

# Housing and Property Chamber First-tier Tribunal for Scotland

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**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”)**

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

**Chamber reference number: FTS/HPC/RP/19/2641**

**Title number: DMB 31865**

**Re: Property at 20 Burns Court, Kirkintilloch, Glasgow, G66 2NP (“the property”)**

## **The Parties:**

**Ms Caroline Ferguson**, 20 Burns Court, Kirkintilloch, Glasgow, G66 2NP (“**the tenant**”) represented by Raymond Heath, East Dunbartonshire Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch, Glasgow, G66 1HB

**Mr John Dickson**, 24 Duntiblae Road, Kirkintilloch, Glasgow, G66 3JQ (“**the landlord**”)

**Tribunal members:** Simone Sweeney (legal chairing member) and Mike Links (ordinary surveyor member)

## **Decision**

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 Act in relation to the property, determined that the landlord has failed to comply with the duty imposed by section 14(1) (b) of the Act.

## **Background**

1. An application dated 22<sup>nd</sup> August 2019 was received on behalf of the tenant. The tenant alleged that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard. The tenant sought a determination of whether the landlord has complied with the duty imposed by section 14(1) (b) of the Act.
2. Specifically, in her application, the tenant alleged that:

*“Kitchen window does not open,  
Lights in porch do not work,  
Concern for electricity supply,  
Bathroom tiles broken.”*
3. In support of her application the tenant had provided copy tenancy agreement and a letter dated 3<sup>rd</sup> July 2019 which her representative had sent to the landlord on behalf of the tenant. The letter was formal intimation of the issues and a request that repairs be undertaken. Attached to the application was a copy recorded delivery slip dated 4<sup>th</sup> July 2019 confirming intimation of the application on the landlord.
4. Having given consideration to the papers, a Convenor, with delegated powers of the Chamber President, formally accepted the tenant's application and passed to a Tribunal for determination.
5. An inspection of the property and hearing of evidence were assigned to take place on 1<sup>st</sup> November at 10am and 11.30am respectively.
6. Having received the papers the Tribunal directed that the landlord produce an Electrical Installation Condition Report (“EICR”). Reference is made to the terms of the direction dated 16<sup>th</sup> October 2019.
7. By email of 18<sup>th</sup> October 2019, the landlord responded to the terms of the direction with an EICR dated 25<sup>th</sup> September 2019 and copy invoices from Scott McCallum, electrical contractor dated 25<sup>th</sup> September and 12<sup>th</sup> October 2019.

## **Inspection of property of 1<sup>st</sup> November at 10am**

8. An inspection took place on 1<sup>st</sup> November at 10am. In attendance were the Tribunal members, the tenant and her representative, Mr Heath and the landlord.
9. The property is a ground floor tenement flat within a former local authority building. It is a two apartment flat with a main hallway leading from the main entrance. The living room is positioned at the end of the hallway and leads into the kitchen. The bedroom and bathroom are positioned on either side of the hallway.
10. In the course of the inspection, the Tribunal identified the following:

### **Kitchen Window**

The tenant alleged that the kitchen window did not open. The window was positioned behind the sink. There were two windows within the frame. The window was double glazed. Each of the window panes were intended to open inwards. Only one of the panes (that to the left hand side of the window frame) was opening inwards. The pane on the right hand side did not open, at all.

### **11. Lights in porch**

The entrance to the property was within a porch which was not part of the original building. The porch was made of double glazed fabric. The ceiling of the porch was the roof of the common close area. The Tribunal observed that, attached to the ceiling were two lights, one of which was noticeably older in presentation than the other. The older light appeared to be connected to the communal electrical supply. It was this light which the tenant alleged to not be in working order. The newer light also appeared to be connected to the communal electricity supply of the building. When the surveyor member attempted to switch on the light at the main switch, the light did not work. The Tribunal found no evidence of an additional switch having been fitted to operate the newer ceiling light. The tenant advised the Tribunal that this light had been fitted by the local authority on Tuesday 29<sup>th</sup> October 2019. The tenant advised that the new light was not on a timer and did not switch on automatically in darkness.

### **12. Electrical supply**

The tenant's representative, Mr Heath, drew to the attention of the Tribunal an electrical socket in the kitchen. The Tribunal observed that the socket was positioned on the wall dividing the kitchen from the living room. The Tribunal observed that the socket was flush with the wall and in a fixed position. The tenant advised the Tribunal that the socket had been hanging loose but had recently been secured. Similarly, Mr Heath directed the Tribunal to the light fitting attached to the bedroom ceiling. Mr Heath advised that previously the light fitting had been hanging loose from the ceiling but the landlord had arranged for this to be repaired. The Tribunal observed that the light was fitted securely to the bedroom ceiling.

### **13. Bathroom tiles broken**

The Tribunal observed that a vinyl covering was applied to the bathroom floor. There was no evidence of any bathroom tiles. The tenant confirmed that the bathroom floor had been recently covered and that she was pleased with the new flooring.

### **14. Further observations.**

The Tribunal identified that the property had gas central heating. A gas boiler was positioned inside a cupboard in the hallway. A carbon monoxide detector was identified attached to the wall outside this cupboard in the main hallway. The Tribunal identified smoke detectors in the hallway and living room. A heat detector was identified in the kitchen. The Tribunal noted that these were all hard wired and interconnected and when tested were found to be operational.

### **Hearing of evidence**

15. A hearing of evidence took place at Glasgow Tribunals centre at 11.30am. In attendance was the landlord and the tenant's representative, Mr Heath. It was explained that due to ill health the tenant was unable to attend the hearing.

### **Evidence for the tenant**

16. The Tribunal chair took the parties through the various complaints. In respect of the light fitting in the bedroom, the electrical socket in the kitchen and the flooring applied to the bathroom, Mr Heath advised that repairs had been undertaken by the landlord since the tenant had submitted her application to

the Tribunal. The tenant was satisfied with the repairs which had been carried out.

17. With regards to the window in the kitchen, Mr Heath explained that the tenancy began in 2015. Mr Heath submitted that the tenant had complained to the landlord that the window did not open for a couple of years. The tenant has requested that the landlord carry out a repair to ensure that both window panes are operational.
18. With regards to the ceiling light at the patio, Mr Heath submitted that this is a complaint which the tenant has been making to the landlord for some time. The landlord has failed to act upon the complaint insisting that because the light is attached to the common electrical supply to the building, it is not a matter for which he is responsible. Rather, the landlord has taken the view that the responsibility for a repair to the common areas rests with the local authority, East Dunbartonshire Council. Mr Heath submitted further that this repair is important to the tenant's health and safety as she has mobility problems. It is important therefore that the entrance to her property is illuminated in the dark. Equally the issue creates a security risk for the tenant.
19. Finally, with regards to the concerns about the electricity supply to the property, Mr Heath referred the Tribunal to the EICR of 25<sup>th</sup> September 2019, specifically page 2 of the 5 page report. Mr Heath highlighted the observation by the author of the report which read, "*No ring continuity on sockets neutral cabling. F1.*" Mr Heath submitted that whilst the tenant was content with the report, this entry had caused her concern. It was explained by the surveyor member that the content of the report is acceptable to the Tribunal.

#### **Evidence of the landlord**

20. In response, the landlord explained that when he had originally purchased the property, he had arranged for the existing windows to be replaced with double glazed windows. When this was completed the glazier brought to his attention that one of the panes within the kitchen window did not open and that it would not open. For both parts of the window to open, an entirely new window frame would be required. The landlord chose not to do this. He was satisfied that one side of the window was operational insofar as it tilts and opens in and out. In his submission the landlord was satisfied that the existing window provided

adequate ventilation to the kitchen. Moreover, the landlord had brought the issue of the window to the attention of the tenant prior to her accepting the tenancy in 2015. Notwithstanding the issue, having been brought to her attention, the tenant entered into a tenancy agreement for the property.

21. In respect of the lighting at the patio, the landlord submitted that he had been confused about with whom responsibility rested for any repairs. The landlord accepted that the ceiling within the porch was within the title of the property and belonged to him. However the fact that the original light fitting was connected to the electrical supply of the common area lead him to believe that the local authority may be responsible for its repair. He explained that he had contacted East Dunbartonshire Council since receipt of the tenant's application. The information provided was that the responsibility rested with the local authority. The local authority had sent an engineer to the property and the new light had been fitted on 29<sup>th</sup> October 2019. The landlord accepted that the light did not appear to be working. There was no specific switch to enable the light to go on or off and he accepted the tenant's evidence that there was no timer to ensure that the light came on after dark.
22. The landlord explained that, having been informed that the new light was not working, he contacted East Dunbartonshire Council again, post inspection. The local authority's position has now changed. East Dunbartonshire Council says that the responsibility for repairing the light rests with the landlord. The landlord submitted that, on receipt of this information, he had instructed an electrician to undertake repairs to ensure that the light is fully operational. The landlord expected this repair to be completed within 7 days.
23. In respect of the issue highlighted on the EICR by Mr Heath, the landlord submitted that he had discussed the issue with the electrician who completed the report. The electrician has assured the landlord that the electrical supply throughout the flat was satisfactory.
24. In conclusion the landlord submitted that he was disappointed that matters had reached a hearing before the Tribunal. He considered himself a responsible landlord and assumed that he and the tenant had a good relationship. Apart from the issue in connection with the window (which the landlord admitted he refused to complete) he had addressed all the other matters raised in her application by the tenant.

## Findings in fact

25. That a short Assured tenancy agreement exists between the parties in respect of the property.
26. That the tenancy began in 2015.
27. That the tenant intimated to the landlord a list of issues of disrepair under cover of letter dated 3<sup>rd</sup> July 2019.
28. That, the repairs having not been completed, in full, made an application to the Tribunal, dated 22<sup>nd</sup> August 2019.
29. That the application was intimated to and received by the landlord.
30. That an inspection of the property took place on 1<sup>st</sup> November 2019 at which both parties were present.
31. That the light fitting in the bedroom was fitted securely to the ceiling and met the repairing standard as required by section 14 (1) (b) of the Act.
32. That the tenant was satisfied with the repair to the light fitting in the bedroom.
33. That the electrical socket in the kitchen was fitted securely to the wall and met the repairing standard as required by section 14 (1) (b) of the Act.
34. That the tenant was satisfied with the repair to the electrical socket in the kitchen.
35. That the Tribunal found no evidence of any cracked tiles on bathroom floor at the time of the inspection.
36. That a new flooring had been fitted in the bathroom and met the repairing standard as required by section 14 (1) (b) of the Act.
37. That the tenant was satisfied with the new flooring fitted in the bathroom.
38. That the landlord had produced an EICR dated 25<sup>th</sup> September 2019 in respect of the property.
39. That the content of the EICR of 25<sup>th</sup> September 2019 indicated that the electrical installation at the property met the repairing standard as required by section 14 (1) (b) of the Act.
40. That there are two light fittings attached to the ceiling of the common area in the patio at the entrance to the property.
41. That these light fittings are not in proper working order.
42. That the landlord accepted that the light fittings in the patio area are not in proper working order.

43. That the repairing standard of section 14 (1) (b) of the Act requires 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.
44. That the lights at the patio are "*fixtures*."
45. That the lights at the patio do not meet the repairing standard as required by section 14 (1) (b) of the Act.
46. That the window in the kitchen has two separate panes.
47. That only one of the panes of the window in the kitchen opens inwards and outwards.
48. That the other window pane cannot be opened and remains closed at all times.
49. That this window pane is not in proper working order.
50. That this window pane has not been in proper working order since the tenancy began in 2015.
51. That the landlord accepted that this window pane does not open and has never opened.
52. That the repairing standard of section 14 (1) (b) of the Act requires 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.
53. That the kitchen window is part of the structure of the house.
54. That the kitchen window does not meet the repairing standard as required by section 14 (1) (b) of the Act.

#### **Reasons for decision**

55. The tenant made various allegations of disrepair at the property in her application of 22<sup>nd</sup> August 2019. Since making the application, the landlord has undertaken various repairs to address the issues concerning the bedroom light fitting, electrical socket, bathroom floor and has produced an EICR to address the tenant's concerns about the electrical installations at the property.
56. The landlord and the tenant are in agreement that the lights at the patio are not in working order. The landlord has given an undertaking to address the issue to ensure that the lights are operational. The lights are a fixture in terms of the Act. The landlord is under a duty to ensure that these are in a



reasonable state of repair and in proper working order. Until such times as the lights are in a reasonable state of repair and in proper working order they do not meet the Repairing standard of section 14 (1) (b) of the Act.

57. The landlord and the tenant are in agreement that the window at the kitchen does not open and that it has not opened since the tenancy began. The fact that this was drawn to the attention of the tenant in 2015 and that the landlord considers there to be adequate ventilation does not negate his responsibilities in terms of the Act. The window forms part of the structure of the house. The landlord is under a duty to ensure that the structure and exterior of the house are in a reasonable state of repair and in proper working order. Until such times as both window panes open and close, the Tribunal is of the opinion that the kitchen window is not in a reasonable state of repair and in proper working order does not meet the Repairing standard of section 14 (1) (b) of the Act.

### **Decision**

58. The Tribunal accordingly determines that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by section 24 (1) of the Act in the following terms:-

*1. Repair or replace, as necessary, the full window in the kitchen.*

*2. Repair or replace, as necessary, the light fitting at the entrance to the property.*

59. The Tribunal considers it reasonable to allow a period of **6 weeks** from the date of service of the RSEO to carry out these works.

60. The decision of the Tribunal was unanimous.

61. The Tribunal require the landlord to carry out such works as are necessary to ensure that the property meets the repairing standard.

### **Right of Appeal**

62. 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**

63. 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 such an 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 determined

S Sweeney

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Legal chairing member Simone Sweeney 11th November 2019

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



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

**SCHEDULE OF PHOTOGRAPHS**

**ADDRESS: 20 BURNS COURT, KIRKINTILLOCH G66 2NP**

**DATE: 1<sup>ST</sup> NOVEMBER 2019**

**REFERENCE: FTS/HPC/RP/19/2641**



**REAR ELEVATION**



**BEDROOM LIGHT FITTING**



**KITCHEN WINDOW**



**POWER POINT – KITCHEN**

*11<sup>th</sup> November 2019*

*This and the following page is a schedule of photographs referred to in the statement of decision dated 11<sup>th</sup> November 2019.*

**S Sweeney**



**BATHROOM FLOOR COVERING**



**PATIO LIGHT FITTING**

**Mr M LINKS**

**ORDINARY MEMBER (SURVEYOR)**

**HOUSING AND PROPERTY CHAMBER**

**DATE 2<sup>ND</sup> November 2019**