

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

First-tier Tribunal for Scotland (Housing and Property Chamber)

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/17/0193

Title no: DMB 51404

52 Loch Road, Kirkintilloch, G66 3EB ("The property")

The Parties:-

Ms Mikhalia McInally, residing at the Property ("the Tenant")

Mr Robert Wilson, residing at East Knoll, 4 Garngaber Avenue, Lenzie, G66 4LJ, ("the Landlord")

Whereas in terms of their decision dated 2nd October 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 :-

- (a) The house is wind and water tight and in all other respects reasonably fit for human habitation; and
- (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; and
- (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;

the Tribunal now requires the Landlord to carry out such works as are necessary for the purpose of ensuring that the house concerned meets the Repairing Standard and that any damage caused by the carrying out of any works in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (a) To repair or renew the roof covering of the property so that the property is made wind and watertight in terms of Section 13(1)(a) of the Act; and
- (b) To repair or renew the living room, bathroom and hall windows within the property so that they are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the Act; and
- (c) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a check and produce a certified Electrical Installation Condition Report (EICR) in respect of the entire electrical installation within the property. The Landlord is to follow the recommendations of that report so that the entire installation is safe and in proper working order in terms of Section 13(1)(c) of the Act; and
- (d) To repair or replace the light switch and lighting within the living room in the property so that they are in proper working order; in terms of Section 13(1)(c) of the Act; and
- (e) To repair or replace the water and heating control unit in the property to ensure that it is in proper working order; in terms of Section 13(1)(c) of the Act; and

The Tribunal order that the works and actions specified in this Order must be carried out and completed within the period of **eight weeks (fifty six days)** from the date of service of this Order upon the Landlord.

Given the evidence heard from the tenant's representative and the Landlord at the Inspection and Hearing on 14th September 2017 the parties are reminded that access should be provided for the carrying out of ordered and recommended works and actions.

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, typewritten on this and the two preceding pages, are executed by G. McWilliams, Solicitor, Legal Member of the Tribunal, at Glasgow on 3rd October 2017, before this witness:-

S Corr

_____ Witness

S Corr

G McWilliams

_____ Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



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Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/17/0193

Title no: DMB 51404

52 Loch Road, Kirkintilloch, G66 3EB ("the property")

The Parties:-

Ms Mikhalia McInally, residing at the Property ("the Tenant")

Mr Robert Wilson, residing at East Knoll, 4 Garngaber Avenue, Lenzie, G66 4LJ, ("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 or not the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 as amended ("the Act") in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised:-

**Mr G. McWilliams, Legal Member; and
Mr M. Links, Ordinary Member**

Background

1. By Application received on 17th May 2017 the Tenant applied to the Tribunal for a determination of whether or not the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the the Act.
2. The Application by the Tenant states that she considers that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standards. The Application states that the Tenant believes that (a) the house is not wind and watertight and in all other respects reasonably fit for human habitation; and (b) 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; and (c) 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.
3. The Tribunal comprised G. McWilliams, Legal Member, and M. Links, Ordinary Member. 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 9th June 2017.
4. The Tribunal Members attended at the property on 14th September 2017 for an Inspection. The parties were present. Also present were the Tenant's friend A. Fraser, the Landlord's business secretary M. Farquharson and the Tenant's Representative R. Heath of East Dunbartonshire Council Citizens' Advice Bureau.
5. Following the Inspection of the property the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL, on 14th September 2017. The Landlord and his business secretary, as well as as the Tenant's Representative attended.

Findings on Inspection- see attached Photographs Schedule

6.
 - (i) There is staining to the wall and ceiling at the chimney breast in the living room of the property. Moisture readings were taken and the area where the staining was present was found to be dry. Immediately above the chimney breast, in the roof space of the property, the timbers surrounding the brickwork of the chimney head are damp, indicating leakage through the roof.
 - (ii) Two catches on the left hopper window in the living room are missing which prevents the window from being shut tightly.
 - (iii) The window in the bathroom is catching and ill fitting within its frame.
 - (iv) The hall window opening and closing mechanism is working. There is evidence of a slight draught at the bottom left hand corner of that window.

- (v) The sink within the bathroom is draining sufficiently well, albeit it slowly
- (vi) The toilet within the bathroom is flushing sufficiently well.
- (vii) The dimmer switch in the living room is incomplete. The turning knob is absent. The lights operated by that switch are not working.
- (viii) The thermostat and timer control unit for the water and heating within the property is working intermittently.
- (ix) The gutter to the roof at the front of the property is not collecting water at one section where the masonry has been worn away.

The Hearing

7. Evidence and submissions were heard at the Hearing from the Tenant's representative and the Landlord. The Landlord produced an estimate from ODC Ltd, dated 22nd July 2017, in respect of renewal of the roof coverings and gutters at the property. He explained that the owner of the house below the property had suffered a bereavement and this had delayed the renewal project. The Landlord confirmed that he intended to renew the roof coverings and gutters in early course. The Tenant's Representative acknowledged that the gutters at the property would be renewed at the same time as the roof renewal works were being carried out. The Landlord stated that he intended to have the windows serviced. Both the Landlord and the Tenant's representative agreed that the sink within the bathroom was draining sufficiently well, although a little slowly, and the toilet there was flushing sufficiently well. The Tenant had complained that there was a smell emanating from the toilet. The Representative agreed with the Landlord that there was no smell at the time of the inspection.
8. The Landlord confirmed that he will obtain an Electrical Inspection Condition Report ("EICR") and resolve the issues of the lights in the living room ceiling not working, and the dimmer switch for those being incomplete. The Landlord and Tenant's representative acknowledged that a transformer likely requires to be replaced. The Landlord produced an email and letter from M. Burke (Electrical Contractors) Bishopbriggs, Glasgow, dated 24th November 2016 and 28th June 2017 respectively, which indicate that a transformer within the roof space of the property requires to be replaced.
9. The Landlord stated that he will replace the thermostat and timer control unit for the water and heating within the property.
10. A Schedule of internal and external photographs of the Property, taken at the Inspection, is attached to this Decision.

The Repairing Standard

11. The Repairing Standard is set out in Section 13 of the Act:

A house meets the Repairing Standard if:-

- (a) The house is wind and watertight 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,
- (e) Any furnishings provided by the Landlord under the Tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings in Fact

- 12.** The property is an upper cottage flat in block of four properties erected around 1933. It is located in a residential area in Kirkintilloch around ten miles north of Glasgow City Centre. The accommodation comprises an entrance hall stairway, one bedroom, kitchen, living room and bathroom.
- 13.** There is staining to the wall and ceiling at the chimney breast in the living room of the property. Moisture readings indicate that the area of staining is dry. Immediately above the chimney breast, in the roof space of the property, the timber surrounding the brickwork of the chimney head are damp.
- 14.** The gutter to the roof at the front of the property is not collecting water at one section where the masonry has been worn away.
- 15.** Two catches in the left hopper window in the living room in the property are missing which prevents the window from being shut tightly.
- 16.** The window in the bathroom in the property is catching and ill-fitting within its frame.

17. The property's hall window opening and closing mechanism is working. There is evidence of a slight draught at the bottom left hand corner of that window.
18. The sink within the bathroom in the property drains slowly but sufficiently well.
19. The toilet in the bathroom within the property flushes sufficiently well.
20. The dimmer switch in the living room in the property is incomplete and its turning knob is absent. The lights controlled by that switch are not working.
21. The thermostat and timer control unit for the water and heating within the property is working intermittently.

Reasons for Decision

22. The Tribunal made its findings based upon what it found at the Inspection and after considering the evidence and representations of the parties and the Tenant's Representative. There is dampness in the timber surrounding the brickwork of the chimney head in the roof space of the property immediately above the chimney breast in the living room of the property. The gutter to the roof at the front of the property is not collecting water at one section. The masonry has been worn away at that part of the roof. Two out of the three catches on the left hopper window in the living room are missing which prevents that window from being shut tightly. The bathroom window is catching and ill fitting within its frame. There is evidence of a slight draught on the bottom left hand corner of the window in the hall. The dimmer switch in the living room is incomplete, the turning knob being absent. The lights controlled by that switch are not working. The thermostat and timer control unit for the water and heating within the property works intermittently. These defects were evident at the Inspection and acknowledged by the Landlord and Tenant's Representative at the Hearing.
23. The Tribunal considered whether or not any of the above defects, which it found to be established, brought the Property below the Repairing Standard in terms of the Act. The Tribunal considered matters and determined that the roof and gutters are not wind and water tight, the windows in the living room and bathroom are not in proper working order and the window in the hall is not in a reasonable state of repair. The dimmer switch in the living room is incomplete as the turning knob is absent. The lights controlled by that switch are not working. The thermostat and timer control unit for the water and heating within the property is working intermittently. Given its findings the Tribunal considered that a Repairing Standard Enforcement Order ("RSEO") should be made and proceeded to make such an order. The Tribunal considered that it is reasonable for the Landlord to be given eight weeks for the works and actions referred to below to be completed.

Decision

24. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Act, as stated
25. The Tribunal proceeded to make a RSEO as required by Sections 24(1) and 24(2) of the Act, in the following terms:
 - (a) The Landlord is to repair or renew the roof covering so that the roof is made wind and watertight in terms of Section 13(1)(a) of the Act; and
 - (b) The Landlord is to repair or renew the living room, bathroom and hall windows within the property so that they are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the Act; and
 - (c) The Landlord is to engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a check and produce a certified EICR in respect of the entire electrical installation within the property. The Landlord is to follow the recommendations of that report so that the entire installation is safe and in proper working order in terms of Section 13(1)(c) of the Act; and
 - (d) The Landlord is to repair or replace the light switch and lighting within the living room in the property so that they are in proper working order; in terms of Section 13(1)(c) of the Act; and
 - (e) The Landlord is to repair or replace the water and heating control unit in the property to ensure that it is in proper working order; in terms of Section 13(1)(c) of the Act; and
 - (f) The Landlord is to carry out all reinstatement works and decoration necessary following the completion of the works and actions referred to above.
26. In view of the nature of the failure to meet the Repairing Standard as defined in the Act, the Tribunal determined that the RSEO requires to be complied with within **eight weeks (fifty six days)** from the date of service of the RSEO upon the Landlord.
27. The decision of the Tribunal is unanimous.

Observations

28. During the course of the Inspection it was observed that the provision for fire detection in the property is not in accordance with current standards. It is recommended that the Landlord should provide and install smoke detection and alarm equipment in accordance with the

British Standard on the design of Fire Detection Installations for Dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.

29. It was also observed that there was no provision for the detection of carbon monoxide. It is recommended that the Landlord supplies and fits a Carbon Monoxide detector compliant with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.
30. The Landlord acknowledged that there has not been a Gas Safety Certificate issued in respect of the property. It is recommended that the Landlord arranges for a Gas Safety Certificate to be produced as a matter of priority.
31. The Tribunal observed that it may be beneficial to apply drain unblocker fluid to increase the drainage flow in the sink in the bathroom within the property.

Right of Appeal.

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.

G McWilliams

Signed: **G McWilliams**
2017

Date 3rd October

G. McWilliams, Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

SCHEDULE OF PHOTOGRAPHS

52 LOCH ROAD, KIRKINTILLOCH G66 3EB

CASE REF: FTS/HPC/RP/17/0193

14th SEPTEMBER 2017



Front elevation



Rear Elevation



Staining at chimneybreast in Living Room



“Green” reading on moisture meter at LR chimneyhead



“Red” damp meter reading in rafter adjacent to chimneyhead in roof void



Missing window handle catches in Living Room



Bathroom window



Bathroom wash hand basin



Bathroom w.c.



Living room light switch



Living room lights



Central heating timeclock/thermostat



Gap between roof and gutter at front elevation



Wallhead at gap –front elevation