

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/16/0341

Search Sheet number: 245151

Sasines Description: 7 Yarrow Court, Penicuik, being the subjects more particularly described in Disposition to Midlothian County Council, recorded in the Division of the General Register of Sasines applicable to the County of Midlothian on the Fifth day of February Nineteen Hundred and Fifty-four ("The Property")

The Parties:-

Ms Caroline Elder, residing at 7 Yarrow Court, Penicuik, EH26 8HD ("the Tenant")

and

Ms Shapla Ahmed Khan, per her agents, The Key Place, 6 Bank Street, Penicuik, EH26 9BG ("the Landlord")

NOTICE TO Ms Shapla Ahmed Khan, per his agents, The Key Place, 6 Bank Street, Penicuik, EH26 9BG ("the Landlord")

Whereas in terms of their decision dated 23 January 2017, The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlord has have 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:-

- (a) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order. (S13(1)(d) of the Act).

The tribunal now requires the Landlord to carry out such works as are necessary for the purposes of ensuring that the Property 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 carry out such works as are necessary to the locking mechanism of the front door so that the locking mechanism at the front door of the Property is in a reasonable state of repair and in proper working order.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 4 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 Repairing Standard Enforcement Order ("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 only are executed by Andrew Cowan, chairperson of the tribunal at Glasgow on Twenty-third day of January Two thousand and Seventeen before this witness:-

Signed
Andrew Cowan, chairperson

.....Witness
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

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/16/0341

Search Sheet number: 245151

Sasines Description: 7 Yarrow Court, Penicuik, being the subjects more particularly described in Disposition to Midlothian County Council, recorded in the Division of the General Register of Sasines applicable to the County of Midlothian on the Fifth day of February Nineteen Hundred and Fifty-four ("The Property")

The Parties:-

Ms Caroline Elder, residing at 7 Yarrow Court, Penicuik, EH26 8HD ("the Tenant")

and

Ms Shapla Ahmed Khan, per her agents, The Key Place, 6 Bank Street, Penicuik, EH26 9BG ("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 Property concerned, and taking account of the evidence led by both the Landlord and 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.

The Tribunal consisted of:-

Mr Andrew Cowan – Chairperson

Ms Sara Hesp – Surveyor Member

Background

1. By application received by the Housing and Property Chamber on 4 November 2016, the Tenant applied 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property 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
- (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.

3. The Tenant noted in her application that she considers that repairs are required to bring the Property up to the repairing standard. The Tenant alleges that:-

- (a) There is a draught into the Property from between the wall and the floor in one of the bedrooms of the Property;
- (b) The washing machine is not in proper working order; and
- (c) The lock on the front door is not in a reasonable state of repair and in proper working order as the Tenant maintains it is stiff and that the Tenant struggles to lock and unlock it.

4. By letter dated 13 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. Following service of the Notice of Referral the Landlord, by letter dated 2 January 2017, lodged further written representations with the tribunal. These representations were copied to the Tenant. The Tenant made no further written representations.
6. The tribunal inspected the Property on 19 January 2017. The Tenant was present during the inspection. The Landlord was represented at the inspection by Mr Robert Young and Miss Karen Clark as representatives of the Landlord's agents, the Key Place.
7. Following the inspection of the Property the tribunal held a hearing at Penicuik Town Hall, High Street, Penicuik, EH26 8HS, at 12.30pm, and heard evidence from both the Tenant and Mr Robert Young and Miss Karen Clark as representatives of the Landlord's agents, the Key Place. The Tenant was accompanied at the hearing by Miss Sharon Lumsden.
8. Photographs were taken during the inspection by the tribunal. Copies of the photographs taken by the tribunal are attached as a schedule to this report.

Findings of fact

9. The tribunal finds the following facts to be established:-
 - (a) The Tenant of the Property is Ms Caroline Elder in terms of a Short Assured Tenancy Agreement between the parties dated 19 October 2015;
 - (b) The owner of the Property is Ms Shapla Khan. Ms Khan is the Landlord of the Property in terms of the tenancy between the parties;
 - (c) The tenancy between the parties was continuing as at the date of the hearing into the Tenant's application;

- (d) The locking mechanism at the front door of the Property is not in proper working order. The door of the Property is also not in proper working order;
- (e) The washing machine at the Property is in proper working order;
- (f) The house is wind and watertight and the structure and exterior of the house are in a reasonable state of repair and in proper working order.

Reasons for the decision

10. (a) At their inspection of the Property the tribunal noted that the locking mechanism for the front door of the Property is not in proper working order. The locking mechanism appears to “stick” on some occasions that the key is turned and the locking mechanism itself does not always operate in a smooth manner. The door of the Property appears to be tight against the door frame and the door itself is difficult to operate.

At the hearing, the Landlord's representatives accepted that the locking mechanism was not in proper working order at the time of the inspection.

As the locking mechanism is a fitting supplied by the Landlord under the tenancy, and as it is not in proper working order, the tribunal determined that the Property did not meet the repairing standard in this respect.

- (b) The Tenant explained, in her evidence at the hearing, that the washing machine within the Property does now operate and that she uses it for the purposes for which it was intended. She further explained that she was concerned that the washing cycle within the machine took longer than she considered to be reasonable. The Landlord's representatives explained that an external contractor had recently repaired the washing machine. The Landlord's representatives submitted that the washing machine was in proper working order.

In the absence of any material evidence to the contrary, the tribunal were satisfied that the washing machine, which was supplied as a fitting in terms of the tenancy between the parties, was in proper working order as at the date of the inspection of the Property. The tribunal had noted at the time of their inspection that the washing machine had been in recent use and the Tenant accepted in her evidence that she continued to use the washing machine. In the circumstances, the tribunal were satisfied that there was no failure of the repairing standard in relation to this issue.

- (c) The Tenant had consistently complained to the Landlord that there was a draught in one of the bedrooms of the Property which entered the bedroom at a point between the floor of the bedroom and the external wall. At the time of their inspection, the tribunal could find no evidence of any structural problems with the Property relating to this issue and no particular draughts entering the Property at the location identified by the Tenant. There may have been a gap between the laminate flooring and the skirting at one time, but this appears to have been filled. The Landlord's representatives explained to the tribunal that the Landlord had carried out works to the exterior of the Property to fill any possible areas where draughts may have been entering the bedroom. The tribunal noted that the bedroom had laminate flooring and that the Landlord had suggested to the Tenant that a carpet could be installed within the Property by the Tenant to further reduce any issues which the Tenant had in this respect. Having inspected the Property and having considered the parties' evidence, the tribunal were not satisfied that there was evidence that the Property was not wind and watertight or that the structure and exterior of the Property was not in a reasonable state of repair. The tribunal accordingly determined that there was no failure of the repairing standard in respect of this matter.

Decision

11. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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 ..
Andrew Cowan, Chairperson

Date 23 January 2017

.....Witness
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs of 7 Yarrow Court, Penicuik, EH26 8HD

All photographs were taken during inspection on 19 January 2017

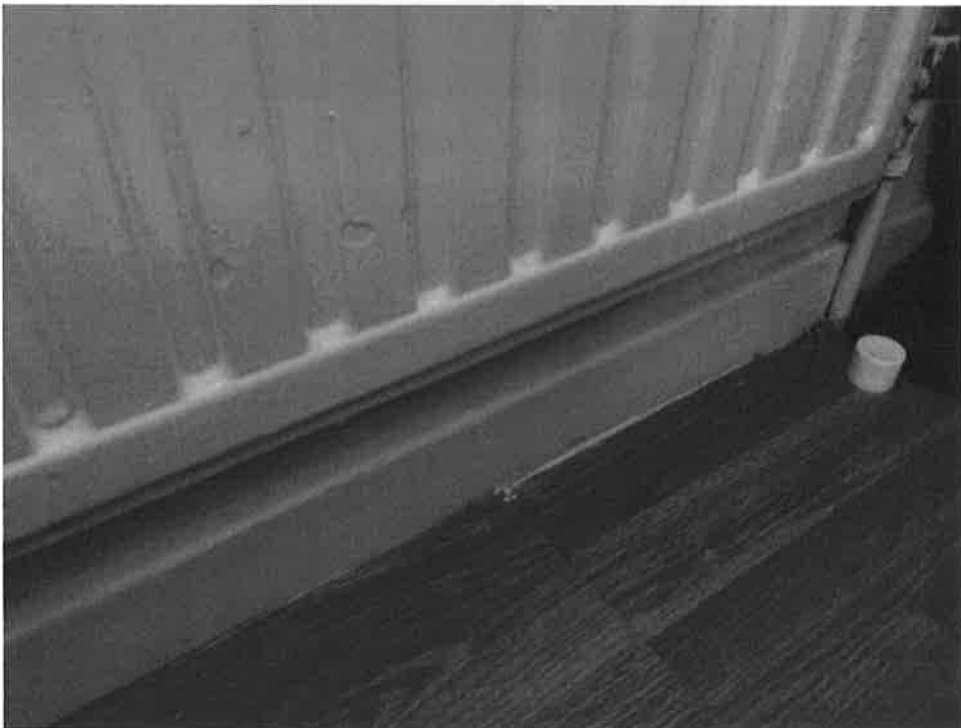


Front elevation



Front door – exterior – handle and lock

Small front bedroom – junction of laminate flooring and skirting beneath window and radiator



Washing machine

