

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: FTS/HPC/RP/17/0124

**Re: 33 Hatton Green, Glenrothes, Fife, KY7 4SD, being 0.0164 ha with house etc. as referred to in the feu disposition to Alexander Moodie Black Crichton and another, recorded in the General Register of Sasines applicable to the county of Fife on 25 September 1985 (Search sheet 84898)
("the Property")**

The Parties: -

**Miss Michelle Ness, residing at the Property
(represented by Mrs Christine Hay, Environmental Health Office, Fife Council,
Kingdom House, Kingdom Avenue, Glenrothes, KY7 5LY
("the Tenant"))**

**Mr Auyub Ali, 17 Drumlie Gardens, Glenrothes, KY7 4TE
("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr David Lawrie (Ordinary Member)(Surveyor)**

Whereas in terms of their decision dated 10 July 2017, The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the landlord had 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) the Property is wind and watertight and in all other respects reasonably fit for human habitation in terms of section 13(1)(a) of the Act; and
- (b) The structure and exterior of the Property are in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the Act;

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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: -

- (a) Engage the services of a competent and suitably qualified roofing contractor to investigate the cause of the mould staining in the main bedroom and carry out all remedial works recommended to ensure that the cause is removed; and thereafter redecorate to hide staining;
- (b) Reinstate the decoration in the downstairs toilet with tiling to match existing or suitable alternative finishing;
- (c) Install a suitable handrail in the lower part of the internal staircase;
- (d) Replace the gate to the rear garden fence;
- (e) Re-attach the coping stone on the garden wall to the rear of the Property with mortar or other suitable fixing agent;
- (f) Repair or replace the rear mutual garden fence between the Property and the neighbouring house.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of two calendar months 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 are executed by Maurice O'Carroll, Advocate, Advocates' Library, Parliament House, Edinburgh, Legal Member and Chair of the Tribunal, at Glasgow on 10 July 2017 before this witness:

M O'Carroll

_____ Legal Member

E Poulos

_____ Witness

Elena Poulos

Name in full and address

c/o, HPC, 1 Atlantic Quay, Glasgow, G2 8JB address *MC*

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 ("the Act"),
Section 24 (1)**

Chamber Ref: FTS/HPC/RP/17/0124

**Re: 33 Hatton Green, Glenrothes, Fife, KY7 4SD
("the Property")**

The Parties: -

**Miss Michelle Ness, residing at the Property
(represented by Mrs Christine Hay, Environmental Health Office, Fife
Council, Kingdom House, Kingdom Avenue, Glenrothes, KY7 5LY
("the Tenant"))**

**Mr Auyub Ali, 17 Drumlie Gardens, Glenrothes, KY7 4TE
("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr David Lawrie (Ordinary Member)(Surveyor)**

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 Tenant's representative at the hearing, following inspection, 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 3 April 2017 the Tenant applied to the Housing and Property Chamber 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 she 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: -

- The Property is wind and watertight and in all other respects reasonably fit for human habitation in terms of section 13(1)(a) of the Act;

The structure and exterior of the Property are in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the Act

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 in terms of section 13(1)(c) of the Act 2006; and

The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act.

3. Specifically, on the Tenant's behalf, her representative Mrs Hay sent a 14-point list of alleged defects by way of notification to the Landlord contained within a letter to him dated 28 October 2016. The Tenant was content to adopt the list contained within the notification as being a full description of the issues which she stated meant that the Property failed to meet the Repairing Standard.
4. A Convenor of the Housing and Property Chamber made a decision to refer the application to the Tribunal on 2 May 2017 in terms of section 23(1) of the Act.
5. By letters dated 23 May 2017, the Tribunal served Notices of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant and her representative.
6. Following service of the Notice of Referral the Landlord made representations to the Tribunal dated 12 June 2017. Within those representations, the Landlord provided a copy of a Gas Safety Certificate ("GSC") dated 14 November 2016, an Electrical Installation Condition Report ("EICR") dated 7 June 2017 and a statement from LB Roofing detailing difficulties encountered in obtaining access to the Property in order to effect repairs.
7. The Tribunal inspected the Property at 2pm on 30 June 2017. The Tenant was present, as was her representative. The Landlord was also personally present during the inspection. The details of what was found during the inspection are set out below.
8. Following the inspection of the Property the Tribunal held a hearing at the Lomond Centre, Glenrothes at 3.00pm. Present at the hearing was Mrs Hay on behalf of the Tenant (who did not attend the hearing) and the Landlord himself. The Tribunal heard evidence from both parties.

9. The Landlord submitted as follows: -

He provided original copies of the GSC and EICR previously submitted to the Tribunal by email. The former was dated 14 November 2016 and the latter 7 June 2017. Both appeared to be genuine. The EICR contained no C1 or C2 recommendations, which is to say, there were no longer any electrical issues in the Property requiring immediate attention. The Tribunal requested that the Landlord provide a copy of the GSC

He stated that the roofer from LB Roofing had attempted to gain access to the Property but had been unable to gain entry, although the Tenant was clearly present within the Property at the time. On at least one occasion, the Landlord had also attempted to gain entry and the police had been called, without justification in his view. In the submission of the Landlord, the Property had been without problem in all of the time in which he had lived there and any issues had been of the Tenant's own creation. In his view, the application to the Tribunal had been prompted by his attempt to obtain rent arrears from the Tenant and was therefore an attempt to create difficulties for him.

The Tribunal went through all of the points listed in Mrs Hay's letter of notification dated 28 October 2016. The Landlord accepted that in relation to points 6, 8, 9, 12, 13 and 14, works required to be carried out to the Property to bring it up to the Repairing Standard and that he was happy to carry them out. Most importantly, however, mains operated smoke alarms and a heat detector, had all now been installed and were inter-linked as required by Scottish Government guidance. This was accepted by the Tribunal.

10. Mrs Hay on the Tenant's behalf was content to rely upon the observations made in her letter of notification dated 28 October 2016. She did add, however, that it was self-evident that access had been provided to the Property in order to carry out the electrical repairs and to check the gas system as the Tribunal had now been provided with an EICR and GSC. She also added that in respect of the roof works, no card had been dropped through the door of the Property to indicate that access had been attempted, nor had any prior notice of the roofer's intention to gain access been given to the Tenant.

Summary of the issues

11. The issue to be determined is whether the Landlord has met his obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal related to (1) whether the house was wind and watertight and in all other respects reasonably fit for human habitation; (2) whether the gas and electrical installations within the Property were safe and functioned satisfactorily and (3) whether there was adequate provision for the detection and warning of fire within the Property.

Findings of fact

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

- The tenancy is a short assured tenancy which commenced on 19 November 2013 for a period of six months. The tenancy agreement thereafter continued by means of tacit relocation. The rental agreement was between the Landlord and a Mr Steven Gray. Mr Gray is the partner of the Tenant and was present at the Property during the inspection. At that time, he indicated that he lived at the Property.
- The rent is stated in the lease to be £525 per calendar month.
- The Property is also occupied by two young children of primary school age.

The inspection of the Property revealed the following:

- The Property is a two storey, semi-detached, three-bedroom villa with garden areas front and back within a residential street. The rear garden is enclosed by a wooden fence, approximately 2 metres high, with high wooden gate and there is a post and wire fence separating the Property from the house adjoining.
- The adjoining property is owned by the local authority.
- In terms of construction and layout, the Property is of a traditional brick construction with a tile roof consisting of the following accommodation:
 - On entry from the front garden area, there is a hallway with a downstairs toilet and adjoining kitchen to the left. Ahead is a door giving access to the living/dining area and thereafter to the rear garden via French doors. On the right off the hallway, is the staircase, and hall cupboard containing the boiler and electrical consumer unit and storage area;
 - Upstairs, there is a landing giving access to the three bedrooms and family bathroom. The latter contains a WC and bath with overhead shower. The main bedroom is to the rear of the Property on the left-hand side of the landing on entry. There is another bedroom to the rear of the property with the third at the front adjacent to the bathroom.
- The Property is fitted with mains operated and inter-connected smoke alarms in the kitchen, hallway, landing and living room. The kitchen has a connected heat sensor and there is a carbon monoxide detector in the hall cupboard.
- There are therefore no issues in relation to fire or carbon monoxide detection and warning within the Property.
- The windows within the Property all function as required and are in reasonable condition taking their age into account. There is some evidence of condensation mould on the windows in the main bedroom.
- There is a patch of dark staining on the ceiling above the far wall of the main bedroom approximately 30cm in diameter which is most

likely mould caused by a defect either within the loft area or the roof. External viewing of the Property did not indicate any damage to the roof or missing tiles.

- The bottom half of the staircase does not have a safety barrier which may present a danger to the children within the Property.
- The wooden gate in the rear garden is rotten, especially at the lower half.
- The mutual post and wire fence between the back garden and neighbouring property is rotten and in need of repair or replacement.
- One of the coping stones on the rear garden wall on the left-hand side of the stone stairs at the upper level facing away from the Property is loose and may present a danger to children and others within the Property.

13. A schedule of photographs taken at the inspection is appended to this decision.

Reasons for the decision

14. Following the inspection and the discussion at the hearing, the Tribunal was of the view that the Property failed to meet the repairing standard as a result of the issues noted above. In particular, the tiles in the downstairs toilet require to be reinstated or similar finishing requires to be applied; investigation is required in order to establish the cause of the mould staining on the ceiling in the main bedroom; the garden gate requires to be replaced as it is probably beyond repair; the coping stone in the rear garden requires to be re-attached safely using mortar or similar. The Tribunal was of the view that the handrail at the lower part of the staircase is a Repairing Standard issue as its absence is a health and safety issue and therefore means that the Property is not reasonably fit for human habitation in terms of section 13(1)(a).
15. In relation to the mutual fence between the Property and the one adjacent, the Landlord was advised to contact the relevant section within Fife Council in order to liaise in order to arrange a mutual repair and divide the cost of so doing. Despite the repair being mutual, the responsibility for ensuring that it is carried out nonetheless remains with the Landlord. Reference is made to section 194(1)(b) of the Act.
16. The Landlord was also advised that in relation to any future repairs, adequate written notice should be given to the Tenant prior to the time and date at which entry is sought. In light of poor relations between the parties, it is recommended that the Landlord does not himself seek to enter the Property again while the Tenant remains in occupation.

Decision

17. The Tribunal therefore determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act. Accordingly, as

required by section 22(4) of the Act, it has issued a Repairing Standard Enforcement Order which is provided under separate cover.

18. The decision of the Tribunal was unanimous.

Right of Appeal

19. **A landlord or tenant 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

20. 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.

M O'Carroll

Signed

Date: 10 July 2017

Legal Member and Chair



PHOTOGRAPHIC SCHEDULE



33 HATTON GREEN GLENROTHES FIFE KY7 4SD
HPC/RP/17/0124

Smoke/Heat Detection Provision



Kitchen + CO2



Hall



Landing

Boiler/Electric Cupboard

This is the schedule referred to in the foregoing decision.



WC



Showing areas where old WC and tiling removed

Rear Left Bedroom



Condensation mould
to ceiling



Slight mould to window

Staircase



Garden



Badly decayed gate



Poor mutual fence



Loose coping steps area

DAVID LAWRIE

Surveyor

First-Tier Tribunal

Housing and Property Chamber

6 July 2017