

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/17/0195

**Subjects at 100 Argyll Road, Kinross, KY13 8BL ("The house") under title
number KNR115**

The Parties:-

Miss Mhairi Stewart, residing at 100 Argyll Road, Kinross, KY13 8BL ("the Tenant")

Miss Aileen McDonald, residing at East Nether Common , Rait, Perthshire, PH2 7RU
("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr David Godfrey - Ordinary Member

Whereas in terms of their decision dated 29 July 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 watertight and in all respects reasonably fit for human habitation;
- (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; and
- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,

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:-

- (a) Repair or replace the electric panel heaters in the front and back bedroom and the wall heater in the bathroom;

- (b) Repair or replace the switch for the immersion heater in the kitchen;
- (c) Install smoke and heat detectors 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.
- (d) Following completion of the works at (a), (b) and (c), produce an electrical installation condition report by a suitably qualified electrician confirming that the electrical installations within the House are in safe condition and in proper working order;
- (e) Replace the floor coverings in the entrance vestibule; and
- (f) Remove and treat the black mould in the vestibule and front bedroom and redecorate the affected areas;

The Tribunal order that the works specified in this Order must be carried out and completed within the period of two months 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(s) are executed by Ruth O'Hare, Chairperson, 7 Mossbeath Grove, Glasgow, G71 7UU, chairperson of the Tribunal at Glasgow on 29 July 2017 before this witness:-

T O'Hare

witness

R O'Hare

chairperson

Tom O'Hare, 7 Mossbeath Grove
Glasgow, G71 7UU

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0195

**Property at 100 Argyll Road, Kinross, KY13 8BL
("The House")**

The Parties:-

Miss Mhairi Stewart, residing at 100 Argyll Road, Kinross, KY13 8BL ("the Tenant")

Miss Aileen McDonald, residing at East Nether Common , Rait, Perthshire, PH2 7RU
("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr David Godfrey	-	Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 17 May 2017 the Tenant applied to the Tribunal for a determination of whether the landlord has failed to complied with the duties imposed by Section 14(1)(b) of 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 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) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
 - (f) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In summary, the Tenant submitted that there was damp in various rooms throughout the house, problems with the ventilation and taps in the bathroom, a hole in the flooring at the front door, defective heaters in both bedrooms and the bathroom, a faulty water heater switch and inadequate provision for the detection of smoke and fire.
 4. By Minute dated 6 June 2017 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 96 of the Housing (Scotland) Act 2014, intimated her decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
 5. Following service of the Notices of Referral the Tribunal received no written representations from the Landlord. The Tenant intimated her intention to be present at the inspection and hearing.
 6. The Tribunal attended the Property on the morning of 27 July 2017. The weather was cloudy and overcast. The Tenant was present and allowed access. She was accompanied by her partner Blane Watson. The Tribunal proceeded to inspect the property.

The Inspection

7. During the inspection the Tribunal members examined the various areas of complaint raised by the Tenant.
8. The Tribunal examined the entrance vestibule. It was noted that there was a hole in the laminate flooring at the front door. Evidence of condensation in the form of black mould could be seen on the ceiling.

9. The Tribunal proceeded into the lounge area where a storage heater was located. The heater was not tested but is understood to be in working order. There was a battery operated smoke detector on the ceiling.
10. In the kitchen the Tribunal noted the switch for the immersion heater fitted to the hot water tank which was located upstairs. There was no heat detector in the kitchen.
11. The Tribunal proceeded upstairs. In the front bedroom the electric panel heater had become dislodged from the wall and was inoperable. Evidence of condensation in the form of black mould could be seen on the ceiling. Damp readings were taken which were found to be within acceptable limits.
12. In the bathroom the Tribunal noted a wall heater which was switched off. The switch for the heater was located outside the bathroom on the wall of the landing. A ventilation fan was located on the ceiling and operated through the light switch. It was in proper working order. The taps for the sink and the bath were also in working order. There was no evidence of condensation or damp in the room.
13. On the landing the Tribunal noted a second battery operated smoke detector on the ceiling.
14. The Tribunal proceeded to the back bedroom. The electric panel heater had become dislodged from the wall and was inoperable. There was no evidence of condensation or damp in the room.
15. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place in Loch Leven Community Campus, The Muirs, Kinross, KY13 8FQ. The Landlord was neither present nor represented. The Tenant was present and accompanied by her partner Blane Watson.
18. In summary, the Tenant advised that she didn't have much to add to what had already been submitted to the Tribunal in terms of the application and accompanying documentation. She reiterated that the electric heaters in the bedrooms and bathroom did not work, nor did the switch for the immersion heater in the kitchen. She and her family were reliant on the storage heater in the lounge during the winter months.
19. The Tenant confirmed that she had only met the Landlord once, prior to the commencement of the tenancy. The Landlord had never carried out an inspection of the property at any point during the tenancy. The Tenant confirmed that the house was in poor condition when the tenancy commenced. She had ended up

doing repairs with the assistance of family members. The Tenant confirmed that an officer from Perth and Kinross Council had attended the property looking for the Landlord and had subsequently arranged an inspection by an Environmental Health officer in August 2016, the report of which had been submitted to the Tribunal.

Findings in fact

20. Having considered all the evidence the Tribunal found the following facts to be established:-

- The tenancy is an assured tenancy which commenced on 28 July 2012. There is no evidence of a tenancy agreement between the parties however a letter from the Landlord as produced by the Tenant confirms the agreement to let.
- The House consists of a two storey terraced dwellinghouse. The accommodation comprises an entrance vestibule, lounge, kitchen, two bedrooms and a bathroom.
- The flooring in the entrance vestibule is damaged and is not in a reasonable state of repair.
- The switch for the hot water immersion heater is not in proper working order
- The electric panel heaters in the front and back bedroom are not in proper working order
- The wall heater in the bathroom is not in proper working order.
- The electrical installations within the house are not in a reasonable state of repair and in proper working order.
- There is no satisfactory provision for the detection of smoke and fire within the house.
- Provision for the detection of carbon monoxide that is hazardous to health is not required as there are no combustion appliances within the house.

Reasons for the decision

21. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and documents from the Tenant.
22. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
23. It was apparent from the findings of the inspection that the flooring in the vestibule was not in a reasonable state of repair. A hole was clearly visible. It was also noted during the inspection that the provision for the detection of smoke and fire within the property was not compliant with current legislation.

24. With regard to the switch for the immersion heater in the kitchen and the wall heater in the bathroom, the Tribunal was unable to confirm within the confines of the inspection the condition of either. However the Tribunal accepted the evidence of the Tenant that neither were in proper working order and noted that the Landlord had failed to present any information or avail herself of the opportunity to make submissions to counter that position. In any event the Tribunal found the submissions of the Tenant to be entirely credible in this regard. It was also apparent from the inspection that the electric panel heaters in each bedroom were not presently in working order, having been dislodged from the wall. The Tribunal therefore considered that these items would require repair and an electrical installation condition report obtained thereafter to confirm that the installations were in a safe condition and in proper working order.
25. The Tenant had stated in her application that there was damp throughout the property. However the Tribunal did not find any evidence of this. Damp readings taken showed acceptable tolerances. What was however evident from the inspection was condensation damage in the form of black mould in the entrance vestibule and the front bedroom. It could reasonably be assumed that the defective heating system was the primary cause of this and had likely led to lifestyle changes by the occupants in response. The Tribunal considered that repairs to the electric heaters in the bedrooms and bathroom would largely assist in remedying the problem however it would recommend the Tenant seeks advice on how to properly heat and ventilate the House in order to fully mitigate the risk of such problems occurring again in future.
26. For the avoidance of doubt, the Tribunal found both the ventilation system in the bathroom and the bathroom taps to be in working order. The Tribunal further noted that as there are no combustion appliances within the house, a carbon monoxide detector is not presently required.
27. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
28. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

29. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not presently wind, watertight and in all respects reasonably fit for human habitation.
30. In respect of section 13(1)(c) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as 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.

31. In respect of section 13(1)(f) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

32. The decision of the Tribunal was unanimous.

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R O'Hare

Signed

Ruth O'Hare
Chairperson

29 July 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



PHOTOSHEET



Property: 100 ARGYLL ROAD, KINROSS, KY13 8BL

Ref no: FTS/HPC/RP/17/0195

Tribunal: Ruth O'Hare and David Godfrey

Inspection: The property was inspected at 10.00 am Thursday 27th July 2017.

Access: Mrs Stewart (Tenant) was present and provided access to the property. Miss McDonald (Landlord) was neither present nor represented.

Photographs

1. Damaged flooring in Entrance Vestibule
2. Condensation mould to Entrance Vestibule ceiling (1)
3. Condensation mould to Entrance Vestibule ceiling (2)
4. Condensation mould to front Bedroom ceiling (1)
5. Condensation mould to front Bedroom ceiling (2)
6. Battery powered smoke detector in Lounge
7. Battery powered smoke detector in Landing
8. Electric Immersion Heater switch in Kitchen
9. Front Bedroom wall heater loose from wall
10. Back Bedroom wall heater loose from wall
11. Bathroom wall heater



Damaged flooring in Entrance Vestibule



Condensation mould to Entrance Vestibule ceiling (1)



Condensation mould to Entrance Vestibule ceiling (2)



Condensation mould to front Bedroom ceiling (1)



Condensation mould to front Bedroom ceiling (2)



Battery powered smoke detector in Lounge



Battery powered smoke detector in Landing



Electric Immersion Heater switch in Kitchen



Front Bedroom wall heater loose from wall



Back Bedroom wall heater loose from wall



Bathroom wall heater

David Godfrey, MRICS

27th July 2017