

Housing and Property Chamber

First-tier Tribunal for Scotland



**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/17/0098

Title no/Sasines Description: GLA180950

Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

("the Property")

The Parties: -

Mr Robert Kilpatrick, 16 Torrance Avenue, East Kilbride G75 0RN

("the Landlord")

And

Mr Mark Dowdall, Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

("the Tenant")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

Andrew McFarlane - Ordinary Member

Whereas in terms of their decision dated 29 May 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") in that the Landlord has failed to ensure that the Property meets the repairing standard whereby: -

- I. 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;
- II. any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order;

under sections 13(1) (c) and (d) 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 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.

Specifically, the Tribunal requires the Landlord: -

- a) To repair or replace the integral dishwasher so that it is in a reasonable state of repair and in proper working order,
- (a) To repair or replace the radiators in the lounge area of the open plan main living area so that they are in a reasonable state of repair and in proper working order,
- (b) To repair or replace the pipework in the kitchen cupboard which services a washing machine so that it is in a reasonable state of repair and in proper working order,
- (c) To repair or replace the intruder alarm so that it is in a reasonable state of repair and in proper working order,

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **6 weeks** from the date of service of this Notice.

In terms of section 46 of the Tribunals (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal 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 typewritten on this and the preceding pages are executed by Susan Christie, solicitor, chairperson of the Tribunal at Glasgow on 29 May 2017 before this witness: -

— witness —

S Christie

~~Legal Member~~

George Harvey Christie name in full
5 Albert Drive, Glasgow, G73 3RT Address

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(1A)

Chamber Ref: FTS/HPC/RP/17/0098

Title no/Sasines Description: GLA180950

Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

("the Property")

The Parties: -

Mr Robert Kilpatrick, 16 Torrance Avenue, East Kilbride G75 0RN

("the Landlord")

And

Mr Mark Dowdall, Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

("the Tenant")

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')
comprised: -**

Susan Christie - Legal/Chairing Member

Andrew McFarlane- Ordinary Member

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 ("the Act") in relation to the Property and taking account of all of the available evidence, determines that the Landlord has failed to comply with the duty imposed on him by Section 14(1)(b) of the Act. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal's decision is unanimous.

Background

1. By application received on 13 March 2017 the Tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
2. The application specifically stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and that the Landlord had failed to ensure that: -
 - (a) 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;
 - (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, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

The detail of the complaint being:

- (a) External pipes, drains: drainage for the washing machine does not work, water constantly comes out of the pipes when the machine drains;
- (b) Dishwasher: the dishwasher is part of the white goods and needs a new internal board or machine replaced;
- (c) Radiator in the front room: the radiator in the front room was deemed corroded and unusable on 28 November 2016 by Scottish Gas.

The Tenant stated that the following work required to be carried out at the Property:

- (a) Dishwasher needs replaced;
 - (b) Radiator in the front room needs replaced;
 - (c) Pipework underground needs unblocked or replaced;
 - (d) Alarm: the alarm in the Property needs fixed, not in working order
3. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 11 April 2017 the Parties were notified that the President of the Housing and Property Chamber had decided to refer the application to a Tribunal for determination.

4. Thereafter on or around 13 April 2017 the Tenant made an application to the Tribunal to withdraw the application and accordingly under Schedule 2 Paragraph 7 (1) of the Act, the Tenant was treated as having withdrawn the application.
5. The Tribunal had regard to the details of the complaint raised in the application regarding *inter alia* there being defective pipes and drains at the washing machine causing water egress and no working radiator within the front room of the Property and the potential health and safety issues arising therefrom for any Tenant. As there was no indication that those matters had since been resolved by the Landlord, the Tribunal decided to continue to determine the application and issued a Minute of Continuation to a Determination on 18 April 2017.
6. The Landlord intimated to the Tribunal that the Tenant would be resident in the Property until 1 June 2017.
7. Following upon the Notice of Referral, Inspection and Hearing being intimated by the Tribunal on the Landlord, no written response was made by him.
8. An Inspection and Hearing was assigned for 10 May 2017.
9. On 28 April 2017, the Tenant made an application to defer access to the Property as he stated that he would be away on business and would not be happy with anyone being present in his absence for the Inspection. Alternative dates were proposed by him. The Landlord had previously stated to Tribunal staff by telephone that he was in London and that he considered it was too costly for him to attend the Inspection and Hearing. The Tribunal adjourned the Inspection and Hearing as it was satisfied that access to the Property would be required to justly determine the application.
10. A new date was arranged for the Inspection and Hearing for 24 May 2017 and the date and time was intimated by the Tribunal on the Tenant and the Landlord on 8 May 2017.
11. The Landlord was reminded on 23 May 2017 that access was required by the Tribunal. The Landlord e- mailed the tribunal office staff in response and stated that there was uncertainty as to whether access would be given.

The Inspection

12. On the morning of 24 May 2017, the Tribunal attended at the Property at 11am but was unable to obtain access then. The Tenant subsequently contacted the Tribunal office indicating access could be facilitated by him and access was given to the Tribunal by the Tenant prior to the Hearing assigned. The Tribunal inspected the Property in

the presence of the Tenant. The weather conditions at the time of the Inspection were dry and overcast. Photographs were taken during the Inspection and these are attached as a Schedule to this decision.

13. The Property is a two bedrooomed, flatted dwelling house on the ground floor of a modern block with a dedicated parking space and exclusive use of a patio area. The main living area incorporating the kitchen is open plan.

The Hearing

14. Following upon the Inspection of the Property, the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL.

15. The Landlord was not present and was not represented. The Tribunal was satisfied that the requirements of Rule 47 of the First- tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 had been complied with as Landlord had received proper notice of the Hearing. The Tribunal proceeded to deal with the application in his absence on the information gathered at the Inspection and all the material before it.

The evidence

16. The evidence before the Tribunal consisted of:

Written evidence in the form of the application form with the accompanying e mail exchanges between the Tenant and the Landlord; a copy of the Land Register title for the Property; a copy of the AT5 form and copy lease between the Landlord and Tenant dated 30 August 2016; and all communication exchanges with the Tribunal.

The findings of the Inspection of the Property that informed the Tribunal are as follows:

- The existing pipework in the kitchen cupboard supplied water to and drained water away from a washing machine;
- There was evidence of water damage and staining on the wall at the washing machine pipework;
- The integrated dishwasher in the kitchen was not in proper working order;
- The radiator in the main living area near to the access door leading into the hall was not in proper working order;
- The second radiator near to the window in the main living area was leaking at the base of the return flow valve;
- The intruder alarm was not in proper working order and a fault light was displaying.

The Tribunal also made the following additional observations during the Inspection:

- The gas boiler had a safety warning label affixed to it;
- The water pressure in the heating circuit taking water from the boiler to the radiators was lower than normal (under one bar);
- The label on the gas boiler stated it was last inspected for safety on 21 October 2014;
- There was evidence of water staining on the wall adjacent to the gas boiler;
- The carbon monoxide detector affixed to the wall in the main living area was displaying a fault light;
- There was one functioning smoke alarm in the hall;
- There was no smoke alarm in the main living area;
- There was no heat alarm in the kitchen;
- There was a loose cable hanging from a hole in the kitchen ceiling.

Summary of the issues

17. The issue to be determined was whether the Property meets the repairing standard as set out in section 13 of the Act, and whether the Landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

18. The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner of the Property and the Landlord.
- II. The tenancy between the Landlord and the Tenant is a Short- Assured tenancy and is a tenancy to which the repairing standard applies.
- III. The Tenant took entry to the Property on 1 October 2016 for a term of 12 months. The parties subsequently agreed to end the lease early and the Tenant was due to move out on 31 May 2017.
- IV. The Property was let with white goods included. The Landlord should have provided the Tenant with a washing machine as specified in section 6 of the tenancy agreement, but one was not provided.
- V. The Tenant raised the complaints referred to the application with the Landlord in writing between 21 November 2016 and 20 January 2017, that is prior to the current application being made.

VI. The Tribunal carefully inspected the Property and found that:

- (a) The existing pipework in the kitchen cupboard supplied water to and drained water away from a washing machine;
- (b) There was evidence of water damage and staining on the wall at the washing machine pipework;
- (c) The integrated dishwasher in the kitchen was not in proper working order;
- (d) The radiator in the main living area near to the access door leading into the hall was not in proper working order;
- (e) The second radiator near to the window in the main living area was leaking at the base of the return flow valve;
- (f) The intruder alarm was not in proper working order and a fault light was displaying;

VII. The Property does not meet the repairing standard required under section 13 (1) (c) and (d) of the Act.

Reasons for decision

- 19. The Tribunal was satisfied that the tenancy between the Parties is a tenancy to which the repairing standard duty applies in terms of section 12 of the Act being a Short -Assured tenancy
- 20. The Tenant was in the middle of packing up his belongings at the time of the Inspection and a washing machine had been disconnected and was sitting in the hall. The Tenant indicated that the lease included provision by the Landlord of a washing machine for his use, but despite being promised one by the Landlord it was never provided. He had purchased his own brand-new washing machine. The site for a washing machine and associated pipework was found in the kitchen cupboard. The Tribunal inspected the kitchen cupboard and noted evidence of water damage and staining on the wall around the pipework.
- 21. The integrated dishwasher was housed in a kitchen unit. It had an electric control master switch at worktop level that was switched on by the Tenant for the Tribunal. The inner control panel which should have switched the dishwasher on and off and allowed for a choice of settings was tried but it did not work. The display did not light up at all. Accordingly, the repairing standard has not been met (section 13 (1) (d) of the Act).

22. Within the main living area there were two radiators inspected which formed part of the central heating system. The one nearest to the door to the hall was cold and the valve was on the off position. The Tribunal noted evidence of corrosion at the air valve and water staining on the flooring underneath the radiator. The Tenant provided copies of the Advisory Notices referred to in his initial correspondence produced to the Tribunal which supported the Tribunal's observation that it was not in a reasonable state of repair and in proper working order. The second radiator within the room was inspected and was found to be leaking water at the base of the return flow valve and there was a small area of staining on the flooring beneath it. Accordingly, the repairing standard has not been met (section 13 (1) (c) of the Act).
23. The intruder alarm was inspected by the Tribunal. The external sounder was situated on the outside wall of the Property and the light was continually flashing as if it had been activated. However, no warning sound was heard outside or inside the Property. An error light was displaying on the intruder alarm control panel inside the hall cupboard. Accordingly, the repairing standard has not been met (section 13 (1) (d) of the Act).

Summary of Decision

The Landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act and has failed to ensure that the Property meets the repairing standard under sections 13(1) (c) and (d) of the Act. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Observations

The Tribunal made the following additional observations during the Inspection of the Property:

- The pipework at the gas boiler had a safety warning label affixed to it;
- The water pressure in the heating circuit taking water from the boiler to the radiators was lower than normal (under one bar);
- The label on the gas boiler stated it was last inspected for safety on 21 October 2014;
- There was evidence of water staining on the wall adjacent to the gas boiler;

The gas boiler services the radiators at the Property. The Tenant exhibited to the Tribunal a copy of a Safety Warning/Advice Notice dated 20 January 2017 which had been left at the Property.

- The carbon monoxide detector affixed to the wall in the main living area was displaying a fault light;

The carbon monoxide detector within the main living area did not sound when tested.

- There was one functioning smoke alarm in the hall;
- There was no smoke alarm in the main living area;
- There was no heat alarm in the kitchen;

The revised Domestic Technical Handbook guidance issued by Building Standards Division (Technical Handbooks 2013: – Domestic – Fire), states there should be at least: one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes, one functioning smoke alarm in every circulation space, such as hallways and landings, one heat alarm in every kitchen, and all alarms should be interlinked. In this Property, no smoke alarm had been fitted in the open plan main living area, the room which is frequently used by the Tenant for general daytime purposes. There was no heat alarm in the kitchen.

- There was loose electrical wiring protruding from a hole in the kitchen ceiling.

This wiring had no immediate or obvious use.

Whilst these matters did not form part of the application and were not issues to be determined by the Tribunal as they were not included in the application, the Landlord may wish to consider taking all appropriate remedial action.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal 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.

Signed _____

Date 29 May 2017

Susan Christie, Legal Member



Property Address

Flat 0/1 341 Glasgow Harbour Terraces
GLASGOW G11 6BH

Case Reference

FTS HPC RP 17 0098

Schedule of Photographs taken during the inspection by tribunal members on 24 May 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



1. General view from Road



2. Radiator in main living area near door



3. Radiator in main living area near door



4. Flooring at radiator in main living area near door



5. Other radiator in main living area



6. Liquid leaking from valve on other radiator in main living area



7. General view of central heating boiler



8. Warning label fixed to central heating boiler



9. Pressure gauge on central heating system at boiler



10. Supply and drainage pipework for washing machine



11. Supply and drainage pipework for washing machine



12. Dishwasher Control panel



13. Dishwasher power control



14. Carbon monoxide alarm



15. Loose cable hanging from hole in ceiling at Kitchen area of main living area



16. Smoke alarm in hallway



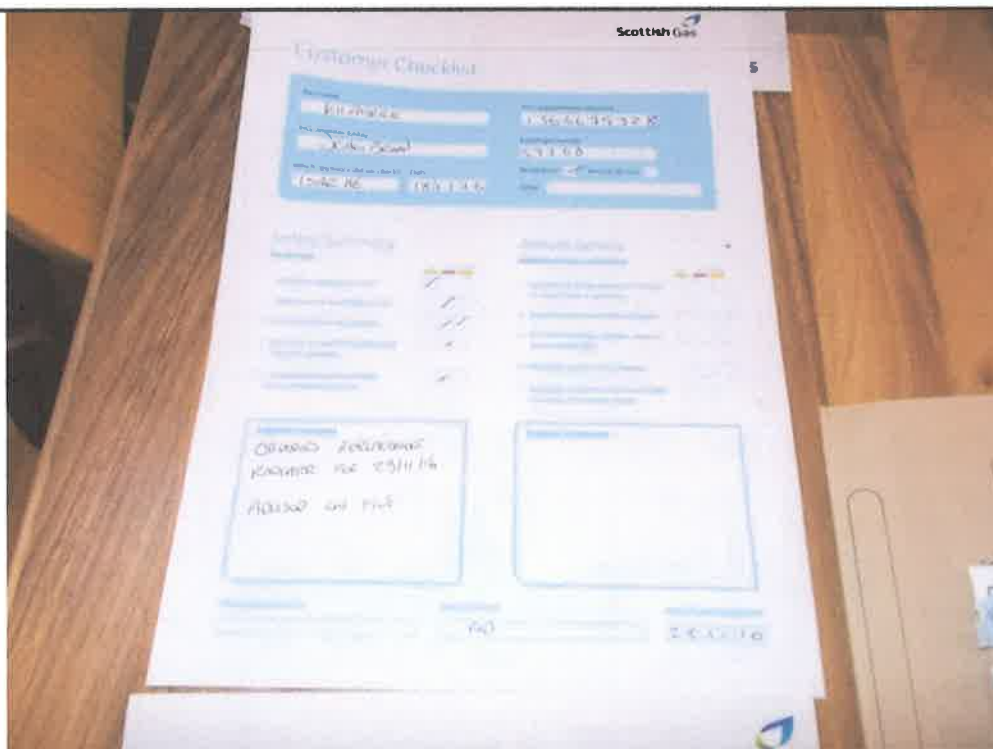
17. Intruder alarm control panel



18. Intruder alarm external sounder

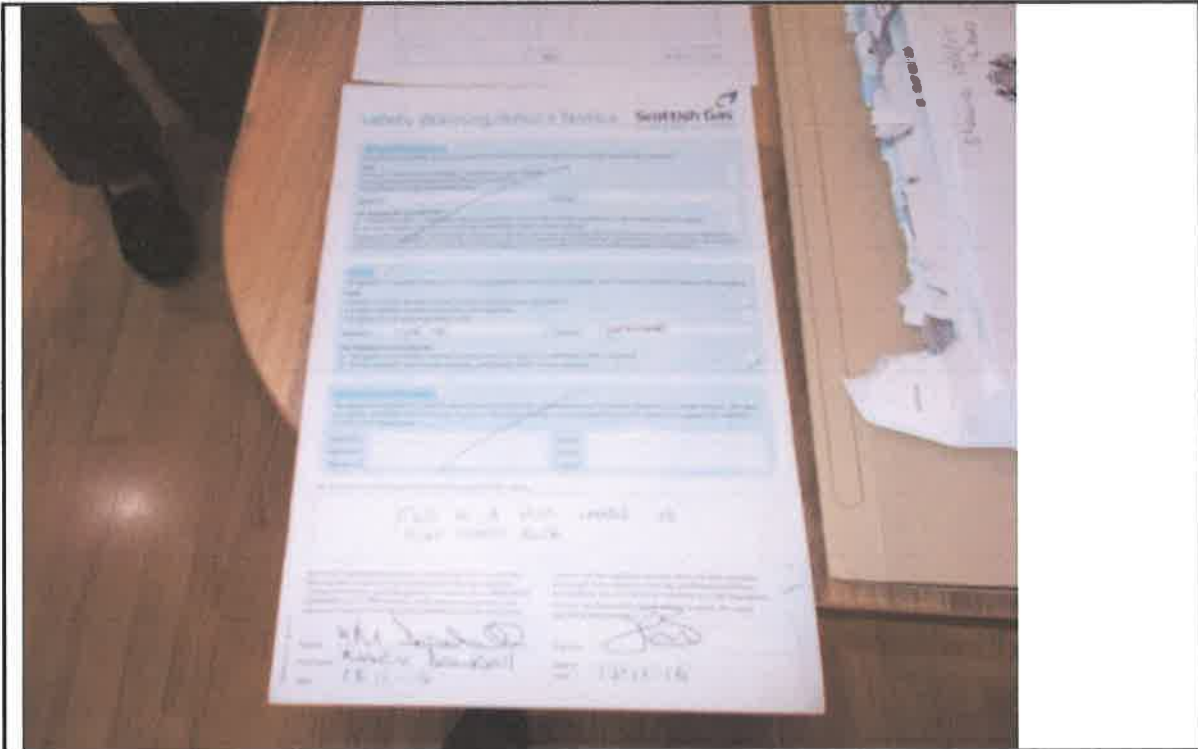


19. Tenant's washing machine

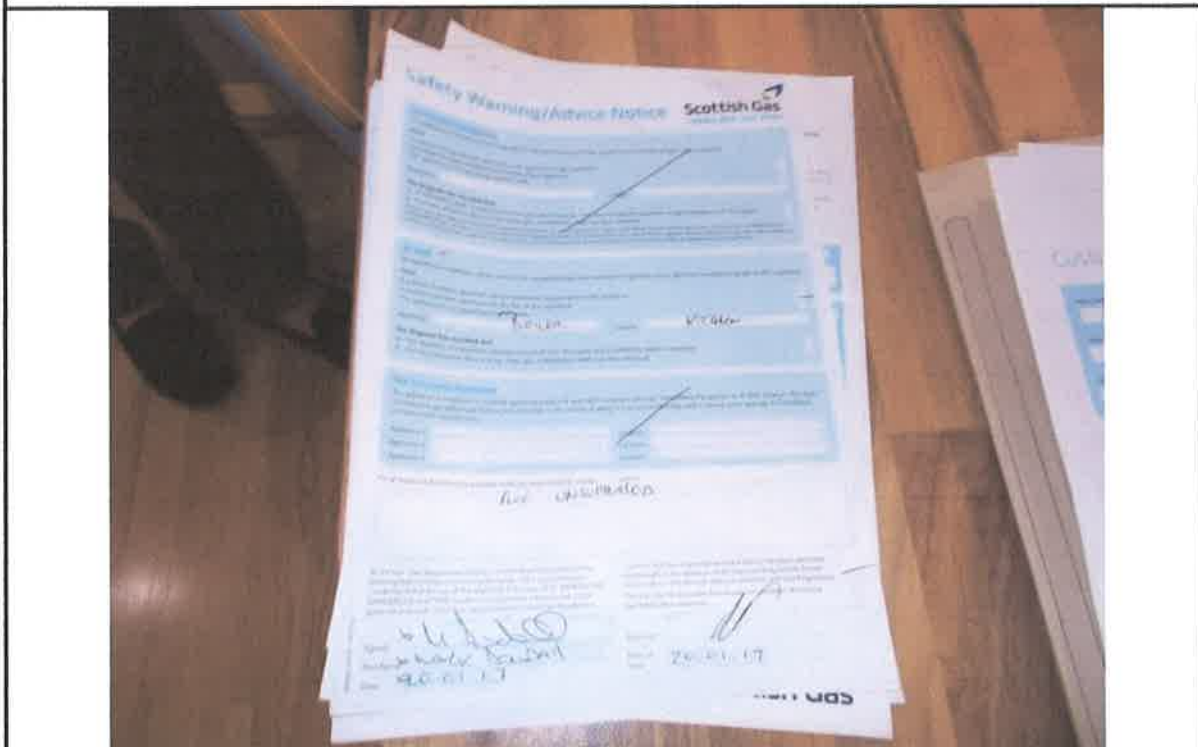


20. Copy Advisory Notice

Housing and Property Chamber First-tier Tribunal for Scotland

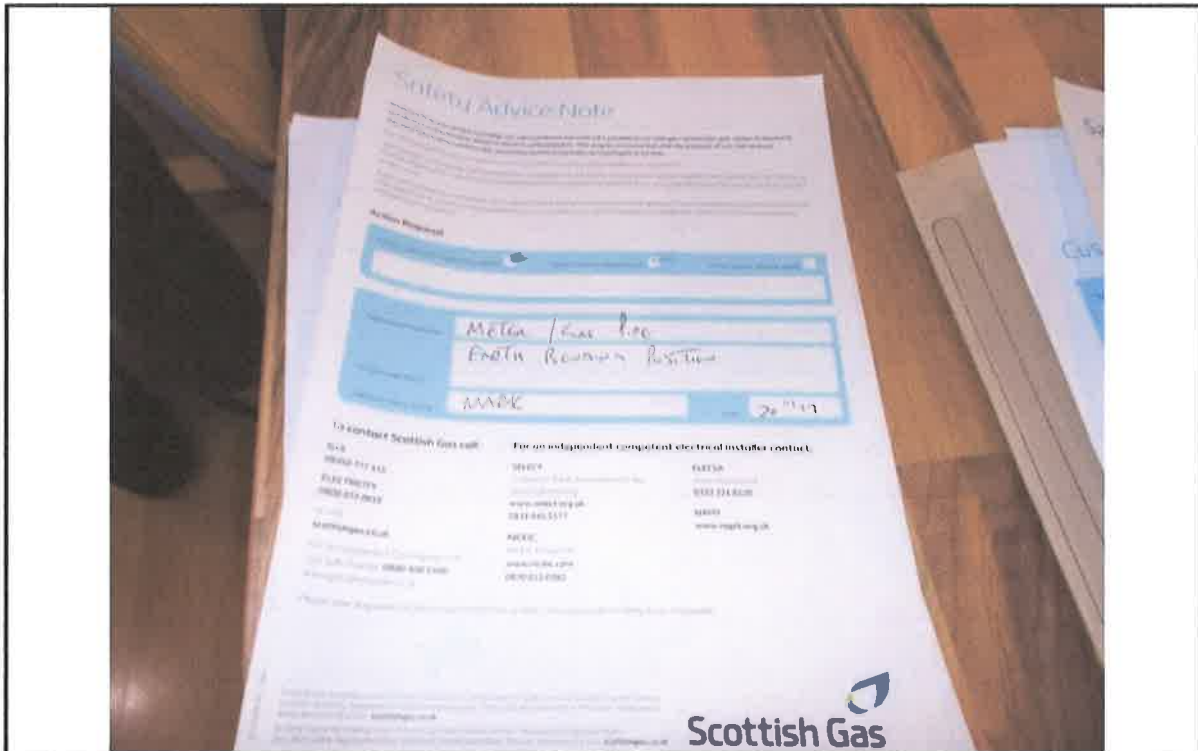


21. Copy Advisory Notice

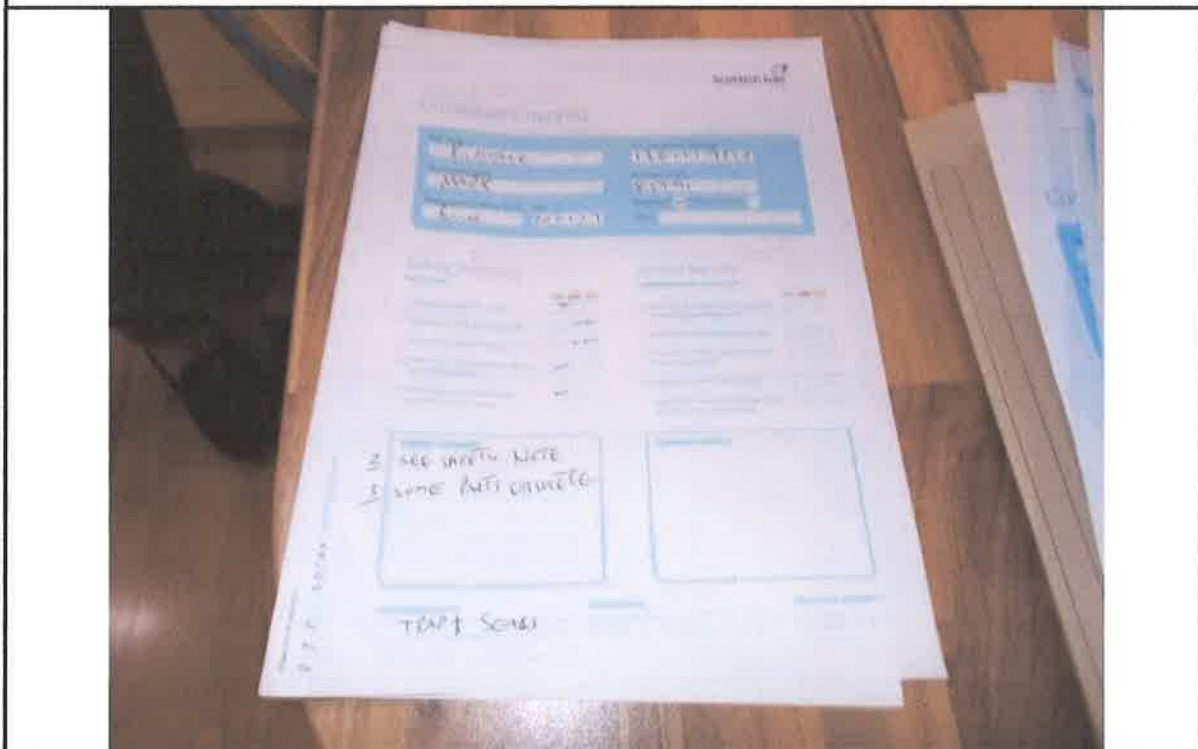


22. Copy Advisory Notice

Housing and Property Chamber First-tier Tribunal for Scotland

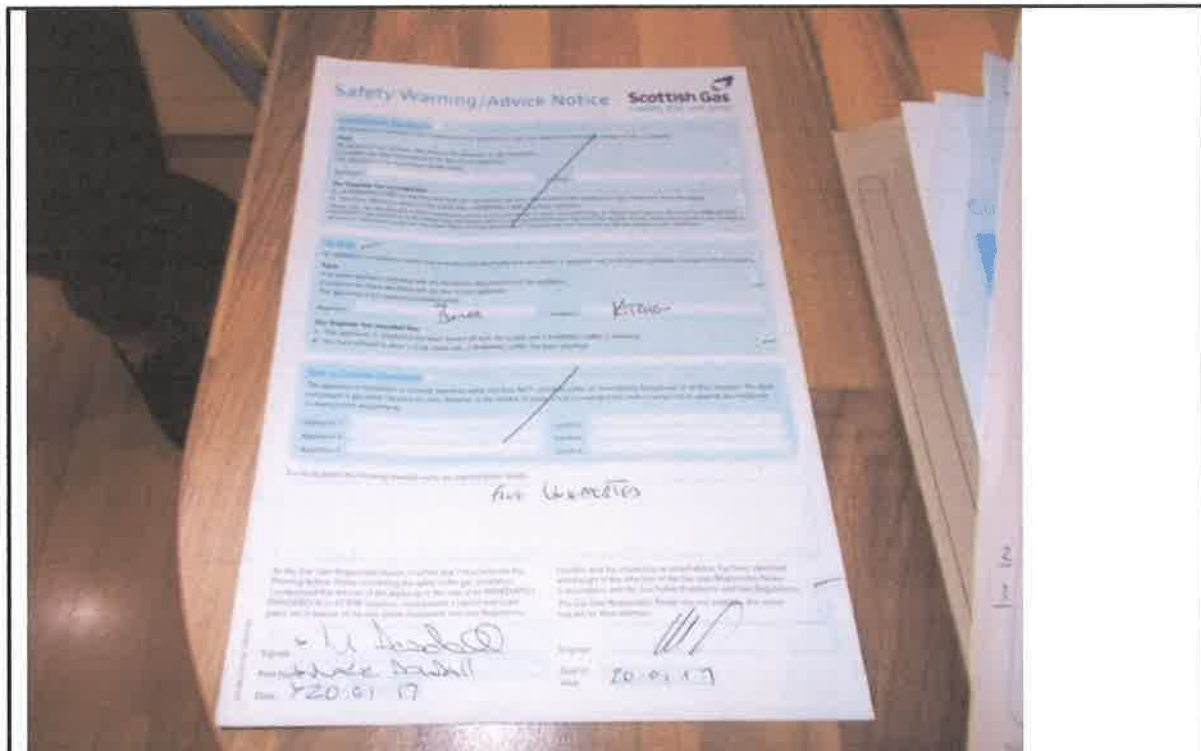


23. Copy Advisory Notice



24. Copy Advisory Notice

Housing and Property Chamber First-tier Tribunal for Scotland



25. Copy Advisory Notice