

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/RP/17/0301

Title no/Sasines Description: LAN 23136

128A Crawford Street, Motherwell, ML1 3BN ("the House")

The Parties:-

Mrs Catherine McGregor, formerly residing at the House and now treated as having withdrawn her Application ("the Tenant")

Mr Gerard Francis Ross (otherwise known as Gary Ross), 61 Hamilton Road, Motherwell, ML1 3DG; 31 Merry Street, Motherwell, ML1 1JJ ("the Landlord")

Whereas in terms of their decision dated 7 January 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 provisions of Section 13 of the Act, as amended:-

- (c) the installations in the house 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, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire; and
- (g) the house has satisfactory 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:-

- (1) To submit to the Tribunal an up to date and satisfactory Gas Safety Record from a Gas Safe registered engineer in relation to the House.
- (2) To submit to the Tribunal an up to date and satisfactory Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings and a Portable Appliance Test (PAT) in respect of portable electrical appliances (if any) from a suitably qualified and registered SELECT or NICEIC electrical contractor.
- (3) To repair or, as necessary, replace the toilet flush to ensure that it is in a reasonable state of repair and in proper working order.
- (4) To install hard-wired and interlinked smoke alarms in the living room and hallway and a heat alarm in the kitchen to ensure that there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (5) To install a carbon monoxide (CO) detection system to ensure that the House has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 4 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 two preceding pages are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 7 January 2018 in the presence of the undernoted witness:-

F T Weir

witness

N Weir

Legal Member

_name in full

90 2 FIRD BND

Address

MARSWORTH

HP23 4LN

Housing and Property Chamber

First-tier Tribunal for Scotland



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/17/0301

Title no/Sasines Description: LAN 23136

128A Crawford Street, Motherwell, ML1 3BN ("the House")

The Parties:-

Mrs Catherine McGregor, formerly residing at the House and now treated as having withdrawn her Application ("the Tenant")

Mr Gerard Francis Ross (otherwise known as Gary Ross), 61 Hamilton Road, Motherwell, ML1 3DG; 31 Merry Street, Motherwell, ML1 1JJ ("the Landlord")

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

Debbie Scott, Ordinary Member

Background

1. By Application received on 1 August 2017, 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. In particular, the Tenant stated as follows:-

- “1) No electrical installations condition report
- 2) No gas safety certificate
- 3) Smoke alarms do not meet the current legal standard
- 4) Carbon Monoxide detectors out of date
- 5) Plug socket in kitchen has scorched
- 6) Toilet doesn't flush properly
- 7) Light fitting in bedroom
- 8) Decoration finish due to previous water leak”.

The Application was signed on behalf of the Tenant by Marianne McGregor, whose details were provided in the Application as the Tenant's representative. Apart from the application form, the Tenant also submitted as part of her Application some tenancy documentation, including a copy AT5 Form and a copy Short Assured Tenancy Agreement, and a copy handwritten letter which appeared to be to the Tenant concerning repairs to the House. The Tenant was asked to stipulate which elements of the Repairing Standard she thought the Landlord had failed to comply with and to provide proof that she had notified the Landlord of the repairs required. This was submitted by the Tenant on 24 August 2017. She stipulated that she thought the Landlord had failed to comply with all elements of the Repairing Standard.

- 2. On 12 September 2017, 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 in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 26 September 2017.
- 3. Following service of the Notice of Referral, no written representations were submitted by either party and neither party indicated that they would be attending the Hearing.
- 4. On 13 October 2017 the Landlord's agents, Ness Gallagher solicitors, submitted a letter by fax (followed by Recorded Delivery), advising that the Tenant had left the House at the end of August 2017, that she had not permitted access to the House to the Landlord for the purpose of repairs, that the Landlord was not intending to re-let the House and requesting that the Application be disposed of. Due to an administrative error, this letter was not circulated to the Tribunal until 26 October 2017. On 27 October 2017, the Tribunal Administration verified with the Tenant's representative that the Tenant had indeed vacated the House at the end of August 2017. Accordingly, in terms of Schedule 2 Paragraph 7(1) of the Act, the Tenant was treated as having withdrawn her Application. The Tribunal then considered whether the Application should be determined or abandoned, in terms of Schedule 2, Paragraph 7(3) of the Act. Having carefully considered the matter, the Tribunal decided that the Application should be continued for determination as it contained matters which raised health and safety issues for any future tenants. A Minute for Continuation to a Determination was issued by the Tribunal dated 27 October 2017. The Landlord's agents then submitted a request for a

adjournment of the Inspection and Hearing, due to take place on 30 October 2017. In the circumstances, the Tribunal considered that there was good reason to adjourn the Inspection and Hearing. The Inspection and Hearing were rescheduled to take place on 11 December 2017. Notification was sent to the Landlord and his agents of this on 14 November 2017.

5. The Tribunal inspected the house on the morning of 11 December 2017. The Landlord provided access to the House and was present during the Inspection.
6. Following the inspection of the house, the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. No party attended the Hearing.

The Inspection

7. At the time of the inspection, the weather was cold, dry and bright. The Tribunal noted that the subjects form part of a mid-terrace red sandstone upper flat villa. The flat is accessed from the rear of the building via external stairs. The accommodation comprised a living room, galley style kitchen, bedroom, shower room and hallway. The Tribunal noted the following on inspection:-
 - (a) The electricity was not on.
 - (b) There was no heat alarm in the kitchen. There was one smoke alarm in the House which was ceiling mounted in the hallway and likely to be of the battery operated type.
 - (c) There was a wall mounted carbon monoxide alarm in the hallway, situated near the gas boiler. It was not operational and had a label visible on the front stating that the unit should be replaced by July 2012.
 - (d) The flush on the toilet in the shower room was not working.
 - (e) One of the double plug sockets in the kitchen appeared to have been replaced. The Landlord indicated that this socket had been replaced because it was scorched, as the tenant had indicated in her Application. The socket was not tested as there was no electricity on.
 - (f) The light fitting in the bedroom appeared to have been replaced with a new pendant lightshade. The Landlord indicated that part of the previous light fitting had been broken. The light could not be tested as there was no electricity on.
 - (g) There was minor damp staining visible on the decorative finish of the bedroom ceiling, which appeared to have been partially redecorated. There was no evidence of any ongoing leak.

A Schedule of Photographs taken during the inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

The Landlord indicated at the end of the Inspection that he was not able to attend the Hearing. He was asked by the Tribunal if he had Gas Safety and Electrical Safety reports available. He stated that he did not have them with him but could submit them to the Tribunal Administration within the next few days for circulation to the Tribunal Members. He also confirmed at the Inspection that his full name was Gerard Francis Ross but that he is known as Gary Ross.

The Hearing

8. At the Hearing, the Tribunal had before it the Application and other documentation referred to above. The Tribunal also had before it a copy of Land Certificate LAN 23136 relative to the House which is registered in the name of the Landlord. No party attended the Hearing.

Findings in Fact

9. Reference is made to the Tribunal's findings on Inspection.
10. The Tenant had occupied the House under a Short Assured Tenancy which appeared to have commenced on 1 September 2015. The Tenant had moved out of the property around the end of August 2017. Circumstances surrounding the termination of the tenancy are not known to the Tribunal.
11. The Landlord recovered possession of the House and has therefore had access to it since around the end of August 2017.
12. Some of the repair issues raised by the Tenant in her Application and which had been notified to the Landlord appeared to have been rectified, namely the replacement of the scorched plug socket in the kitchen and the light fitting in the bedroom. However, some of the repair issues remain outstanding.
13. No Gas Safety or Electrical Safety reports have been submitted by the Landlord to the Tribunal in respect of the House.

Reason for decision

14. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection.
15. The Tribunal was not satisfied that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of Section 13(1)(f) of the Act. There is no heat alarm in the

kitchen and only one smoke alarm in the House, situated in the hallway. This does not comply with current Scottish Government and current building regulations and does not accordingly meet the Repairing Standard.

16. In the Tribunal's view, the House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health in terms of Section 13(1)(g) of the Act and does not therefore meet the Repairing Standard. Although there is a carbon monoxide alarm situated near the gas boiler, it was not operational and the label on it indicated that the alarm was due to be replaced in July 2012.
17. The flush on the toilet in the shower room was not working and accordingly, the Repairing Standard was not met in that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act.
18. As no current Gas Safety record has been submitted by the Landlord, the Tribunal was not satisfied that the installations in the House for the supply of gas, for space heating and heating water are in a reasonable state of repair and proper working order in terms of Section 13(1)(c) of the Act.
19. As no current Electrical Safety inspection report has been submitted by the Landlord, the Tribunal was not satisfied that the installations in the House for the supply of electricity are in a reasonable state of repair and proper working order in terms of Section 13(1)(c) of the Act.
20. Although there was some slight staining evident on the bedroom ceiling and the ceiling appeared to have been only partially redecorated, in the Tribunal's view, this was not sufficient to constitute any breach of the Repairing Standard.
21. The Landlord did not dispute the repair issues alleged by the Tenant by submitting any written representations or attending the Hearing. The Landlord's agents had advised in correspondence referred to above that the Landlord did not intend to let out the House again and this was reiterated by the Landlord himself at the Inspection. However, the Tribunal has no knowledge as to whether this will be the case or not. The Landlord has had access to the House since around the end of August 2017 and some repair issues remain outstanding. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified above. Given the nature of the required repairs, 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.

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(1) 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.

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N Weir

Signed.

Nicola Weir, Legal Member of the Tribunal

Date: 7 January 2018

128A Crawford Street, Motherwell, ML1 3BN
FTS/HPC/RP/17/0301

Glasgow, 7 January 2018
This is the Schedule of Photographs
referred to in the attached Statement
of Decision of even date herewith.
N Weir, Legal Member of the
Tribunal.

128A Crawford Street, Motherwell, ML1 3BN

FTS/HPC/RP/17/0301



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Rear Access



Light fitting in bedroom replaced with pendant light

128A Crawford Street, Motherwell, ML1 3BN
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Damp staining in bedroom partially redecorated



Consumer unit and meter located within the hallway

128A Crawford Street, Motherwell, ML1 3BN
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Carbon Monoxide monitor located in hallway – not operational.



Smoke detector in hallway – None in kitchen

128A Crawford Street, Motherwell, ML1 3BN
FTS/HPC/RP/17/0301

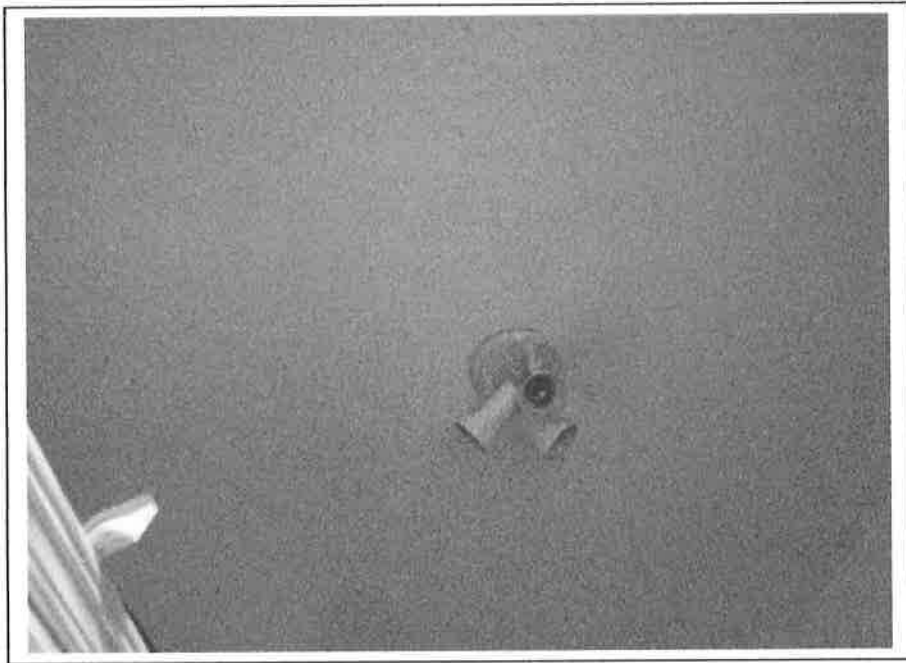


Shower room– Toilet not flushing



Repaired socket within kitchen

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No smoke or heat detector in kitchen