

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/17/0177

Land Register Title No. ANG12892

**Property at G/R, 5 Balmore Street, Dundee, DD4 6SX
("The Property")**

The Parties:-

**MS KIMBERLY EDWARDS, G/R, 5 Balmore Street, Dundee, DD4 6SX
("the Tenant")**

**MS NADIA BASHIR, 12 Springhill Gardens, Dundee, DD4 6JF
(represented by Baker Bradley Limited, 211B Albert Street, Dundee, DD4 6QA)
("the Landlord")**

Whereas in terms of their decision dated 5 July 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:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.
- (b) 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.
- (c) Any fixtures, fitting and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and

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 carry out the following works:-

- (a) Instruct an RICS registered and qualified building surveyor to carry out a survey and report on the condition of the following: -
Rising damp and/or penetrating damp throughout the Property with particular reference to the hall floor, internal hall walls, external walls at the bedroom and living room. The report should include commentary on recent works carried out in the hall area.
- (b) Carry out and complete any and all repairs to the property identified in and recommended by the report referred to in paragraph (a) above and provide a copy of the report to the tribunal.
- (c) Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the Property to include testing of the fire detection equipment.
- (d) Follow the recommendations of the report referred to in paragraph (c) above to ensure that the entire system is safe and in proper working order. Provide a copy of the EICR to the tribunal.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 42 days 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 Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 5 July 2017 before this witness:-

G Buchanan

_____ witness

_____ chairperson

JENNI LYNCH

name in full

THORNTONS LAW LLP

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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: FTS/HPC/RP/17/0177

**Property at G/R, 5 Balmore Street, Dundee, DD4 6SX
("the Property")**

The Parties:-

**MS KIMBERLY EDWARDS, G/R, 5 Balmore Street, Dundee, DD4 6SX
("the Tenant")**

**MS NADIA BASHIR, 12 Springhill Gardens, Dundee, DD4 6JF
(represented by Baker Bradley Limited, 211B Albert Street, Dundee, DD4 6QA)
("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 determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application dated 27 April and received on 4 May 2017 ("the Application"), 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 the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property 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 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.

- (c) Any fixtures, fitting and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
 - (d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. By letter dated 8th May 2017 the Convenor of the Housing and Property Chamber 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 the Landlord and the Tenant.
 5. Following service of the Notice of Referral neither the Tenant nor the Landlord made written representations to the tribunal.
 6. The tribunal, comprising Miss Gillian Buchanan, Legal Member, and Mr Andrew Taylor, Ordinary Member, inspected the Property on the morning of 26th June 2017. The Tenant was present at the inspection. The Landlord was neither present nor represented. Photographs were taken and are attached.
 7. At the time of the inspection it was fair and dry.
 8. Following the inspection of the Property the tribunal held a hearing at Caledonian House, Greenmarket, Dundee, DD1 4QX. The Tenant was neither present nor represented at the hearing. The Landlord was neither present nor represented at the hearing. .
 9. The Tenant submitted as follows:-
 - (a) That the Landlord had been asked to provide an EICR.
 - (b) That whilst in the Application the Tenant complained that the light fitting in the toilet would not hold a bulb, the Landlord had since replaced the light fitting.
 - (c) That in the bedroom to the right of the door leading into the shower room and around the window the wall is damp.
 - (d) That in the lounge beneath the window and towards the floor behind the television the wall is damp.
 - (e) That at the time of making the Application the water in the hallway could be 3-4" deep such that the laminate floor was therefore soaking and the walls damp but that the Landlord had since replaced the flooring with new laminate and had re-plaster boarded and skimmed the walls from mid height to the floor.
 - (f) That whilst the works being carried out by the Landlord in the hallway are ongoing the incoming mains water connection located there continues to drip.

10. The Landlord made no submissions.

Summary of the issues

11. The issues to be determined are:-

- (a) Whether an EICR is required.
- (b) Whether the replacement light fitting in the toilet is in a reasonable state of repair and in proper working order.
- (c) Whether there is damp within the Property.

Findings of fact

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

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the Tenant is the tenant of the Property in terms of a Lease dated 22 July 2016.
- (c) That with regard to the required repairs intimated by the Tenant:-
 - (i) That an EICR is required.
 - (ii) That the light fitting in the bathroom has been replaced.
 - (iii) That on the external wall of the bedroom the moisture reading was slightly elevated indicating the presence of dampness.
 - (iv) That no dampness was identified within the lounge.
 - (v) That within the hallway the flooring appeared to have been recently replaced and that new plasterboard had been installed in the walls from mid-height to the floor which had been skimmed with a plaster finish. Damp meter readings were taken, however, due to plaster works having been recently undertaken, these were inconclusive.

Reasons for the decision

13. The Property is on the ground floor of a block of flats, access to which is taken from a common close. The Property comprises a bedroom to the rear with shower room therefrom and a living room to the front of the Property along with a kitchen and toilet. All rooms are accessed from a single corridor leading from the front door.

The tribunal carefully inspected each room within the Property.

Within the toilet, the light fitting was observed to be new and appeared to operate correctly. However, no evidence was provided as to the identity of the tradesman who replaced the light fitting and, in addition, no EICR had been provided by the Landlord to the Tenant relative to the Property generally.

Within the bedroom the external wall located to the right of the shower room and around the window was tested with a damp meter and showed slightly elevated readings indicating the presence of dampness.

Within the living room, the walls were tested with a damp meter. Readings were found to be normal.

In the hallway, the tribunal noted the new flooring and the new plasterboard installed from mid-height to the floor skimmed with plaster and in relation to which further works and decoration were still required. These works had been carried out within two weeks of the tribunal's inspection and were clearly incomplete. Damp meter readings in this area were inconclusive due to recently carried out wet-trade works. No information was provided by the Landlord as to the nature or extent of the works undertaken to eradicate damp in this area.

Decision

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

Right of Appeal

17. **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

18. 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.

G Buchanan

Signed

..... Chairperson & Legal Member

Date 5 July 2017



Flat G/R, 5 Balmore Street, Dundee, DD4 6SX
FTS/HPC/RP/17/0177
Schedule of Photographs - Inspection Date 26th June 2017
Weather – Dry and overcast.



1. The property.



2. Recent dampness works in hall.



3. Recent dampness works in hall.



4. Moisture reading – external wall in bedroom.



5. Smoke detector - hall



6. Smoke detector – bathroom.



7. Smoke detector – living room.