

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/17/0034

5D Beechwood Drive, Coatbridge, ML5 4RF
("The property")

The Parties:-

Richard McCallum, 5D Beechwood Drive, Coatbridge, ML5 4RF
("the applicant")

**Frankdersan UK Properties Ltd, having its registered office at 81 St Judes
Road, Englefield Green, TW20 0DF**
("the respondents")

Whereas in terms of their decision dated 30 May 2017, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the respondents had 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 respondents had failed to ensure at all times during the tenancy, that:-

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
- 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 (section 13(1)(b));
- 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 (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 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:

1. The respondents, either themselves or with other owners of the properties at 5D Beechwood Drive, Coatbridge to:
 - a) replace the close entry door lock, so as make the door secure;
 - b) clean out the gutters;

- c) repair and make good the cracking to: the upper part of the reveal of the front window; and the roughcasting to the wall, immediately above the front window;
- d) repair or replace broken section of down pipe at ground level, on the side (east facing) elevation of 5 Beechood Drive, and patch-fill the hole in the wall behind the pipe at the bathroom window level.

2. The respondents to:

- a) install seals, as required, to properly seal beneath all external window sills at the property, between the frame and window reveals;
- b) repair or replace the handle of the leftmost (when viewed from inside the property) window unit in the lounge;
- c) repair or replace the trickle vents to both window units in the lounge, so that they can be opened and closed;
- d) replace the missing section of uPVC closing plate, between the glass pane and the frame missing, in bathroom window;
- e) block off and seal the hole created by the missing section of the external window sill of the bedroom window, where it fits into the window reveal;

The tribunal orders 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.

Further, in light of paragraphs 7, 9 and 13 of its decision, the tribunal requires the respondents to produce to the office of the tribunal and the applicant a Gas Safety Certificate, completed by a qualified Gas Safe Registered Engineer, confirming that the installations for the supply of gas at the property are in a reasonable state of repair and in proper working order, 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(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the tribunal at Edinburgh on 30 May 2017, before this witness:-

A Stalker

witness

JANE NICOL name in full

WESTWATER ADVOCATES Address

PARLIAMENT HOUSE,

EDINBURGH EH1 1RF

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/17/0034

5D Beechwood Drive, Coatbridge, ML5 4RF
("The property")

The Parties:-

Richard McCallum, 5D Beechwood Drive, Coatbridge, ML5 4RF
("the applicant")

Frankdersan UK Properties Ltd, having its registered office at 81 St Judes Road, Englefield Green, TW20 0DF
("the respondents")

Tribunal Members:

Adrian Stalker (Chairman) and 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 respondents have complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the respondents had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By an application to the Housing and Property Chamber received on 31 January 2017, the applicant sought a determination of whether the respondents had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application contended that the respondents had failed to comply with their duty to ensure that the house meets the repairing standard under section 13 of the 2006 Act, and in particular, that the respondents had failed to ensure, at all times during the tenancy, that:-

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
 - 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 (section 13(1)(b));
 - 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 (section 13(1)(d)).
3. On 28 December 2016, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier tribunal. The tribunal served Notice of Referral under and in terms of schedule 2, paragraph 1 of the Act upon both the respondents and the applicant by letter dated 5 April 2017.
4. Following service of the Notice of Referral the respondents' agent Kirsty Hill, of HomeLink Estate and Letting Agents Ltd, 18 Main Street Coatbridge, ML5 3AE ("HomeLink"), contacted the tribunal on 25 April, providing confirmation that the respondents had, on that day, instructed HomeLink to take over the management of the property. On behalf of the respondents, Ms Hill sought further time to make written representations to the tribunal. The respondents were allowed till 5 May to do so. Subsequently, HomeLink provided written representations, on behalf of the respondents, in a letter dated 4 May. That letter takes the form of a report, from Ms Hill, of her own inspection of the property, and her views on the complaints made by the applicant.
5. The tribunal inspected the property on the morning of 17 May 2017. The applicant was present during the inspection. There was no representation for, or appearance by, the respondent at the inspection. Later that morning the tribunal held a hearing at the Airdrie Business Centre, Chapel Street, Airdrie. There was no representation for, or appearance by, either party at the hearing. The applicant had already informed the tribunal, by email dated 16 May, and at the inspection, that he did not intend to be present at the hearing, because he suffers from severe anxiety. Given the respondents' failure to attend either the inspection or the hearing, HomeLink's letter of 4 May is their sole representation to the tribunal in relation to the complaints made by the applicant.

Summary of the issues

6. In the application, in in copy letters attached thereto, the applicant described outstanding repair issues at the property, as follows:
- a) The windows were in need of replacement.
 - b) In particular, the windows were drafty.
 - c) The external roughcasting of the building was cracking, and falling off the walls.

- d) The radiators were not correctly positioned, which adversely affected the heating.
- e) The door entry system for the front door of the building was not secure.
- f) The guttering required repair.
- g) A pipe at the gable end of the building was rusting.

Findings in fact

7. The tribunal finds the following facts to be established: -

- i. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988.
- ii. The date of commencement of the current tenancy was 30 December 2013 ("the beginning of the tenancy"). At that time, the landlords were Paul Maske and Mauran Uthayakumar. In August 2016, the property was sold to the respondents. Accordingly, the interest and obligations of the landlord under the tenancy have passed to them.
- iii. The property is a ground floor right flat in a four in a block, built around 1935. The flat comprises a hall, lounge, bedroom, bathroom and kitchen.
- iv. As regards all of the windows (lounge, bedroom, kitchen and bathroom), the seal under the outside sill is either in poor condition, or non-existent. In addition, and in many places, there is no seal between the window frames and the external rendering.
- v. In the lounge, the left-hand window unit handle is broken, such that the window cannot be opened.
- vi. The trickle vents above both of the lounge windows have been sealed by the applicant because he cannot close them manually, when required, as a consequence of a missing closing mechanism.
- vii. The bathroom window rear pane, lower right hand side, has a section of uPVC closing plate missing, between the glass pane and the frame. See photograph 8 in the schedule of photographs.
- viii. Outside the bedroom window, a section of window sill, where it fits into the window reveal, is missing, and there is a hole in the wall at this point.
- ix. The front door entry system is broken. The locking mechanism has been removed completely. It is not possible to lock the outside door. As a result, the building is not secure. It has been entered by persons at night. On occasion, they have urinated in the close. This has been a source of considerable anxiety to the applicant. He has fitted a number of locks to his own flat door. He has also fitted a CCTV camera to the wall of the close, looking onto the front door.
- x. At some point earlier in 2017, a contractor employed by the landlord removed the radiator in the hall, and replaced it with the radiator from the lounge. At the same time, a new radiator was fitted in the lounge. The applicant is able to heat all of the rooms in the property using the radiators, though this takes a bit longer in the bedroom. The radiators are in a reasonable state of repair and in proper

working order. The positioning of the radiators does not adversely affect their operation.

- xi. Externally, over the front window, there was cracking to the upper part of the reveal, and in the roughcasting to the wall, immediately above the front window. Roughcasting repair work has been carried out at the window reveal of the neighbouring flat (ground floor left).
- xii. The guttering at the side of the building is choked (the east facing side, the lower part of which is an external wall of the applicant's flat).
- xiii. A down pipe on the same side has a large hole, at ground level. There is also a hole in the roughcast directly behind the pipe approximately mid-way between ground and roofline level.
- xiv. At some point earlier in 2017, a contractor employed by the landlord carried out certain repair work to the boiler. He informed the applicant that he had "passed" the boiler.
- xv. There is no heat detector, smoke detector or carbon monoxide alarm in the kitchen. There is a carbon monoxide alarm in the lounge. There is no smoke alarm in the lounge, being the room which is frequently used by the applicant for general daytime living purposes.
- xvi. There is a smoke alarm in the hall, but it is not linked to the carbon monoxide alarm.

8. The first three findings follow from the papers obtained by the tribunal in relation to the application, in particular the tenancy agreement, and the title sheet for the property. The remaining points were apparent to the tribunal members during the course of the inspection, or were based on their discussion with the applicant at the inspection.

9. It should be noted that points xiv to xvi were not a matter of complaint in the application. As regards findings in fact x and xiv: the tribunal asked the applicant if he had been provided with a gas safety certificate in respect of the property. The applicant recalled receiving a document from the contractor. However, he was unable to say whether it was a gas safety certificate, and he could not locate it, to show to the tribunal.

Reasons for the decision

10. Of the points (a) to (g) listed at paragraph 7 above, being the complaints made in the application, the Tribunal was satisfied that complaints (a), (b), (c), (e), (f) and (g) were established. It was not satisfied that point (d) was established. The decision essentially followed from the facts determined by the tribunal as a result of the inspection, and the information provided by the applicant.

11. Certain of these points (but not all of them) were addressed by the letter from Ms Hill of HomeLink, dated 4 May. Ms Hill states that she cannot see any defects with the windows. The tribunal has found otherwise. The letter accepts that gutters appear to be choked, and that there are outstanding repairs to the roughcasting and the security door entry. As to those points,

the letter states: "I explained to the tenant that this is the responsibility of all four owners but we will obtain quotes and send to all owners for contribution...I will obtain quotes for the...external works with a hope of having these works done in a timely manner."

12. The tribunal observes that any liability of other proprietors to contribute to the cost of common repairs does not bear upon its decision as to whether the property meets the repairing standard. Having found that it does not, the tribunal is required to make a Repairing Standard Enforcement Order, under section 24(2) of the 2006 Act.
13. Standing paragraph 9 above, the Repairing Standard Enforcement Order includes a direction to the respondents to produce a gas safety certificate, as is required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998.
14. The tribunal also observes that, given findings in fact xv and xvi, the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. It accordingly does not meet the repairing standard in terms of section 13(1)(f) of the Act. However, that was not the subject of a complaint in the application. Therefore, it not the subject of any part of the Repairing Standard Enforcement Order. Nevertheless, the tribunal strongly suggests that the respondents take measures with a view to having the property meet the current Building Standards Guidance. This requires that there should be at least: one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes (i.e. the lounge in this case); one functioning smoke alarm in every circulation space, such as hallways and landings; one heat alarm in every kitchen, and all alarms should be interlinked.
15. Similarly, the tribunal also observes that, given findings in fact xv and xvi, the property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. It accordingly does not meet the repairing standard in terms of section 13(1)(f) of the Act. However, that was not the subject of a complaint in the application. Therefore, it not the subject of any part of the Repairing Standard Enforcement Order. Nevertheless, the tribunal again strongly suggests that the respondents take measures with a view to having the property meet the current guidance, under which the need for carbon monoxide detection applies to any fixed combustion appliance in the dwelling. Accordingly, the carbon monoxide alarm should be in the kitchen, not the lounge.

Decision

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

17. In particular, the tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(a), 13(1)(b) and 13(1)(d) given findings in fact iv to ix, and xi to xiii.
18. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.
19. The decision of the tribunal was unanimous.
- 20. 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.**
21. 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.

A Stalker

Signed

Date

30/5/17

Chairperson