

# 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/17/0240**

**Title no LAN157179**

**119B Main Street, Overtown, Wishaw ML2 0QF  
("The Property")**

**The Parties:-**

AS Properties Ltd, I.N.I. Enterprises Ltd, INI Enterprises, 7 Chapmans Court,  
Wishaw, ML2 7PQ; 159b Netherton Road, Wishaw, ML2 0AR; 3 Iona Quadrant,  
Wishaw, ML2 8XL (Represented by their agent Lanarkshire Letting, Suite 1/10,  
Dalziel Building, 7 Scott Street, Motherwell, ML1 1PN)  
("The Landlord")

**Former Party**

Miss Hazel Gallacher, formerly 119B Main Street, Overtown, Wishaw, ML2 0QF  
(represented by Motherwell and Wishaw Citizens Advice Bureau, 32/33 Civic  
Square, Motherwell ML1 1TP) ("**The Tenant**")

Lesley Dowdalls (Legal Member) and Carol Jones (Ordinary Member)  
Tribunal Clerk – Duncan Miller

Whereas in terms of their decision dated 3<sup>rd</sup> January 2018, 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 installations in the house for the supply of electricity are in proper working order
- (b) The gate at the rear of the tenancy is secure and in proper working order

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 and secure the gate lock at the rear of the property by carrying out necessary repairs
- (b) to instruct a suitably qualified and registered Electrician to investigate the electrical supply and establish the cause of any fluctuation in electricity supply, and carry out all works identified as necessary to ensure that the domestic supply is in proper working order and that the lights do not flicker

The tribunal order 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 3<sup>rd</sup> January 2018 before this witness: -

**N Gibson** — witness

**L Dowdalls** chairperson

NANCY GIBSON name in full

23 THE FOREGATE Address

KILMARNOCK

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

# **Housing and Property Chamber**

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

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**Decision in respect of Application under s22(1) of Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0240**

**Title no LAN157179**

**119B Main Street, Overtown, Wishaw ML2 0QF  
("The Property")**

### **The Parties:-**

AS Properties Ltd, I.N.I. Enterprises Ltd, INI Enterprises, 7 Chapmans Court, Wishaw, ML2 7PQ; 159b Netherton Road, Wishaw, ML2 0AR; 3 Iona Quadrant, Wishaw, ML2 8XL (Represented by their agent Lanarkshire Letting, Suite 1/10, Dalziel Building, 7 Scott Street, Motherwell, ML1 1PN)  
("The Landlord")

### **Former Party**

Miss Hazel Gallacher, formerly 119B Main Street, Overtown, Wishaw, ML2 0QF (represented by Motherwell and Wishaw Citizens Advice Bureau, 32/33 Civic Square, Motherwell ML1 1TP) ("**The Tenant**")

Lesley Dowdalls (Legal Member) and Carol Jones (Ordinary Member)  
Tribunal Clerk – Duncan Miller

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') inspected the property on 21<sup>st</sup> December 2017.

The following people were in attendance at the Inspection:

1. The tenant
2. Mr Gallacher, the tenant's father
3. Mr Daley, Lanarkshire Letting
4. Ms Daley, Lanarkshire Letting
5. Mr Melvin, Citizens Advice Worker for the tenant
6. Mr Willcox, Citizens Advice, Energy advice worker for the tenant

On 20<sup>th</sup> December 2017 the tenant withdrew the application. In terms of Schedule 2 paragraph 7(3) of the Housing (Scotland) Act 2006, the Tribunal determined to continue to consider the application due to the potential safety issues identified in the application.

The tenant has given notice to end her tenancy, and the termination date is 14<sup>th</sup> January 2018. She has removed herself from the property but returned to ensure access to the tribunal for the Inspection to be carried out.

### **The Inspection**

The tribunal inspected the property and found the following facts established, all as detailed in Schedule of Photographs attached hereto:

1. The rear garden gate does not have a suitably secure lock. The latch style lock is not properly fixed to the timber gate, it is loose because there is a screw missing and it is therefore insecure.
2. The issues regarding guttering and drainage have been resolved, as confirmed by the tenant. The tenant confirmed the landlord repaired the gutters and carried out some works to the slabs surrounding the rear drain in April 2017. During very heavy rain an amount of ponding still appears at the drain site but disperses over time. Otherwise the drain and guttering complaints are resolved. The tenant intimated prior to the inspection that the issue of drainage was withdrawn.
3. The internal door locks have been repaired and are in working order.
4. The electricity continues to suffer from fluctuation in supply, causing lights to flicker. New sockets have been fitted in the living room and one bedroom as they previously sparked. The living room socket was replaced for a second time 2 weeks ago.
5. The property comprises a three apartment flat situated above a convenience store, "Day-Today" and located in the centre of the village of Overtown, around 2 miles south of Wishaw town centre in North Lanarkshire. Access to the flat is to the rear of the building.

In advance of the Inspection, the tribunal had issued a Notice of Direction dated 12<sup>th</sup> December 2017. Said notice has been complied with as follows:

1. The Landlord provided details of the Landlord and acknowledged receipt of intimation of the Tribunal hearing and Inspection dates
2. An EICR dated 10 May relevant to the property was produced and contained within the application papers.

### **Evidence provided at the Hearing**

At the Hearing following Inspection, the following documents were produced on behalf of the Landlord and included in the tribunal papers:

1. Tenant Information Pack
2. Photographs of meter readings at date of commencement of tenancy
3. Notice of acceptance of Completion Certificate
4. Gas Safety record dated 15<sup>th</sup> December 2015

The tenant did not attend the tribunal hearing. The tenant's representatives from the Citizens Advice Bureau (as noted above) attended the hearing as observers only given that the tenant had withdrawn her application and was no longer a party to the application. The Landlord's agents (as noted above) attended as representatives of the Landlord. They advised that the tenant had been issued with Gas Certificate, meter and energy supplier information and Tenant Information Pack (all as produced and referred to above) at commencement of the tenancy. They advised that the EICR had been provided in May 2017, as the initial certificate lodged with the Local Authority had been lost. The property was new in 2015 and the tenant was the first person to reside there. Confirmation of acceptance of Completion certificate was produced as evidence that the property met building regulations.

The Landlord's agents provided evidence that they understood from the tenant that the electrician providing the EICR had suggested that the flickering lights in the property could be caused by a number of factors including the possibility of this being linked to the use of the chillers in the shop below. The agents also said that they were aware that the electrician who carried out the EICR said the commercial property below could be a factor. A second electrician from 2 Core Electrics had recently suggested that a change of light bulbs may resolve the issue of flickering lights. He had changed the socket in the living room for the second time which had "sparked" and been of concern to the tenant. The Landlord awaits a Minor Works certificate in respect of those repairs.

The EICR indicates that the tenant's main electrical supply comes from the commercial property below the property. The Landlord's agents did not understand why that should be the position and confirmed the electricity supply in the subject property is provided by Scottish Power. The tenant had provided information in her application that she did not receive electricity bills and did not know her supplier. She had however signed the document produced by the agents showing electricity meters and relevant supplier information at the commencement of the tenancy. The Landlord's agents did not dispute that the lights flicker but did not consider it a safety issue as the EICR was satisfactory.

## **Decision**

**The tribunal finds that the property does not meet the repairing standard required in s13(1)(c) and s13(1)(d) of the Housing (Scotland) Act 2006 in respect that:**

- 1. The installations in the house for the supply of electricity are not in proper working order.**
- 2. The gate which is provided under the tenancy is insecure and has a lock which is not in reasonable working order.**

**The tribunal makes a Repairing Standard Enforcement Order in respect of the property requiring the Landlord:**

- (a) to make good and secure the gate lock by carrying out necessary repairs and**

- (b) to instruct a suitably qualified and registered Electrician to investigate the electrical supply and establish the cause of any fluctuation in electricity supply, and carry out all works identified to ensure that the domestic supply is in proper working order and the lights do not flicker.

### Reasons for Decision

The evidence provided did not satisfy the tribunal that proper investigation of the cause of flickering lights and fluctuating electricity supply has been undertaken. The EICR provided confirms that the main supply of electricity is from a commercial property downstairs. The application made it clear that the tenant has had issues regarding sparking sockets and flickering lights throughout the tenancy. These matters require to be fully investigated and any repair or alteration work necessary carried out in order to ensure that the supply and electrical installation is in proper working order.

The gate lock is insecure, and security could be easily compromised.

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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.

In witness whereof these presents type written on this and the preceding 3 page(s) are executed by Lesley Dowdalls, solicitor, 23 The Foregate, Kilmarnock, chairperson of the tribunal at Kilmarnock on 3<sup>rd</sup> January 2018 before this witness:-

**N Gibson** — witness      **L Dowdalls**

NANCY GIBSON name in full

23 THE FOREGATE Address

KILMARNOCK

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