

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(1) ('the Act')

Chamber Ref: FTS/HPC/RP/17/0331

Property at 207 Carlisle Road, Kirkmuirhill, South Lanarkshire ML11 9SB

Land Register Title Number LAN 71584

('The Property')

The Parties:

Mr Thomas Callan, former tenant of 207 Carlisle Road, Kirkmuirhill, South Lanarkshire ML11 9SB

('the Tenant')

Mrs Tracey Lochrie, 5 Tenants March West Calder EH55 8NB

('the Landlord')

Whereas in terms of their Decision dated 22nd 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 the Landlord has failed to ensure that the Landlord has failed to ensure that the property meets the Repairing Standard with reference to the following provisions of section 13 of the Act, as amended:-

- (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 property 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
- (f) The house has satisfactory provisions for detecting fires and 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 Property 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:

(i) To install hard-wired and interlinked smoke alarms in the living room and hallway and a heat alarm in the kitchen to ensure that there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;

(ii) To produce to the tribunal a clear Electrical Installation Condition Report (EICR) from a suitably qualified electrician confirming that the electrical installations within the property are in proper working order and comply with the relevant regulations with no items marked as Category 1 or Category 2, and a Portable Appliance Test (PAT) in respect of portable electrical appliances (if any) from a suitably qualified and registered SELECT or NICEIC electrical contractor. The Landlord is to exhibit such Reports (EICR and PAT) to the tribunal;

(iii) To submit to the tribunal an up to date and satisfactory Gas Safety Record from a Gas Safe registered engineer in respect of the property. This must include appropriate service of the boiler; and

(iv) To repair or, as necessary, replace the defective sheeting to the car port roof;

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 seek permission to appeal from the First-tier 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 all in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the two preceding pages are executed by Joseph Christopher Hughes, Solicitor Advocate, Legal Member and Chairperson of the tribunal at Glasgow on 24th January 2018 in the presence of the undernoted witness :-

I McClelland

..... Witness

J C Hughes

Chairperson

Ian Mark McClelland, Solicitor

J C Hughes Solicitors

1028 Tollcross Road

Glasgow

G32 8UW

Housing and Property Chamber
First-tier Tribunal for Scotland



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

STATEMENT OF DECISION

Housing (Scotland) Act 2006 Section 24(1) ('the Act')

Chamber Ref: FTS/HPC/RP/17/0331

Property at 207 Carlisle Road, Kirkmuirhill, South Lanarkshire ML11 9SB

Land Register Title Number LAN 71584

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The Parties:

Mr Thomas Callan, former tenant of 207 Carlisle Road, Kirkmuirhill, South Lanarkshire ML11 9SB

('the Tenant')

Mrs Tracey Lochrie, 5 Tenants March, West Calder EH55 8NB

('the Landlord')

The Tribunal Members:

Joseph C Hughes (Legal Member)

Colin Hepburn (Ordinary Member/ Surveyor)

DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14(1) (b) in relation to the Property, determined the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act.

Background:

1. By Application (undated) the Tenant applied to the First-tier Tribunal for Scotland (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'). The Application was received on 29th August 2017.

2. The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the Repairing Standard. The Tenant brought forward the following breaches:

- (i) No smoke alarms;
- (ii) No carbon monoxide detector;
- (iii) Un-serviced boiler;
- (iv) No Gas Safety certificate;
- (v) Windows need replacing;
- (vi) Floor in kitchen uneven/unsafe;
- (vii) Carport unsafe structure; and
- (viii) Electrics signed off as safe by non certified electrician.

3. The Tenant considered that the Landlord is in breach of her duty under the Housing (Scotland) Act 2006 in relation to the Repairing Standard and in particular the Landlord has failed to ensure that:

- (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;
- (f) The house has satisfactory provisions for detecting fires and giving warning in the event of fire or suspected fire; and
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

4. By Minute dated 12th September 2017 the Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers under Section 96 of the Housing (Scotland) Act and Section 21(8A) of the Act, made a Decision to Refer the Application to a tribunal in terms of Section 23(1) of the Housing (Scotland) Act 2006.

5. On 19th October 2017 the Tribunal wrote to the Landlord to advise that the Tribunal intended to inspect the property on 28th November 2017 at 10am with a Hearing at 11.30am. The Landlord contacted the Tribunal by email on 9th November 2017 requesting an adjournment to allow her to attend in person and prepare. The Tribunal postponed the original Inspection and Hearing. The tribunal inspected the property on 10th January 2018 at 10am with a Hearing at 11.30am. Neither party lodged any additional written representations.

6. The tribunal understand the Tenant left the property in November 2017 without any forwarding address.

The Inspection:

7. An inspection and hearing were arranged for 10th January 2018 at 10am and 11.30am respectively. The tribunal attended at the property for the purposes of inspection of the property. The Landlord was present and provided access to the property. The Tenant was not in attendance. The Landlord stated that the property had not been let out to anyone since the Tenant left in November 2017. The Landlord cooperated throughout the Inspection.

8. At the inspection the tribunal noted the following points:

(a) The property is a semi-detached bungalow comprising 2 bedrooms, hall, lounge, kitchen, toilet/shower room. There is a small cupboard within the hall which houses the electrical consumer unit. The central heating boiler is within the kitchen. The property has an attached car port. The property is currently being decorated. The Landlord indicated she was intending to sell the property and had arranged for a Home Report to be carried out the next day;

- There are no smoke detectors fitted within the property. This is not disputed by the Landlord;
- There is a carbon monoxide detector fitted within a sealed unit. This is located within the kitchen;
- The gas boiler has not been recently serviced. This is not disputed by the Landlord;
- There is no Gas Safety Certificate available. This is not disputed by the Landlord;
- The Landlord accepts there is no PAT testing in respect of the electrical equipment. This is not disputed by the Landlord;
- The windows and the patio door in the rear bedroom were examined internally and externally. All windows opened properly and the double-glazed units had not failed. The tribunal noted that there is softening to the sill and frame of the kitchen window to the front elevation.
- The floor in the kitchen was uneven but does not seem to be hazardous. There is a hatch under the floor coverings in front of the cooker;
- External to the property there is an attached car port. Whilst the actual structure seemed safe, the roof sheeting is defective in that it is broken with sections missing. The mesh is also defective.

A Schedule of Photographs taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

The Hearing:

9. The Hearing took place at Lesmahagow and District resource Centre. The Landlord attended the Hearing and provided some background information about the property and the Tenant. The tribunal had before it the Application and other documentation. The tribunal also had the Land Certificate LAN 71584 relative to the property which is registered in the name of the Landlord under her maiden name Tracey Paula Peacock.

(a) This was an unfurnished tenancy.

(b) The Landlord showed the tribunal photos she had taken of the property on 16th December 2017.

(c) The Landlord accepted there are no smoke detectors fitted at the inspection today. She indicated there had been battery operated smoke detectors in the property but she stated that the tenant removed them. She accepted that she had never hardwired the smoke detectors as required by law.

(d) The Landlord accepted there is no heat detector installed.

(e) The Landlord accepted that she did not have a Landlords Gas Safety Certificate. The Landlord accepted the boiler was no longer under warranty.

(f) The Landlord accepted there was no current PAT documentation.

(g) The Landlord accepted that the car port roof was defective indicating she was already planning to carry out repairs and had purchased replacement sheeting.

(h) There is a carbon monoxide detector installed in the kitchen area within a sealed unit.

(i) There is no current service record of the boiler.

(j) The windows in the property open with relative ease with no failed sealed units.

(k) The tribunal explored with the Landlord the flooring within the kitchen. There appeared to be evidence of past leakage and spillage under the floor coverings causing swelling to the chipboard flooring. This would probably explain the unevenness in front of the cooker.

11. The issue to be determined is whether the repairing standard has been met in light of the inspection and the submissions by the Tenant and Landlord.

Findings of Fact:

12. The tribunal finds the following facts to be established:

(i) The Landlord is the registered owner of the property;

(ii) The property is a semi-detached villa comprising of two bedrooms, a toilet/shower room, kitchen, living room and hallway;

(iii) There are no smoke detectors/heat alarm installed;

- (iv) A working carbon monoxide detector is installed within the kitchen;
- (v) There is no up to date satisfactory Gas Safety Record available;
- (vi) The kitchen floor is not unsafe. No evidence on inspection that the floor is unsafe;
- (vii) The windows operate safely. All double glazed units appear to be sealed. The windows do not require to be replaced. The sill and frame of the kitchen window at the front external elevation is softening; and
- (viii) The car port is effectively unsafe due to the defective sheeting on the roof. It is not in a satisfactory state. Sections of the sheeting are missing with many sections of the Perspex sheeting/mesh broken or missing. The car port is not performing the function it is supposed to do

Decision:

- 13. The tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 14. The decision of the tribunal is unanimous.
- 15. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(1) of the Act. 12. The works specified within the RSEO must be carried out and completed within the period of two months from the date of service of Notice of the RSEO.

Reasons for Decision:

- 16. The tribunal considers that the Landlord has had sufficient time to address her duty in respect of ensuring her property meets the Repairing Standard.
- 17. The tribunal considers that the Landlord has failed in her duty under Section 14(1)(b) of the Act and has not complied with the Repairing Standard in terms of Section 13 (1) (c) of that Act.

Observation:

- 18. The flooring in the kitchen and the external kitchen window sill and frame will require future maintenance in order to address overall good maintenance of the property.

Right of Appeal:

- 19. A Landlord, Tenant or Third Party application 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:

20. Where such an Appeal is made, the effect of the Decision and the Order is suspended until the Appeal is abandoned or finally determined.

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.

J C Hughes

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Joseph Christopher Hughes

Legal Member and Chairperson

Housing and Property Chamber

Dated 24th January 2018

Schedule of photographs taken during the inspection of:
207 Carlisle Road, Kirkmuirhill, South Lanarkshire ML11 9SB

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for
Scotland(Housing and Property Chamber) on the 10th January 2018.



Front elevation



Rear elevation



CO detector



Central heating boiler



Floor in front of washing machine



Electrical consumer unit



Last test certificate on consumer unit



Car port



Car port



Kitchen window