

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/RT/17/12

Title Number: ANG48154

**33 Woodlands Gardens, Abercrombie Street, Broughty Ferry, Dundee, DD5
2ST ("The Property")**

The Parties:-

**DUNDEE CITY COUNCIL, 3 City Square, Dundee, DD1 3BA (represented by Mr
Lindsay Watson of Dundee City Council) ("the Third Party Applicant")**

**AMANDA FLEMING residing at 33 Woodlands Gardens, Abercrombie Street,
Broughty Ferry, Dundee, DD4 2ST ("the Tenant")**

**KELVIN RIVER PROPERTY ESTATES LIMITED a company incorporated under
the Companies Acts (Registered Number SC496000) and having its Registered
Office at 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ
(represented by their agent Ms Hazel Young of Rockford Properties) ("the
Landlords")**

Whereas in terms of their decision dated 7 March 2017 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlords 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 Landlords have failed to ensure that:-

- (a) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (c) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;

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:-

- (a) to replace the oven within the Property;
- (b) to provide a working tumble dryer to the Tenant (unless the Tenant confirms in writing that she does not so require a tumble dryer)
- (c) to replace the lounge window and to carry out works of repair or replacement to the remaining windows within the Property to bring them up to the repairing standard
- (d) to replace the kitchen units, worktops, drawers and cupboards in the kitchen

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 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 Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 7 March 2017 before this witness:-

L Johnston

— witness

E Miller

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

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/RT/17/12

**33 Woodlands Gardens, Abercrombie Street, Broughty Ferry, Dundee, DD5 2ST
("The Property")**

The Parties:-

DUNDEE CITY COUNCIL, 3 City Square, Dundee, DD1 3BA (represented by Mr Lindsay Watson of the Private Sector Unit, Dundee City Council) ("the Third Party Applicant")

AMANDA FLEMING residing at 33 Woodlands Gardens, Abercrombie Street, Broughty Ferry, Dundee, DD4 2ST ("the Tenant")

KELVIN RIVER PROPERTY ESTATES LIMITED a company incorporated under the Companies Acts (Registered Number SC496000) and having its Registered Office at 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (represented by their agent Ms Hazel Young of Rockford Properties) ("the Landlords")

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 Landlords has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlords at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application dated 4th January 2017 the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the house met the repairing standard and in particular that the Landlords had failed to ensure that:-**
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;**
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;**

- (c) 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;
- (d) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
3. By letter dated 30th January 2017 the President 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 both the Landlords and the Tenant.
 5. Following service of the Notice of Referral neither party made material written representations to the Tribunal.
 6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr Harry Maclean, Ordinary Member) inspected the Property on the morning of 28th February 2017. The Tenant was not present but had arranged for a friend to give access to the Tribunal. Mr Lindsay Watson of the Third Party Applicant was present as was Ms Hazel Young of the Landlords' agent.
 7. Following the inspection of the Property the Tribunal held a Hearing at Caledonian House, Greenmarket, Dundee. The Landlord was represented by Ms Hazel Young and Ms Natalie Robertson of Rockford Properties. The Tenant was not present. Mr Watson of the Third Party Applicant was present.
 8. The Tenant had submitted in her application that there were a number of issues which had failed to be addressed by the Landlord. These primarily centred around the kitchen and some of the appliances within it, together with the windows at the Property.
 9. The Landlord had submitted prior to the inspection and hearing that they were considering selling the Property and also that they had insufficient funds to pay for repairs to be carried out. However on the day of the inspection the Landlord's agent indicated that the Landlord did accept works were required and did intend to carry out any necessary works.

Summary of the issues

10. The issues to be determined were:-

- (1) Whether the oven was in proper working order and met the repairing standard.
- (2) Whether the tumble dryer was in proper working order and met the repairing standard.
- (3) Whether the windows at the Property met the repairing standard.
- (4) Whether the kitchen units, doors, drawers and worktops met the repairing standard.

Findings of fact

11. The Tribunal found the following facts to be established:-

- It was not possible to determine whether the oven and tumble dryer were in proper working order as at the date of the inspection.
- The windows did not meet the repairing standard in a number of different respects.
- The kitchen doors, drawers, units and worktops did not meet the repairing standard.

Reasons for the decision

12. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection.

The Tribunal first inspected the oven. It was dated and in relatively poor condition although the oven and grill did appear to be working. In any event the Committee noted that it was an integral unit and that as the Landlord was to be replacing the kitchen units surrounding it, this would mean the oven would also require to be replaced. On that basis the Tribunal was satisfied that it was appropriate for the oven to be replaced.

The tumble dryer at the Property had been removed and was located outside in the hall. Accordingly the tumble dryer could not be tested. The agents indicated that that Landlord was happy to provide a new tumble dryer. The Tribunal was of the view that the Tenant should be provided with a working tumble dryer and would make an order on that basis. However if it was now the case that the Tenant did not require to be provided with a replacement then the Tribunal would, upon confirmation of this from the Tenant, be happy to remove this element from the RSEO.

The Tribunal inspected the kitchen units. These were in poor order. A number of doors had been missing. The worktops were in poor condition and the edges were blown around the sink areas and could not be cleaned hygienically. A number of the drawers were defective and not capable of being opened and closed properly. It was apparent that a number of previous repairs had been carried out to the extent that there were now limited areas where new screws could be inserted to support doors and cupboards. The Tribunal was of the view that the overall standard of the kitchen units did not meet the repairing standard. The Tribunal considered whether an order to repair or replace should be given. On balance, the Tribunal felt the underlying condition of the units was sufficiently poor that they were now beyond economic repair and that the appropriate action to take was for replacement of all of the kitchen units, worktops, drawers etc.

The Tribunal inspected the windows in the Property. The poorest window was in the lounge where it was apparent that the rubber seal around the window was defective, there was a missing handle and the panes of glass had blown and were severely misted and difficult to see out of. The Tribunal was satisfied that the lounge window required to be replaced as it was beyond meaningful repair. The other windows in the Property were dated and required more minor repairs in relation to handles and seals. These windows were capable of repair or replacement to bring them up to the repairing standard and the Tribunal was satisfied it was for the Landlord to determine which route they wished to go down. The Tribunal did note, however, that these other units were becoming dated and towards the end of their

economic life and it may therefore be a more sensible decision of the Landlords to simply replace them. This was, however, ultimately a decision for the Landlords.

The Tribunal considered the period to give the Landlords to carry out the works. The Landlords' agents had been helpful during the course of the inspection and had indicated at an early stage that the Landlords now accepted that the windows and kitchen units did not meet the repairing standard and were going to replace the kitchen and windows. The agents thought a month would probably be sufficient. The Tribunal was of the view that it would be prudent to give a slightly longer period of 6 weeks to ensure that all works were done within the relevant timescale.

A schedule of photographs taken at the inspection is annexed for information.

Decision

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

Right of Appeal

16. 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.

Effect of section 63

17. 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.

Signed **E Miller** ..

Date 7 / 3 / 17

Chairperson

*This is the schedule of photographs offered to in the preceding session of the
Tribunal dated 7/3/17*



Kitchen base units – missing doors



Kitchen units -- missing doors. Loose and defective drawers.



Kitchen worktops – de-laminating – beyond economic repair



Zanussi electric fan oven



Fan oven – model type



Sitting room window - failed double glazing seals and missing broken handle



Front elevation – first floor - sitting room and kitchen windows



Side elevation – Bedroom 1 window



Side elevation – Bedroom 2 window

E Miller