

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/RT/19/0709

Land Register Number: WLN9652

**92 Lower Bathville, Armadale, Bathgate, West Lothian, EH48 2JS
("the Property")**

The Parties:-

**Mrs Gillian Rodger, residing at the property
("the Tenant")**

**Mrs Donna Murray or Kerr, residing at 53 Dalzell Place, Armadale, Bathgate,
EH48 2QB
("the Landlord")**

Whereas in terms of their decision dated 21 May 2019, 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:-

- (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.

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 repair or replace all of the windows in the property, with the exception of the bathroom window, so that they are in a reasonable state of repair and in proper working order.
- (b) To repair the defective smooth cement render base course located below the Living Room window.
- (c) To repair or replace the consumer unit so that it is in a reasonable state of repair and in proper working order.
- (d) To produce an Electrical Installation Condition Report (EICR) by a duly qualified and registered electrician and to carry out any work identified in the EICR as category C1 or C2.
- (e) Once parts (c) and (d) are completed, to produce a further EICR by a duly qualified and registered electrician showing no C1 or C2 defects.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 21 days 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 page are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 21 May 2019 in the presence of the undernoted witness:-

P Pryce

N Pryce

_____ witness
 NICHOLAS PRYCE name in full
 55 DLYTHS WOOD ST Address
 GLASGOW

_____ Legal Member

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)

Chamber Ref: FTS/HPC/RT/19/0709

**92 Lower Bathville, Armadale, Bathgate, West Lothian, EH48 2JS
("the Property")**

The Parties:-

**Mrs Gillian Rodger, residing at the property
("the Tenant")**

**Mrs Donna Murray or Kerr, residing at 53 Dalzell Place, Armadale,
Bathgate, EH48 2QB
("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, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:-

Patricia Anne Pryce	-	Legal Member
Greig Adams	-	Ordinary Member (Surveyor)

Background

- 1. By application comprising documents received on 6 March 2019, 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 her duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-**

- (a) "There are old wooden framed windows which are rotten and in disrepair.
- (b) The windows are very draughty, the frames are loose and have large gaps under them.
- (c) The windows are old and do not open easily.
- (d) The bathroom window is difficult to open and close and due to no ventilation in the bathroom, there is mould on the bathroom tiles.
- (e) The concrete facing below the living room window is crumbling off
- (f) The electrics keep tripping and there is no Electrical Installation Condition Report (EICR)."

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:-

- (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.

Although the Tenant did not tick the box on the application form in respect of point (iii) above, she did include the complaint about the electrics and the lack of EICR in her intimation to the Landlord which forms part of the present application and thus the Tribunal was content to consider this.

3. By Minute dated 11 March 2019 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 and the Tenant advising that the inspection and hearing would take place on 21 May 2019 at 10 am and 11.30 am respectively. No submissions were received from the Landlord. Submissions were received from the Tenant which were considered by the Tribunal. However, these submissions referred to matters out-with the present application. The Tribunal did not take account of the matters referred to within these submissions which did not pertain to the present application.

The Inspection

5. An inspection and hearing were arranged as noted above. The Tribunal attended at the property. The Landlord did not attend at the property but his

representative, Mr Steven Rollo of LetLink Property Rental Services, attended on her behalf. The Tenant was in attendance at the property and allowed the Tribunal access to the property. The Tribunal noted the following at inspection:-

- The property is a cavity construction semi-detached villa over two storeys comprising an entrance hall, living room, dining kitchen, small bedroom and W.C. on the ground floor and two bedrooms and a bathroom on the first floor.
- The glazing beads located around all of the timber-framed windows in the property were defective, loose and unsealed.
- All of the windows in the property, apart from the replaced window in the bathroom, were tested using smoke and all, to varying degrees, demonstrated draughts emanating from these windows.
- The external seal around the living room window was partially defective.
- There was a clear gap around the frame of the PVC window in the kitchen and the integral gasket seal had completely failed.
- The window in the small bedroom was binding as it was sticking when being opened and closed. This window was not sealed properly externally.
- The handle of the window in the W.C. was loose and this window was binding. Once again, it was not sealed but fitted directly into the dry dash render.
- The window located part-way up the stair well was binding and was not sealed.
- The windows in the front bedroom were operational but were draughty.
- Although not part of the application, there was no panel on the bath.
- The mould located in the bathroom was historic as the bathroom window had been replaced in April 2019 and the Tenant kept the window open for ventilation purposes.
- The window in the rear bedroom was operational but draughty when tested with smoke.
- There was no EICR for the property.
- The distribution panel of the consumer unit was located in a floor level cupboard in the small bedroom (the bedroom where one of the Tenant's children slept). This panel was open and provided access to live electrical wires.

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

The Hearing

6. Mr Rollo attended at the hearing. No one else attended the hearing. The Tenant had previously advised that she could not attend as she required to attend her employment.

Mr Rollo submitted that there had been an electrical inspection carried out on the property in January 2019 and this had led to a failed EICR. However, no mention had been made of the failing consumer unit. He confirmed that his electrician had conducted this visit and was registered with NICEIC. He provided a photograph which he had been sent of this unit in January and this clearly showed adhesive tape around the distribution panel. There was no current EICR in respect of the property but an electrician is due to go out to the property on the evening of 21 May 2019.

The Tribunal noted the potential danger to life in terms of the consumer unit and had taken the unusual step of warning the Tenant of its condition at the inspection as it was aware that the Tenant could not attend the hearing. The Tribunal was extremely concerned about the safety of the Tenant and, in particular, her child who slept in the small bedroom.

Mr Rollo acknowledged and accepted this danger and submitted that this matter would be resolved immediately.

Mr Rollo submitted that a window expert had visited the property and had advised that the windows required to be replaced. However, the Landlord did not have sufficient funds to undertake this.

The Tribunal considered that it had sufficient information before it to make a decision and proceeded to make a decision based on its findings at the inspection and what it heard at the hearing together with the application.

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 remained in the property at the time of inspection along with her husband and two children aged 9 and 11 years.
 - The Tenant has resided there since 2015.
 - The Tenant pays £625 per calendar month by way of rent for the property.
 - The property is a semi-detached house of cavity construction under a tiled roof.
 - It comprises accommodation as described above.
 - There was clear evidence that none of the timber-framed windows in the property had been properly sealed externally.

- All of the windows in the property, apart from the bathroom, suffered issues with draughts to varying degrees as demonstrated when tested using smoke.
- None of the external glazing beading had been sealed. It was loose.
- The distribution panel of the consumer unit was broken and allowed access to live electric wires.
- The consumer panel posed an immediate threat to life.
- There was no EICR in place in respect of the property.
- The smooth cement render base course below the living room window was defective.

Reasons for the decision

9. The Tribunal noted that in terms of the present application the Tenant had first notified the Landlord of the repairs in December 2018. Despite attending to some of the issues raised, some of the 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 complete lack of perimeter sealant surrounding all of the timber-framed windows in the property, the glazing beads, which have a water-tight function, are completely defective and loose allowing water to bypass and smoke testing revealed draught ingress around all of the timber-framed windows in the property;
- 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 base course smooth cement render located under the living room window is defective and cracking is evident adjacent to the entrance door;
- 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 consumer unit panel is unsafe and loose allowing access to live wires resulting in risk of death.

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.

Observations

13. The Tribunal noted the potential danger to life in terms of the consumer unit and had taken the unusual step of warning the Tenant of its condition at the inspection as it was aware that the Tenant could not attend the hearing. The Tribunal was extremely concerned about the safety of the Tenant and, in particular, her child who slept in the small bedroom. Mr Rollo submitted that this matter would be dealt with as a matter of urgency. It was of grave concern to the Tribunal that a child was sleeping in a room where such a clear and present danger was located.

Right of Appeal

14. 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

P Pryce

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Signed
Date

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21 May 2019

Legal Member



**92 Lower Bathville, Armadale, Bathgate,
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SCHEDULE OF PHOTOGRAPHS



1 Kitchen window.



2 Defective and loose gasket seal to Kitchen window.



3 Ground Floor bedroom – binding in frame and operation impaired.



4 Ground Floor bedroom – binding in frame and operation impaired.



5 Ground Floor Bedroom – boiler.



6 Staining above ground floor bedroom window.



7 Cloakroom/WC window.



8 Loose handle ironmongery to WC window.



9 Stair window – binding in frame and operation impaired.



10 First Floor Front Bedroom – left hand window.



11 Ongoing works at Front Bedroom.



12 Ongoing works at Front Bedroom.



13 Front Bedroom – right hand window.



14 Plaster below Front Bedroom right hand window.



15 Bathroom – mould growth complaint.



16 View of bathroom.



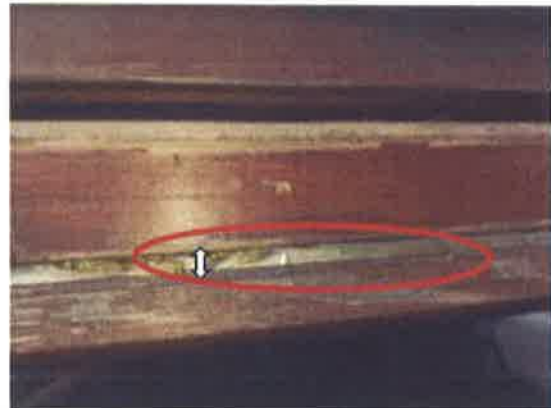
17 External view of Living Room window.



18 Timber decay at sill of living room and defective seals.



19 Living Room window – defective glazing beads.



20 Living Room window – defective glazing beads.



21 Living Room window – defective and loose glazing beads.



22 Living Room window – defective perimeter seals.



23 Stair window.



24 Stair window – perimeter seals not provided at junction between frame and ingoes.



25 Stair window – missing perimeter sealant.



26 Stair window – missing perimeter sealant.



27 Cloakroom window – missing perimeter sealant.



28 Ground Floor Bedroom – missing perimeter sealant.



29 Extract flue location.



30 Ground Floor Bedroom - poor paint finish generally to windows and missing perimeter sealant.



31 Ground Floor bedroom – missing perimeter sealant.



32 Ground Floor bedroom – missing perimeter sealant.



33 Gable Elevation – first floor window.



34 Kitchen window.



35 Kitchen PVC window.



36 Rear Elevation.



37 Consumer unit – tape evident.



38 Consumer unit – front cover not secured and “risk of death” due to uncontrolled access to “live” cables.



39 Defective smooth cement render base course below Living Room window.



40 Front Elevation.



41 Cracking to render adjacent to entrance door.