

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/16/0322

Land Register Title No: FFE80100

1, Cleish Gardens, Kirkcaldy, Fife KY2 6A ("The house")

The Parties:-

The Parties:-

**Mr Karl Tonks, formerly residing at 1 Cleish Gardens, Kirkcaldy, Fife KY2 6AA
("the Tenant")**

**Ms Jusbinder (also known as Jasbinder) Kaur, 3 Cleish Gardens, Kirkcaldy,
Fife KY2 6AA ("the Landlord")**

NOTICE TO: Ms Jusbinder Kaur ("the Landlord ")

Whereas in terms of their decision dated 8th May 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 house is:-

(a) wind and watertight and in all other respects reasonably fit for human habitation

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:-

(a) carry out such works as are necessary to the patio doors of the house to ensure that the doors are fully functional and secure and able to be used safely without undue strength needed to open or close them.

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

A landlord, tenant or third party applicant 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 Morag Leck, solicitor, chairperson of the tribunal at *Glasgow* on *26th May 2017* before this witness:-

 **J Kane**

witness

M Leck chairperson

Janet Kane 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: PRHP/RP/16/0322

1, Cleish Gardens, Kirkcaldy, Fife KY2 6A ("the House")

The Parties:-

Mr Karl Tonks, formerly residing at 1 Cleish Gardens, Kirkcaldy, Fife KY2 6AA ("the Tenant")

Ms Jusbinder (also known as Jasbinder) Kaur, 3 Cleish Gardens, Kirkcaldy, Fife KY2 6AA ("the Landlord")

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 ") in relation to the House concerned, and taking account of the written evidence submitted by the parties together with oral representations made by the Landlord at the inspection on 10th January 2017 , determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of-

Morag Leck – Chairperson

Geraldine Wooley – Ordinary member

Background

1. By application dated 11th October 2016 , the Tenant applied to Private Rented Housing Panel ("PRHP") (which body was succeeded by the First-tier Tribunal (Housing and Property Chamber) on 1st December 2016) 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 stated that the Tenant considered that the Landlord had failed to comply with her 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 for for human habitation (as required by section 13(1)(a) of the Act) ; and
 - (b) 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 (as required by section 13(1) (c) of the Act)
3. The Tenant set out the following complaints in his application :-
 - (a) Bedroom windows have broken seals and gaps
 - (b) Patio doors non functional
 - (c) Boiler obsolete, and advised by several independent plumbers that it needs to be replaced
 - (d) Property has been without heating and hot water for seven consecutive days
 - (e) Recent electrical inspection failed
4. By Minute dated 8th November 2016, the Convener of the PRHP with delegated powers under section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (now the Tribunal) for a determination.
5. 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 on 1st December 2016. An inspection of the house and a hearing were fixed for 10th January 2017.
6. Following service of the Notice of Referral the Tenant intimated to the Tribunal by email dated 14th December 2016 that he had vacated the house and advised the Landlord that he wished to withdraw his application.
7. The Tribunal elected to continue with the application and a Minute of Continuation was issued on 15th December 2016 all in terms of Paragraph 7 of Schedule 2 to the Act.
8. On 23rd December 2016 the Tribunal issued a Direction to the Landlord requiring her to provide the Tribunal by 6th January with a current Gas Safety Record for the house. On 29th December 2016 an email was received by the Tribunal from the Landlord's agents Fife Letting Service Ltd attaching a Gas Safety Record dated 5th May 2016 .Thereafter the Landlord's agents intimated to the Tribunal on 4th January 2017 that they were no longer acting as agents.

9. No further representations were received prior to the hearing.
10. The Tribunal inspected the house on the morning of 10th January 2017. The Tenant was neither present nor represented, no longer being the Tenant of the house. The Landlord was present and explained that she was unable to attend the hearing but wished to point out to the Tribunal all the work undertaken in the house and that further work was still to be carried out. The Tribunal noted that considerable work had been carried out to the house prior to the inspection and there were no longer live issues in relation to the majority of defects set out in the application other than the functionality of the patio doors. As the patio doors lacked an internal door handle their functionality could not be ascertained. Photographs were taken during the inspection and these are attached as a schedule to this decision.
11. Following the inspection of the Property the Tribunal held a hearing at Linktown Community Action Centre, Kirkcaldy. The Tribunal considered the written evidence submitted by the parties. Again the Tenant was neither present nor represented at the hearing. The Landlord had stated at the inspection that she would be unable to attend the hearing and had made representations at the inspection.
12. There were no submissions at the hearing. The Landlord explained at the inspection that the boiler had been replaced and produced paperwork to support this including a more recent Gas Safety Certificate dated 5th January 2017 than that provided by her previous agent to comply with the Tribunal's Direction prior to the hearing. She also produced an Electrical Installation Condition Report (EICR) and pointed out the new Consumer Unit which had been installed. She further explained that she had dismissed the previous letting agents and engaged a new company. She produced a list of work which was to be undertaken in the house by a firm of builders. When asked at the inspection if this work would include repairs to the patio doors she advised that this would be added. The Tribunal noted that this was the only matter outstanding and it was clear that the Landlord had undertaken extensive works to address the other complaints set out in the Tenant's application. Accordingly the Tribunal agreed to adjourn the hearing to allow the Landlord to carry out the final work and thereafter made a Direction ordering the Landlord to produce photographic evidence that the internal handle of the patio doors had been replaced together with a receipt for the work carried out. The Landlord subsequently produced to the Tribunal on 1st March 2017 photographs of the patio doors and an invoice from MD General Builders, Dunfermline.
13. The Tribunal inspected the property again on the morning of 25th April 2016. The Landlord was not present and had advised in advance that she would be unable to attend the hearing. She referred at that time to her response to the Tribunal's Direction. Access to the house was given by the new Tenant. The Tribunal in particular inspected the replacement door

handle and bolts on the patio doors. The current tenant explained that the patio doors were not working properly and could only be opened with considerable difficulty using strength as the opening section appeared to be poorly fitted to the runner. He demonstrated this to the Tribunal members and pointed out the difficulties using the bolts which had been added to lock the doors, but were misaligned with the opening section of the patio doors. Further photographs were taken at this inspection which also form part of the Schedule attached to this decision.

14. Following the inspection the Tribunal held a hearing at Templehall Community Centre Kirkcaldy. There were no parties in attendance

Summary of the issues

15. As a preliminary issue the Tribunal noted the response in relation to the Direction made by the Landlord. The Tribunal acknowledges that the Landlord had submitted photographic evidence of the replacement internal handle and a receipt for the work carried out and therefore the Direction has been complied with.

Thereafter the issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b).

Findings of fact

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

- (a) The Tenant entered into a Short Assured tenancy agreement with the Landlord on 16th June 2015.
- (b) The Landlord is recorded on the lease as Jusbinder Kaur
- (c) The landlord is the registered owner of the house. For the avoidance of doubt, whilst the lease and communications with and from the landlord have been in the name of Jusbinder Kaur, her name is recorded on the Land Certificate for the house as Jasbinder Kaur .
- (d) The Tenant ceased to occupy the house on or around 14th December 2016.
- (e) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- (f) The Tenant notified the Landlord per her previous agent Fife Letting Services of required works to the house by email correspondence during 2015 and 2016 which were the works set out in his application dated 11th October 2016 other than the issue described in the application as "a recent electrical inspection failed". No evidence of notification regarding this was provided.
- (g) The Tribunal at its inspection on 10th January 2017 carefully checked the items which were the subject of the complaint. Whilst

the electrical inspection had not been previously included in the Landlord's notification, the Landlord provided evidence that the electrical installation was satisfactory to the Tribunal during the inspection. The Tribunal further observed the following :-

- i) There were no broken seals or gaps in the bedroom windows and the catches were in working order
- ii) The patio doors did not have an internal handle and could not be tested as to functionality.
- iii) A new boiler had been installed and radiators for the central heating system appeared to be functioning. Hot water was available. A receipt was produced by the Landlord for the new boiler along with a Gas Safety certificate dated 5th January 2017.
- iv) The electrical consumer unit in the house had been replaced and a satisfactory SELECT electrical installation condition report (EICR) dated 13th December 2016 was also produced by the Landlord.
- v) Smoke detectors and carbon monoxide detectors were installed in the house and fully operational

At the further inspection on 25th April 2017 the Tribunal observed the following:-

- vi) An internal handle had been fitted to the patio doors but the doors were very difficult to open/close. New locks had been fitted which were misaligned and damaged

Reasons for the decision

17. The Tenant had complained that bedroom windows had broken seals and gaps. The Tribunal noted from the inspection on 10th January 2017 that the windows had been repaired. The window catches were working and the windows were wind and water tight, it was noted at the inspection on 25th April 2017 that the rear bedroom window catch was loose but still functioning.

The Tribunal considered that the bedroom windows in the house were in a reasonable state of repair and in proper working order. The Tribunal accordingly determined that there was not a failure to comply with the repairing standard in this respect

The Tenant had also complained that the boiler was obsolete and needed replaced and that the house had been without hot water or heating for seven consecutive days. A new boiler had been installed and the Landlord produced paperwork in respect of this. The boiler appeared to be working appropriately and the heating was operational and hot water available during the inspection on 25th January 2017. A Gas Safety certificate dated 13th December 2016 was produced.

The Tribunal considered that the boiler had been replaced and the central heating system was fully functional with hot water available. The Tribunal accordingly determined there was not a failure to comply with the repairing standard in this respect

The Tenant had also complained that the patio doors were non-functional. At the first inspection on 10th January 2017 the doors could not be opened as the internal handle was missing. The Landlord had advised that this could be repaired when other repair work was being carried out to the house by a firm of builders she had engaged. A receipt for a repair and photograph of a handle was subsequently provided to the Tribunal. However at the second inspection of the house on 25th April 2017 it was noted by the Tribunal that the handle had been replaced but the patio doors were very difficult to open and close and the new locks which had been fitted were misaligned and damaged.

The Tribunal considered that in all the circumstances the repair undertaken by the Landlord to the patio doors since the first inspection was not satisfactory. The patio doors were not in proper working order. Accordingly the Tribunal determined that the house did not meet the repairing standard in this respect.

Observations

The Tenant had included in his application reference to a recent electrical inspection that had been failed, but this was not referred to in the notification given to the Landlord. The Tribunal noted during the inspection on 10th January 2017 that the electrical consumer unit in the house had been replaced and a SELECT electrical installation condition report (EICR) dated 13th December 2016 was also produced by the Landlord. The Tribunal considered that whilst this issue could not be considered within the scope of the application as a result of the failure to notify, the Tribunal were satisfied that there was not a failure to comply with the repairing standard in this respect.

Decision

- a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- c) The decision of the Tribunal was unanimous.

Right of Appeal

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

- d) 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 Leck

Chairperson

Date

26/5/17

Housing and Property Chamber
First-tier Tribunal for Scotland



1 Cleish Gardens, Kirkcaldy, KY2 6AA

Inspection and Hearing 10 Jan. and 25 April 2017

Bedroom windows wind
tight with catches in
working order



Patio doors – handle fixed but doors are difficult to open/close and locks misaligned and damaged



26/5/17

These are the
photographs
referred to in the
foregoing
~~Schedule~~ Decision

M Leck

Gas Safe Certificate

For satisfactory evaluation of products of combustion. A detailed internal inspection of the flue integrity, construction and lining has NOT been carried out.

REGISTERED BUSINESS DETAILS		INSPECTION/INSTALLATION ADDRESS		LANDLORD (OR AGENT) NAME & ADDRESS (if applicable)	
Gas Engineer Name: <u>Permy P.H.</u> Registration No: <u>533 388</u> Address: <u>100-101, 102-103, 104-105, 106-107, 108-109, 110-111, 112-113, 114-115, 116-117, 118-119, 120-121, 122-123, 124-125, 126-127, 128-129, 130-131, 132-133, 134-135, 136-137, 138-139, 140-141, 142-143, 144-145, 146-147, 148-149, 150-151, 152-153, 154-155, 156-157, 158-159, 160-161, 162-163, 164-165, 166-167, 168-169, 170-171, 172-173, 174-175, 176-177, 178-179, 180-181, 182-183, 184-185, 186-187, 188-189, 190-191, 192-193, 194-195, 196-197, 198-199, 200-201, 202-203, 204-205, 206-207, 208-209, 210-211, 212-213, 214-215, 216-217, 218-219, 220-221, 222-223, 224-225, 226-227, 228-229, 230-231, 232-233, 234-235, 236-237, 238-239, 240-241, 242-243, 244-245, 246-247, 248-249, 250-251, 252-253, 254-255, 256-257, 258-259, 260-261, 262-263, 264-265, 266-267, 268-269, 270-271, 272-273, 274-275, 276-277, 278-279, 280-281, 282-283, 284-285, 286-287, 288-289, 290-291, 292-293, 294-295, 296-297, 298-299, 300-301, 302-303, 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970-971, 972-973, 974-975, 976-977, 978-979, 980-981, 982-983, 984-985, 986-987, 988-989, 990-991, 992-993, 994-995, 996-997, 998-999, 1000-1001, 1002-1003, 1004-1005, 1006-1007, 1008-1009, 1010-1011, 1012-1013, 1014-1015, 1016-1017, 1018-1019, 1020-1021, 1022-1023, 1024-1025, 1026-1027, 1028-1029, 1030-1031, 1032-1033, 1034-1035, 1036-1037, 1038-1039, 1040-1041, 1042-1043, 1044-1045, 1046-1047, 1048-1049, 1050-1051, 1052-1053, 1054-1055, 1056-1057, 1058-1059, 1060-1061, 1062-1063, 1064-1065, 1066-1067, 1068-1069, 1070-1071, 1072-1073, 1074-1075, 1076-1077, 1078-1079, 1080-1081, 1082-1083, 1084-1085, 1086-1087, 1088-1089, 1090-1091, 1092-1093, 1094-1095, 1096-1097, 1098-1099, 1100-1101, 1102-1103, 1104-1105, 1106-1107, 1108-1109, 1110-1111, 1112-1113, 1114-1115, 1116-1117, 1118-1119, 1120-1121, 1122-1123, 1124-1125, 1126-1127, 1128-1129, 1130-1131, 1132-1133, 1134-1135, 1136-1137, 1138-1139, 1140-1141, 1142-1143, 1144-1145, 1146-1147, 1148-1149, 1150-1151, 1152-1153, 1154-1155, 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Invoice for new boiler

PRESTIGE
Heating & Cooling

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408-838-8888
www.prestigehvac.com

Customer: [blank]
Address: [blank]
City: [blank] State: [blank] Zip: [blank]
Phone: [blank] Email: [blank]
Post Code: [blank]

Invoice: [blank]
Order: [blank]
Receipt: [blank]

DESCRIPTION	E	P
1. New 40,000 BTU Gas Furnace	1100	✓
2. New 40,000 BTU Gas Furnace		
3. New 40,000 BTU Gas Furnace		
4. New 40,000 BTU Gas Furnace		
5. New 40,000 BTU Gas Furnace		
6. New 40,000 BTU Gas Furnace		
7. New 40,000 BTU Gas Furnace		
8. New 40,000 BTU Gas Furnace		
9. New 40,000 BTU Gas Furnace		
10. New 40,000 BTU Gas Furnace		
TOTAL	1100	

Signature: [blank] Date: 5/1/17

All goods property of Prestige

This is the
invoice referred to
in the foregoing
decision

M Leck

