

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: PRHP/RT/16/0291

Sasines Description: All and Whole the dwellinghouse 192 Deanswood Park, Livingston, in the County of West Lothian, being the subjects more particularly described in Feu Contract containing Feu Disposition by Livingston Development Corporation in favour of Christopher Brown and Janetta Anne Morris, dated 29 June 1987 and 5 January 1988 and recorded in the Division of the General Register of Sasines applicable to the County of West Lothian on 20 April 1988.

The Property

192 Deanswood Park, Livingston EH54 8QG (“the Property”)

The Parties:-

West Lothian Council

(represented by Tara McLaren - Housing Needs Team-Homelessness Prevention)
 (“the Third Party Applicant”)

Ms Roseanne Docherty, 192 Deanswood Park, Livingston EH54 8QG
 (“the Interested Party”)

Anwar UL Haq, 7 Fulmar Brae, Ladywell West, Livingston EH54 8DQ and/or 1A Tweed Drive, Craigshill, Livingston EH54 5LS
 (“the Landlord”)

Whereas in terms of their decision dated 10 January 2017, 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 property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, **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 to instruct a suitably qualified electrical contractor to install in the Property mains-wired and interlinked smoke detectors in the living room, downstairs hallway and upper floor landing of the Property and a

heat detector in the kitchen of the Property, all in accordance with the Revised Domestic Technical Handbook guidance and the Scottish Government revised statutory guidance on the requirements for smoke alarms

The tribunal order that the works specified in this Order must be carried out and completed within the period of six weeks from the date of service of this Notice.

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.

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 preceding page are executed by George Barrie Clark, solicitor, Chairperson of the tribunal at Lasswade on 10 January 2017 before this witness, Mrs Valerie Elizabeth Jane Clark, Droman House, Lasswade, Midlothian:-

G. Clark Chairperson
V. Clark Witness

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: PRHP/RT/16/0291

The Property

192 Deanswood Park, Livingston EH54 8QG (“the Property”)

The Parties:-

West Lothian Council

(represented by Tara McLaren - Housing Needs Team-Homelessness Prevention)

(“the Third Party Applicant”)

**Ms Roseanne Docherty, 192 Deanswood Park, Livingston EH54 8QG
(“the Interested Party”)**

**Anwar UL Haq, 7 Fulmar Brae, Ladywell West, Livingston EH54 8DQ
and/or 1A Tweed Drive, Craigshill, Livingston EH54 5LS
(“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) in relation to the house concerned, and taking account of the evidence led by the Third Party Applicant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application received on 8 September 2016, the Third Party Applicant applied to the Private Rented Housing Panel 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”).**
- 2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets**

the repairing standard and in particular that the Landlord had failed to ensure that house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. On 1 December 2016, the jurisdiction of the Private Rented Housing Panel transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland.
4. By letter dated 12 December 2016, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
5. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Third Party Applicant and the Interested Party.
6. On 15 December 2016, the Third Party Applicant submitted a written representation to the tribunal which referred to a meeting Tara McLaren had had with the Landlord earlier on that day, when the Landlord had stated to her that he did not intend to carry out any more repairs to the Property. The Landlord did not make any written representations to the Tribunal following service of the Notice of Referral.
7. The tribunal inspected the Property on the morning of 10 January 2017. The Third Party Applicant and the Interested Party were present during the inspection. The Landlord was neither present nor represented at the inspection.
8. The Tribunal comprised George Clark (Legal member) and Donald Wooley (Ordinary Member)(surveyor).
9. Following the inspection of the Property the tribunal held a hearing at Howden Park Centre, Howden, Livingston EH54 6AE and heard from the Third Party Applicant. The Interested Party was present at the hearing. The Landlord was neither present nor represented at the hearing.
10. The Third Party Applicant submitted as follows:- A Committee of the Private Rented Housing Panel had observed, in a Decision dated 16 July 2016 relating to the Property, that there were no smoke or fire detection devices located anywhere within the Property, thus placing any occupant of the Property at potential risk. The Committee strongly urged the Landlord to install the appropriate number of hard wired and interlinked smoke and heat detection devices conform to present regulations as a matter of extreme urgency. The Third Party Applicant had notified the Landlord by letter dated 21 July 2016, that the Property was in need of repair and did not meet the repairing standard and that the work required was the installation of mains powered, interlinked smoke alarms in the living room, downstairs hall and upper landing of the Property and a heat alarm in the kitchen. The Landlord had not responded to that letter or carried out any of the works considered by the Third Party Applicant to be

required. The Scottish Fire and Rescue Service had provided the Interested Party with 2 battery-operated smoke detectors, which are located in the downstairs hallway and the upper landing.

Summary of the issues

11. The issues to be determined are whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Findings of fact

12. The tribunal finds the following facts to be established:-

- The Property does not have any mains-wired and interlinked smoke detectors and does not have a heat detector in the kitchen, so does not meet the repairing standard.
- The tenancy is an Assured or Short Assured Tenancy.

Reasons for the decision

13. Fire safety is one of the most important concerns for any tenant and it is essential in order to meet the repairing standard that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The Tribunal interprets this as requiring the Landlord to ensure, in line with the revised Domestic Technical Handbook guidance issued by the Scottish Government, that there is one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes, one functioning smoke alarm in every circulation space, such as hallways and landings and one heat alarm in every kitchen, and that all alarms should be interlinked.
14. The 2 battery-operated smoke alarms were provided by the Scottish Fire and Rescue Service as a short-term emergency measure only.
15. In its decision of 16 July 2016 in respect of the Property, the Private Rented Housing Committee strongly urged the Landlord to install the appropriate number of hard-wired and interlinked smoke and heat detection devices conform to present regulations. The Landlord has taken no steps towards their installation, despite the Third Party Applicant's letter to him of 21 July 2016.

Decision

16. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

17. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

18. The decision of the tribunal was unanimous.

Observations

At the inspection, the Interested Party pointed out to the Tribunal a number of issues with the property and the Third Party Applicant also drew the attention of the Tribunal to the fact that most of the work required by the existing Repairing Standard Enforcement Order made on 16 July 2016 remained outstanding. The tribunal advised the Interested Party that it could only deal with the matters contained within the current application, but that the additional issues could, if the Interested Party or Third Party Applicant wished, be the subject of a further application to the tribunal. The issues pointed out by the Interested Party and noted by the tribunal were as follows and the tribunal recommends that the Landlord undertakes appropriate investigations and carries out any necessary remedial works:-

- The ceiling light within the hall emits a “buzzing” sound when switched on. The Interested Party indicated that this had occurred after it had been affected by water which, she indicated, had stemmed from the bathroom
- Where they remain, the older double glazed fittings display evidence of significant condensation internally and a cracked pane was noted at the living room.
- Above the “master” bedroom window there is considerable evidence of damp staining. The room remains undecorated.
- The “Black spot mould” within the downstairs toilet, identified by the Private Rented Housing Committee in its Statement of Decision of 16 July 2016, may have become much worse in the intervening period.
- Within the kitchen, in addition to those items already the subject of the Repairing Standard Enforcement Order made on 16 July 2016, there is a broken door at the grill section of the cooker. The Interested Party informed the tribunal that the oven was not in working condition and indicated that the gas supply was simply to the hob with no connection to the cooker.
- The Interested Party informed the tribunal that she was not in possession of a Gas Safety Certificate or an Electrical Installation Condition Report.
- The front brick boundary wall, adjacent to the pavement is badly damaged and has partially collapsed.

Right of Appeal

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

19. 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.

Signed G. Clark

Date 10 January 2017

Chairperson



