

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/16/0331

Title no: GLA17246

**insert property address
("The Property")**

The Parties:-

286B London Road, Glasgow, G40 1PT
("The property")

The Parties:-

Miss Jacqueline Hendry, Mr Thomas McPhee, residing together at 286B London Road, Glasgow, G40 1PT
("the tenants")

Gareth Bruce, Flat 3/2, 10 Wood Street, Dennistoun, Glasgow, G31 3BY
("the landlord")

Whereas in terms of their decision dated 23/1/17..., 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 is:-

- (a) wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a)); and
- (b) that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d);

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) That the landlord instruct a reputable contractor, specialising in ventilation and ventilation systems, to carry out an inspection to ascertain the cause of air blowing through the opening in the bathroom of the property, in which the extractor fan is positioned, as a result of which strong odours such as cigarette smoke and cooking smells are carried into the property; that the landlord instruct the contractor to prepare a report identifying that cause, and any necessary remedial work; that the landlord submit a copy of the report to First-tier tribunal for Scotland (Housing and Property Chamber).

(b) That the landlord instructs the remedial work specified in the report to be undertaken, and certified as completed by the contractor, or by another competent person.

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 type written on this and the preceding page(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the tribunal at Edinburgh on 23 January 2016, before this witness:-

C Ballantyne

witness

A Stalker

chairperson

CHRISTINA BALLANTYNE name in full

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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/RP/16/0331

286B London Road, Glasgow, G40 1PT
("The property")

The Parties:-

Miss Jacqueline Hendry, Mr Thomas McPhee, residing together at 286B London Road, Glasgow, G40 1PT
("the tenants")

Gareth Bruce, Flat 3/2, 10 Wood Street, Dennistoun, Glasgow, G31 3BY
("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 in relation to the house concerned, and taking account of the evidence led by the tenants 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 26 October 2016, the tenants applied to the Housing and Property Chamber (or as it then was, the Private Rented Housing Panel) for a determination of whether the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the tenants stated that the tenants considered that the landlord had failed to comply with his duty to ensure that the house meets the repairing standard under section 13 of the 2006 Act, and in particular, that the landlord had failed to ensure, at all times during the tenancy, that:-
 - (a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));

- (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 (section 13(1)(b));
- (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)).

These complaints were all made in respect of the extractor fan in the bathroom of the property. In particular, it was said that air continuously blew back into the bathroom through opening in the wall in which the extractor fan is positioned. This conveyed strong odours into the bathroom and the rest of the property, including smells of cigarette smoke and cooking. The bathroom has no other windows, and no other means of extraction of air.

3. By letter dated 8 November 2016, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(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 both the landlord and the tenants.
5. Following service of the Notice of Referral the tenants (by letter dated 28 November 2016), made written representations to the tribunal. The landlord's agents (1-2-Let Ltd of 104 Bellgrove Street Glasgow, by letter dated 15 November 2016), indicated an intention to attend the hearing, but did not make written representations to the tribunal.
6. The tribunal inspected the property on the morning of 5 January 2017. The first named tenant Miss Hendry and the landlord were present during the inspection. During the inspection, a strong smell of cigarette smoke was evident in the bathroom. It was apparent to both members of the tribunal, and to the landlord.
7. Following the inspection of the property the tribunal held a hearing at Wellington House, Glasgow. It heard from both of the tenants and the landlord. Both parties represented themselves.
8. The tenants submitted that the smells blowing back into the bathroom were strong, and at times nauseating. They asked for work to be done to address this problem. They led evidence from a witness, Stephanie Gillespie, of 38 Poplar Avenue, Johnstone. She is a friend of the tenants. She spoke to the nature of the smells.
9. The landlord accepted that, during the inspection, there was a distinct and strong smell of cigarette smoke in the bathroom. He accepted that something would need to be done to address the problem.

Summary of the issues

10. The issues to be determined are: (i) whether there was air blowing back through the opening in which the extractor fan is positioned, such as to convey strong smells of cigarette smoke and cooking into the property; (ii) whether this amounts to a breach of the repairing standard.

Findings of fact

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

- i. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988.
- ii. The tenants took up occupation in March 2013.
- iii. On or about April 2016, the tenants began to notice strong odours coming into the bathroom. These are odours of cigarette smoke, or cooking smells. Sometimes the smell is strongly of fish.
- iv. This coincided with an family moving into 286F, which is the flat two floors above 286B. One of the members of that family smokes.
- v. These odours are carried in air which blows into the bathroom through the opening in which the extractor fan is placed.
- vi. The odours come from other flats in the building at 286 London Road.
- vii. The smells are strong, and permeate throughout the property. They cause discomfort and even nausea to the tenants.
- viii. The smells linger and are noticeable during the day, and into the early hours of the morning.
- ix. Formerly the extractor fan did not operate properly. The tenants complained to the landlord's agents. After about 4 months, the fan was replaced.
- x. The fan now seems to operate properly, for the purposes of extracting moisture and air from the bathroom. However, when it is not switched on, air carrying the odours blows back into the bathroom.

Evidence was given in relation to these points by the first named tenant Miss Hendry. Ms Gillespie gave evidence supporting points iii, v and vi. That evidence was not challenged by the landlord, and was accepted by the tribunal.

Reasons for the decision

12. During the course of the inspection, and the hearing, the landlord accepted that there was a problem with odours coming into the bathroom through the opening in which the extractor fan is positioned. He also accepted that the tenants should not be expected to tolerate those odours, and that this problem has to be addressed. In the view of the tribunal, it was established that, these odours adversely affected the amenity of the property, and as a result, it is not in all respects reasonably fit for human habitation. It also considered that the system for air extraction from the bathroom was a

fixture, fittings or appliance provided by the landlord under the tenancy which was not in a reasonable state of repair and in proper working order. Accordingly, a breach of the repairing standard was established in respect of section 13(1)(a) and (d) of the 2006 Act.

The exact cause of the problem is not clear. It is likely that there is a system within the building by which the extracted air from the bathrooms of flats is carried into a duct. It is also likely that the tenancy property and other flats, in particular Flat 286F, are connected by a single duct, and that smells from other flats are somehow blown into 286B. However, the reason why this happens, and the work required to address the problem, remains to be established. Thus, the Repairing Standard Enforcement Order requires the landlord to instruct an appropriate contractor to report on these issues, and then carry out the necessary remedial work.

Decision

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

14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and (2) of the 2006 Act, in the following terms:

(a) That the landlord instruct a reputable contractor, specialising in ventilation and ventilation systems, to carry out an inspection to ascertain the cause of air blowing through the opening in the bathroom of the property, in which the extractor fan is positioned, as a result of which strong odours such as cigarette smoke and cooking smells are carried into the property; that the landlord instruct the contractor to prepare a report identifying that cause, and any necessary remedial work; that the landlord submit a copy of the report to First-tier tribunal for Scotland (Housing and Property Chamber).

(b) That the landlord instructs the remedial work specified in the report to be undertaken, and certified as completed by the contractor, or by another competent person.

15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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

17. 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.

A Stalker

Signed

Date 23/1/17

Chairperson ASHIAN STALKER

