

# 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/18/2606

Title no: ABN10974

House at 46a Charlotte Street, Fraserburgh, Aberdeenshire, Ab43 9JE  
("The Property")

The Parties:-

Miss Kimberley Ritchie, 46a Charlotte Street, Fraserburgh, Aberdeenshire, Ab43 9JE  
("the Tenant")

Mrs Helen Buchan, 8 Greenbank Grove, Fraserburgh, Aberdeenshire, AB43 7HX  
("the Landlord")

Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51  
2WA  
("the Third Party Applicant")

Whereas in terms of their decision dated 12 February 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:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.
- (b) 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.

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 Landlords to carry out the following works:-

- (a) To repair or replace the kitchen window to ensure that the window opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.
- (b) To repair or replace the two windows in the bathroom to ensure that the windows open, close and lock correctly and are in a reasonable state of repair and in proper working order.
- (c) To repair or replace the electrical socket in the first floor bedroom (being the socket situated behind the door and towards the floor) to ensure that it is in a reasonable state of repair and in proper working order.
- (d) To repair or replace the cupboard door in the hallway to ensure that it opens and closes correctly and is in a reasonable state of repair and in proper working order.
- (e) To repair or replace the loose light switch in the main hallway (being the light switch situated to the right of the cupboard immediately opposite the main entrance to the Property) to ensure that it is in a reasonable state of repair and in proper working order.
- (f) (i) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.  
  
(ii) On completion of the works referred to in paragraph (c), (e) and (f)(i) above to provide to the tribunal a copy of the EICR with no items marked as Category 1 or Category 2.
- (g) To engage a suitably qualified Gas Safe engineer to carry out a Landlord's inspection of the gas hob and oven and gas boiler located in the kitchen of the property and any other gas appliances within the property and to carry out any repairs identified by the engineer as being necessary to ensure the safety of the occupants and safe use of the gas installations and to exhibit a copy of the Gas Safe Certificate provided by the engineer intimating the safety of the installations
- (h) To repair or replace the smoke detector in the hallway on the first floor of the Property.
- (i) Repair or replace the exterior front door and frame to ensure that the door is wind and watertight, in a reasonable state of repair and in proper working order and to provide keys to the front door to the Tenant.
- (j) To carry out any and all making good and decoration associated with the foregoing works.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 4 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 pages are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 12 February 2019 before this witness:-

J Lynch

G Buchanan

\_\_\_\_\_ witness \_\_\_\_\_ Chairperson  
 JENNIFER LYNCH name in full  
 % THORNTONS LAW LLP Address  
 WHITEHALL HOUSE  
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**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: Housing (Scotland) Act, Section 24(1)**

**Chamber Ref: FTS/HPC/RT/18/2606**

**Title no: ABN10974**

**House at 46a Charlotte Street, Fraserburgh, Aberdeenshire, Ab43 9JE  
("The Property")**

**The Parties:-**

**Miss Kimberley Ritchie, 46a Charlotte Street, Fraserburgh, Aberdeenshire,  
Ab43 9JE  
("the Tenant")**

**Mrs Helen Buchan, 8 Greenbank Grove, Fraserburgh, Aberdeenshire, AB43 7HX  
("the Landlord")**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie,  
Aberdeenshire, AB51 2WA  
("the Third Party Applicant")**

**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 determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. By application, which application comprises documentation received on 8 October 2018, ("the Application"), the Third Party Applicant 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").
2. The Application stated that the Third Party Applicant 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) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
  - (f) The Property has satisfactory provision for giving warning if Carbon Monoxide is present in a concentration that is hazardous to health.
3. By letter dated 10 October 2018 the Convenor of the tribunal intimated a decision to refer the Application under Section 22(1) of the Act to a tribunal.
  4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Third Party Applicant.
  5. Following service of the Notice of Referral the neither the Third Party Applicant nor the Tenant made representations to the tribunal.

The Landlord made the following representations to the tribunal:-

- (i) By email dated 22 November 2018 that she had served an eviction notice on the Tenant and that the Property was being put up for sale;
  - (ii) By email dated 31 January 2019 that she intended to wait until the Property was repossessed by or would otherwise hand the keys to the Property back to her mortgage provider due to there being negative equity in the Property and the costs of the remedial works required being unaffordable.
6. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Mr Mark Andrew, Ordinary Member inspected the Property on the morning of 5 February 2019. The Tenant was present along with Ms Diane Coutts representing the Third Party Applicant. The Landlord was neither present nor represented.
  7. It was dry and bright during the inspection. Photographs taken are produced in the attached Schedule.
  8. Following the inspection of the Property the tribunal held a hearing at Banff Sheriff Court, Banff. None of the parties were present or represented at the hearing.

## Summary of the issues

9. The issues to be determined are:-

- (i) Whether the kitchen window opens and closes correctly and is in a reasonable state of repair and in proper working order.
- (ii) Whether the bathroom windows open and close correctly and are in a reasonable state of repair and in proper working order.
- (iii) Whether the electrical socket in the bedroom is in a reasonable state of repair and in proper working order.
- (iv) Whether the door in the corridor is in a reasonable state of repair and in proper working order.
- (v) Whether the electrical socket in the corridor is in a reasonable state of repair and in proper working order.
- (vi) Whether the installations for the supply of electricity and heating water are in a reasonable state of repair and in proper working order.
- (vii) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (viii) Whether the Property has satisfactory provision for giving warning if Carbon Monoxide is present in a concentration that is hazardous to health.
- (ix) Whether the front entrance door opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.
- (x) Whether the drainage system is in a reasonable state of repair and in proper working order.

## Findings of fact

10. 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.
- (c) That with regard to the required repairs intimated by the Tenant, at the time of the tribunal's inspection of the Property:-

- (i) The kitchen window has no handles and is therefore not capable of opening and closing correctly. The kitchen window is therefore not in a reasonable state of repair and in proper working order.
- (ii) In the bathroom, the window adjacent to the bath does not close properly and the window above the toilet does not open properly. The bathroom windows are therefore not in a reasonable state of repair and in proper working order.
- (iii) That in the bedroom on the first floor the electrical socket situated behind the door and towards the floor is not properly affixed to the wall and is unsafe. The electrical socket is therefore not in a reasonable state of repair and in proper working order.
- (iv) The door to the cupboard immediately opposite the front entrance door is off its hinges. It does not therefore open and close correctly. It is therefore not in a reasonable state of repair and in proper working order.
- (v) That in the hallway the "electrical socket" is a light switch situated to the right of the cupboard mentioned in paragraph 10(c)(iv) above which is loose from the wall and unsafe. The light switch is therefore not in a reasonable state of repair and in proper working order.
- (vi) That the installations in the Property for the supply of electricity and heating water are not in a reasonable state of repair and in proper working order.
- (xi) That the whilst generally the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the smoke detector in the first floor hallway is damaged and is not therefore in a reasonable state of repair.
- (xii) That the Property has satisfactory provision for giving warning if Carbon Monoxide is present in a concentration that is hazardous to health.
- (xiii) That the front entrance door does not open, close and lock properly. It is therefore not in a reasonable state of repair and in proper working order.
- (xiv) That the drainage system serving the Property is in a reasonable state of repair and in proper working order.
- (xv) That a Gas Safety Record and an Electrical Installation Condition Report have not been produced.

### **Reasons for the decision**

11. The Property is a flat situated over the first and second floors of a terraced row of flats and is entered from external stairs to the rear of the Property.

The Property has a gas central heating system with Radiators throughout. The Property was unoccupied but furnished at the time of the tribunal's inspection. Due to the condition of the Property generally, the Tenant has been relocated to temporary emergency accommodation by the Third Party Applicant.

The boiler is located within a high level cupboard in the kitchen. The boiler appeared to be a relatively new Worcester boiler. A carbon monoxide detector was located above the cupboard housing the boiler. The radiators were warm. No Gas Safety Record had been produced.

Within the kitchen the window was found to have the handles missing. Accordingly, the window could not be opened or closed correctly and therefore failed to meet the Repairing Standard.

In the bathroom, the window immediately adjacent to the bath opened but did not close properly whilst the window immediately above the toilet would not open. The bathroom windows are therefore not in a reasonable state of repair and in proper working order, and therefore breached the Repairing Standard.

Within the bedroom on the first floor of the property the electrical socket situated immediately behind the door and towards the floor is not properly fixed to the wall and is unsafe. The socket is not therefore in compliance with the Repairing Standard.

Within the hallway, the door to the cupboard immediately opposite the front entrance door and within which the washing machine point is located was found to be off its hinges and therefore not capable of opening and closing correctly.

Also within the hallway the electrical socket about which the third party applicant complains was identified as being a light switch situated immediately to the right of the cupboard mentioned in the paragraph above. The light switch was found to be hanging loose from the wall and is therefore unsafe. The light switch is not in a reasonable state of repair and in proper working order.

The Tenant reported that when trying to operate the shower the fuse in the fuse box repeatedly trips when the shower switch is turned on. The tribunal determined that either the wiring to the shower switch is faulty or the fuse in the consumer unit is the wrong size or the wiring to the shower is unable to take the number of kilowatts required to operate the shower. On any view, however, the electrical installations for the supply of electricity to the Property are not in a reasonable state of repair and are not in proper working order as a consequence of which the shower does not operate.

Within the Property the Tribunal identified satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In particular a heat and smoke detector were found affixed to the kitchen ceiling with additional smoke alarms in the livingroom, first floor hallway and on the landing on the second floor all of



which are hard wired and interlinked. The smoke alarm in the first floor hallway was, however, found to be damaged and in need of repair.

The front entrance door to the property does not open and close correctly and does not lock. In particular the door catch and the latch do not meet together as a consequence of the door frame being split. The draught proof strip on the external side of the door is partly unfixed and is bent out of shape. The front entrance door does not therefore open, close and lock correctly.

With regard to the drainage system serving the property, the Tenant reported that there were no issues therewith and a previous problem had been repaired by a neighbour.

### **Decision**

12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
13. The decision of the tribunal was unanimous.

### **Right of Appeal**

14. **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**

15. 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.

G Buchanan

Signed..... Chairperson & Legal Member

Date 12 February 2019

This is the Schedule of Photographs referred to in  
the foregoing Decision dated 12 February 2019.  
G Buchanan

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE/

12/2/19



Front (Street) view – 1<sup>st</sup> floor flat



Rear elevation – 1<sup>st</sup> & 2<sup>nd</sup> floors. Left hand window to kitchen. Extension window to bathroom.

Photographs taken by M H T Andrew FRICS FAAV FARLA on 5<sup>th</sup> February 2019

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Kitchen windows. No handles to operate catches to window.



Bathroom window does not close.

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Bathroom window – locked shut



Bedroom socket in disrepair.

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Corridor cupboard door (to washing machine point) off its hinges



Shower switch fused

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Light switch in corridor unsafe.



Close up of scored out inspection dates.

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Heat and CO detectors on kitchen ceiling



CO alarm above boiler (too close – should be 1m + away)

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Damaged smoke alarm on corridor ceiling



Smoke alarm on living room ceiling



Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Smoke alarm on landing ceiling to 2nd floor.



Door catch and latch do not meet because door frame split, lock loose and unsafe.

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Internal view of split door frame above door catch.



Door to flat does not open or close properly. Draught proof strip partly unfixed and bent out of shape.

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE



Observation – 2<sup>nd</sup> floor bedroom gable wall very damp.



Observation – cupboard door on 2<sup>nd</sup> floor and cupboard door on 1<sup>st</sup> floor off their hinges

Schedule of photographs of 46a Charlotte St., Fraserburgh, AB43 9JE