

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/17/0209**

**Title no AYR53929**

**37D McLelland Drive,  
Kilmarnock, KA1 1SG ("The Property")**

**The Parties:-**

**Ms Mhari McDonald,  
37D McLelland Drive  
Kilmarnock  
KA1 1SG  
("the Tenant")**

**Mr David Colin Alexander Neil  
26 Glasgow Road  
Kilmarnock  
(represented by their agent Lyn-Mar, 20 West George Street, Kilmarnock, KA1  
1DG)  
("the Landlord")**

Whereas in terms of their decision dated 7<sup>th</sup> September 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 property is: -

- (a) Wind and watertight and otherwise fit for human habitation, all in terms of s13(1)(a), as the roof leaked, causing damage to the living room wall and ceiling
- (b) In terms of s13(6), fitted with a Carbon monoxide monitor
- (c) In terms of s13(1)(b) that the exterior is in a reasonable state of repair as the lath and plaster wall at the entrance door requires repair

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) To make good the ceiling, cornice and wall plasterwork and decoration in the living room where damaged by water penetration from the roof leak
- (b) Repair damaged lath and plaster wall adjacent to the flat entrance door and make good decoration
- (c) To supply and fit Carbon Monoxide detector compliant with the Scottish Government Statutory Guidance for the provision of Carbon Monoxide alarms in private rented housing.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 28 days 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 Lesley Dowdalls, Solicitor, 23 The Foregate, Kilmarnock, Chairperson of the Tribunal, at Kilmarnock on 7<sup>th</sup> September 2017 before this witness: -

J R Brown

witness

JEAN REID BROWN

name in full

L Dowdalls

Chairperson

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/17/0209**

**37D McLelland Drive,  
Kilmarnock, KA1 1SG ("The Property")**

**The Parties:-**

**Ms Mhari McDonald,  
37D McLelland Drive  
Kilmarnock  
KA1 1SG  
("the Tenant")**

**Mr David Colin Alexander Neil  
26 Glasgow Road  
Kilmarnock  
(represented by their agent Lyn-Mar, 20 West George Street,  
Kilmarnock, KA1 1DG)  
("the Landlord")**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit, and Lesley Dowdalls, Legal Member and Andrew Taylor, Surveyor member, having carried out an inspection on 1<sup>st</sup> September 2017 for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application received on 26<sup>th</sup> May 2017 the Tenant applied to the Housing and Property Chamber 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard required by s13 of the Housing (Scotland) Act 2006, and in particular that the Landlord had failed to ensure that:-
  - (a) In terms of s13(1)(a) the house was wind and watertight and otherwise fit for human habitation, as the roof leaked, causing damage to the living room wall and ceiling, and there was dampness within the property
  - (b) In terms of s13(6), a Carbon monoxide monitor was fitted
  - (c) In terms of s13(1)(b), that the wall at the entrance door was repaired
3. By letter dated 26<sup>th</sup> July 2017, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. Following service of the Notice of Referral the Landlord (by letter dated 16<sup>th</sup> August 2017), made written representations to the Tribunal. The Tenant submitted written representations (undated).
6. The Tribunal inspected the Property on the morning of 1<sup>st</sup> September 2017. The Tenant was present during the inspection. The Landlord did not attend. Schedule of Photographs taken at Inspection is attached hereto.
7. Following the inspection of the Property the Tribunal held a hearing at Kilmarnock and heard from both the Tenant and Landlord's representative. The Landlord was represented by Mr Riddell, Lyn-Mar, 20 west George Street, Kilmarnock. The Tenant represented herself.
8. The tenant submitted evidence all as contained within the written submission and application. She was unaware of roof repairs having been carried out, but confirmed at Inspection that water leaked only into the kitchen now. The tenant advised that water leaks through the kitchen roof, running down the kitchen walls. The kitchen light flickers intermittently. She has tried to resolve issues and had communicated with the letting agency with the assistance of her mother due to her own health issues and pregnancy. She had not notified the Landlord's agents about further water ingress in the kitchen, and had last notified the Landlord about water ingress issues in February 2017.
9. The landlords submitted evidence all as contained in the written submission. In addition, the Landlord representative confirmed that roof repairs were carried out in March 2017, when slates were renewed and gutters cleaned, and the tenant had not notified him of any further

difficulties since that date. The tenant had been uncooperative with letting agency staff and had refused to allow access to the property. An electrical inspection has been arranged for 5<sup>th</sup> September, when a carbon monoxide monitor will be installed.

### **Summary of the issues**

10. The issues to be determined are whether the property meets the Repairing Standard (all as noted in section 2(a) to (c) above).

### **Findings of fact**

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

- The tenancy is an assured tenancy
- No Carbon Monoxide monitor is fitted in the property
- There is evidence of water ingress causing damage to decoration on the ceiling and wall in the living room (all as detailed in Inspection Report attached). This damage requires to be made good.
- The roof repairs which were carried out have prevented further leaks.
- There is no evidence of further water ingress or dampness in the living room.
- The issue of leaks in the kitchen roof is not part of this current application as no notification had been made to the Landlord.
- There is no evidence of dampness within the property
- The wall at the front entrance door is not in a reasonable state of repair and impacts upon the tenant's use of the property as the plaster is open and crumbling when the tenant's door closes.

### **Reasons for the decision**

The Tribunal considered all information provided in writing and at the Hearing. It is evident that a very acrimonious relationship has developed between the Landlord representatives and the Tenant. That has prevented issues which are easily resolvable from being resolved. The tenant raised issues which were not contained in the application or notified to the landlord in relation to faulty electrics and the kitchen roof leaking. These matters will not form part of the determination of the Tribunal as they require to be made the subject of a separate application. The Landlord representative complained that access to the property to carry out essential inspections and installation of the carbon monoxide monitor had been prevented by the Tenant. The Tribunal reminded him however that the Landlord has the right to enter the property in terms of Clause Eight of the tenancy agreement, and has a duty to ensure that the property meets the Repairing Standard.

### **Decision**

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

### **Right of Appeal**

15. **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**

16. 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 L Dowdalls

Date ..... 7<sup>th</sup> September 2017

Chairperson