

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/16/0358

Title no/Sasines Description: LAN27073

**109 Winning Quadrant, Ritchie Street, Craigneuk, Wishaw ML2 7TS
("The House")**

The Parties: -

**Mr David Strang, North Lanarkshire Council, Regulatory Services and Waste
Solutions, 453 Main Street, Coatbridge, North Lanarkshire ML5 3RS
("the Third Party Applicant")**

**Ms Susan McQuade, formerly residing at the house
("the former Tenant")**

**Mr David Hill, BUD Ltd, East Bank, Kelton, Dumfries, DG1 4UA
("the Landlord")**

Whereas in terms of their decision dated the 26th March 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:-

- i. the installations in the house for the supply of water, gas, electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 produce an Electrical Installation Condition Report in respect of the electrical installation, fixtures and fittings and fixed electrical equipment in the House. The report must be prepared by a suitably qualified and registered electrical contractor and comply with Scottish Government Guidance on Electrical Installations and Appliances in Private Rented Property.
- b) To carry out such works as are necessary to rectify any identified issues in the Electrical Installation Condition Report and if any works are required, to provide the Tribunal with a certificate from a suitably qualified and registered electrical contractor confirming that the works are completed.
- c) To instruct a suitably qualified contractor to carry out any necessary repairs to the storage heaters throughout the House to ensure that they are in a reasonable state of repair and in proper working order. In particular, to repair or replace any broken parts and ensure the heater in the hall is functioning and is properly secured to the wall.

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 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(s) are executed by Mary-Claire Kelly, solicitor, 57 Vandeleur Avenue, Edinburgh, EH76UQ, chairperson of the Tribunal at Edinburgh on 26th March 2017 before this witness:-

N Ferguson

witness

M Kelly

chairperson

NORMAN HUNTER Ferguson name in full

57 VANDELEUR AVE, Address

Edinburgh, EH7 6UQ

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

Chamber Ref: PRHP/RT/16/0358

Title no/Sasines Description: LAN27073

**109 Winning Quadrant, Ritchie Street, Craigneuk, Wishaw ML2 7TS
("The House")**

The Parties: -

**Mr David Strang, North Lanarkshire Council, Regulatory Services and
Waste Solutions, 453 Main Street, Coatbridge, North Lanarkshire ML5
3RS ("the Third Party Applicant")**

**Ms Susan McQuade, formerly residing at the house ("the former
Tenant")**

**Mr David Hill, BUD Ltd, East Bank, Kelton, Dumfries, DG1 4UA ("the
Landlord)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as are 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 concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties has made the following decision:

It has decided that the Landlord has failed to comply with section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of:-

Mary-Claire Kelly, Chairing and Legal Member

Carol Jones, Ordinary Member

Background

1. By application received on 17th November 2016, the Third Party 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"). On 1st December 2016 the functions of the Private Rented Housing Panel were transferred to the First-tier Tribunal (Housing and Property Chamber), in terms of The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016.
2. The application stated that the Third Party considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(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"
3. The application by the Third Party specified that the said failure was established as follows:-
 - (a) The installations for the supply of electricity are unsafe
 - (b) A number of heaters in the property do not work
 - (c) There is an area of penetrating damp at the front door
4. The Third Party submitted as part of the application, a copy of a lease, a "Change to Supply Notification" from SP Energy Networks dated 12th November 2016 and copies of emails between the Third Party and the Landlord.

5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 6th December 2016, following a decision to refer made by the Convener of the Private Rented Housing Panel on 21st November 2016.
6. On 15th December 2016, the Tribunal issued a Notice of Direction requiring the Landlord to produce an Electrical Installation Condition Report ("EICR"). By email dated 29th December 2016 the Landlord provided a document purporting to be an EICR and an Energy Performance Certificate. Prior to the hearing the Tribunal carried out a check with the SELECT, NICEIC and NAPIT registration schemes. The EICR had not been prepared by an Electrical Contractor registered with one of the recognised registration schemes.
7. By email dated 29th December 2016 the Landlord advised the Tribunal that the Tenant no longer resided in the House. This Third Party confirmed that the Tenant no longer resided in the House by email dated 12th January.
8. A hearing was assigned for 16th January 2017. The Landlord requested that the hearing be adjourned to allow him to attend a hospital appointment. The Tribunal adjourned the hearing until 13th March 2017.

Inspection

9. The Tribunal inspected the House at 10am on Monday 13th March. The Landlord was present at the inspection. The Third Party and the former Tenant did not attend.
10. Photographs were taken by the Tribunal during the Inspection. Copies of the photographs are attached as a schedule to this Statement of Decision.

Hearing

11. Following the Inspection the Tribunal held a hearing at Wellington House, Wellington Street, Glasgow G2 2XL. The Landlord attended the hearing and gave evidence. The Third Party and former Tenant did not attend.

12. At the hearing the Tribunal dealt with each of the issues specified in the application in turn:-

The installations for the supply of electricity:

The Landlord confirmed the contents of an email sent to David Strang on 16 November 2016 which had been lodged with the application. He confirmed that he had instructed a report from Dart Electrical in November 2016 and that the report specified that extensive works were required to the electrical installations. The works proposed would require the lifting of the floorboards. The Landlord did not produce a copy of the report from Dart Electrical. The Landlord advised that he had subsequently instructed WES Electrical Ltd to carry out the repairs to the electrical installations and heating system within the House. He had thought that they would be more qualified to do the work than Dart Electrical. The Landlord confirmed that the House had not been rewired and that he did not think this necessary. He confirmed that no floorboards had been lifted during the course of the works. He confirmed that a new consumer unit had been fitted and all sockets had been replaced. The Landlord advised that his understanding was that the works carried out had been sufficient to ensure that the electrical installations were in proper working order. The Landlord advised the Tribunal that he had assumed that WES Electrical were suitably qualified and registered to carry out the necessary work to the electrical installations. He confirmed that he had not checked whether they were registered with one of the appropriate bodies. His evidence was that he paid for the work to be done in the expectation that both the EICR and the works carried out would address the issues raised in the application.

The heaters within the property

The Landlord advised the Tribunal that he had instructed repairs to be carried out to the storage heaters within the property. During the inspection one of the heaters was switched on however it was not functioning. The Landlord advised the Tribunal that this heater had only been switched on that morning and had not stored enough off peak electricity overnight to allow it to heat up properly.

The area of penetrating damp at the front door

The Landlord advised the Tribunal that the dampness had been due to a

poorly positioned gutter to the exterior of the property. He had requested that the Factor carry out work to reposition and repair the gutter. This work had been carried out and had addressed the water ingress into the House. The Landlord had arranged for all the affected areas of plaster in the upper floor bedroom and around the front door in the hall to be re-plastered and repainted as necessary.

Summary of the issues

13. The issue to be determined is whether the House meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act. The focus of the Tribunals' investigation related to the complaints as specified in paragraph 3. above.

14. Findings in Fact:

The Tribunal finds the following facts to be established:-

- a) The House comprises a 2 bedroom first and second floor former Local Authority maisonette flat constructed in or around the 1960s and situated in a 5 storey block in the Craigneuk district of Wishaw. This is a predominantly residential area located approximately 1.5 miles west of Wishaw town centre in Lanarkshire. The lower floor of the maisonette comprises a hallway, kitchen, living room and cupboard. Upstairs there are 2 bedrooms and a bathroom.
- b) Mr David Hill is a Director of Bud Ltd. A tenancy agreement was entered into between Bud Ltd and Susan McQuade, the former Tenant on 3rd September 2016. Mr David Hill signed the agreement on behalf of Bud Ltd. The duration of the tenancy agreement was from 3rd September 2016 until 3rd September 2017. The lease purports to be a "Short Assured Lease". The rent payable in respect of the lease was £350 per calendar month.

- c) The Tenant had moved out of the House prior to January 2017. The House was unoccupied at the date of the hearing.
- d) Following the application to the Tribunal a new consumer unit had been installed in the House. The plug sockets throughout the House had been replaced.
- e) There were fixed storage heaters in the hall, living room and both bedrooms in the House. The heater in the hall was switched to “on” at the time of the inspection but emitted no heat. The heater in the hall was not properly fixed to the wall and was unstable. The heater in the living room had a broken cover over the control panel.
- f) The EICR prepared by WES Electrical Ltd and dated 29th December 2016 did not comply with Scottish Government guidance on the preparation of such reports. In particular the EICR was not prepared by a registered electrical contractor in accordance with the guidance. The report was limited to the “Main consumer unit electrically and visually, wiring of power and lighting.” The report did not include a fixed electrical appliance or equipment test.
- g) Since the application had been submitted repairs had been carried out to the area of penetrating damp in one of the bedrooms and adjacent to the front door. The Landlord had arranged for the Factor to reposition an external gutter which had been causing water ingress. Thereafter the affected plaster was replaced and some repainting carried out. There was no evidence of ongoing water ingress in the area around the front door. There was a slight water stain to the ceiling above the door. A damp meter test to the base of the wall on the left side of the door, an area which had not been re-plastered, showed a moderate moisture reading.

Reasons for the Decision

- 15.** The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior the hearing, the inspection and the oral representations at the hearing.
- 16.** The Tribunal was only able to consider those items which formed part of the intimated application.
- 17.** The report from SP Energy Networks dated 12th November 2016 and the email from Mr David Hill to the Third Party dated 16th November both indicated that the electrical installations within the House were in need of extensive repairs. The Landlord had asked the Tenant to leave the House due to the extent of the repairs required. The Landlord had instructed WES Electrical Ltd to carry out works and prepare an EICR. As the EICR did not comply with Scottish Government Guidance the Tribunal could not be satisfied that the Repairing Standard had been complied with in respect of the installations for the supply of electricity.
- 18.** The Tribunal noted that the Landlord had arranged for repairs to be carried out to the heaters within the House however not all heaters were functioning at the time of the inspection. The general condition of the heaters was variable and the Tribunal found that the installations for space heating in the House were not in a reasonable state of repair and in proper working order.
- 19.** The Tribunal noted that the Third Party had complained that there was an area of penetrating damp adjacent to the front door of the House. The Tribunal noted from the inspection and the evidence of the Landlord that remedial works had been carried out. The Tribunal found that there was no ongoing penetrating dampness/water ingress in the area and accordingly finds that there was no failure of the repairing standard in relation to this matter.

20. Decision

The Tribunal determines that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

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

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

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 date on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page(s) are executed by Mary-Claire Kelly, solicitor, 57 Vandeleur Avenue, Edinburgh, EH76UQ, chairperson of the tribunal at Edinburgh on 26th March 2017 before this witness:-

N Ferguson

witness

M Kelly

chairperson

NORMAN HUNTER FERWSON name in full

57 VANDELEUR AVE Address

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EH7 6UQ

**Scottish Courts
and Tribunals Service**



Schedule of photographs taken during the inspection of 109, Winning Quadrant,
Craigneuk, Wishaw ML2 7TS by the First-tier Tribunal for Scotland (Housing and Property
Chamber) on 13 March 2017.

Reference Number : PRHP/RT/16/0358



External view - Front elevation of property



Hall Cupboard - Consumer unit



Living Room - Night storage heater



Living Room - Night storage heater - loose/
broken cover to controls



Hall - Night storage heater



Hall - Night storage heater - unsecured to wall
fixture/gap



Bedroom (1) - Night storage heater



Bedroom (2) - Night storage heater



Hall - walls above front door - slight water stain to ceiling in corner.



Hall - left side of front door - moderate damp reading to base of wall



Hall - lintel above front door - low damp reading