

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RP/18/1447**

**Title no/Sasines Description: LAN 117921**

**52 Howletnest Road, Airdrie, ML6 8AL ("the House")**

**The Parties:-**

**Miss Kirsty Leung, residing at the House  
("the Tenant")**

**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes,  
Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF ("the  
Landlord")**

Whereas in terms of their decision dated 25 September 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 that the Landlord has failed to ensure that the House meets the repairing standard with reference to the following provision of Section 13(1) of the Act, as amended:-

- (d) any fixtures, fittings and appliances provided by the Landlord under the tenancy 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:-

- (1) To obtain and exhibit to the Tribunal a report from a suitably qualified contractor identifying the source of the water leak (s) from the bathroom;
- (2) To rectify said leak(s) by repairing or, as necessary, replacing any fixtures, fittings or appliances to ensure that they are in a reasonable state of repair and in proper working order and to prevent any further water ingress into the living room;

- (3) To repair or, as necessary, replace the surface of the living room wall and ceiling to rectify the hole, cracks and other damage, including staining, caused by the said water ingress and thereafter, to paint or re-decorate same, to provide a satisfactory finish;
- (4) To repair or, as necessary, replace the bathroom floor and floor covering to rectify all water damage and to ensure that the flooring is in a reasonable state of repair and in proper working order; and
- (5) To make good any other damage caused by the carrying out of any of the above works.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 6 weeks 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 typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on Twenty-fifth September 2018 in the presence of the undernoted witness:-

F T Weir

N Weir

Witness

Legal Member

N. T. WEIR

name in full

90 2 FLEMING ROAD

Address

MARYBOROUGH

HB23 4LN

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/18/1447**

**Title no/Sasines Description: LAN 117921**

**52 Howlettnest Road, Airdrie, ML6 8AL (“the House”)**

**The Parties:-**

**Miss Kirsty Leung, residing at the House  
 (“the Tenant”)**

**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF (“the Landlord”)** Chamber Ref: FTS/HPC/RP/17/0233

**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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The Tribunal comprised:-**

**Nicola Weir, Legal Member**

**Nick Allan, Ordinary Member**

**Background**

1. By Application received on 20 June 2018, the Tenant applied to the Tribunal 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 by the Tenant stated that the Tenant considered

that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (Section 13(1)(d)). Specifically, the Tenant stated "I have informed landlord there is leak from living room coming from bathroom and there is clearly a big cross crack in ceiling which will fall through at some point. You can clearly see the water mark and crack and hole." As to the nature of the work that requires to be done, the Tenant stated that the Landlord "needs to check in bathroom where leak is coming from and fix crack in the ceiling." In connection with the Application, the Tenant also submitted copy tenancy agreement, Form AT5 and proof of notification to the Landlord of the repairs required

2. On 10 July 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 23 July 2018. In terms of same, representations were to be lodged by 13 August 2018. Neither party lodged any representations.
3. The Tribunal inspected the House on the morning of 12 September 2018. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
4. Following the Inspection of the House, the Tribunal held a Hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.

## The Inspection

5. A Photograph Schedule taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.
6. At the time of the Inspection, the weather was overcast. The Tribunal noted that the House is a two storey end terrace house constructed circa the 1950s. On inspection, it was noted that:-
  - (a) The living room ceiling and wall were water damaged and badly stained. The ceiling surface was cracked and there was a hole and other damage to the wall surface. Below surface dampness readings were taken by the Ordinary Member using a dampness meter which showed that dampness was present at the wall, constituting a risk to timber, but not present on the surface, or below the surface, on the ceiling. Reference is made to photographs 2 and 3 and to the Ordinary Member's Inspection notes contained in the Photograph Schedule.

- (b) The bathroom was situated above the living room. The Tenant indicated that the water ingress into the living room below was particularly noticeable after the shower had been used. It was noted that there was a shower enclosure with sealed base and a screen door in the bathroom. There was also a bath with a fitted bath panel so inspection under the bath was not possible. Below surface dampness readings of the bathroom floor were taken by the Ordinary Member using a dampness meter which showed dampness present, to varying degrees, throughout the floor, constituting a risk to timber. Reference is made to photographs 4 and 5 and to the Ordinary Member's Inspection notes contained in the Photograph Schedule.
- (c) There was a battery operated ceiling mounted smoke detector in the downstairs hallway which was inoperative. The smoke detector on the upstairs landing ceiling was missing except for its baseplate. There was no smoke detector in the living room, heat alarm in the kitchen or carbon monoxide detector near the boiler which was situated in a utility room off the kitchen. In addition, an electrical adaptor and plugs were poorly situated under the boiler and resting against the boiler pipework. Reference is made to photographs 6,7,8 and 9 in the Photograph Schedule.
- (d) The exterior of the House appeared poorly maintained. Part of the gutter and soffit at the rear of the House were missing whilst the gutter on the front elevation appeared blocked by vegetation and ran at an angle away from the downpipe. The Tenant stated that there was black mould in the bedroom situated under this gutter. Reference is made to photographs 10 and 11 of the Photograph Schedule.

## The Hearing

- 7. At the Hearing, the Tribunal had before it the Application documentation referred to above and a copy of Land Certificate LAN 117921 relative to the House which is registered in the names of Paul George McNiven and Jenna McNiven. The Tribunal noted that the Tenant had previously confirmed that she is Miss Pui Wah Leung named in the tenancy agreement but is known as Miss Kirsty Leung.
- 8. The Tenant gave evidence and answered questions from the Tribunal. She confirmed that she had moved into the House in 2012. The Airdrie Property Centre had acted on behalf of the Landlord at that time in connection with the tenancy agreement. The Tenant advised that there was no damage or staining to the living room ceiling and wall when she moved in. She first noticed water starting to come through into the living room around 3 years ago. It was initially very light but got worse over time. The cracking and the hole in the wall appeared and now the water pours down the wall. The Tenant reported the problem to the Landlord whom she has a telephone number for. The Landlord has never been out to the House but he did send

out his joiner about a year after she first reported the problem. The joiner did work to the sealant around the shower but this did not resolve the problem. In December 2017, the joiner came out again and lifted the bathroom floor, removed the bath panel, replaced the shower panel and sealant. The problem persisted and the joiner told the Tenant she would have to contact the Landlord which she did around February/March 2018. She then received a Notice to Quit and Section 33 Notice in April 2018. These documents were served on behalf of the Landlord by Jewel Homes. The Tenant had not had any previous contact with Jewel Homes and they have not been involved in the repair side of things. There has been no further contact from the Landlord regarding the repairs, either before or after these Tribunal proceedings were raised. The Landlord has never done anything about the living room wall and ceiling. The Tenant confirmed that the water leak does not occur when the bath is used, just the shower. She advised that the water does not leak out of the shower unit under the shower door or anything like that and that the water appears to drain down out of the shower unit normally. The Tenant stated that it is very inconvenient to her and her family as they are now trying to avoid using the shower as they are worried about the living room ceiling coming down.

9. The Tribunal advised the Tenant of the various health and safety issues that had been noted by the Tribunal during the Inspection of the House. The Tenant was asked if any gas or electrical safety checks had been carried out or if she had been given any gas or electrical inspection reports or safety certificates by the Landlord at the start of her tenancy or subsequently, to which she responded no. The Tribunal explained to the Tenant that, as these matters had not formed part of her application to the Tribunal, no formal order could be made regarding these matters. However, the Tenant was advised to seek urgent advice in relation to these matters.

## Findings in Fact

10. The Tenant occupies the House under a Short Assured Tenancy which commenced on 30 June 2012. She is the joint tenant, along with Mr Hing Keung Miu and occupies the House with her family.
11. The Landlord owns the House, ownership being in the joint names of the Landlord and Ms Jenna McNiven.
12. For the past few years, there has been an ongoing issue with water leaking from the bathroom of the House into the living room. The issue has got gradually worse and there is visible damage to the wall and ceiling of the living room. There is below surface dampness present in the living room wall and the bathroom floor. Parts of the bathroom floor had very high dampness readings. Reference is made to the Tribunal's findings on Inspection.

13. The Tenant has reported this issue to the Landlord several times. Although the Landlord had a tradesman out to inspect and carry out some repairs, these have been ineffective and the problem persists.
14. The Landlord has not responded to being formally notified by the Tenant of the repairs required, nor to the Tribunal Application.
15. The Landlord has served the Tenant with a Notice to Quit.
16. A number of health and safety issues and exterior maintenance issues are also apparent at the House but did not form part of the Application to the Tribunal.

#### Reason for decision

17. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection and Hearing.
18. There is water leaking from the bathroom of the House into the living room below and causing damage. The bathroom floor and the living room wall are affected by dampness, at levels which are a risk to timber. The Repairing Standard is not met as fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair or proper working order. The source of the water leak(s) requires to be identified and repairs or replacement carried out to rectify same and to repair or replace the bathroom flooring, the sections of the living room wall and ceiling and any other items which have been damaged by the water and water ingress to ensure that the House meets the Repairing Standard.
19. The Landlord has not made any representations in respect of the Tenant's Application to the Tribunal. Although the Landlord had instructed a tradesman previously to carry out some repairs, these had not addressed the problem, which remains outstanding. The Tribunal is accordingly of the view that in respect of this breach of the repairing standard, it requires to make a Repairing Standard Enforcement Order ("RSEO").
20. Given the nature of the repairs required, the Tribunal was of the view that a period of 6 weeks from service of the RSEO was an adequate and reasonable timescale for the repairs to be completed.
21. Although the Tribunal had noted other matters at the Inspection which breach the Repairing Standard, these matters had not been included in the Tenant's Application to the Tribunal so cannot form part of the RSEO. The Tribunal was particularly concerned to note the potential health and safety issues apparent at the House, given the lack of adequate smoke alarms, no heat alarm in the kitchen, no carbon monoxide detector near the boiler and the electrics situated against the pipework below the boiler. Although advice was given to the Tenant concerning these matters, the Tribunal recommends that these issues are addressed immediately by the

Landlord. Similarly, it is recommended that the exterior maintenance issues are also attended to, to prevent deterioration in the condition of the House. The Tribunal observed that these matters could form the basis of a separate application to the Tribunal.

## Decision

22. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
23. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of the Act.
24. The decision of the Tribunal was unanimous .

## Right of Appeal

**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.

N Weir

Signed..... Date: 25 September 2018  
Nicola Weir, Legal Member of the Tribunal



*Glasgow, 25 September 2018*

*This is the Photograph Schedule referred to in the attached  
Statement of Reason, of even date herewith.*

*N Weir*

*Legal Member of the Tribunal*

**Housing and Property Chamber  
First-tier Tribunal for Scotland**



**Photograph Schedule**

**52 Howlettnest Road, Airdrie, ML6 8AL**

**Case Reference:** FTS/HPC/RP/18/1447

**Date of inspection:** 12/09/2018

**Time of inspection:** 10.00 am

**Weather conditions:** Overcast

**Present:** Mrs Nicola Weir – Legal Member  
Mr Nick Allan – Ordinary Member  
Mrs Patricia Pryce – Observer  
Miss Kirsty Leung - Tenant



**Photo 1 – Front elevation**



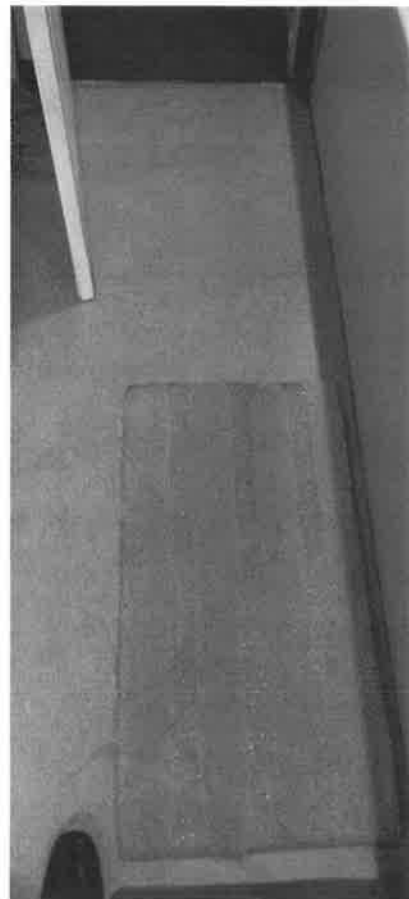
**Photo 2** – Damaged Living room ceiling



**Photo 3** – Water damaged wall



**Photo 4** – Shower enclosure + base



**Photo 5** – Wet bathroom floor



**Photo 6** – Smoke detector in hallway



**Photo 7** – Baseplate on landing



**Photo 8** – Boiler pipework/electricals



**Photo 9** – Boiler installation date



**Photo 10** – Missing gutter/soffit



**Photo 11** – Choked guttering

### **Inspection notes**

1. Below surface dampness readings were obtained from the living room wall section visibly affected by water ingress. These readings fell within the 170-200 range, thereby constituting a risk to timber. Photo 3 refers.
2. No dampness readings were recorded from the living room ceiling, despite the visible staining on the ceiling surface. Photo 2 refers.

3. Below surface dampness readings were obtained from the bathroom floor. These ranged from 250 (nearest to the shower enclosure) to 600 (nearest to the bathroom door), thereby constituting a risk to timber. Photos 4 + 5 refer.
4. The battery operated smoke detector in the hallway was inoperative.
5. The battery operated smoke detector on the landing was missing except for its baseplate.

Nick Allan – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber – 17<sup>th</sup> September 2018