

Housing and Property Chamber
First-tier Tribunal for Scotland



**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/18/0234

Title no: REN584

Flat 1/02, 59 High Street, Lochwinnoch, PA12 4AB ("the property")

The Parties:-

**Miss Claire Monaghan, residing at the property per her representative Ms
Fiona Brown, Shelter Scotland, 10 Falcon Crescent, Paisley, PA3 1NS**
("the tenant")

and

**Mrs Gurjit Kaur Lally, 57 High Street, Lochwinnoch PA12 4Ab per her
representative, Mr James Russell, Solicitor, James Patrick & Muir, 44 New
Street, Dalry KA24 5AE.** ("the landlord")

The Tribunal:

**David M Preston, Legal Member and Mr Andrew Murray Ordinary Member
(Surveyor)** ("the tribunal")

**Whereas in terms of their decision dated of even date with these presents, 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") the
tribunal 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 carry out such repairs as are necessary to the bath so as to resolve any
leak therefrom.**
- (b) To produce and lodge with the First tier Tribunal (Housing and Property
Chamber) a satisfactory Gas Safety certificate provided by a suitably qualified
Gas Safe engineer.**

**The tribunal orders 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 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 are executed as follows:

David Preston

Rose Sullivan

Chairing Member

Witness signature

Glasgow

Place of signing

ROSE SULLIVAN

Witness full name

11 April 2018.

Date of signing

142 ST VINCENT ST

Witness address

92 SCA

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision for Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24

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representative, Mr James Russell, Solicitor, James Patrick & Muir, 44 New
Street, Dalry KA24 5AE.** ("the landlord")

The Tribunal:

**David M Preston, Legal Member and Mr Andrew Murray Ordinary Member
(Surveyor)** ("the tribunal")

Decision:

**The tribunal, having made such enquiries as are fit for the purposes of
determining whether the landlord had complied with the duty imposed by
section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as
"the Act") in relation to the property, and taking account of the representations
by the landlord and the tenant:**

- 1. Determined that the landlord had failed to comply with the said duty;**
- 2. Determined to issue a Repairing Standard Enforcement Order under
section 24(2) of the Act.**

Background:

- 1. By application received by the Tribunal on 31 January 2018, the tenant applied to
the Private Rented Housing Panel 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 she considered that the landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the landlord had failed to ensure that:
 - a. 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
 - b. Any fittings, fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and proper working order.
3. In particular the tenant complained that: there was leaking water from under the bath; there was no gas safety check carried out; and the washing machine was broken.
4. By Decision of a convener with delegated powers so to do dated 2 February 2018 decided to refer the application to a tribunal under section 23(1) of the Act.
5. The Tribunal served Notice of Referral, Inspection and Hearing upon both the landlord and the tenant by letter dated 19 February 2018.
6. Following service of the Notice the landlord submitted representations dated 23 February and 19 March 2018. By email dated 26 March 2018, the tenant advised that the washing machine complained of belonged to the tenant and accordingly the complaint in that respect was withdrawn.

Inspection:

7. The tribunal inspected the property on the morning of 27 March 2018. The tenant, the landlord and Mr Russell were present throughout the inspection.
8. The property comprised a flatted dwellinghouse on the first floor over a general grocery store the main street of Lochwinnoch (Photograph 1 of the Schedule of photographs attached hereto). Accommodation consisted of three rooms, bathroom and kitchen.
9. The tribunal was able to carry out a limited inspection beneath the bath waste and observed that the waste pipe from the bath appeared to be supported by pieces wood and tiles. The bath was an enamel coated iron bath with an integral shower fitting over.

Hearing:

10. Following the inspection of the property the tribunal held a hearing at the Teachers Building, St Enoch Square, Glasgow G1 4DB. The tenant was not present but was represented at the hearing by Ms Brown. The landlord was present along with Mr Russell. The tenant had indicated at the inspection that she did not intend to attend the meeting. Accordingly the tribunal was content to proceed with the hearing and reach a determination in the absence of the tenant.

11. On behalf of the landlord Mr Russell confirmed that there was no Gas Safety Certificate in existence. He advised that the central heating system had been replaced some two years previously and a certificate had not been produced at that time. It was believed that the central heating system would still be under warranty although acknowledged that this did not satisfy the regulations. Attempts had been made to instruct a local gas engineer to inspect the gas installations. He had called at the property on 24 March 2018 in an effort to inspect the fittings but had been unable to gain access to the property. The tribunal was shown a card which had been left by the engineer at the property.
12. Mr Russell advised that the landlord had experienced problems with gaining access to the property although the landlord believes that the tenant rarely leaves the property. He explained that the leak from the bath had adversely affected the landlord's shop beneath but that she had been unable to gain access to investigate the problem and have it fixed. Mr Russell said that the landlord had not received any rent for some time.
13. At the inspection the tenant had indicated that the problem with leaking water did not particularly affect her but when it happened, people from the shop below came to her door to complain. It appeared to happen mainly when the bath was used as opposed to the shower.

Findings in Fact:

14. In reaching its decision the tribunal had regard to:
 - a. The application received 31 January 2018;
 - b. Letter from Ms Brown to the landlord dated 30 November 2017 with Post Office proof of Delivery dated 15 November 2017;
 - c. emails from Mr Russell dated 23 February and 19 March 2018;
15. The tribunal finds in fact that:
 - a. The tenancy between the parties is constituted by Lease between the parties dated 4 November 2016.
 - b. The landlord is the heritable proprietor of the property having taken into 18 May 2007.
 - c. The tenant had advised the landlord of the issues with the property and her concerns through her agent Ms Brown by letter dated 30 November 2017;
 - d. The tenant has not been provided with a Gas Safety Certificate;
 - e. The waste pipe from the bath was faulty resulting in leakage;
 - f. The landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

Reasons for the decision:

16. The tribunal noted that the landlord's representations dated 19 March 2018 confirmed that the landlord had experienced historic leakage into her shop below

from the bathroom in the flat. The tenant confirmed that she was aware through people coming to the flat that there was a problem when the bath was used.

17. The landlord representations of 19 March 2018 also confirmed that there was no current Gas Safety Certificate.

18. The tribunal considered that a period of two months would be a reasonable time within which the landlord could have necessary repairs to the bath wastepipe carried out and to obtain a Gas Safety Certificate.

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David Preston

..... Chairman

11 April 2018

**Photograph Schedule – 1/02 59 High Street
Lochwinnoch
Case reference: FTS/HPC/RP/18/0234
Date of Inspection: 27 March 2018**

Glasgow, 11 April 2018
This is the Schedule of photographs referred to in
the foregoing Statement of Reasons

David Preston

Chairman



1 Front elevation of 1/02 59 High Street Lochwinnoch



2 View of the bathroom



3 View of the unsecured bath trap at the outlet