

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/19/1472

Title no: PH38511

Property at Flat 1/2, 137 Clepington Road, Dundee DD3 7PA (“The Property”)

The Parties:-

- **Mr Abu Baker Meah, Flat 1/2, 137 Clepington Road, Dundee DD3 7PA (“the Tenant”)**
- **Mr Christian Hoyer Miller, Mr James Inchyra and Mrs Caroline Inchyra, Inchyra House, Glencarse, Perth PH2 7LU (“the Landlord”)**
- **Dundee City Council Private Sector Services Unit, Dundee City Council, 5 City Square, Dundee DD1 3BA (“the Third Party Applicant”)**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Whereas in terms of their decision dated 25th November 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: -

- (a) that the House is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) That 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.

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:-

- (a) To replace or repair and make good the window in the front bedroom of the Property to ensure that it is wind and watertight and in proper working order.
- (b) To repair the loose boarding in the kitchen to ensure that the radiator is attached to the wall and appropriately secured.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 2 months 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 type written on this and the preceding pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Dundee on ^{25th} 25th November 2019 in the presence of the undernoted witness ^{G Miller} G Paterson

_____ witness _____ chairperson
GARETH PATERSON name in full
CALEDONIA HOUSE, Address
GREENMARKET,
DUNDEE.

Housing and Property Chamber First-tier Tribunal for Scotland



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**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

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The Parties:-

- **Mr Abu Baker Meah, Flat 1/2, 137 Clepington Road, Dundee DD3 7PA ("the Tenant")**
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- **Dundee City Council Private Sector Services Unit, Dundee City Council, 5 City Square, Dundee DD1 3BA ("the Third Party Applicant")**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr Robert Buchan - Ordinary Member

Decision

1. 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 led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application received 16th May 2019, the Third Party Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by the Third Party Applicant stated that they considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that the Property was wind and watertight and in all other aspects reasonably fit for human habitation; that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order; the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. However, in the particular complaints in the paper apart and a subsequent email to the Housing and Property Chamber, the complaints consisted of:-
 - a) No mains smoke or heat detectors within the flat;
 - b) No Carbon monoxide detectors near the boiler and living flame gas fire in the living room;
 - c) The windows were draughty, warped and not closing properly,
 - d) The wall boarding in the kitchen is uneven and unsightly;
 - e) There are open joints and vegetation growth evident at the chimney heads; and
 - f) The rear rhone is choked and leaking.
4. On 26th June 2019, a Convenor for the First-Tier Tribunal for Scotland (Housing and Property Chamber) signed Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act and this was duly served upon the Landlord and the Tenant.
5. A hearing date was initially fixed for 22nd August 2019 but was postponed due to the Landlords being away on the date of the inspection and hearing. A new date for the hearing was set for 1st November 2019.

The Inspection

6. The Tribunal attended the Property on the morning of 1st November 2019. The Tenant, his wife and infant child were present. Mr Donald Graham, enforcement officer for Dundee city council and Mr James Inchyra were also present. The Tribunal was let into the property by the Tenant. It was a wet day and of cold temperature on the day of the inspection.
7. The Property comprises a two bedroom second floor flat in a traditional 4 storey stone built tenement block of 8 flats built c1900 and located in a mixed residential and commercial area of Dundee.

8. The fire and heat detectors were inspected first. The Tribunal found that all were in the appropriate places. They had recently been installed.
9. The carbon monoxide detectors were found to be in the boiler room at the rear of the back bedroom and by the fire in the living room.
10. The boarding in the kitchen was inspected next. It was found that the internal boarding which lines the solid brick wall and to which the radiator is attached was loose and causing the radiator to come away from the wall. The wall was tested for damp but the reading showed no signs of dampness. The other side of the wall formed part of the stairwell and showed no damage to indicate a reason for the boarding to be coming adrift from the wall.
11. The windows were inspected next. The Tenant confirmed that it was only the front bedroom window that was of issue. On inspection, brown packing tape could be seen around the top half of the window. It was not clear from the visual inspection as to why it had been put there. The Tenant confirmed that he had put up the packing tape. The bottom pane of that window was cracked with a hole in it. When the window was inspected from the outside of the Property it was clear that the top right corner of the window was not meeting the frame and was not wind and watertight.
12. The Tribunal then inspected the outside of the Property. It was clear that the guttering was blocked with vegetation growing in it. The wall below it was not damp or damaged from the water that was leaking over as a result of this blockage. The wall formed the outside face of the back bedroom. Although there were indications of past damp penetration at the window, the area was found to be dry on inspection.
13. The Tribunal carried out a ground level visual inspection of the chimney. Open joints were not evident in the chimney from this inspection and only a modest bit of vegetation was apparent.
14. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
15. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

16. The hearing took place at The Carers Centre, Seagate, Dundee. The Tenant was not present. He had indicated at the Inspection that he would not be attending. The Third Party Applicant was not present. He had recently taken over the case and had nothing further to add. The Landlord was present.
17. The Property was discussed item by item.

18. The heat detectors, smoke detectors and carbon monoxide detectors were discussed first. The Tribunal was satisfied that these were all in place and in working order. The Landlord noted that these were recently installed.
19. The window was discussed. The Landlord advised that the pane was broken by the Tenant and so was not his responsibility. However, he accepted that the frame was not closing properly.
20. The boarding in the kitchen was discussed next. The Landlord thought that the action of the Tenant caused the board to come away from the wall but accepted this could not be substantiated and that there is a danger that the radiator could become damaged and leak so that remedial action should be undertaken as soon as possible.
21. The Chimney and guttering was discussed next. The Tribunal noted that the guttering was blocked but this was not causing damage to the Property. The Tribunal noted that section 15(2) of the Housing (Scotland) Act 2006 was applicable here insofar as the Landlord did not need to undertake any specific work to common areas because the Tenant was not adversely affected by the disrepair or failure to keep the common parts in proper working order. It was noted that the concrete area immediately outside of the rear door was exceptionally slippery as the surface was covered in a slimy matter and this caused the Chair to fall to the ground during the inspection. As it was raining that day it was not clear if the water was from the rain or the over flow of the guttering. The Tribunal did not consider the chimney to be an issue.
22. The gas safety certificate and Electrical Installation Condition Report (EICR) were discussed next. The gas safety certificate passed without issue. The Tribunal had no cause for concern. It was noted that the EICR had pass on it but that it had Code3 items where improvement is recommended. This was discussed with the Landlord. He had not been aware that was an issue until he had discussed it with his electrician recently. He presumed that the pass was adequate. He will now look at what items need to be addressed. As the EICR was a pass the Tribunal was not pursuing it further but the Tribunal would expect a responsible Landlord to arrange for these items to be addressed.
23. The Landlord was asked if he wished to make any further comment. The Landlord advised that he felt that everything had been covered in the Hearing.
24. It was explained to the Landlord that the Tribunal must make a Repairing Standard Enforcement Order ("RSEO") if they find that the property does not meet the Repairing Standard.
Summary of the issues
25. The issues to be determined are: -
 - a) Whether there were mains smoke detectors or heat detectors within the Property;

- b) Whether there were appropriate carbon monoxide detectors in the back bedroom by the boiler which was stored in what is assumed to be the old WC to the rear of that room and in the living room by the living flame fire;
- c) Whether the windows were draughty, warped and not closing properly;
- d) Whether the wall boarding in the kitchen was uneven and unsightly;
- e) Whether the open joints and vegetation growth were evident at the chimney heads; and
- f) Whether the rear rhone was choked and leaking;

Findings of fact

26. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The window in the front bedroom was not wind and water tight in that the opening part of the window clearly did not fit square to the frame. It needs repaired or replaced.
- b) The boarding in the kitchen which attaches to the wall and supports the radiator was loose, endangering the operation of the radiator which was attached to it and was therefore not in a reasonable state of repair. The boarding needs to be repaired or replaced.

Reasons for the decision

27. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection, the representations of the Third Party Applicant and the Landlord at the hearing.

28. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

29. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.

30. There was clear evidence that the window in the front bedroom was in poor condition. It had tape around the inside but the gap between the frame and the window was apparent from the outside of the Property.

31. There was clear evidence that the boarding in the kitchen that attaches to the wall and had the radiator attached to it, required to be repaired as it was loose.

32. Accordingly, in view of its findings the Tribunal found that the Landlord was in breach of the duty to comply with the Repairing Standard.

33. The Act states that where a Tribunal determines that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".

34. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

35. The Tribunal would wish to point out that:-

- a) Guttering at the rear of the property had vegetation in it and needed to be cleared, albeit, that it was not causing an issue to the Tenant directly.
- b) The EICR had C3 items listed on it. While this does allow for the EICR to be granted it would be beneficial to the Tenant and the Landlord to address the C3 items.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

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.

G Miller

G Miller, Chair
25th November 2019