

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/17/0233**

**Title no/Sasines Description: LAN 95710**

**20 Citadel Place, Motherwell, ML1 3NT ("the House")**

**The Parties:-**

**Miss Claire Bunch, residing at the House  
("the Tenant")**

**Mr Anthony Baguley, 50 Upper Brighton Road, Worthing, West Sussex, BN14  
9HT ("the Landlord")**

Whereas in terms of their decision dated 7 September 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 the House meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended:-

- (a) the house is wind and watertight 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;
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire,

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

- (1) To repair, or, as necessary replace, the back bedroom window of the House to ensure that it can open and close properly and is fully operational such that the House is wind and watertight and in all other respects reasonably fit for human habitation.
- (2) To submit to the Tribunal a report from a Gas Safe registered engineer confirming that the gas boiler has been serviced, when the service took place and that any defects identified have been rectified, to ensure that the gas boiler is in a reasonable state of repair and in proper working order.
- (3) To make good the bathroom floor by installing a proper floor covering of a type suitable for use in a bathroom over the exposed plywood to ensure that the flooring is in a reasonable state of repair and in proper working order.
- (4) To install a hard-wired smoke detector in the ground floor entrance hallway interlinked to the existing alarms to ensure that there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Housing (Scotland) Act 2006: Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires (attached to the decision) and current building regulations.
- (5) To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke detectors and heat alarm, and a Portable appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT or NICEIC contractor, together with a report or other written evidence from such a contractor confirming that any remedial action or further investigation identified as necessary in the EICR and PAT has been carried out, to ensure that the installations in the House for the supply of electricity are 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 6 weeks from the date of service of this Notice.

**A landlord, tenant or third party applicant 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.**

In terms of Section 63 of the Act, 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 two preceding pages are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 7 September 2017 in the presence of the undernoted witness:-

F Weir

witness

N Weir

Legal Member

Nicola T. Weir name in full

402 Field Road Address

MAESWORTH,

LEICS, LE23 4LN

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0233**

**Title no/Sasines Description: LAN 95710**

**20 Citadel Place, Motherwell, ML1 3NT ("the House")**

**The Parties:-**

**Miss Claire Bunch, residing at the House  
("the Tenant")**

**Mr Anthony Baguley, 50 Upper Brighton Road, Worthing, West Sussex, BN14 9HT ("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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The Tribunal comprised:-**

**Nicola Weir, Legal Member**

**Carol Jones, Ordinary Member**

### **Background**

1. By Application received on 21 June 2017, the Tenant applied to the Tribunal 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"). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:- 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; 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 house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complained that the back bedroom window does not open fully; there are no adequate heat or smoke alarms; that the bathroom floor was removed to repair a water leak but has not been replaced; that the cold water tap on the bath does not work (no water); that there is no carbon monoxide alarm; that the living room windows do not open fully; that there is no EICR available for electrical safety; and that there is no Gas Safe certificate. Apart from the application form, the Tenant also submitted as part of her Application some tenancy documentation, namely a copy AT5 Form and Notice to Quit, both dated 10 January 2014 prepared by the Landlord's agent, EMPS Property, on his behalf; and an email dated 21 April 2017 from the Tenant to the Landlord as proof that she had intimated repairs issues to him, together with the Landlord's response email dated 27 April 2017. The email dated 21 April 2017 mentioned some of the repairs issues subsequently contained in the Tenant's Application, namely problems arising from the leak in the bathroom, that there is no heat alarm and that the smoke alarm does not meet the legal standard as there was only one alarm in the hall that does not work and that the back bedroom window does not open fully and is their fire escape in the event of fire. The email also requested that the Landlord service the boiler at least once a year.

2. On 23 June 2017, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 11 July 2017.
3. Following service of the Notice of Referral, written representations were submitted by the Landlord who indicated that he would not be attending the Hearing. The Tenant indicated that she would be attending the Hearing and did not wish to submit written representations.
4. On 3 August 2017, the Tribunal issued a Notice of Direction to the Parties in terms of Schedule 2, Paragraphs 2(1) and 3(1)(b) of the Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Regulations"). The Direction required the Tenant to submit to the Tribunal evidence that prior notification of all required works detailed in the Tenant's Application to the Tribunal had been made to the Landlord as it appeared to the Tribunal that only some of the said works had been notified to the Landlord. The Direction also required the Landlord to submit to the Tribunal a copy of the Tenancy Agreement/Lease between the parties; a current gas safety

record from a Gas Safe registered engineer; and, in the event that any smoke or heat alarms in the House were hard-wired, a current Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT or NICEIC electrical contractor. Both parties required to submit the documentation detailed in the Direction by 12 noon on 11 August 2017, subsequently extended to 18 August 2017. In response to the Direction, the Landlord submitted a Gas Safety Record dated 3 August 2017, EICR dated 7 August 2017 and copy terms of business between him and his agent, EMPS Property. He did not submit a copy of the Tenancy Agreement/Lease. The Tenant emailed the Tribunal with an update regarding the bathroom leak and the electrical safety check. She submitted some copy text messages from 19 June 2017 which appeared to be between herself, the Landlord and the Landlord's contractor referring to the bathroom issues and problems with the boiler and from 2 August 2017 which appeared to be between herself and the Landlord referring to the electrical work, smoke alarms and a complaint from the Tenant's downstairs neighbour alleging he was getting further water through his ceiling. The Tenant also submitted some photographs showing the condition under the bath before the repairs were carried out. All documentation submitted by the Landlord and Tenant in response to the Direction was submitted before the extended time limit of 18 August 2017.

5. The Tribunal inspected the house on the morning of 21 August 2017. The Tenant, her partner and her child were present during the inspection.
6. Following the inspection of the house, the Tribunal held a Hearing at Brandon Gate, Ground Floor Block C, Leechlea Road, Hamilton, ML3 6AU. The Tenant was present and gave evidence.
7. Following the Hearing, the Tenant submitted further paperwork to the Tribunal by email on the afternoon of 21 August 2017 and on 23 August 2017. This was copied to the Landlord and the Tribunal but was not taken into account by the Tribunal as the Hearing had finished, the Tribunal had already made its decision in the case and it would not have been just to do so.

### **The Inspection**

8. At the time of the inspection, the weather was dry and bright, with no wind. The Tribunal noted that the House is an upper four in a block flat. The flat is accessed from Citadel Place via external steps at the side of the House leading up to the front door, and then via an internal staircase leading up to the flat. The Tribunal was able to inspect the whole house. Inspection revealed the following:-
  - (a) The back bedroom window had a defective opening/closing mechanism in that the window tilted in slightly but did not properly

open. The window was loose in the frame and did not close properly either. The Tenant indicated that the Landlord had said this window would be replaced and that this would be done on 3 September 2017.

- (b) The living room window had hopper style windows at the top which appeared to be working normally.
- (c) There was a heat alarm in the kitchen and smoke alarms in the living room and top hall landing, all of which were hardwired and ceiling mounted. There was no smoke alarm in the ground floor entrance hallway. The Tenant indicated that the heat and smoke alarms had been installed a few weeks before.
- (d) There was a ceiling-mounted carbon monoxide alarm in the kitchen, situated near the boiler cupboard. The Tenant indicated that this alarm had also been installed a few weeks before.
- (e) The bathroom appeared to be in a satisfactory state of repair, other than the flooring. The bath cold tap was operating properly. The bath panel was removed and the area under the bath looked dry. Most of the floorboards looked new and were dry. Some of the pipework behind the bath looked to have been recently replaced and to be in order. There was no visible evidence of an ongoing leak. There was an electric cable under the bath. The covering appeared to be in good condition with no wiring exposed. There was no satisfactory floor covering on the remainder of the bathroom floor. The flooring consisted of plywood, with exposed nails and screws showing.
- (f) The electricity consumer unit was situated in a hall cupboard. The Tenant mentioned having experienced some electrical problems. One of the switches in a double socket in the living room was defective, in that it was jammed and could not be switched on/off. The light fitting attached to the ground floor entrance hall ceiling was cracked and the cable loose. There was no bulb in the fitting, the Tenant indicating that if she tries to switch this light on, the electricity "trips". The Tenant also mentioned an electric extractor fan which was not working.

A Schedule of Photographs taken during the inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

## **The Hearing**

9. At the Hearing, the Tribunal had before it the Application documentation, the landlord's written representations and the documentation submitted in response to the Direction by both Parties, all as referred to above. The Tribunal also had before it a copy of Land Certificate LAN 95710 relative to the House which is registered in the name of the Landlord.

10. The Tenant confirmed that she moved into the House in January 2014 and that her current rent is £425 per month, most of which is met by Housing Benefit. Initially, she dealt with the Landlord's agent, EMPS, who prepared the tenancy paperwork for the Landlord and it was EMPS that she initially reported repair issues to. The Landlord subsequently stopped using EMPS as his agent and more recently, has managed the tenancy himself.
11. The Tenant advised that as soon as she knew there was a leak in the bathroom, she had reported this to EMPS. The neighbour downstairs reported water coming through his ceiling and he got his landlords, Clyde Valley Housing Association involved as the problem was ongoing. The Landlord, who was then managing the tenancy himself, was told repeatedly about the problem. Mushrooms were found growing on the floorboards underneath the Tenant's bath as there had apparently been a long-term leak. The Tenant advised the Landlord of this development in April 2017. The Landlord's handyman, Charlie, arranged for a plumber to come out. The plumber came out three times but the Tenant's impression was that he did not do much. Environmental Health became involved and visited at the same time as the plumber, with Clyde Valley Housing Association in the property downstairs at the same time. Charlie ripped up the floor and the Tenant said she then had weeks without a bath or water or a floor in the bathroom which was difficult as she has a young child. The tenant advised that there is an electric shower in the bathroom but it has never worked. The Tenant reported the bathroom and various other issues to the Landlord by email dated 21 April 2017. Environmental Health advised the Tenant to refer the matter to the Tribunal. The bathroom works were then carried out and included repair to a pipe under the bath, new wall panels and a new bath panel. The tenant confirmed that the cold water tap on the bath is now working fine. Since these works have been completed, there has been a one-off complaint from the downstairs neighbour about water coming through his ceiling but the Tenant did not think this was the same as the original leak. The Tenant agreed that the area under the bath looked very dry on inspection today. She advised that her remaining issue with the bathroom is the lack of a proper floor covering. She said that there had been tiles on the floor before. She also mentioned that there had been some kind of sand in the floor which had been removed and nothing had been put down in its place. She thinks that there is now no sound insulation as she hears noise from the property below, which she did not before. The Tenant said that the Landlord had told her she would have to pay for vinyl for the bathroom floor and he would reimburse her.
12. As regards the back bedroom window, the Tenant advised that she had raised this with the Landlord's handyman but had also texted the Landlord about it and mentioned it in her email referred to above. The Tenant has been told by the Landlord that this window, as well as the



living room and front bedroom window will be replaced and that this has been booked in for 3 September 2017.

- 13.** The Tenant confirmed that after she had made her Application to the Tribunal, the Landlord arranged for an electrician to install the carbon monoxide and heat alarms in the kitchen and the two smoke alarms in the living room and upstairs hall. These were wired in. Before that, there had just been a battery operated smoke alarm in the hall which did not work. A few weeks after that, an electrician came out to do the electrical safety check. The Tenant had the impression that the House had failed the electrical check. She said that a new fusebox had had to be installed, that the electrician had had to rewire it again and that there was still some problem with a light on at the bottom of the box which the electrician said he was going to put in his report. The electrician showed her behind the cooker which the Tenant said was a mess, was lots of loose wires. The Tenant said that she showed the electrician the faulty switch on the double socket in the living room and he said that it could blow up. The Tenant thinks the other sockets in the House were fine. The electrician said the shower not working was down to wear and tear. She forgot to show him the extractor fan. The Tenant confirmed that, other than the cooker, the white goods and other electrical appliances in the House are her own. The Tenant thought that she would hear something else from the Landlord after the electrics failed but she has not heard anything since. The Tenant conceded that she had not notified the Landlord of the lack of a carbon monoxide alarm or regarding electrical defects before making her Application to the Tribunal, other than raising the issue of the lack of a heat alarm and adequate smoke alarms and also the lack of an EICR. She pointed out that the Landlord had, however, arranged for a carbon monoxide alarm to be installed and for the electrical safety inspection to be done and that she only became aware of some of the issues with the electrics when that was carried out.
- 14.** The Tenant advised that she has had lots of issues with the gas boiler and spells where she has had no hot water or heating. She advised that she had texted the Landlord when these problems arose. She mentioned having texted the Landlord about the boiler and not having any hot water most recently on 10 June 2017. This was shown in the copy text messages she had sent in to the Tribunal in response to the Direction. She said that she had had seven weeks without hot water or heating on one occasion. The Tenant advised that the boiler was now fixed and was working fine at the moment. As far as the Tenant was aware, the boiler had not been serviced whilst she had been living at the House and she advised that, due to all the problems she had had with the boiler, this is why she asked the Landlord in her email intimating repairs issues to the Landlord referred to above to have the boiler serviced once a year. It was noted by the Tribunal that the Tenant had also mentioned the lack of a Gas Safe Certificate in her application form to the Tribunal. The Tenant explained that she thought that the servicing and Gas Safe Certificate were the same thing.

- 15.** The Tribunal read through the Landlord's written representations that he had originally sent in to the Tribunal and asked the Tenant what she thought about his comments at that time that the repairs issues she had raised had all been fixed or were in the process of being fixed. The Tenant responded that some but not all of the issues have been fixed, that she has experienced problems with the House since she moved in and that it has always taken the Landlord longer than it should to get things fixed. She said that the mould situation under the bath and the boiler, in particular, have been "a joke". The Tenant is of the view that many of the repairs and safety checks have only been carried out, or are only going to be carried out, by the Landlord, as a result of her Application to the Tribunal.

### **Findings in Fact**

- 16.** The House is an upper flat in a block of four situated within a housing estate of similar style Local Authority housing in the "North Motherwell" district of Motherwell. This location is approximately one mile north-west of the town centre. The accommodation comprises a hall, living room, kitchen, two bedrooms and bathroom and the flat has UPVC double glazed windows and gas central heating.
- 17.** The Tenant occupies the house under a Short Assured Tenancy dated 10 January 2014, which appears also to have been the commencement date of the tenancy. She is the sole Tenant. At that time, the Landlord had an agent, EMPS Property, dealing with the tenancy on his behalf but subsequently has managed the tenancy himself.
- 18.** The Tenant has notified EMPS Property and latterly, the Landlord, of several repairs issues concerning the House throughout the tenancy. She has tended to communicate with the Landlord through text messages but has also emailed him. The Landlord resides in England and has tended to instruct his handyman to deal with repairs issues on his behalf in the first instance. There have been delays in repairs issues being dealt with and repeat problems arising, particularly with the boiler and the bathroom leak.
- 19.** The repair issues came to a head as a result of other parties becoming involved due to damage being caused to the property below the House from the bathroom leak, including Clyde Valley Housing Association which owns the property below and Environmental Health. Investigations revealed extensive mould/fungus growing on the floor under the bath, an indication of a long-term leak. Works were carried out on behalf of the Landlord to repair the leak and to thereafter repair and reinstate the bathroom in the House. These works were not fully completed.
- 20.** Following the Tenant's Application to the Tribunal, further repair works and safety checks, including an electrical and gas safety check have been carried out on behalf of the Landlord. Reference is made to the Tribunal

findings at the inspection of the House on 21 August 2017. Some repair issues raised by the Tenant in her Application and which had been notified to the Landlord have been resolved but some remain outstanding.

**21.** The Gas Safety Record dated 3 August 2017 from Wilson Building submitted by the Landlord was in order (other than that the Landlord's name and address had not been inserted).

**22.** The EICR dated 7 August 2017 from Lite-Up Electrical Services was not in order, in that it had not been fully completed. In particular, sections in pages 1 and 2 had been left blank. A PAT was not produced.

### **Reason for decision**

**23.** The Committee considered the issues of disrepair set out in the Application and noted at the Inspection and Hearing.

**24.** The back bedroom window is defective and does not open fully so as to allow proper safe cleaning and escape in the event of fire and it does not close properly. The House is accordingly not wind and watertight or reasonably fit for human habitation in terms of Section 13(1)(a) of the Act. The window requires to be repaired or replaced to ensure that the House meets the repairing standard.

**25.** The Gas Safety Record dated 3 August 2017 submitted by the Landlord was recent and in order. However, no evidence was produced to indicate that the boiler had been serviced. Given the Tenant's evidence about the repeat problems she had experienced throughout the tenancy and as recently as June 2017, with the boiler not working, the Tribunal was not satisfied that the installations in the House for the supply of gas, for space heating and heating water are in a reasonable state of repair and proper working order in terms of Section 13(1)(c) of the Act. A report from a Gas Safe registered engineer is required, confirming that the boiler has been serviced, when it was serviced and that any defects identified have been rectified to ensure that the House meets the repairing standard.

**26.** Although works had been carried out to the bathroom including repair of the leak and replacing the bathroom floor, the flooring had not been made good in that a satisfactory floor covering had not been laid, leaving bare plywood, with exposed screws and nails showing. Fixtures and fittings provided by the Landlord are not therefore in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act. Section 14(2) of the Act specifies that the Landlord's duty to ensure that the House meets the repairing standard includes a duty to make good any damage caused by the carrying out of any work to comply with the repairing standard. A suitable floor covering requires to be installed in the bathroom to ensure that the House meets the repairing standard.

27. Although a heat alarm had been installed in the kitchen and two smoke alarms in the living room and upper hall, in the Tribunal's view there also requires to be a hard-wired smoke alarm installed in the ground floor entrance hallway and for that to be interlinked to the existing alarms in order to comply with the Housing Scotland Act 2006: Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires (a copy of which is attached to this decision) and current building regulations. This is to ensure that the House 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) and complies with the repairing standard.
28. Although the Landlord had submitted an EICR dated 7 August 2017, it was of concern to the Tribunal that certain sections of this report had not been completed by the electrician. In particular, it was noted that the electrician had not completed the section on page 1 of the report nor the declaration on page 2 as to whether or not his overall assessment of the installation was that it was satisfactory or unsatisfactory for continued use. In addition, although observations were made on page 2, including one stating that "cooker wiring behind oven unsafe", the electrician had not inserted any codes beside some of said observations (including the one about the cooker wiring) specifying the degree of urgency for remedial action, nor completed the parts specifying which items required to be remedied immediately, urgently, further investigated without delay, etc. Given the unsatisfactory EICR, the fact that a PAT had not been produced by the Landlord and the Tenant's evidence at the Hearing that she was told by the electrician that the electrics had failed on inspection and also in respect of the various electrical issues the Tenant had been experiencing, the Tribunal was not of the view that the installations in the House for the supply of electricity are in a reasonable state of repair and proper working order in terms of Section 13(1)(c) of the Act. An up to date, satisfactory and complete EICR and PAT from a suitably qualified and registered SELECT or NICEIC contractor, together with a report from such a contractor confirming that any necessary remedial action identified in the EICR or PAT has been carried out requires to be submitted to the Tribunal to ensure that the House meets the repairing standard.
29. The Landlord had not disputed any of the repairs issues raised by the Tenant in her Application and, indeed, had already taken steps to rectify some of them. However, there appears to the Tribunal to have been a background of delays in repair issues notified by the Tenant being rectified by the Landlord and repeat issues arising. Some issues remain outstanding and the Tribunal is of the view that there is a breach of the repairing standard and that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the matters specified above.
30. Given the nature of these repairs and the fact that the Landlord had indicated in his written submissions that some of the windows, including the back bedroom window, were to be replaced and that an appointment

in this regard had been arranged to take place in the near future, the Tribunal was of the view that a period of 6 weeks from service of the order was an adequate and reasonable timescale for the repairs to be completed.

31. As regard other matters raised by the Tenant in her Application or at the Inspection and Hearing:- the bathroom floor removed in connection with the leak had been replaced (other than the floor covering); the bath cold water tap was now working normally; the Tribunal had not been provided with proof that the Tenant had notified the Landlord of the lack of a carbon monoxide detector or that the living room windows do not open fully, although it was noted by the Tribunal that a carbon monoxide detector has now been fitted appropriately and that the Landlord appears to have agreed to replacing windows, including the living room window in the near future; the Tribunal had not been provided with proof that the Tenant had notified the Landlord of the specific electrical defects that she raised with the Tribunal at the Inspection, namely the jammed switch in the double socket in the living room, the problems with the light fitting in the ground floor entrance hall, the shower not working and the extractor fan not working. None of the matters mentioned in this paragraph are accordingly included in the RSEO. However, the Tribunal observed at the inspection that there indeed appear to be defects with both the socket switch and the light fitting and it is recommended that these items, as well as alleged defects with the shower and extractor fan, are investigated and rectified as part of any other electrical works being carried out.

### **Decision**

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

### **Right of Appeal**

**A landlord, tenant or third party applicant 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.**

In terms of Section 63 of the Act, 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.

N Weir

Signed..... Date: 7 September 2017  
Nicola Weir, Legal Member of the Tribunal

Glasgow, 7 September 2017

This is the Schedule of Photographs referred to in the Statement of Decision  
of over date herewith.

N Weir, Legal Member of the Tribunal

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



Schedule of photographs taken during the inspection of 20 Citadel Place, Motherwell ML1  
3NT by the First-tier Tribunal for Scotland (Housing and Property Chamber)  
21 August 2017

Reference Number : FTS/HPC/RP/17/0233



Front Elevation (Upper 4 in a block flat)



Back Bedroom window



Back Bedroom window - restricted opening/loose  
frame and defective opening mechanism



Living Room window



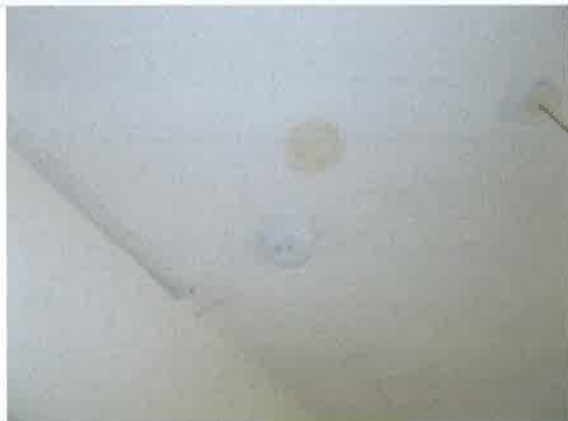
Ceiling mounted heat alarm - Kitchen



Ceiling mounted CO alarm - Kitchen



Ceiling mounted smoke alarm - Living Room



Ceiling mounted smoke alarm - Hall



Staircase





**Boiler - Kitchen cupboard**



**Consumer unit in cupboard off hall**



**Double socket in Living Room - defective/jammed switch**



**Light Fitting - ground floor hall ceiling - cracked/ loose cable**



**Bathroom - cold tap operating properly**



**Bathroom**



Bathroom - floor under bath - showing electric cable



Bathroom - floor under bath and pipework



Bathroom - floor under bath



Bathroom floor - exposed plywood - no floor covering

Glasgow, 7 September 2017

This is the Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of fires referred to in the Statement of Decision of even date herewith.  
N Weir, legal Member of the Tribunal

## **HOUSING (SCOTLAND) ACT 2006: SCOTTISH GOVERNMENT GUIDANCE ON SATISFACTORY PROVISION FOR DETECTING AND WARNING OF FIRES**

1. Section 13(1) of the Housing (Scotland) Act 2006 sets out the criteria that must be met if a house is to comply with the Repairing Standard. One part of the Repairing Standard is that a house should have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. There are more than 6000 reported fires in dwellings (e.g. houses, flats and maisonettes) every year in Scotland. Fires can have a devastating effect on the lives of people and results in around 50 deaths and 1300 injuries each year. According to national fire statistics dwelling fires in which smoke alarms raise the alarm continue to:

- be discovered more rapidly (less than 5 minutes) after ignition; and
- be associated with lower fatal casualty rates.

2. The installation of smoke and fire detectors is intended to reduce the risk of fire and the consequent loss of life, injury and damage to property. Because of these dangers, the Repairing Standard sets a high benchmark for smoke and fire detection, matching the standard required for new building and which is higher than many owner-occupiers will meet for their own homes. All privately rented homes should, if at all possible, meet this standard. However, the most important thing is that there should be some provision to detect fires and that this should be operational and in good working order.

3. As stated in section 13(5) of the 2006 Act, in deciding whether this standard is met in relation to the fire safety standard, regard must be had to any building regulations and any guidance on the subject issued by the Scottish Ministers.

4. Building regulations set out the essential standards to be met when building work or a conversion takes place. The reference to building regulations in the Repairing Standard does not mean that privately rented property must always comply with building regulations. However, landlords should be aware of what the building regulations say in relation to smoke and fire detectors and have regard to those regulations in assessing what level of smoke and fire detectors are needed to ensure that the home has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. This means that landlords should either install smoke and fire detectors that meet the standard set by building regulations or be able to justify why a lesser level of protection is appropriate in a particular home. Reasons why a lesser level of protection might be appropriate could include:

- Where the proximity of an open fireplace would make a detector impracticable,
- Where the cost of installing detectors would be prohibitive (this is more likely to be due to the cost of structural alterations necessary to install detectors rather than the cost of the detectors themselves)
- Where the landlord intends to install detectors within a reasonable timescale as part of a programme of upgrading property.

5. Landlords are entitled to rely on professional advice from qualified electricians on their compliance with the standards in building regulations.

6. Landlords should note that building standards were amended from 1 October 2010, and revised technical guidance has been issued by Building Standards Division (Technical Handbooks 2013: – Domestic – Fire, <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubtech/th2013dom2>).

7. The revised Domestic Technical Handbook guidance 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.

8. When the Repairing Standard was introduced (3 September 2007) the building standards regulations required that there should be one or more than one functioning smoke alarm installed in the house, the number and position of alarms to be determined by the size and layout of the house. There was normally to be at least one smoke alarm on each floor. If there were multiple alarms, they should be interlinked. A smoke alarm installed from 3 September 2007 onwards had to be mains powered with a standby power supply. Note that the manufacturer's recommended life span of a fire alarm is usually 5-10 years and all battery-powered fire alarms in private rented houses should hardwired when they are replaced.

9. If there is a requirement for the house to meet a more stringent standard of provision for detecting and giving warning of fire (for example, in a house in multiple occupation (HMO) requiring to be licensed, or under building regulations), then the Repairing Standard criterion is only to be regarded as met if that requirement is met. An alarm should be installed in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Domestic Technical Handbook guidance under Standard 2.11 Communication. The fitting of a hardwired smoke/heat alarm system may require a building warrant and landlords should consult the Building Standards department of the local authority.

10. The Repairing Standard was amended by the Housing (Scotland) Act 2014 to include a requirement that privately rented properties must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health - these requirements are set out in separate Scottish Government guidance.

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\* Text amended September 2014. Building regulations were updated in May 2014 and the word "every" was replaced by "the" in clause 2.11.1 of the technical handbook. See <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/techbooks/techhandbooks/therrt14>.

The need for carbon monoxide detection applies to any fixed combustion appliance in the dwelling or in an inter-connected space, for example, an integral garage.

11. Landlords should ensure that smoke and heat alarms are regularly maintained in accordance with the manufacturer's recommendations.

12. It is recommended as good practice that landlords advise tenants to test alarms on a weekly basis. It is also recommended that landlords should advise tenants not to tamper with alarms.

13. The risk of fire can be reduced by ensuring the electrical installations and appliances are safe. It is also part of the Repairing Standard that the installations in the house for the supply of electricity and any appliances provided by the landlord are in a reasonable state of repair and in proper working order. Separate Scottish Government guidance outlines the duty on private landlords to carry out electrical installation inspections, including fixtures, fittings and any appliances provided by the landlord at least every five years. Landlords may also wish to provide advice for tenants on ensuring the safety of any appliances brought into the house by the tenants.

14. Before a tenancy commences, landlords should:

- Carry out an inspection check to confirm that the house meets the repairing standard (required by section 19 of the Housing Scotland Act 2006),
- Provide a new tenant with a copy of a gas safety certificate (required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998).
- Provide a new tenant with a copy of an Electrical Installation Condition Report or an Electrical Safety Certificate.
- Provide a new tenant with a copy of a valid energy performance certificate (required by the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012).

15. The Scottish Fire and Rescue Service (SFRS) offer free home (i.e. domestic premises) fire safety visits (HFSVs) comprising an assessment of fire risk within the home at that time and the provision of advice on preventing fires, avoiding fire spread and formulating an escape plan in event of fire. Additionally, SFRS staff may on occasion, if available and appropriate, fit long life battery operated smoke and heat alarm(s). Note that a HFSV is neither a substitute for responsible persons complying with their specific legal obligations under the Fire (Scotland) Act 2005 nor does it signify compliance by persons with any other legislative requirement or standard. To arrange a free Home Fire Safety Visit: call 0800 0731 999; or visit [www.firescotland.gov.uk](http://www.firescotland.gov.uk).

27 November 2013

( Revised November 2016 )