

# **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/17/0313**

**Title no/Sasines Description: DMB6027**

**80 Glenacre Road, Cumbernauld, G67 2PE  
("the House")**

**The Parties:-**

**Ms Donna Reid, residing at the property  
("the Tenant") (represented by Mr Iain Hunter of Shelter Scotland, 116 Osborne  
Street, Glasgow, G1 5QH)**

**Mr Colin Lang, 38g Townhead, Kirkintilloch, Glasgow, G66 1NL  
("the Landlord")**

Whereas in terms of their decision dated 23 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 watertight and in all other respects reasonably fit for human habitation. (Section 13 (1) (a) of the 2006 Act)
- (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. (Section 13 (1) (b) of the 2006 Act)
- (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. (Section 13 (1) (c) of the 2006 Act)
- (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. (Section 13 (1) (d) of the 2006 Act)
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed. (Section 13(1) (e) of the 2006 Act)

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 replace the front door to ensure that it is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) To replace the blind in the main bedroom with another blind which does not interfere with the operation of the windows so that it is in a reasonable state of repair and in proper working order.
- (c) To install a heating system within the house which is adequate for the size of the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.
- (d) To repair the locking mechanisms in the windows located in the kitchen utility room, the main bedroom and the bathroom to ensure that the windows are in a reasonable state of repair and in proper working order.
- (e) To repair or replace the window located in the kitchen utility room to ensure that it is in a reasonable state of repair and in proper working order.
- (f) To repair or replace the hot water system to ensure that it is in a reasonable state of repair and in proper working order and to produce to the Tribunal a report from a SELECT or NICEIC registered electrician confirming that this has been carried out and that the hot water system produces a sufficient and adequate hot water supply to the kitchen sink and to the bath.
- (g) To replace the floor coverings located in the kitchen and the hallway to ensure that they are capable of being used safely for the purpose for which they were designed.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 8 weeks 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.**

In terms of Section 63 of the Act, 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 two pages  
are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 23  
October 2017 in the presence of the undernoted witness:-

**A Spooner** witness

ABIGAIL SPOONER name in full

4<sup>th</sup> FLOOR, 1 ATLATIC Address

QUAY, 45 ROBERTSON

street, Glasgow, G2 8UB

**P Pryce**

Legal Member

# **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/17/0313**

**80 Glenacre Road, Cumbernauld, G67 2PE  
("the Property")**

**The Parties:-**

**Ms Donna Reid, residing at the property  
("the Tenant") (represented by Mr Iain Hunter of Shelter Scotland, 116  
Osborne Street, Glasgow, G1 5QH)**

**Mr Colin Lang, 38g Townhead, Kirkintilloch, Glasgow, G66 1NL  
("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 the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the representations submitted by the Tenant and the Tenant's representatives at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The tribunal consisted of:-**

<b>Patricia Anne Pryce</b>	<b>- Legal Member</b>
<b>Lori Charles</b>	<b>- Ordinary Member (Surveyor)</b>

**Background**

- 1. By application comprising documents received between 11 and 16 August 2017, the Tenant applied to the First-tier Tribunal (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 and that the said failure was established as follows:-

- (a) "There was mould/fungus in bedroom and bathroom.
- (b) Windows which do not fully open/close/lock in bedroom, bathroom and kitchen.
- (c) Heating system unaffordable and takes unreasonable time to produce hot water.
- (d) Extractor fan in kitchen out of Tenant's reach.
- (e) Flooring throughout property requires replacement.
- (f) Draught proofing required externally and internally."

The Tenant considered that the Landlord is in breach of his duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
  - (ii) 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.
  - (iii) 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.
  - (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - (v) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed.
3. By Minute dated 28 August 2017 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Tenant's representatives advising that the inspection and hearing would take place on 17 October 2017 and 10 am and 11.30 am respectively. No submissions were received from the Landlord or the Tenant's representatives. The Tenant's representative confirmed that he would attend the hearing on behalf of the Tenant along with the Tenant.

### **The Inspection**

5. An inspection and hearing were arranged as noted above. The tribunal attended at the property. Both the Tenant and her representative, Mr Hunter, were in attendance at the property. The Landlord did not attend the inspection nor was he represented at the inspection. The tribunal noted the following at inspection:-

- The windows in the main bedroom could not be opened due to the location of the window blind.
- The extractor fan located in the kitchen functioned and was within reach of the tribunal members.
- There was visible daylight between the front door of the property and the surrounding door frame and a draught could be detected at this gap.
- There were no discernible draughts emanating from the internal doors or their surrounding frames.
- There was no dampness or mould/fungus located in the main bedroom.
- There was mould located on the wall below the window in the second bedroom which was as the result of condensation and a damp meter reading showed that there was no dampness present.
- There was no mould or fungus in the bathroom ceiling or on the wall of the bathroom. Damp meter readings taken showed that there was no dampness. There was staining located on the ceiling and wall which was historical in nature.
- The hot water from the tap in the kitchen only reached a lukewarm temperature and ran at a low pressure.
- The hot water tap located in the bath only reached a lukewarm temperature and ran at a low pressure.
- There are small wall mounted convector heaters located within both bedrooms, the hallway, the bathroom and the kitchen which do not produce sufficient heat to adequately heat the whole property.
- There is no convector heater located in the living room of the property. There is an electric bar fire which was installed by the Tenant.
- The locks on the windows located in the main bedroom, the kitchen utility room and the bathroom do not function.
- The window in the kitchen utility room does not work properly and the window requires to be lifted to close properly.
- The carpet in the hallway is frayed.
- The carpets located in the bedrooms are of poor quality but are not frayed or worn.
- The linoleum in the kitchen is ripped and worn and is a tripping hazard.
- The linoleum in the bathroom is not covered by dampness or mould but is poorly fitted.
- There were sufficient smoke and heat detectors within the property which were hard-wired and interlinked.



The schedule of photographs taken by the Ordinary Member of the tribunal at the inspection is attached to this decision.

### **The Hearing**

6. The Tenant and Mr Hunter attended at the hearing. The Landlord did not attend the hearing nor was he represented at the hearing.

The tribunal advised the parties of their findings at inspection as noted above. The parties indicated that they agreed with these findings.

Mr Hunter confirmed that he did not disagree with what the tribunal had noted at the inspection. He submitted that the heating in the property was wholly insufficient for the property and could not adequately heat the property.

### **Summary of the issues**

7. The issue to be determined is whether the repairing standard has been met in light of what the tribunal viewed at the inspection.

### **Findings of fact**

8. The tribunal finds the following facts to be established: -
  - The Tenant entered into a tenancy with the Landlord which was a short-assured tenancy.
  - The Tenant remains in the property and has lived there for six years.
  - The property is a top floor flat within a three-storey terraced block of flats constructed circa 1950. It comprises a hallway, living room, kitchen with utility, two bedrooms and bathroom.
  - There is no dampness located in the property.
  - The second bedroom suffers from condensation due to the inadequate heating system located within the property.
  - The property is cold as the heating system located within is insufficient to heat the property.
  - The locking mechanism in the bathroom window was rusted and did not work.
  - The locks on the windows were broken as noted above.
  - The temperature of the hot water supply to the kitchen sink and to the bath was lukewarm and insufficient. The pressure in these hot water taps was also inadequate.

### **Reasons for the decision**

9. The tribunal noted that in terms of the present application the Tenant had first notified the Landlord of the outstanding repairs in March 2017, around eight months ago. Despite this and despite various works having been

carried out to the property by the Landlord, outstanding repairs issues remained.

Given all of the circumstances, the tribunal is satisfied that: the house is not wind and watertight and in all other respects reasonably fit for human habitation as there is a draught emanating from the gap between the front door and the surrounding frame and the heating system is wholly inadequate to heat a property of its size; 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 as the windows located in the main bedroom, the kitchen utility room and the bathroom do not lock together with the window in the utility room not closing properly; 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 as the temperature and pressure of the hot water taps located in the bath and the kitchen sink are wholly inadequate; any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order as the blind in the main bedroom prevents the windows there from being opened; any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed as the carpet in the hallway is threadbare and frayed and presents a slip hazard and the linoleum in the kitchen is ripped and presents a trip hazard.

### **Decision**

10. The tribunal accordingly determined that the Landlord had not complied with the duty imposed by Section 14 (1)(b) of the Act.
11. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
12. The decision of the tribunal was unanimous.

### **Right of Appeal**

13. 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

Signed

**P Pryce**

Date 23 October 2017

Legal Member

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Schedule of Photographs



80 Glenacre Road, Cumbernauld, G67 2PE

FTS/HPC/RP/17/0313

Inspection date - 17<sup>th</sup> October 2017 at 10am

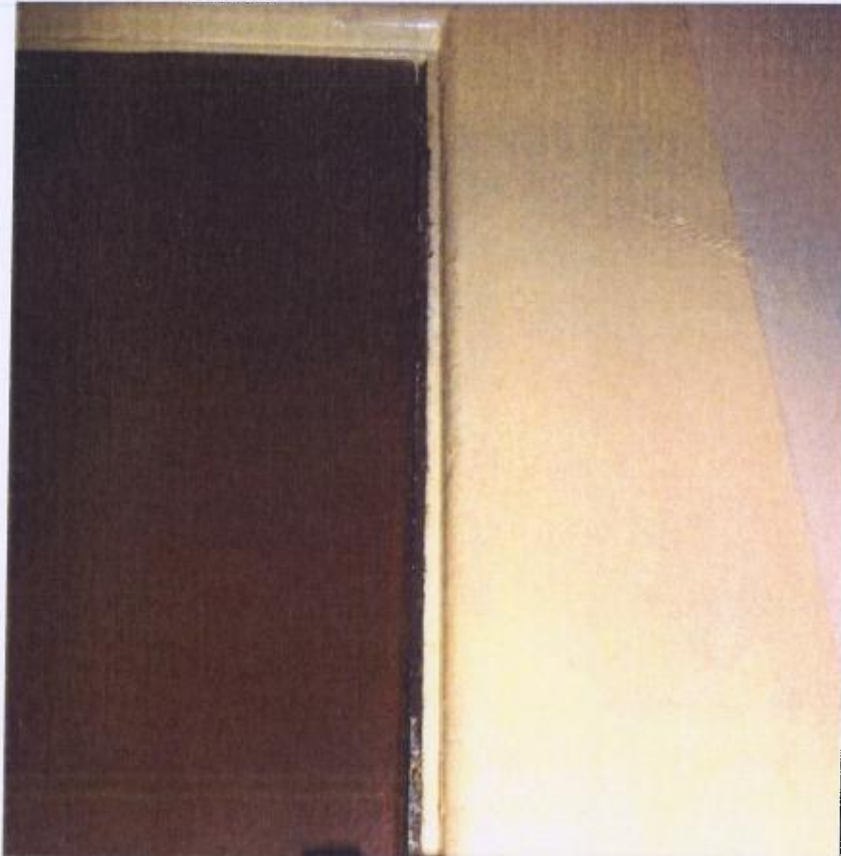
Weather - Windy and Wet



Roller blind preventing window from opening – Main bedroom  
Unable to lock with key



Cord on extract fan has been lengthened and operated fan



External timber door - Daylight visible and draught was noted



No evidence of dampness in bedrooms - Mould due to condensation

Green moisture meter readings recorded





No evidence of dampness in bathroom – Green moisture meter readings recorded  
Historic water staining noted



Water temperature was tested in kitchen and bathroom – Lukewarm temperature and poor water pressure noted



Electrical wall mounted heating – bedrooms one, two, hall, kitchen and bathroom



Electric fire and surround – lounge (provide by tenant)





Bathroom window difficult to open and close and unable to lock with key



Kitchen utility window hinges are defective and window requires to be lifted to close.

Unable to lock with key



Hall carpet frayed



Linoleum in kitchen ripped at washing machine



Linoleum in bathroom no dampness or mould noted