

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision and Statement of Reasons: Housing (Scotland) Act 2006 s22(1)

Chamber Ref: PRHP/RP/16/0349

Title no FFE57606

1 Middlefield Cottage, Hawklaw, Cupar, Fife, KU15 4PL
("The Property")

The Parties

Miss Kerrie Noble, 1 Middlefield Cottage, Hawklaw, Cupar, Fife, KU15 4PL
("the Tenant")

Mr Alan Hughes ("the Landlord")
(represented by their agent Your Move, 31A North Bridge street, Bathgate,
west Lothian, Scotland EH48 4PJ

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 concerned, and taking account of the evidence obtained at inspection, and the Landlord's agent's acknowledgement that the landlord is aware that the property is not wind and watertight, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By application dated 11th November 2016 the tenant applied to the Private Rented Housing Panel for a determination that the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the tenant stated that the fire detection system is inadequate; no carbon monoxide monitor was provided; the property was not wind and watertight and there was evidence of water ingress, loose roof tiles, hole in conservatory roof, back door not water tight, broken floor tiles and rain coming into the house through a hole in the roof; gutters were blocked and inadequate and the conservatory roof was beyond repair.

3. By letter dated 7th December 2016 the President of the Housing and Property Chamber intimated a decision to refer the application under s22(1) of the 2006 Act to a Private Rented Housing Committee (now First tier tribunal of the Housing and Property Chamber). The Tribunal members were Lesley Dowdalls, Legal member and Geraldine Wooley, Surveyor Member.
4. The First-tier tribunal served notice of referral on both the tenant and landlord in terms of Schedule 2 Paragraph 1 of the 2006 Act. Reference is made to decision to refer dated 14th November 2016.
5. Following service of the notice, the tenant made no further representations. The agents for the Landlord responded on 12th December 2016 that they had made the landlord aware of the detail of the report and that the Landlord was fully aware that the property was not wind and watertight.
6. The Tribunal carried out an inspection of the property on Friday 13th January 2017. The tenant was present throughout. The Landlord did not attend and was not represented.
7. Following inspection, the Tribunal held a hearing at County Buildings, St Catherine Street, Cupar, Fife, KY15 4TA. The tenant did not attend. The Landlord did not attend. No other party attended. No further representations were received. The Tribunal was satisfied that the application could be determined on the available evidence.

Summary of Issues

The issues to be determined are whether the property meets the repairing standard as set out in s13(1)(a)(b) and (g) and whether the Landlord has failed to meet the duty imposed on him by s14(1)(b) of the 2006 Act.

Findings in Fact

1. On 17th October 2015 the Landlord and tenant entered into a short assured tenancy agreement in respect of the house at 1 Middlefield Cottage, Hawklaw, Cupar which is the subject of this application. The deposit paid was £1,035. The rental is £690 per calendar month. The lease commenced on 19th October 2015. The Landlord did not provide the tenant with an energy performance certificate (EPC). The tenant has resided in the property since commencement of the lease.

2. The property is a rural terraced cottage. The property is entered in the middle and comprises 2 hallways in either directions, a kitchen, sitting room, conservatory, bathroom and 3 bedrooms. The tenant, her partner and 4 young children reside in the property.

3. The property has oil central heating with radiators in each room and hallway.

4. Christine Hay, environmental health Officer at Fife Council carried out an inspection of the property at the request of the tenant on 13th September 2016. She reported her findings to the landlord's agent on 20th September 2016.

Reasons For Decision

1. The Tribunal observed the following (fully documented in Photo report attached):
 - a. There is a smoke alarm in the front lobby/hallway of the house which has a base plate but no alarm fitted.
 - b. There is a smoke alarm in the rear hallway/lobby in working order but no evidence that it is linked to other alarms
 - c. The heat alarm in the living room appears to be in working order but there is no evidence that it is linked to other alarms
 - d. There is no heat alarm in the kitchen and no Carbon monoxide alarm for the open fire and flue in the living room
 - e. The rear external door cannot be opened and is a means of escape in the event of fire
 - f. The rear external door is sealed with tape and is not wind-tight
 - g. The Conservatory is not wind and watertight, with evidence of water penetration from the valley gutter between the conservatory and main house, and slipped glazing panels to the roof, exposing the flashing and open to air
 - h. There is internal evidence of water penetration beneath the valley gutter
 - i. There are loose floor tiles around the conservatory door which are a tripping hazard
2. The tenant's complaint is that the house is not wind and watertight. That is not challenged by the Landlord. New internal conservatory doors have been installed since the application was lodged. There is water coming through the open spaces in the conservatory roof and the door to exit cannot be opened. The conservatory cannot be used by the tenant in its present condition.
3. There is evidence of failure of the gutters between the conservatory and main house allowing water ingress.
4. The tenant advised of exploding light bulbs and many light fittings were noted to be in a poor state of repair. This indicates that the electrical installation may be failing within the property. A further cause of concern is that the fire alarm system may be connected to the lighting circuit.
5. The fire alarm system was inadequate, in poor repair and does not meet current requirements. There was no carbon monoxide alarm fitted. This represents a serious risk to the safety of the tenant and her family.
6. The Tribunal makes a Repairing Standard Enforcement Order ordaining the Landlord to repair the conservatory roof and door to make it wind and watertight, and to repair the floor tiles. The Tribunal also requires the Landlord to upgrade the fire alarm system and install carbon monoxide alarms to meet current standards, and to produce to the Tribunal within 4 weeks of Notice of this decision an Electrical Installation Condition Report carried out by a properly registered electrician, and showing that the fire alarm system meets current standards and is in working order,

and that the electrical installation in the property is in a fit state to support the fire alarm system.

The Landlord is also required to ensure the back door is wind and watertight, has a key and is in full working order.

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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Lesley Dowdalls, solicitor, 23 The Foregate, Kilmarnock), chairperson of the tribunal at Kilmarnock, 24th January.....(date) before this witness:-

2017

K Brown

witness

L Dowdalls

chairperson

L Dowdalls

name in full

23 THE FOREGATE Address

KILMARNOCK.

24.01.17

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/16/0349

Title no FFE57606

**1 Middlefield Cottage, Hawklaw, Cupar, Fife, KU15 4PL
("The Property")**

The Parties:-

Miss Kerrie Noble, 1 Middlefield Cottage, Hawklaw, Cupar, Fife, KU15 4PL

("the Tenant")

Mr Alan Hughes ("the Landlord")

**(represented by their agent Your Move, 31A North Bridge street, Bathgate,
West Lothian, Scotland EH48 4PJ**

Whereas in terms of their decision dated 18th 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 the property is:-

- (a) wind and water tight and in all other respects reasonably fit for human habitation
- (b) that 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) that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
- (d) that there is provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

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 the conservatory roof and door to make it wind and watertight, and to repair the floor tiles
- (b) To upgrade the fire alarm system and install carbon monoxide alarms to meet current standards
- (c) To produce within 4 weeks of notice of this decision an Electrical Installation Condition Report carried out by a properly registered electrician, and showing that the fire alarm system meets current standards and is in working order, and that the electrical installation in the property is in a fit state to support the fire alarm system
- (d) To ensure that the back door is wind and watertight, has a key and working lock, and is in full working order

The tribunal order that the works specified in this Order must be carried out and completed within the period of 28 days 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 Lesley Dowdalls, Solicitor, 23 The Foregate, Kilmarnock, chairperson of the tribunal at Kilmarnock, on 24th January 2017 before this witness:-

K Brown

witness

L Dowdalls

chairperson

L Dowdalls

name in full

23 THE FOREGATE Address

KILMARNOCK

24.01.17



Photo report

**Property: 1 Middlefield Cottage, Hawkhill
Cupar KY15 4PL**

Ref no. PRHP/rp/16/0349



Rear elevation

1) Fire detection system

**1a) Smoke alarm in front lobby – base plate
but no alarm fitted**



**1b) Smoke alarm in rear lobby –
in working order but no evidence
that it linked to other alarms -
needs to be checked to ensure it
meets current standard**

1c) Heat alarm in living room – in working order but no evidence that it is linked to other alarms. A smoke alarm is the standard requirement for living space, but the heat alarm may have been fitted because of the open fire

(NB there is no heat alarm in the kitchen, and no CO alarm for the open fire and flue in the living room)



2) Rear external door- means of escape in fire

2a) No key – cannot be opened



2b) Door sealed with tape – not wind-tight

3) Conservatory

The room is not wind and watertight, with evidence of water penetration from valley gutter between conservatory and main house, and slipped glazing panels to the roof exposing the flashing and open to the air.



3a) Valley gutter



3b) Internal evidence of water penetration beneath valley gutter

3c) Loose floor tiles around door



3d) Left slipped glazing panels exposing the flashing with gap to open air



3e) Right slipped glazing panel exposing the flashing

