

# **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 under Section 60 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RT/18/1003**

**Land Registration Title Number ANG25099**

**Property at 9 Earlstoun Avenue, Dundee DD4 0TH ("the Property")**

### **The Parties:-**

**Ms Catherine Low residing at 9 Earlstoun Avenue, Whitfield, Dundee, DD4 0TH ("The Tenant")**

**Mr Stuart Glen and Mrs Ashley Glen, both residing at 32 Ballumbie Meadows, Ballumbie, Dundee DD4 0UL, ("The Landlords")**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee DD1 3BA ("the Third Party Applicant ")**

### **Tribunal**

**Morag Leck – Legal member and Chairperson**  
**Mark Andrew – Ordinary member**

### **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 Repairing Standard Enforcement Order (RSEO) relative to the Property dated 31<sup>st</sup> July 2018, determined that the Landlord has complied with the RSEO and that a Certificate of Completion to that effect should be issued. The decision of the Tribunal was unanimous.

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### Background

1. On 31<sup>st</sup> July 2018, the Tribunal found that the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 ("the Act") and produced a statement of decision. The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property, together with its statement of decision on the same date. The RSEO required the Landlord to carry out the works specified therein within eight weeks from date of service of the RSEO.
2. The RSEO required the Landlord to:-
  - (a) instruct suitably qualified contractors to repair or replace (i) the front and back door locks of the house (ii) the decking in the garden and (iii) the rhones / downpipe of the front exterior of the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order.
  - (b) instruct a certified Electrical Installation Condition Report (EICR) which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identified issue in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
  - (c) carry out such works as are necessary to obtain a gas safety record in respect of the house by a Gas Safe registered engineer
  - (d) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and current building regulations
  - (e) carry out such works as are necessary to ensure the house has satisfactory provision for giving warnings if carbon monoxide is present in a concentration that is hazardous to health, all as required in terms of the Scottish Government Guidance for the provision of Carbon Monoxide alarms in Private Rented Housing;

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- (f) instruct suitably qualified contractor(s) to provide reports on the electric shower and bath in the house and to repair or replace as required in terms of said reports to ensure these are in a reasonable state of repair and in proper working order;
  - (g) instruct a suitably qualified contractor to repair or replace the oven located in the kitchen of the house to ensure it is in a reasonable state of repair and proper working order.
  - (h) instruct a suitably qualified contractor to repair or replace the door handle of the living room door of the house to ensure it is in a reasonable state of repair and in proper working order;
  - (i) instruct a suitably qualified contractor to install flooring in the kitchen of the house which flooring is capable of being used safely for the purpose for which it has been designed.
3. Following the issue of the RSEO the Landlord submitted a copy Gas Safety Record to the Tribunal by email dated 31st August 2018. The Landlord then submitted a copy EICR and information on works carried out to the Property by email on 6<sup>th</sup> September 2018.
4. Following the expiry of the time limit for work to be carried out as stated in the RSEO, the Tribunal agreed that a re-inspection of the Property be scheduled. This was set for 16<sup>th</sup> October 2018.
5. Mr Mark Andrew, the ordinary Member attended at the Property on the scheduled date along with a Clerk and Mr Stuart Glen, the Landlord. The Tenant was not present and no access could be gained. An external inspection of the Property was undertaken and Mr Andrew went through the list of works detailed on the RSEO with Mr Glen. Thereafter contact was made with the Tenant and the Tribunal agreed to reschedule the re-inspection. A date was fixed for 8th November 2018 and the ordinary Member carried out a re-inspection of the property on that date and prepared a report. A copy of this re-inspection report is annexed hereto.
6. The re-inspection disclosed that the works specified in the RSEO had been partially completed in so far as item (a) and items (c) - (h) had been completed. Item (b) had been partially completed but the Landlord had not provided proof that the contractor was a registered member of SELECT or NICEIC. Item (i) in relation to the flooring remained outstanding and the Tenant stated at the re-inspection that she would provide the flooring when she had an opportunity to

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do so which was likely to be March/April 2019. Thereafter the re-inspection report was issued to the parties on 16<sup>th</sup> November 2018.

7. No representations were received during the period for representations on the re-inspection report to be submitted. Thereafter the Tribunal were in communication with both the Tenant and Landlord in early December 2018 as the Tenant had advised of issues with the boiler and difficulties in contacting the Landlords. Whilst the boiler did not form part of the application, the Tribunal did ask the Landlords to ensure contact details were up to date. Upon resuming consideration of the application itself and the works required by the RSEO, the Tribunal agreed that further contact should be made with the Landlords to seek clarification on the two outstanding matters given the majority of the work detailed in the RSEO had been carried out. The Tribunal asked the Landlords to address the two outstanding issues by submitting a photo of the flooring in the kitchen and a receipt for same together with confirmation that the EICR had been carried out by an approved electrician. This information was required for 3<sup>rd</sup> January 2019.
8. On 2<sup>nd</sup> January 2019, a request was received for an extension of time to respond from the Landlords as they were out of the country. The Tribunal agreed to extend the time for a response to 31<sup>st</sup> January 2019. As no communication was received from the Landlords by that date, the Tribunal then notified the Landlord on 7<sup>th</sup> February 2019 that in the absence of any response to its earlier communication the Tribunal would proceed to make a decision.
9. An email was subsequently received from the Landlords providing further details of the electrical contractor who had carried out the EICR. They also stated that the Tenant wished to install the flooring in the kitchen herself and that the Landlords had a text from the Tenant confirming this which was also in accordance with her position on the day of the re-inspection. The texts were attached as a screenshot to the email of 7<sup>th</sup> February 2019.
10. The Tribunal again resumed its consideration of the application and agreed that the information provided in relation to the contractor was sufficient for the Tribunal to establish that he was NICEIC registered. The Tribunal also agreed that the Tenant be contacted to confirm if it remained her position that she wished to install the floor covering in the kitchen herself. An email was sent to the Tenant regarding this by the Tribunal on 18<sup>th</sup> February 2018. On 24<sup>th</sup> February the Tenant responded to say that she was happy to go with whatever decision was made by the Tribunal regarding the flooring. She also confirmed that she did previously say that she would be willing to put the flooring in herself but due to a change in financial circumstances she would need longer to do this. Following receipt of the Tenant's email the Tribunal were satisfied that no further

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clarification was needed in relation to the outstanding item and proceeded to make its decision.

### Reasons for decision

11. The Tribunal was satisfied from its consideration of the information provided by the Landlord that the outstanding issue detailed in the re-inspection report in relation to item (b) of the RSEO regarding the EICR had been addressed and the contractor was NICEIC registered. As regards item (i) of the RSEO in relation to the installation of flooring in the kitchen, the Tribunal was satisfied that the Tenant had indicated both at the time of the re-inspection and subsequently to both the Landlord and the Tribunal that she would carry out the installation of flooring herself. In the circumstances the Tribunal was satisfied that the work required under the RSEO no longer required to be undertaken by the Landlords and would be carried out by the Tenant as indicated by her.
12. Accordingly, having regard to the terms of the re-inspection report and the communications which had subsequently been submitted to the Tribunal by both the Landlords and the Tenant, the Tribunal were satisfied that the RSEO had been complied with by the Landlords. The Tribunal therefore determined to issue a Certificate of Completion to the effect of discharging the RSEO.

### 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.

M Leck

Signed

..... Chairperson

Date

14/3/19 .....

*This is the reinspection  
report and schedule of  
photographs referred to in the foregoing decision*

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

M Leck

*Chairperson*

**Re-inspection report**

**Date of inspection: 8<sup>th</sup> November 2018**

**Reference Number: FTS/HPC/RT/18/1003**

**Property: 9 Earlston Avenue, Dundee, DD4 0TH**

**Surveyor: M H T Andrew FRICS**

**Access: from Tenant (Ms Catherine Low)**

**In attendance: Landlord (Mr Stuart Glen) and Clerk (Vicky)**

**Repairing Standard Enforcement Order (RSEO) of 31<sup>st</sup> July 2018**

**Works required by the RSEO:**

- (a) Instruct suitably qualified contractors to repair or replace (i) the front and back door locks of the house (ii) the decking in the garden and (iii) the rhones / downpipes of the front exterior of the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the structures and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order.
- (b) Instruct a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which report should be carried out by a suitably qualified registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identifiable issues in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (c) Carry out such works as are necessary to obtain a gas safety record in respect of the house by a Gas Safe registered engineer.
- (d) Carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and the current buildings regulations
- (e) Carry out such works as are necessary to ensure the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, all as required in terms of the Scottish Government Guidance for the provision of carbon monoxide alarms in Private Rented Housing

- (f) Instruct suitably qualified contractor(s) to provide reports on the electric shower and bath in the house and to repair or replace as required in terms of said reports to ensure these are in a reasonable state of repair and in proper working order.
- (g) Instruct a suitably qualified contractor to repair or replace the cooker located in the kitchen of the house to ensure that it is in a reasonable state of repair and proper working order.
- (h) Instruct a suitably qualified contractor to repair or replace the door handle of the living room door of the house to ensure that it is in a reasonable state of repair and in proper working order.
- (i) Instruct a suitably qualified contractor to install flooring in the kitchen of the house which flooring is capable of being used safely for the purpose for which it has been designed.

**Works in the RSEO undertaken:**

- (a) The (i) front and back door locks have been replaced; (ii) the timber decking has been removed and replaced by a pre-cast concrete step that provides access from the back door to the garden and (iii) the rhones and downpipes to the front elevation of the house have been repaired and all items are in a reasonable state of repair and proper working order.
- (b) A satisfactory EICR has been produced by the Landlord provided by wrb (gas) contracts Ltd of 40 North Ellen St. Dundee dated 3<sup>rd</sup> August 2018. At the time of writing this report it is unclear whether or not the contractor is a registered and qualified electrician belonging to SELECT or NICEIC. The Landlord has been asked to provide the Registration Reference for the contractor in relation to either of these trade bodies.
- (c) A Gas Safe registered gas safety record has been submitted by the landlord provided by wrb (gas) contractors of 40 North Ellen St., Dundee dated 25<sup>th</sup> June 2018
- (d) There are adequate alarms in the kitchen, living room and first floor landing for the detection and warning of fire which comply with current Scottish Government Guidance.
- (e) There is a satisfactory alarm in the kitchen for the detection and warning of hazardous concentrations of carbon monoxide in the house which complies with current Scottish Government Guidance.
- (f) The electric shower is in proper working order and the pull switch has been replaced ensuring that it is safe to use and in a reasonable state of repair. There is no evidence of a leak from the bath.
- (g) The oven has been repaired, is in a reasonable state of repair and proper working order.
- (h) The door handle of the living room door has been replaced and is in a reasonable state of repair and proper working order.

**Outstanding works:**

- (b) To provide proof that the contractor is a registered member of SELECT or NICEIC as detailed above.
- (i) The flooring in the kitchen has not been installed. The Tenant said that she would provide it when she had the opportunity to do so which was likely to be in March / April of 2019.

M Andrew

**Photographs were taken on the day of inspection and are attached.**

M H T Andrew FRICS

Date of report: 11<sup>th</sup> November 2018



Schedule of photographs of 9 Earlston Avenue, Dundee, DD4 0TH



Front door lock in operation with key installed (Note Tenant had lost back door key but confirmed the lock was working properly)



Concrete step at back door replacing previous dangerous decking.

Schedule of photographs of 9 Earlston Avenue, Dundee, DD4 0TH



Rhone and downpipe properly connected



Combined Smoke and CO alarm in sitting room

Schedule of photographs of 9 Earlston Avenue, Dundee, DD4 0TH



Heat detector in kitchen



Combined smoke and CO alarm on landing



Carbon Monoxide alarm in kitchen above gas boiler

Photographs taken by M H T Andrew FRICS FAAV FARLA on 8<sup>th</sup> November 2018

Schedule of photographs of 9 Earlston Avenue, Dundee, DD4 0TH



Electric shower in proper working order



Pull switch for shower in good state of repair and proper working order.



Schedule of photographs of 9 Earliston Avenue, Dundee, DD4 0TH



Electric oven in proper working order



Living room door handle in a reasonable state of repair and proper working order

Schedule of photographs of 9 Earlston Avenue, Dundee, DD4 0TH



Kitchen floor (no floor covering)



Kitchen floor (no floor covering)