

# **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 2006 Section 24 (1)**

**Chamber Ref: PRHP/RP/16/0368**

**12 School Place, Kirkwall, Orkney, KW15 1JG  
("The Property")**

**The Parties:-**

**Mr. Juan del Valle, residing at the property  
("the Tenant")**

**Mr. Raymond Rendall and Mrs. Susan Rendall, residing at Stavanger, St.  
Ola, Orkney, KW15 1SR  
("the Landlords")**

**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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by the Landlords at the hearing, determined that the Landlords had complied with the duty imposed by Section 14 (1)(b) of the Act.**

**The tribunal consisted of:-**

<b>Patricia Anne Pryce</b>	<b>- Chairing Member</b>
<b>Andrew Taylor</b>	<b>- Ordinary Member</b>

**Background**

- 1. By application comprising documents received on 23 November 2016 the Tenant applied to the Private Rented Housing Panel ("PRHP") (which body was succeeded by the First-tier Tribunal (Housing and Property Chamber) on 1 December 2016) for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application by the Tenant stated that the Tenant considered that the Landlords had failed to comply with its duty to ensure that the house meets the repairing standard and that the said failure was established as follows: -**

- (a) The Tenant was unable to get hot water out of the shower and despite several attempts had been unable to get this fixed by the Landlords.

The Tenant considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) 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.
3. By Minute dated 1 December 2016 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(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 Landlords and the Tenant.
  5. Following service of the Notice of Referral (by letter dated 20 December 2016), the Landlords submitted written representations to the tribunal by way of an email dated 4 January 2017 which was received by the tribunal on 12 January 2017. The Landlords advised that the shower was now fixed.
  6. The Tenant thereafter advised the tribunal that he wished to withdraw his application. The tribunal then issued a Minute of Continuation dated 27 January 2017 under Schedule 2 Paragraph 7(3) of the Act, having decided that the application should be determined on public interest grounds.
  7. The tribunal attended the property for the purposes of inspection on 31 January 2017. The Landlords also attended at the property. The Tenant did not attend at the property. The Landlords advised that they thought that their agent who managed the property on their behalf, namely, Orkney Leasing, were due to attend at the property for the inspection. However, the agent did not attend. The clerk of the tribunal telephoned the Tenant who advised that he was in Glasgow and could not attend at the inspection or hearing. However, he advised that he had told the Landlords' agent, Orkney Leasing, that he gave them consent to allow the tribunal access for the purposes of inspection. The clerk telephoned the said agent who advised the clerk that the Tenant had told them that he was not prepared to consent to access to the property for the purposes of inspection. The clerk telephoned the tribunal and advised the members of the tribunal of

the details of the telephone calls. The tribunal confirmed to the Landlords that the inspection could not go ahead but that the hearing would proceed at 11 am as previously confirmed.

8. Following the attempted inspection of the property the tribunal held a hearing at Kirkwall Community Centre, Broad Street, Kirkwall. The Landlords attended the hearing. The Tenant did not attend the hearing nor was he represented at the hearing. The Landlords' agent did not attend the hearing.

### **The Hearing**

9. The Landlords submitted as follows: -

- They admitted that they did not know that there was a long-standing problem with the shower in question. They advised that the first they knew of the problem was when they received the notice of referral from the tribunal just before Christmas 2016.
- They confirmed that as soon as they knew about the problem, they had the shower fixed without further delay.
- They accepted that the problem with the shower had existed since July 2016 and that the delay in fixing it was unacceptable.
- They also accepted that the risk of legionella existed in relation to problems with the shower such as the present case but had been under the impression that their agent had instructed a test and certificate for this.
- They submitted that they had no idea why their agent had not advised about the issue nor simply used another plumber.
- They confirmed that the delay was wholly down to the plumber from whom they have now received an apology.
- They advised that the agent had instructed the plumber to repair the shower in July 2016.
- They confirmed that they had not received an invoice from the plumber detailing the work carried out to the shower and had only received the email from him which they had forwarded to the tribunal by way of their email of 4 January 2016. They further advised that they did not expect to receive an invoice for the work carried out as the delay had been wholly the fault of the plumber and they did not expect to be charged for the work.
- They were at a loss to explain why their agent had not instructed another plumber as the agent had apparently chased up the plumber on at least six occasions but advised that the leasing firm they used had been sold and was under new ownership.
- They accepted that the duty to ensure that the property met the repairing standard was theirs as landlords, whether or not they employed an agent.

- Mrs. Rendall submitted that she had instructed the agent to send a letter of apology to the Tenant regarding the delay which the agent has advised her has been done.
- Mrs. Rendall advised that the Tenant had resided in the property since 2011 and this was the one and only problem which had ever arisen and that she and her husband were both very happy with the Tenant.

### **Summary of the issues**

10. The issue to be determined is whether the repairing standard has been met in light of the submissions made by the Landlords.

### **Findings of fact**

11. The tribunal finds the following facts to be established: -
- The shower was not working for seven months.
  - The shower was eventually repaired on or about 22 December 2012.

### **Reasons for the decision**

12. At the hearing, the Landlords were very honest in their submissions and were appalled and embarrassed that there was such an inordinate delay in fixing the shower. They could not believe that the first they were aware of the issue was when they received notification from the tribunal that the inspection and hearing were arranged.

The Landlords confirmed that they understood that although they employed an agent to manage the property, the duty to maintain the property to the repairing standard remained with them. They also accepted that potential legionella risk in relation to showers and, although their agent had advised them that the shower had been tested and was clear of this risk, they could not produce a certificate to this effect.

Although the tribunal did not have the opportunity to inspect the shower, the tribunal is of the view, given all of the evidence before it, that the repairs have been carried out.

Given all of the circumstances, the tribunal is satisfied 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 as the Landlords have repaired the shower.

### **Observations**

The tribunal notes that this is a matter which could have been resolved easily and need not have progressed so far, however, there was an inordinate delay in the necessary repairs being carried out with no explanation being provided

to the Tenant in advance of the present application. The tribunal notes that the agent for the Landlords emailed the tribunal to demand that the inspection and hearing be cancelled but did not appear to appreciate that the matter required to be continued in part due to the agent's lack of proper management of the property and to instruct a plumber on behalf of the Landlords who could have carried out the necessary repairs within a reasonable time.

### **Decision**

13. The tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.

14. The decision of the tribunal was unanimous.

### **Right of Appeal**

**15. 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**

16. 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.

P Pryce

Signed

Date 1 February 2017



Chairperson

