 2016.
12. On 3 June 2016, the Landlord wrote to the Private Rented Housing Panel, advising that he was to be unavailable from 20-23 June and a revised date of 30 June 2016 was intimated to him by letter dated 20 June.
13. The Private Rented Housing Committee arrived to inspect the Property on the morning of 30 June 2016. There was nobody there to admit the Committee to the Property, so the inspection could not go ahead. The Committee did, however, observe that the entrance door to the Property appeared to be insecure and two windows to the rear of the Property were boarded over.
14. Following the failed attempt to inspect the Property, the Committee held a hearing at Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The Landlord was not present or represented at the hearing. The Tenant, having vacated the Property, was no longer a party to the proceedings.
15. Following the hearing, the Private Rented Housing Panel sent to the Landlord on 19 August 2016 a Notice of Required Entry to the Property, advising him that a further inspection and hearing would take place on 30 September 2016 and that, if entry was not provided on that date and at the time intimated, a Warrant authorising the members of the Committee to exercise the right of entry afforded to them under Section 181(2) of the Act, using reasonable force, might be granted by a Sheriff or Justice of the Peace in terms of Section 182 of the Act.

16. The Committee arrived to inspect the Property at the time intimated on 30 September 2016. The Committee Chairman audibly knocked on the entrance door on 3 occasions. The Committee could hear the sound coming from within the Property of a dog barking, but nobody answered the door to allow the Committee to carry out its inspection.
17. Following the unsuccessful attempt to inspect the Property, the Committee held a hearing at Stirling Enterprise Centre, John Player Building, Stirling FK7 7RP. The Landlord was not present or represented at the hearing.
18. The Committee noted that the entrance door to the Property appeared now to be secure and that the boarding had been removed from the two rear windows which had been boarded over at the time of the previous inspection. This, together with the fact that there was a dog present in the Property, led the Committee to conclude that the Landlord had re-let the Property.
19. The Committee was of the view that there were health and safety implications in the Tenant's application and that that determination of the application should go ahead, in order to ensure the Property met the repairing standard, particularly as the Landlord had re-let. As the Landlord had failed, after due notice had been given, to provide access to the Committee, the Committee was of the view that an application to the Sheriff should be made for a Warrant authorising entry to the Property in terms of Sections 181(2) and 182 of the Act.
20. The Committee also determined that, in view of the potential health and safety implications a Direction to the Landlord should be made, requiring him to provide to the Committee a current Gas Safety Certificate and an Electrical Installation Condition Report in respect of the Property and either the Energy Performance Certificate which should have been provided to the Tenant at the commencement of the tenancy or the Energy Performance Certificate that should have been provided when the Property was re-let.
21. The jurisdiction of the Private Rented Housing Committee transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland on 1 December 2016 and the members of the Committee were appointed as the Tribunal members to determine the application.
22. On 10 April 2017, the Tribunal obtained a Warrant in terms of Section 182 of the Act from a Justice of the Peace for the Sheriffdom of Tayside, Central and Fife, authorising the Tribunal to enter upon the Property, for the purpose of enabling the Tribunal to determine the application under Section 24 of the Act.
23. On 3 July 2017, the Tribunal arrived to inspect the Property. It was not necessary to exercise the right conferred by the Warrant, as the new tenant, Ms Ann Grieve, admitted the Tribunal members to the Property.

The Landlord was present at the inspection. The Tenant, no longer being a party to the proceedings, was not present or represented at the inspection or the subsequent hearing.

24. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision

25. Following the inspection, the Tribunal held a hearing at Wallace House, Maxwell Place, Stirling FK8 1JU. The Landlord was not present or represented at the hearing.

Findings of fact

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

- The Property is a ground floor flatted dwellinghouse and is currently occupied by a tenant and her family.
- The windows of the Property appear to be wind and water tight and none of them were broken at the time of the inspection.
- There is no evidence that any of the window frames require maintenance or repair.
- The external door appears to be wind and water tight.
- The current tenant advised the Tribunal at the inspection that the central heating boiler had been serviced and that the central heating and hot water systems were in working order.
- There are no bare wires in the kitchen.
- There are no holes in the kitchen walls.
- The current tenant advised the Tribunal at the inspection that all the electrical sockets were in working order.
- There is no evidence of any of the electrical sockets being cracked.
- There is no evidence that any of the light fittings are faulty.
- The internal doors all have handles and all close properly.
- There are fitted kitchen units, all of which have doors and facings.
- There are hard wired and interlinked smoke detectors in the hall and living room and a heat detector in the kitchen.
- The Tribunal has seen a Gas Safety Certificate in respect of the Property.
- The Tribunal has seen the front cover page of an Electrical Installation Condition Report in respect of the Property.

Summary of the issues

27. The issues to be determined were whether the Landlord had complied with the duty set out in Section 14(1)(b) of the Act and whether a Repairing Standard Enforcement Order should be made in respect of the Property.

Reasons for the decision

28. The Tribunal was satisfied from its inspection of the Property that, apart from those relating to gas and electrical safety, none of the complaints set out in the application of failure to comply with the repairing standard should be upheld.
29. The Tribunal was, however, not satisfied with the Gas Safety Certificate or the Electrical Installation Condition Report ("EICR") provided by the Landlord. The engineer who had provided the Gas Safety Certificate did not, from the Tribunal's enquiries, appear to be currently registered as a Gas Safe engineer under the number given on the Certificate and the Tribunal had only seen one page of the EICR. Further, the company who carried out the work did not, from the Tribunal's enquiries, appear to be registered with either NICEIC or SELECT. Gas Safety Certificates are only acceptable to the Tribunal if issued by a Gas Safe registered engineer and Electrical Installation Condition Reports are only acceptable to the Tribunal if issued by an electrical engineer who is registered either with NICEIC or SELECT. In the absence of such certificates, the Tribunal was unable to determine the issues in the application relating to gas and electrical safety. The Tribunal determined, therefore, that the Landlord had not complied with the Direction made on 30 September 2016. Accordingly, the landlord had not complied with the duty set out in Section 14(1)(b) of the Act and that a Repairing Standard Enforcement Order should be made in respect of the Property.
30. The Tribunal observed that the carbon monoxide detector is not in the correct place. The Tribunal recommends that the Landlord ensures that it is relocated to the central heating boiler cupboard. This matter was not, however, included in the application, so the Tribunal's comment on it is by way of observation and recommendation.
31. 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..... **G Clark** Date 16 August 2017
Legal Member/Chair

This is the file of photographs referred to in the foregoing
Statement of Decision

G Clark lay member Chair 16/5/2017

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of Photographs of 78 Drip Road, Raploch, Stirling FK8 1RE

The following photographs were taken during attempted inspection on 30 June 2016



Side/entrance elevation



Rear elevation



Entrance door

The following photographs were taken during attempted inspection on 30 September 2016:



Rear elevation



Entrance door



Side elevation

The following photographs were taken during inspection on 3 July 2017:



Front elevation



Smoke detector – hallway



Smoke detector – living room



Window – living room



Kitchen



Kitchen



Sockets and switches - kitchen

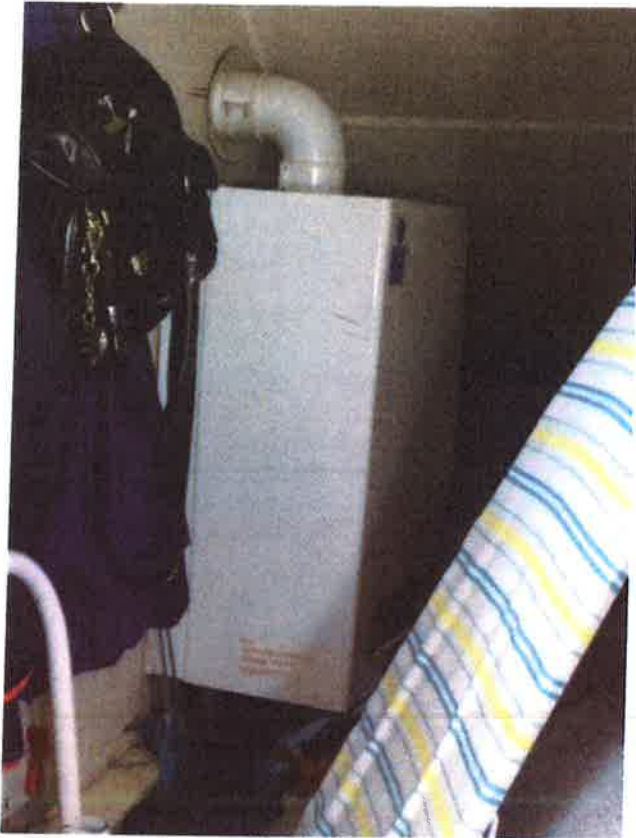




Heat detector – kitchen



Carbon monoxide detector – kitchen



Gas Boiler



Switch - hallway