

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: PRHP/RP/16/0298

Land Register Title No: KNC13119

**Property at 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
("The Property")**

The Parties:-

**MR LUCASZ SZCZYGIELSKI, 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
("the Tenant")**

**MS RACHEL MARY MURRAY, 27 Menzies Road, Aberdeen, AB11 9AX
(represented by their agent, Jane Mullin, Cox & Co, 38 Holburn Street,
Aberdeen, AB10 6BT
("the Landlord"))**

Whereas in terms of their decision dated 10 January 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 Property is wind and water tight and in all other respects reasonably fit for human habitation.
- (b) The structure and exterior of the Property (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.
- (d) Any fixtures, fitting and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

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:-

- (a) To investigate the cause of the water ingress around that window in the double bedroom and thereafter to carry out such works of repair or replacement as are necessary to ensure that the window, the frame thereof and the recess into which the window is set meet the Repairing Standard and are wind and watertight, and in a reasonable state of repair and in proper working order.
- (b) To repair or replace the radiator in the double bedroom to ensure that it is in a reasonable state of repair and in proper working order.
- (c) To adjust and/or repair the main entrance door to include in particular the installation of draught proofing to ensure that it is in a reasonable state of repair and in proper working order.
- (d) To produce a current Gas Safety Certificate confirming that the radiator in the double bedroom is in proper working order, safe to use and complies with the relevant regulations. The Landlord is to exhibit such Gas Safety Certificate to the Committee.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 3 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 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(s) are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 10 January 2017 before this witness:-

J Lynch witness **G Buchanan** chairperson

name in

% THORNTONS LAW LLP Address

WHITEHALL HOUSE,
33 YARMAN SHORE
DUNDEE DD1 4BJ

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: PRHP/RP/16/0298

Property at 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
Land Register Title No. KNC13119
("The Property")

The Parties:-

MR LUCASZ SZCZYGIELSKI, 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
("the Tenant")

MS RACHEL MARY MURRAY, 27 Menzies Road, Aberdeen, AB11 9AX
(represented by their agent, Jane Mullin, Cox & Co, 38 Holburn Street,
Aberdeen, AB10 6BT
("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 Property, and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application dated 12 September 2016 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 the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.
 - (b) The structure and exterior of the Property (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.
 - (d) Any fixtures, fitting and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
 - (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. By letter dated 11 November 2016 the Convenor of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee.
 4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
 5. Following service of the Notice of Referral the Tenant by letter dated 14 December 2016 made written representations to the tribunal (the tribunal having succeeded the Private Rented Housing Committee with effect from 1 December 2016). The Landlord's agent by email dated 15 December 2016 also made written representations to the tribunal.
 6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Colin Hepburn, Surveyor Member, inspected the Property on the morning of 10 January 2017. The Tenant was present during the inspection. The Tenant was accompanied during the inspection by Mr Marius Zdybel who acted as the Tenant's interpreter. The Landlord was not present and was not represented. Photographs were taken and are attached.
 7. At the time of the inspection it was fair and dry.
 8. Following the inspection of the Property the tribunal held a hearing at Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT and heard from the Tenant who was accompanied by Mr Zdybel who acted as the Tenant's interpreter. The Landlord was neither present nor represented.
 9. The Tenant submitted as follows:-
 - (a) (i) That the window in the double bedroom is leaking and requires sealed.
 - (ii) That water pours in around the window when rain is particularly heavy.
 - (iii) That the window is draughty.
 - (iv) That following his complaints in around May 2016 the Landlord had sealed the window around the outside using silicon which made no difference.
 - (v) That the Landlord or her agent has not seen the effect of heavy rain on the window.

- (b) (i) That the radiator in the double bedroom is not adequate for the room size and requires replaced.
- (ii) The bedroom is the coldest room in the Property and when the outside temperature drops it is uninhabitable.
- (iii) The Tenant presently sleeps in the single bedroom.
- (iv) That following his complaints the Landlord or her agent had the radiator valve replaced.
- (v) That a plumber appointed by the Landlord or her agent has attended on a number of occasions and commented on one occasion that the radiator was not appropriate for the room.
- (c) (i) That the main entrance door to the Property requires sealed as it is not tight fitting or soundproofed and gaps are apparent between the door and the door frame.
- (ii) That the Landlord has taken no action to resolve his complaints about the main entrance door.
- (d) That whilst in his application the Tenant complained that the beds and mattresses were not in a safe condition and require replaced, this complaint was no longer being pursued and had been resolved.
- (e) That whilst in his application the Tenant complained that the fridge was not working properly and required repaired or replaced, the Landlord had supplied a replacement fridge which is in proper working order but which the Tenant considered too small as a consequence of which he had purchased his own fridge/freezer.
- (f) (i) That the carpet in the single bedroom requires replaced due to holes and its general condition. There are also cigarette burns.
- (ii) The Landlord's agent had arranged for a contractor to attend on Wednesday 11 January 2017 to fit a new carpet. The Tenant would take a day off work to allow the fitting of the new carpet.
- (g) That his complaints relative to the Property had existed since the tenancy commenced on 7 March 2016 and substantially remained unresolved.

10. The Landlord's agent, Jane Mullin of Cox & Co, submitted as follows:-

- (a) That following intimation of the Tenant's application to the Private Rented Housing Panel, a contractor was appointed to undertake works.
- (b) That following the appointment of the contractor the Tenant was contacted to arrange for the works to be carried out.
- (c) That the Tenant attended at the offices of Cox & Co and arrangements were made for the delivery of a fridge and beds, and was advised the contractor would contact him directly to arrange access for the other works.

- (d) The works were left with the contractor to undertake.
- (e) Due a misunderstanding the carpet was not fitted.
- (f) There have been 2 attendances at the Property by a plumber who advises that the heating works.

Summary of the issues

11. The issues to be determined are:-

- (a) Whether the window in the double bedroom is wind and watertight, in a reasonable state of repair and in proper working order.
- (b) Whether the radiator in the double bedroom is in a reasonable state of repair and in proper working order.
- (c) Whether the main entrance door is in a reasonable state of repair and in proper working order.
- (d) Whether the fridge supplied by the Landlord is in a reasonable state of repair and in proper working order.
- (e) Whether the carpet in the single bedroom is capable of being used safely for the purpose for which it is designed.

Findings of fact

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

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the Tenant is the tenant of the Property in terms of Minute of Lease dated 8 March 2016.
- (c) That the tenancy is an assured tenancy that commenced on 9 March 2016.
- (d) (i) That the window in the double bedroom is recessed and comprises a large glazed panel with a smaller glazed panel beneath.
- (ii) That draughts are clearly evident between the outside edge of the window and the frame/ingo.
- (iii) That window frame, facing and ingo are in a very poor state of repair, are soft to the touch and move considerably when pressed.
- (iv) That during heavy rain water pours from above the window into a basin on the internal window ledge beneath.

- (v) That externally there is evidence of vegetation in the gutter above the window.
- (e) (i) That the heating within the Property is gas supplied.
- (ii) That the radiator in the double bedroom has had a new valve fitted.
- (ii) That despite the gas boiler in the Property being turned on to the maximum setting with valve of the radiator in the bedroom also being turned on to the maximum setting the radiator in the double bedroom is only very slightly warm to the touch and is cold in places.
- (f) (i) That the main entrance door to the property is of sound construction and is adequate.
- (ii) That the main entrance door is not tight fitting and rattles when closed.
- (iii) That there is no draught proofing or any other seal around the main entrance door or door frame.
- (iv) That draughts are evident around the main entrance door.
- (g) That a new fridge with integral freezer compartment has been supplied by the Landlord which operates correctly.
- (h) That the carpet in the single bedroom contains no holes but is generally in poor condition with a number of small cigarette burns and due to the access hatch in the floor boards immediately adjacent to the cupboard housing the boiler being loose.

Reasons for the decision

13. The Property is a second floor, south facing flat within a terraced block of flats. The Property comprises a lounge, double bedroom, single bedroom, bathroom and kitchen all leading from a small entrance hallway. The tribunal had regard and took into account the age and character of the Property.

On arrival the tribunal inspected the radiator in the double bedroom and noted it to be dated albeit with a new valve fitted. The tribunal asked the Tenant to turn the gas boiler up to its maximum setting and turned the valve on the radiator to its maximum setting too. After the tribunal inspected the Tenant's other complaints it returned to inspect the radiator again noting it to be emitting only a very small amount of heat, with the outward face of the radiator being only warm to the touch in places. By way of comparison the radiator in the lounge was found to be extremely hot and eliminating considerable heat. The tribunal is not satisfied that the radiator meets the Repairing Standard in that it is not in a reasonable state of repair and in proper working order.

The tribunal examined the window in the double bedroom which is recessed and south facing with a large opening upper panel and a smaller lower glazed panel. The large upper panel of the window opened and closed correctly. Draughts were notably felt around the window. The frame and recess around the window are in a very poor state of repair being very soft to the touch suggesting the presence of rot beneath. During the hearing the tribunal was shown video footage of the window during heavy rainfall and the tribunal could clearly see water pouring in from above the window into a basin placed on the internal window cill beneath. Externally, the tribunal noted a gutter above the window in which vegetation could be seen. The tribunal concluded that the window does not meet the Repairing Standard in that it is not wind and watertight, and is not in a reasonable state of repair and in proper working order.

The main entrance door to the Property is not the original entrance door. It is nevertheless of good quality and sound construction. Due to the age and character of the Property the door does not properly fit the door opening resulting in gaps which cause draughts and allows external noise in the common stairwell to more readily be heard within the Property. The tribunal observed the door to rattle when closed and noted there to be no draught proofing or other sealant around the door or doorframe. The tribunal concluded that the main entrance door does not meet the Repairing Standard in that it is not in a reasonable state of repair and in proper working order.

The Tenant showed the tribunal a new or almost new fridge with integral freezer compartment recently supplied by the Landlord. The fridge was not in use and was stored by the Tenant in the double bedroom. The Tenant confirmed the fridge operated correctly. The Tenant considered the fridge too small for the Property and had purchased his own fridge/freezer which was in use. The tribunal is satisfied that the fridge supplied by the Landlord is in a reasonable state of repair and in proper working order and therefore meets the Repairing Standard.

The tribunal inspected the carpet in the single bedroom. No holes were obvious. There are small carpet burns and the carpet was generally old and in poor condition. The tribunal noted the carpet to be considerably marked in front of the cupboard which houses the gas boiler as a consequence of the pipe hatch in the floor boards beneath being loose.

Decision

14. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
15. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
16. The decision of the tribunal was unanimous.

Observation

The tribunal noted there to be no carbon monoxide detector in the single bedroom where the gas boiler is housed within a cupboard. The absence of a carbon monoxide detector is a breach of section 13(1)(f) of the Housing (Scotland) Act 2006 in that there is not satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The tribunal expects the Landlord to install a carbon monoxide detector to comply with the Repairing Standard.

Right of Appeal

- 17. 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.**

Effect of section 63

18. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and 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.

Signed **G Buchanan**

Date 10 January 2017

Chairperson





















