

# **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/17/0235**

**Title no: GLA168231**

**31 Cessnock Road Millerston Glasgow G33 6NH ("The Property")**

**The Parties:-**

**Miss Jane Haig, residing at 31 Cessnock Road Millerston Glasgow G33 6NH  
("the Tenant")**

**Mr Thomas Muirhead, executor of the late Raymond Muirhead, residing at  
26 Rossie Crescent, Bishopbriggs, Glasgow G64 AP ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Greig Adams (Ordinary  
Member)**

**NOTICE TO THOMAS MUIRHEAD, executor of the late Raymond Muirhead,  
residing at 26 Rossie Crescent, Bishopbriggs, Glasgow G64 AP ("the  
Landlord")**

Whereas in terms of their decision of even date 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 house is wind and watertight and in all other respects reasonably fit for human habitation.
- 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 house has satisfactory provision for detecting fires and for giving warning in the event of fire, or suspected fire.
- The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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:-

1. To install provision for the detection of fire or suspected fire in accordance with Scottish Government Regulations, and in particular to install -
  - 1.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
  - 1.2 One functioning smoke alarm in every circulation space, such as hallways and landings.
  - 1.3 One heat alarm in every kitchen.
  - 1.4 All alarms should be hardwired and interlinked and
2. To install a carbon monoxide detector in accordance with Scottish Government Regulations.
3. To obtain and produce an up-to-date Gas Safety Certificate.
4. To instruct a suitably qualified tradesman to repair or replace the rubber seals of the double glazed window units so as to ensure that they are wind watertight and to overhaul the ironmongery to ensure that all handles can be operated efficiently to open, close and lock the windows.
5. To instruct a suitably tradesman to investigate the plumbing and external drainage system, to report and to instruct recommended work to ensure that all waste water from the Property drains into the mains system effectively.
6. To instruct a specialist report into the condensation and damp found within the kitchen, bedroom and boiler cupboard in the Property, and to instruct the recommendations contained therein in respect of the installation of both suitable ventilation and damp proof works.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the Tribunal.

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 Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 6 November 2017 before this witness:-

**R Mill**

Legal Member

**M Murray**

Witness

MARGARET JOHNSTONE MURRAY Name

69-71 DALRY ROAD Address

EDINBURGH

EH11 2AA

# 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: Section 24 (1) of the Housing (Scotland) Act, as amended**

**Chamber Ref: FTS/HPC/RP/17/0235**

**Title no: GLA168231**

**31 Cessnock Road Millerston Glasgow G33 6NH ("The Property")**

**The Parties:-**

**Miss Jane Haig, residing at 31 Cessnock Road Millerston Glasgow G33 6NH ("the Tenant")**

**Mr Thomas Muirhead, executor of the late Raymond Muirhead, residing at 26 Rossie Crescent, Bishopbriggs, Glasgow G64 4AP ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Greig Adams (Ordinary Member)**

### **Decision**

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

### **Background**

1. By way of application received on 22 June 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. Additional information and clarification required to be obtained from the Tenant prior to formal registration of the application. The Tenant has been actively represented in this process by Messrs Brown & Co, Solicitors. They did not, however, actively participate or attend the inspection or hearing.
3. In the application the Tenant states that the Landlord has failed to ensure that the property meets the repairing standard in a number of



respects. The relevant elements of the repairing standard put at issue are those contained within Section 13(1)(a), (c), (f) and (g).

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
  - Whether 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.
  - Whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire, or suspected fire.
  - Whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
4. Notices of referral were issued to parties on 26 September 2017.

#### **The Tenancy**

5. There is no written Tenancy Agreement. On the basis of the evidence produced a tenancy does exist. The Tenant moved into the property in or about December 2007 with her husband, John Haig, as joint tenant. They rented the Property from Pauline McFadden (later Muirhead) who is the daughter of Jane Haig and her son in law, Raymond Muirhead. Following taking up occupation the Tenant has paid £300 per calendar month which is evidenced. The said Pauline McFadden or Muirhead died on 3 September 2008. The said Raymond Muirhead died on 16 February 2009. His estate falls to his daughter who is still a minor. As a consequence, the tenancy and collection of rent is being managed by the executor of Raymond Muirhead's estate, namely his father Thomas Muirhead. The existence of the Tenancy has been acknowledged in writing by Messrs Morrisons LLP, the solicitors who act in the administration of the estate. In particular, by way of letter dated 1 April 2011 issued by John Kerrigan, partner, for and on behalf of Morrisons LLP, the relationship of Landlord and Tenant in respect of the Property was confirmed to subsist.
6. The Tenant pays rent to the firm of Messrs Morrisons LLP. The Tribunal issued a Direction in order to seek clarification of the management of the Tenancy. The Tribunal issued a Direction dated 9 October 2017 seeking clarification of the arrangements made, if any, in respect of Landlord Registration given that the Tribunal had checked the Local Authority Register and identified that the Property had no registered Landlord and that this is an offence. The Direction was also served on Messrs Morrisons LLP. No formal response was received to this Direction which the Tribunal finds disappointing.

### **Application for an Adjournment**

7. By way of email dated 27 October 2017, the Landlord sought to postpone the case. He acknowledged being in receipt of all of the relevant papers. The Tribunal were satisfied that there were no satisfactory reasons for the Landlord not having adequately prepared matters, given the ample fair notice which had been afforded to him. Given the issues raised within the application, by the Tenant regarding the matters affecting her enjoyment of the Property and the potential serious nature of the issues being of a health and safety nature the Tribunal refused to postpone consideration of the application further.

### **Inspection**

8. The Tribunal inspected the property on 3 November 2017 at 10.00 am. The Tenant was present and invited the Tribunal members into the Property and directed them around. The Landlord had been invited, but did not attend.

### **Hearing**

9. Following the inspection of the Property, the Tribunal convened a hearing later the same day at 11.30 am at Wellington House, Room 1, 134-136 Wellington Street, Glasgow G2 2XL. The Tenant chose not to attend the Hearing. Full written submissions had been lodged on her behalf by her solicitor. The Landlord had been invited and attended personally.

### **Summary of Issues**

10. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
11. A number of issues were referred to within the initial application. These can be summarised as:-
  - The windows are not wind and watertight. The rubber seals are slack and the handles are loose.
  - There is dampness in the Property causing mould.
  - The drainage in the bath is defective. Reference was also made to water logging in the basement.
  - Reference was made to there being no extractor fan in the bathroom or kitchen.

- The Tenant complained that there were insufficient alarms for the detection of both fire and carbon monoxide.

### **Findings in Fact**

12. The Tribunal makes the following findings in fact:-

1. The Title to the subjects known as 31 Cessnock Road Millerston Glasgow G33 6NH is held by Raymond William Muirhead and Pauline McFadden. Their interest is registered in the Land Register of Scotland under Title number GLA168231.
2. Raymond William Muirhead and Pauline McFadden are both deceased. Pauline McFadden died first. Title to the Property was taken equally between them and to the survivor of them.
3. The executor dative of Raymond William Muirhead is his father, Raymond Muirhead, who is the Landlord. The beneficiary of the estate of the late Raymond Muirhead is his daughter born of the relationship between him and Pauline McFadden. She is minor, currently aged 12 years. Title to the Property has not passed to her and Raymond Muirhead retains responsibility for the Property and the Tenancy.
4. No Landlord Registration has been undertaken in respect of the Property.
5. The Property which is the subject of this application is a lower one bedroomed ex-Local Authority flat within a block of four.
6. The Property comprises of a living room, one bedroom, kitchen, bathroom, walk-in cupboard and hallway.
7. No written Lease exists but a Tenancy does exist between the parties. The Tenant has occupied the Property for a period approaching 10 years. Rental payments made by the Tenant are paid to Messrs Morrison LLP, Solicitors.
8. In relation to the matters complained of in the application, the inspection by the Tribunal revealed:-
  - i. There was no effective means by which fire or suspected fire could be detected. There was one aged battery alarm which had become unfixed from the ceiling some time ago, which is in operative.



- ii. No carbon monoxide detector has been provided by or on behalf of the Landlord.
  - iii. A number of the rubber seals around the double glazing units were perished and ineffective. Some of the window handles were either loose or stiff leading to difficulties with opening, closing and locking of the windows. Parts of the ironmongery was detached.
  - iv. Excessive technical readings for condensation were found in both the kitchen and bedroom of the Property. The wallpaper in the kitchen has peeled away due to this condensation.
  - v. Damp was detected in the bedroom and the boiler cupboard of the Property. The wallpaper in the corner of the bedroom has been seriously affected and has come away from the wall. Water staining, due to the damp, is visible on the timber floorboards.
  - vii. The external drainage system of the Property could not be inspected. Decking has been installed at the rear elevation of the Property above ground level. There was no indication of any rodding entry point. Inspection of the solum of the Property beneath the bathroom and kitchen areas to the rear of the Property was not possible.
9. Reference is made to the Schedule of Photographs taken at the time of the Tribunal's inspection which are attached herewith and referred to for their terms.
13. At the time of the inspection the Tenant advised of the following matters which are found to be established:-
- i. No up-to-date Gas Safety Certificate had been provided. The last such Certificate expired in October 2017.
  - ii. There are ongoing problems with drainage water returning up through the bath plug hole. This has been investigated by Scottish Water and she has been advised that there is water leaking from the external drain system, and that there is water retained in the solum of the Property along the rear elevation.

#### **Reasons for Decision**

14. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at



the inspection and the representations made to the Tribunal by the Landlord at the hearing.

15. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 3 November 2017.
16. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
17. Reference is made to the Tribunal's earlier Findings in Fact upon which the decision is based.
18. The Landlord had not been present at the inspection. He advised that he had not had any opportunity to enter the Property and inspect it himself. The Tribunal explained to the Landlord their findings from the earlier inspection. The Landlord did not take exception with what had been found, other than to state that it was his belief that there was detectors for both fire and carbon monoxide but that this had been installed by his son some 8 years ago. He also suggested that the indicators of condensation and damp could have been caused by the Tenant herself in a contrived manner, but a full explanation was given in respect of the findings which the Landlord then accepted.
19. The Landlord advised that there had been a history of difficulties in communicating with the Tenant due to the difficult family background. He advised that he was committed to undertaking the relevant work to ensure that the Property meets the repairing standard. He advised that over recent days investigations had been instructed by him, in particular with reference to the windows in the Property and the drainage problems. The Landlord accepted that there were problems which required to be resolved and that he would ensure that the requirements, if any, which the Tribunal were to impose would be remedied. He accepted that there is no current Gas Safety Certificate.
20. The Tribunal encourages the Tenant to ensure that full access is given to all parties instructed by the Landlord to undertake the work as specified by the Tribunal. The Tribunal would also encourage the Landlord to take professional advice regarding the Tenancy and given the difficult relationships, the Landlord would be well advised to instruct a formal Letting Agent to manage the Property.

## **Decision**

21. The Tribunal, having made enquiries for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in

relation to the property, determined that the Landlord has failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

### Right of Appeal

22. 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.
23. 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.

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**R Mill**

Legal Member

**M Murray**

Witness

MARGARET JOHNSTONE MURRAY Name

69-71 DALRY ROAD Address

EDINBURGH

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**31 CESSNOCK ROAD  
MILLERSTON GLASGOW G33  
6NH (“THE PROPERTY”)**

Chamber Ref: FTS/HPC/RP/17/0235

# **SCHEDULE OF PHOTOGRAPHS**





1 Unfixed battery operated smoke detector (1 No. within property).



2 Removable battery to smoke detector and date stamp.



3 Carbon Monoxide detector not fixed.



4 Carbon Monoxide positioning.



5 Gas fired boiler.



6 Drainage pipework from bathroom.



7 Weatherproof strip defective – view of rear elevation window.



8 Weatherproof strip defective – view of rear elevation window.



9 Seal between window frame and ingoe.



10 View of loose weatherstrip viewed internally.



13 Internal condensation to window pane.



14 Loose weatherseal not adhered.





15 High Relative Humidity (red indicator outlines risk of condensation) within Kitchen.



16 High Relative Humidity (red indicator outlines risk of condensation) within Front Bedroom.



17 High moisture meter readings recorded at low level within Front Bedroom wall.



18 Further example of high moisture meter readings recorded at low level within Front Bedroom.



19 Carpet taken back and evidence of water staining at corner.



