

# 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/RP/16/0321**

**Title no: DMB65482**

**141 Braehead, Bonhill, Alexandria, G83 9NB  
("the house")**

**The Parties:-**

**Ms Ann McLaughlin, residing at the house ("the Tenant")**

**Mr Calum Watt, CPW Property Investment, Centrum Offices, 38 Queen Street,  
Glasgow, G1 3DX, represented by his agent, Mr John Haughey, Infiniti Property  
Services ("the Landlord")**

Whereas in terms of their decision dated 24 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 house meets the repairing standard in that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (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; 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:-

- (a) To repair, or, as necessary replace, the rear patio door to ensure that it is lockable and otherwise in a reasonable state of repair and proper working order, wind and watertight and in all other respects reasonably fit for human habitation. In particular, the patio door requires to provide a safe means of exit and entry to the house and to conform with building regulations in terms of the width of the door opening, a platform outside the door/the steps down into the rear garden and the handrail. A letter from the local Building Standards section of West Dunbartonshire Council confirming that the patio door conforms to building regulations or is otherwise satisfactory to said Building Standards section requires to be submitted to the Tribunal.
- (b) To repair or replace the exterior render above the living room window to ensure that it is in a reasonable state of repair and proper working order.
- (c) To carry out such works to the house as are necessary to comply with Section 13(1)(g) of the Act by the installation of a carbon monoxide (CO) detection system in accordance with the current Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, a copy of which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (d) 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, including the smoke detectors and heat alarm in the kitchen, from a suitably qualified and registered SELECT or NICEIC electrical contractor, in accordance with the current Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property, which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (e) To make good the plaster repair to the bedroom ceiling by painting/decorating same to provide a satisfactory finish.
- (f) To repair or replace the rear boundary fence to ensure that it is in a reasonable state of repair and proper working order.

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.**

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 an 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 an 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 Jane Weir, Chairperson of the Tribunal at Hamilton on the Twenty-fourth day of January, Two thousand and seventeen in the presence of this witness:-

N Weir

E Paton

Witness

Chairperson

ELAINE ALEXANDRIA PATON name in full

COUNCIL OFFICES Address

ALMADA STREET

HAMILTON

# **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: PRHP/RP/16/0321**

**Title no: DMB65482**

**141 Braehead, Bonhill, Alexandria, G83 9NB  
("the house")**

**The Parties:-**

**Ms Ann McLaughlin, residing at the house ("the Tenant")**

**Mr Calum Watt, CPW Property Investment, Centrum Offices, 38 Queen Street, Glasgow, G1 3DX, represented by his agent, Mr John Haughey, Infiniti Property Services ("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:-**

**Mrs Nicola Weir, Chairperson**

**Mr Robert Buchan, Surveyor Member**

### **Background**

1. By application received on 7 October 2016, the Tenant applied to the Private Rented Housing Panel ("PRHP") 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"). As of 1 December 2016, the functions of the Private Rented Housing Panel were transferred

to the Tribunal, in terms of The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016.

2. 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 and in particular that the Landlord had failed to ensure that:- the house is wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; 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; and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complained [sic] as far as the exterior structure of the building that the living room window/plaster is in need of repair; that the back patio door is jammed shut, cannot open, is a fire hazard and lets in wind and rain; that there is no carbon monoxide detector; that the plug sockets in the whole house are outdated and she cannot plug in appliances; that the ceiling in the bedroom has plaster hanging from it; and that the fence in the back garden has never been fixed. The Tenant also stated that she had made repeated attempts to get the repairs done since she first moved in on 17 July 2014, promises were made to have the work done, appointments made for work to be carried out only for workmen to not turn up. She stated that her daughter also contacted John Haughey [the Landlord's agent] throughout the years, that again promises were made for the work to be carried out, dates given for when work was to be carried out but again no one turned up. The Tenancy Agreement was submitted with the application. The Tenant submitted to the PRHP a copy of a letter notifying the Landlord of the required repairs and proof of delivery of same on 7 October 2016 via the Royal Mail 'Signed For' service.
3. On 31 October 2016, a Convener of the PRHP made a decision to refer the application, under section 23(1) of the Act, to a Private Rented Housing Committee (now the Tribunal in terms of the Transfer Regulations referred to above). Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant.
4. Following service of the Notice of Referral neither the Landlord nor the Tenant made written representations. The Tenant confirmed that she would attend the Hearing.
5. The Tribunal inspected the house on the morning of 9 January 2017. The Tenant and the Landlord's Agent, Mr John Haughey, were present during the inspection.

6. Following the inspection of the house, the Tribunal held a hearing at Alexandria Community Centre, Main Street, Alexandria, G83 0NU. The Tenant and the Landlord's Agent were both present and gave evidence.

### **The Inspection**

7. At the time of the inspection the weather was mainly dry, with occasional showers and little wind. The Tribunal noted that the house is a mid-terrace, two storey house, constructed in the 1970s. It is located within a housing estate of similar properties. The house can be accessed via a front door or rear patio door. The Tribunal were able to inspect the whole house. Inspection revealed the following:-

- (a) The Tenant indicated that a new rear patio door had recently been installed. The Tribunal noted that the locking mechanism was not working and that the door could not be locked to secure the house. Water was accumulating in the bottom section of the door frame, due to the drainage holes in that section not working properly. The exterior handrail was noted to be on the wrong side, taking account of the direction in which the new door opened. The width of the door opening itself was restricted by door jambs and was too narrow (490mm) to comply with building regulations. The Tribunal noted that there were three concrete steps leading down from the patio door into the rear garden area, but that there was no platform onto which to step directly outside the door and the step down from the door onto the top step was too high. It was noted that a loose plank of wood had been placed on the top step, presumably to lessen the step down. The Tribunal also noted that the exterior render on the right-hand side (when viewed from outside) of the patio door was cracked and some of the render had fallen off.
- (b) The Tenant indicated that a repair to the exterior render above the living room window had very recently been started. The Tribunal noted that render had come off a section of the lintel above the window. Filling material appeared to have been applied to part of this section, which was shored up with a horizontal plank of wood, held in place by a vertical piece of wood. The Tribunal noted that, although works appeared to have commenced, the repair to the render required to be completed.
- (c) It was noted by the Tribunal that there was no carbon monoxide detector in the kitchen area of the house, where the gas boiler was situated. The Tenant indicated that, although smoke alarms and a heat alarm had recently been installed in the house, no carbon monoxide detector had been installed. The Tribunal noted that there was an interlinked heat alarm in the kitchen and smoke alarms in the living room and hall. It was also noted that there were holes in the ceilings around the new smoke alarms which had been installed.

- (d) The Tenant indicated that the plug sockets that she had complained about in her application had all been fixed. The Landlord's agent advised that he has an Electrical Installation Condition Report ("EICR") from the electrician who had carried out the repairs to the plug sockets and installed the heat and smoke alarms and that he would submit this to the Tribunal.
- (e) The Tenant indicated that a repair had recently been carried out to the bedroom ceiling to repair the plaster, where expanding foam had been hanging down. The Landlord's agent indicated that the ceiling had been plaster skimmed but was still to be painted. The Tribunal noted that no material was now hanging down from the bedroom ceiling, that there were signs of recent plastering and that the ceiling still required to be painted to give a uniform, satisfactory finish.
- (f) The Tribunal noted that a large section of the rear garden wooden boundary fence had completely detached from the remainder of the fence and was propped up in the rear garden against the remaining fence.

A schedule of photographs taken during the inspection is attached to this Statement of Decision.

### **The Hearing**

8. At the Hearing, the Tenant gave evidence and answered questions from the Tribunal. As regards the patio door, she advised that she had complained to the Landlord within a day or two of moving into the house about the door not locking. A window lock was put on to the door at some point which was not suitable. Around a week and a half ago, the new patio door was installed. Although the door is now wind and watertight, the lock does not work so she cannot lock the door with the key. There is a lever inside which can be put down to lock the door but there is also a lever on the outside which means the door can be opened from outside so she has no security. The Tenant stated that she has health problems, including heart problems and fibromyalgia. She walks with the aid of a stick. She said that because the new door opens the opposite way from the original door, the handrail (which was pre-existing) is now on the wrong side of the door and she cannot reach it when going out the door. She said that she does find it difficult getting out of the door and it was she who had placed the plank of wood on the top step so that the step down was not as high. In connection with the rear fence, the Tenant stated that there was never a gate in the fence. The fence was damaged by strong winds in the storms at the beginning of 2015. The section of fence was left hanging off to the side and she moved it to its present position against the fence. She notified the Landlord of this at that time but nothing was done. As regards the living room window, the Tenant stated that the render has been needing repaired since she moved in but gradually more and more bits have fallen off. She said that the wind hits that section straight on and she has had water inside which she thinks has come through the gap. She

has complained six, seven or eight times to the Landlord. She stated that the Landlord's agent had come out to look at it before with another builder but did not then get back to her. A workman had come out on Saturday (two days before the Hearing) and started work on this. The Tenant stated that she had complained about the bedroom ceiling from "day one". She said it looked awful. She thought someone had possibly come through the ceiling from the loft. A board had been put up, with sealant round the edge of the board and this was what had been hanging down. She confirmed that the bedroom ceiling was fixed before Christmas, possibly in October 2016. As to the holes in the ceiling around the new smoke detectors, the Tenant stated that the electrician had said that he would fix these but did not. The Tenant said that the plug sockets had all been fixed in November 2016, at the same time as the smoke detectors were installed. She said that no carbon monoxide detector was installed and that the person who fitted the smoke detectors did not mention a carbon monoxide detector.

9. The Landlord's agent also gave evidence and answered questions from the Tribunal. In connection with the patio door, he confirmed that the majority of what the Tenant had stated was correct. He advised that, after the door had had to be forced by the police to gain access to the Tenant who had had a heart attack last year, a company was coming out to fix the door but the company then ceased trading. He had thought that the new patio door had been installed before Christmas, not after Christmas as the Tenant had said. He did not know about the locking problem with the new door until this morning. He had spoken to the window company between the Inspection and the Hearing and they had said they would fit another door handle, hopefully this afternoon, as he had told them it was urgent. He will also arrange for a roughcaster or builder to fix the roughcast at the side of the door, install another handrail at the left side of the door and put another step in. He can also speak to Occupational Therapy to see if things can be sorted. The Landlord's agent conceded that there had been an unacceptable delay and explained that this had been due to internal problems within the Landlord's company which have now been resolved. He explained that he used to work for the Landlord but is now a self-employed agent for the Landlord and has his own property maintenance company, Infiniti Property Services. He said that he had given the Tenant his up to date details. As regards the rear fence, the Landlord's agent said that funds have been allocated to get this fixed and that the repair should be done this week, weather permitting. In explanation for the delay, he said that the Landlord had been of the view that the fence did not form part of the Repairing Standard and did not therefore require to be fixed by him. It is now accepted that this is not the case. In relation to the render above the living room window, the Landlord's agent confirmed that work had started on Saturday (two days before the Hearing) to fix this, that the workman had shored up the repair with the pieces of wood to hold it in position and that roughcasting would be applied to complete this repair, hopefully tomorrow, if the weather is dry. The Landlord's agent explained that this repair had not been carried out previously because the landlord owns another similar house nearby and had been approached by a company that proposed to do external

wall cladding insulation and other works on both houses, with the aid of grant funding. The required render repair had been deliberately left pending the outcome of this. As regards the bedroom ceiling, the Landlord's agent could offer no explanation for the delay with this repair which had been carried out in October 2016. He confirmed that there had been a plaster repair patch applied to the ceiling previously and that someone had sealed around the edge of this with expanding foam which had expanded and hung down as stated by the Tenant. The Landlord's agent conceded that the Landlord required to make good the repair carried out to the bedroom ceiling in terms of the Repairing Standard by painting the ceiling. Likewise, he will take this up with the electrician who installed the smoke alarms as regards fixing the holes left in the ceilings around the alarms. The Landlord's agent reiterated that he would submit to the Tribunal the EICR obtained from the electrician who carried out the electrical works in November 2016 to fix the plug sockets and install the smoke and heat alarms. The Landlord's agent said that the carbon monoxide detector should have been installed at the same time and he is certain that this is stated on the Small Works Certificate he obtained in respect of the smoke alarms. He stated that he would ensure that a carbon monoxide detector is installed today or tomorrow. In summing up, the Landlord's agent apologised for the delays with the repairs and said that he would endeavour to have everything rectified within the next 10 days.

## **Findings in Fact**

10. The house is a mid-terrace, two story house, constructed in the 1970s. It is located within a housing estate of similar properties in Bonhill, Alexandria.
11. The Tenant occupies the house under a Short Assured Tenancy. The Tenancy Agreement is dated 17 July 2014, which was also the commencement date of the tenancy. She is the sole tenant and has lived there alone until recently when her sister moved in with her.
12. The Tenant first notified the Landlord of several of the repairs issues at the house at the outset of her tenancy in 2014 and others as they arose. She has repeatedly complained to the Landlord and the Landlord's agent regarding the repairs issues. Although the Landlord's agent communicated with the Tenant and attended at the house, the repairs issues were not dealt with.
13. Works in connection with some of the repairs issues did, however, commence in October 2016 which coincides with the Tenant making her application to the PRHP and the Landlord being notified of this.
14. The Tenant had been complaining about the rear patio door since the outset of her tenancy. A new rear patio door was installed in December 2016/January 2017. The door is now wind and watertight. However, the lock does not work and the door cannot be locked to make the house

secure. The door opening is too narrow and the exterior handrail is on the wrong side given the way the door opens. The Tenant walks with the aid of a walking stick. There are three concrete steps leading down from the door to the rear garden. There is no platform outside the door onto which to step and there is a high step down from the door onto the top step below. A loose plank of wood had been placed on the top step by the tenant to reduce this drop. It is physically difficult for the Tenant to exit the house safely via the new patio door. The door does not provide a safe exit. Water is accumulating in the bottom frame of the door, due to the drainage holes not working properly. The exterior render at the side of the door is cracked and broken.

15. Works to the exterior render above the living room window had commenced two days before the Hearing. A partial repair had been carried out and was shored up with pieces of wood. The repair to the render was incomplete and requires to be finished.
16. There is a gas boiler situated in the kitchen area of the house but no carbon monoxide detector.
17. Electrical works had been carried out in November 2016 to rectify the issue that the Tenant had complained about concerning the plug sockets and to install interlinked smoke alarms in the living room and hall. The Tenant has not been provided with a copy of the EICR that the Landlord's agent advised had been carried out at that time. There are holes in the ceiling around the new smoke alarms.
18. The Tenant had been complaining about the condition of her bedroom ceiling since the commencement of her tenancy. Repair and plaster works to the ceiling had been carried out at some point between October and December 2016. The ceiling still requires to be painted to give a uniform finish.
19. The rear boundary wooden fence was damaged in storms in January 2015. A large section has detached from the rest of the fence, leaving a gap. The section of fence is propped up against the remainder of the fence in the rear garden. The tenant had been complaining about this to the Landlord since the damage occurred. No repair works to the fence have been undertaken by the Landlord.

### **Reason for decision**

20. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
21. The Tenant's complaints in her application concerning the rear patio door which were notified to the Landlord were that it was "jammed shut, cannot open, is a fire hazard, lets in wind/rain". Prior to the inspection

and hearing, the Landlord had chosen to install a new patio door. However, this replacement door is not satisfactory in a number of ways and does not meet the repairing standard in that it does not lock and is not in a reasonable state of repair and proper working order (Section 13(1)(b) of the Act), nor reasonably fit for human habitation (Section 13(1)(a) of the Act). Section 13(2) of the Act states that in determining whether a house meets the standard of repair mentioned in Section 13(1)(a) of the Act, regard is to be had to the extent (if any) to which the house, by reason of disrepair falls short of the provisions of any building regulations. The narrow width of the door opening, the lack of a platform outside the door, the height of the step down from the door to the top step and the lack of a handrail on the correct side of the door do not comply with building regulations. These items require to be rectified by the Landlord to ensure that the house meets the repairing standard. The condition of the render at the outside of the patio door did not form part of the tenant's application which was notified to the Landlord and thereby does not form part of the Order. However, the disrepair to the render was noted at the inspection and the Landlord's agent undertook to have this rectified.

22. Although repair works had been commenced to the exterior render above the living room window, these repairs had not been completed and the render is not in a reasonable state of repair or proper working order (Section 13(1)(b) of the Act). These repairs require to be completed by the landlord to ensure that the house meets the repairing standard.
23. There is no carbon monoxide detector in the house. This requires to be rectified by the Landlord in accordance with the relevant Statutory Guidance to ensure compliance with Section 13(1)(g) of the Act and that the house meets the repairing standard.
24. The issues with the plug sockets which had formed part of the Tenant's application have been rectified. However, the Tenant has not been provided with a copy of the EICR. The Landlord requires to produce a satisfactory EICR to satisfy the Tribunal that the installations in the house for the supply of electricity are in a reasonable state of repair and proper working order (Section 13(1)(c) of the Act) and that the house thereby meets the repairing standard. It was noted at the inspection that there were holes in the ceilings around the new smoke alarms which had been installed as part of these electrical works. These did not form part of the Tenant's application which was notified to the Landlord so cannot form part of the Order. However, the Landlord's agent again undertook to have this rectified.
25. Although repairs had been carried out to the bedroom ceiling to rectify the defect complained about by the Tenant in her application, the ceiling requires to be painted by the Landlord to provide a satisfactory finish. In terms of Section 14(2) of the Act, the duty on the Landlord to meet the repairing standard includes a duty to make good any damage caused by

carrying out any work for the purposes of complying with the repairing standard.

26. The rear boundary fence has been damaged and is not in a reasonable state of repair and proper working order (Section 13(1)(b) of the Act). This requires to be rectified by the Landlord to meet the repairing standard.
27. The Landlord's agent did not dispute any of the repairs issues, nor the Tenant's version of events as regards the history of her complaints to the Landlord concerning these matters. He apologised for the Landlord and his own delays in dealing with the repairs issues which he conceded had been unacceptable. By way of explanation, he mentioned internal problems within the Landlord's company, including disputes between himself and the Landlord over repairs issues, but that these issues have now been resolved and that all outstanding repairs issues will be rectified within a short timescale.
28. The Tribunal, however, is of the view that the Landlord was notified on numerous occasions of the repairs issues which required attention and most of these have still not been properly resolved. The Tribunal accordingly took the view that it will require to make a Repairing Standard Enforcement Order in respect of the rear patio door, the exterior render above the living room window, the lack of a carbon monoxide detector, an electrical safety certificate, the bedroom ceiling and the rear boundary fence.

## **Decision**

29. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
30. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
31. 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.**

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.

N Weir

Signed.. ..... Date: 24 January 2017  
Nicola Weir, Chairperson of the Tribunal

Photographs taken during the inspection of  
141 Braehead, Alexandria, G83 9NB



Front



Rear showing gap in the fence

Photographs taken during the inspection of  
141 Braehead, Alexandria, G83 9NB



Detail of the repair being carried out above the living-room window



Stacked sections of the rear fence

Photographs taken during the inspection of  
141 Braehead, Alexandria, G83 9NB



New patio door



Narrow patio door opening and makeshift wooden step

Photographs taken during the inspection of  
141 Braehead, Alexandria, G83 9NB



Cracked render outside the patio door



Bedroom ceiling

**Photographs taken during the inspection of  
141 Braehead, Alexandria, G83 9NB**



**Holes in the ceiling around the new smoke detector**