

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/17/0040

Title no: AYR69002

**Roaston Farmhouse, Kirkmichael, Ayrshire, KA19 7JY
("The Property")**

The Parties:-

**Mr. Philip Hamerton and Ms. Alison (known as Jean) Rennie, residing at the
property
("the Tenants")**

**Doctor Nicholas Hunter and Mrs. Morag Hunter, 26 Havelock Road,
Shrewsbury, Shropshire, SY3 7NE (represented by CKD Galbraith LLP, 7
Killoch Place, Ayr, KA7 2EA)
("the Landlords")**

Whereas in terms of their decision dated 4 April 2017, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have 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 Landlords have failed to ensure that:-

- (i) 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.
- (ii) 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.
- (iii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working.

The tribunal now requires the Landlords 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 Landlords:-

- (a) To repair or replace the non-functioning front right hand heating ring on the hob of the cooker to ensure that it is in a reasonable state of repair and in proper working order.
- (b) To produce a complete Electrical Installation Condition Report by a suitably qualified and registered electrician, which report confirms that the repair in (a) above is carried out.
- (c) To install fully functional regulatory valves on the radiators located in the downstairs hallway, bathroom, dining room and shower room of the property.
- (d) To repair the leaking radiator in the dining room of the property.
- (e) To instruct a suitably qualified and competent contractor to expose and investigate the sub floor void and the surrounding area of the en-suite bathroom together with all drainage located therein in order to identify the source of the noxious odour emanating from the en-suite area and to carry out all necessary remedial work identified by said contractor to eradicate the said odour.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 8 weeks 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.

In witness whereof these presents type written on this and the preceding page are executed by Patricia Anne Pryce, solicitor, Atlantic Quay, Glasgow, chairperson of the tribunal at Glasgow on 4 April 2017 before this witness:-

G Cusick

_____ witness

G. Cusick

_____ name in full

1 ATLANTIC QUAY

_____ Address

GLASSGOW

P Pryce

_____ Chairperson

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/17/0040

**Roaston Farmhouse, Kirkmichael, Ayrshire, KA19 7JY
("The Property")**

The Parties:-

**Mr. Philip Hamerton and Ms. Alison (known as Jean) Rennie, residing at
the property
("the Tenants")**

**Doctor Nicholas Hunter and Mrs. Morag Hunter, 26 Havelock Road,
Shrewsbury, Shropshire, SY3 7NE (represented by CKD Galbraith LLP, 7
Killoch Place, Ayr, KA7 2EA)
("the Landlords")**

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the representations submitted by both the Landlords and the Tenants, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Donald Wooley	-	Ordinary Member

Background

1. By application comprising documents received between 3 and 8 February 2017, the Tenants applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlords 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 Tenants stated that the Tenants considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and that the said failure was established as follows: -
 - (a) A foul smell appears in the ground floor en-suite bathroom.
 - (b) The cooker has a defective "hot plate".
 - (c) Several radiators lack effective control and one seems unable to be turned on.

The Tenants considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) 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.
- (ii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

3. By Minute dated 13 February 2017 the Convener of the tribunal, 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 tribunal.
4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords and the Tenants advising that the inspection and hearing would take place on 3 April 2017 and 12 noon and 1 pm respectively.
5. Following service of the Notice of Referral (by letter dated 22 February 2017), the Landlords submitted a written request to the tribunal by way of an email dated 28 February 2017 requesting that the hearing be postponed for seven days from 3 April 2017 until 10 April 2017 as Mr. Hunter had heavy work commitments as a G.P. and Mrs. Hunter had similar work commitments as an occupational therapist. The Tenants responded to this postponement request by letter received by the tribunal on 6 March 2017 and within which they objected to a postponement of the hearing as they felt that the Landlords had delayed in tackling the outstanding repairs. They stated that they had been unable to use the principal bedroom on the ground floor since the beginning of January 2017 due to the smell emanating from the en-suite bathroom. In short, they submitted that they did not want a further delay as the Landlords had already delayed in tackling the outstanding issues despite having been advised of these by the Tenants in advance of the application and that the Landlords' response to their complaints had been to issue them with a Notice to Quit. The tribunal issued a Minute in respect of a Request for

Adjournment in terms of Rule 48 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 refusing the Landlords' request for adjournment as the Landlords had not provided any detail as to what their work commitments were and why these could not be addressed, the Landlords had known about some of the issues for almost five months and the Landlords had agents who managed the property on a day to day basis for them and could represent them at the hearing.

6. The Landlords submitted written representations dated 14 March 2017 stating that they were fixing the roof at the property at significant expense and enclosed a copy blog written by the Tenants wherein the Tenants wrote about cooking wonderful food using the cooker in the property. They also stated that their agents had been inundated with emails and telephone calls from the Tenants which was bordering on harassment. The Landlords' agents submitted written representations by way of an email dated 14 March 2017 confirming that they would attend at the hearing. Within these representations, the agents stated that the Landlords had taken extensive steps to try and resolve the bad smell issue including the septic tank being emptied, having a contractor investigate and flush the drains and arranging for a pest controller to investigate the property. Furthermore, they advised that the Landlords' insurers had instructed another contractor to place dye into the drainage system and could find no blockage within the system. In short, the agents submitted that the Landlords had taken all reasonable steps to investigate and rectify this issue. In relation to the cooker, the agents submitted that, as the cooker was large, the loss of part of one of the cooking rings did not materially impact on the Tenants' use of the cooking facilities. Finally, the agents submitted that a new boiler was installed in the property in April 2016 and that the heating system was in a reasonable state of repair and in proper working order. The agents submitted that in terms of the lease the Tenants had a duty to keep the property heated. The agents enclosed invoices from the various contractors who had investigated the smell complaint at the property.
7. The Tenants confirmed by way of a response dated 3 March 2017 that they would attend the hearing and that they did not wish to submit written representations.

The Inspection

8. An inspection and hearing were arranged for 3 April 2017 at 12 noon and 1 pm respectively. The tribunal attended at the property. The Tenants provided access to the property. The Landlords did not attend but they were represented by Mrs. Marjory Douglas, Property Manager employed

by the Landlords' agents, and Mr. Robert Cherry, Partner of the Landlords' agents. The tribunal noted the following at inspection:-

- There was no control valve on the radiator which was located within the downstairs hallway beside the front door of the property. This radiator was warm to touch.
- There was no control valve on the radiator located within the bathroom of the property on the ground floor of the property. This radiator was hot to touch.
- There was a valve control on the radiator in the dining room of the property but this did not work and came away in the ordinary member's hand when tested. There was a leak emanating from this radiator. The radiator was hot to touch.
- The radiator located in the shower room on the first floor of the property appeared to have a valve but this did not function and the radiator itself was tepid to the touch. The Tenants complained that this radiator never became any warmer.
- The cooker in the kitchen was an electric range style cooker. The inside of the front right hand heating ring did not function. The Tenants demonstrated this by switching it on. The Tenants advised that this meant that they could not use this smaller ring for small pots as it was completely ineffective.
- On entering the en-suite bathroom which was located off the master bedroom located on the ground floor of the property the tribunal noted a distinctly unpleasant odour. When the water in the shower was running, this odour became even more noxious and unpleasant.
- When the bath tap in the en-suite was turned on, there was an odour but not as strong as the odour emanating from the shower.
- When the tap in the wash hand basin in the en-suite was turned on there was no odour at all.
- The tribunal allowed hot water to pour into a glass from the tap in the wash hand basin but no smell emanated from the water itself.

The schedule of photographs taken by the ordinary member of the tribunal at the inspection is attached to this decision.

The Hearing

9. The Tenants, Mrs. Douglas and Mr. Cherry all attended at the hearing.

The Tenants advised that they would not have brought the present application if the issue of the smell in the en-suite had been resolved.

The tribunal confirmed to all present what it had found at inspection.

Mrs. Douglas confirmed that she was the Property Manager for this particular property.

All parties present accepted that the inside of the front right hand ring on the cooker was not functioning. Mrs. Douglas confirmed that the Landlords had been advised of this issue but that the Landlords took the view that there were another four rings on the cooker for the Tenants to use and therefore they had sufficient cooking facilities. The Landlords took the view that they did not require to repair this ring.

Mrs. Douglas confirmed that there was an Electrical Installation Condition Report ("EICR") in place in respect of the property. The Tenants confirmed that they had been provided with a copy of this. Mrs. Douglas could not say whether or not the issue with the cooker had been mentioned within the EICR.

Mrs. Douglas also confirmed that the Landlords had been made aware of the issues that the Tenants had raised with the lack of control valves for the radiators within the property. However, she reiterated that the Tenants were obliged to keep the property heated in terms of their lease.

Both the agents and the Tenants agreed that the radiators were in the condition as found by the tribunal and as outlined above under the heading of "The Inspection". It was also a matter of agreement that there was no central thermostatic control of the heating in the property at all. The male Tenant confirmed that the remaining radiators within the property had control valves and therefore the amount of heat emanating from them could be controlled but the ones which formed part of the present application could not be so controlled which resulted in the upper floor of the house in particular becoming unbearably warm. However, he further submitted that the shower room was very cold as the radiator there did not produce an adequate amount of heat.

The Tenants confirmed that they had first notified the Landlords of the issues with the radiators and the cooker on 22 November 2016 and to date these issues had not been addressed. Mrs. Douglas confirmed that such notification had been received and that the Landlords did not think that they required to address these issues.

Mrs. Douglas confirmed, that until the inspection, she was unaware that the radiator in the dining room was leaking.

In relation to the remaining issue of the odour emanating from the en-suite of the master bedroom, it was a matter of agreement that the Tenants had first notified this to the agents on 17 December 2016 and to date the source of the smell had not been identified.

The Tenants stated that they had not been able to sleep in the bedroom since the beginning of January 2017. They submitted that they could not stand the smell. They felt aggrieved as this room was one of the main reasons they had taken on the lease of the property. They felt that the Landlords had delayed in dealing with this issue.

Mrs. Douglas submitted that the Landlords had done everything they could to try and identify the source of the smell and referred to the invoices which she had produced to the tribunal as part of her submission to the tribunal on behalf of the Landlords.

It was a matter of agreement of all present that there was an unpleasant smell emanating from the en-suite during the inspection and that it had become worse when the shower had been switched on and water started to clear away down the drain and, to a lesser extent, when the bath tap was running.

The Tenants confirmed that this issue was intermittent and there seemed to be no rhyme nor reason to it.

It was a matter of agreement between the parties that the Landlords had made some attempt to identify the source of the smell but without success.

Summary of the issues

10. The issue to be determined is whether the repairing standard has been met in light of the submissions made by and on behalf of the Landlords and the Tenants and in light of what the tribunal viewed at the inspection.

Findings of fact

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

- The Tenants entered into a tenancy with the Landlords which runs from 14 November 2016 until 14 May 2017 and which is entitled a short assured tenancy.
- The property is a one and a half storey house comprising a lounge, kitchen, study, dining room, master bedroom with en-suite and utility room all located on the ground floor.
- The oil-fired boiler is located in the cupboard within the utility room.
- On the first floor of the property there are two further bedrooms and a shower room with W.C.
- The property is predominantly of traditional stone construction with a slate roof which is in the process of being repaired.
- The property is located approximately one mile outside of the village of Kirkmichael in Ayrshire.
- The radiators located in the downstairs hallway and bathroom do not have any control valves attached to them and the amount of heat which emanates from them cannot be controlled.
- The radiator in the dining room has a valve on it which does not function, the amount of heat which emanates from it cannot be controlled and this radiator leaks.
- The radiator located in the shower room does not function as the valve does not work and it gives out very limited heat.
- There is no central thermostatic control of the heating located within the property.

- The inside of the front right hand ring of the cooker does not function.
- There is a noxious smell which emanates from the en-suite of the master bedroom.

Reasons for the decision

12. At the hearing, all parties spoke in a straightforward manner and did not attempt to embellish their evidence in any way.

It was a matter of agreement between parties that the inside of the front right hand cooker did not function.

It was also agreed between parties that the radiators within the downstairs hallway and bathroom had no control valves.

It was accepted by parties that the valves on the radiators in the shower room and the dining room did not function.

It was clear to the tribunal at the inspection that the issue of the odour emanating from the en-suite bathroom of the master bedroom remained a live issue which required to be addressed.

The tribunal did note with some sympathy that the Landlords had attempted to have investigations carried out into the cause of the odour in the en-suite bathroom. However, it remains a serious issue which impacts greatly on the Tenants' ability to enjoy the property, and indeed any future occupier of the property.

The tribunal further notes that, although the Tenants did not tick the box on the application form which relates to that part of the repairing standard which refers to the structure and exterior of the house, the tribunal is entitled to properly consider this as part of the present application as the Tenants had given fair notice to the Landlords of the circumstances which gave rise to concerns under this particular part of the repairing standard, namely, the issue of the odour emanating from the en-suite bathroom.

Given all of the circumstances, the tribunal is satisfied that: the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order as there is a noxious odour which emanates from the drains within the shower and the bath of the en-suite bathroom and the general area of the en-suite bathroom; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order as the heat emanating from the radiators within the hallway, the bathroom, the dining room and the shower room cannot be controlled, the radiator in the dining room leaks and the radiator in the shower room does not produce sufficient heat; and any fixtures, fittings and appliances provided by the

landlord under the tenancy are not in a reasonable state of repair and in proper working order as the inside part of the front right hand ring on the cooker does not function.

Decision

13. The tribunal accordingly determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Act.
14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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.

P Pryce

Signed

Date 4 April 2017

Chair and Legal Member

Roaston Farm, Kirkmichael, Maybole, KA18 7JY

Schedule of Photographs taken at the inspection on 3rd April 2017



Photograph 1:- Cooker hob with defective front right inner ring.



Photograph 2:- Ground floor hall radiator with missing control valve.



Photograph 3:- Ground floor bathroom radiator with missing control valve.



Photograph 4:- Broken and defective / leaking valve at dining room radiator.



Photograph 5:- First floor shower room radiator. Visible valve fitted. Radiator "tepid".



Photograph 6



Photograph 7

Photographs 6 and 7 illustrate "en suite" bathroom at master ground floor bedroom with tiled walls and flooring. No visible defects although there is a noxious background smell exacerbated when shower or bath water running.



Photograph 8:- Roaston Farm, front elevation