

# 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 26 (“the Act”)**

**Chamber Ref: FTS/HPC/RP/17/0078**

**Title no/Sasines Description: REN112837**

**4B Woodbank Crescent, Johnstone, PA5 8ER**

**(“the House”)**

**The Parties: -**

**Ms Leeanne Reilly, 4B Woodbank Crescent, Johnstone, PA5 8ER**

**(“the Tenant”)**

**(represented by her agent Ms Claire Strong, Shelter Scotland, 10 Falcon Crescent, Ferguslie, Paisley PA3 1NS)**

**(“the Tenant’s Representative”)**

**Mr Alan Hayes, 4 Ollach, Erskine, PA8 7 EU**

**(“the Landlord”)**

**Tribunal Members**

**Susan Christie (Legal Member/Chairperson)**

**Lori Charles (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 Repairing Standard Enforcement Order (“RSEO”) dated 9 May 2017, in terms of Section 26(1) of the Act and taking account of all of the available evidence, determines that the Landlord has failed to comply with the RSEO. The Tribunal determined that a Notice of that failure should be served on the local authority in whose area the House is situated in terms of Section 26(2)(a) of the

Act. The Tribunal also determined that a Rent Relief Order under Section 27 should be made. The decision of the Tribunal is unanimous.

## **Background**

1. By application received on 6 March 2017 the Tenant's Representative on behalf of 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. An Inspection and Hearing took place on 3 May 2017 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Act, as the Landlord had failed to ensure that the House met the repairing standard in terms of Section 13(1) (a), (c),(d),and (f) of the Act and then imposed a Repairing Standard Enforcement Order ("RSEO ").Reference is made to the Decision of the Tribunal and RSEO both dated 9 May 2017 which were issued to the Parties on 19 May 2017.
2. The RSEO required the Landlord to undertake works as were necessary for the purposes of ensuring that the House concerned met the repairing standard and that any damage caused by the carrying out of work in terms of the said Order was made good.
3. In particular, the Tribunal required the Landlord to: -
  - (a) To investigate the cause of dampness in the main bedroom gable wall near to the windowsill and to repair as necessary to ensure that all dampness is eradicated, and that the House is wind and watertight and in all other respects reasonably fit for human habitation.
  - (b) To install sufficient smoke alarms and heat detector that are mains wired and interlinked and otherwise comply with the relevant fire legislation and to produce to the Tribunal such documentation evidencing same.
  - (c) To refit a bedroom door between the lounge and the second bedroom.
  - (d) To instruct a suitably competent qualified electrician (such as NICEIC, SELECT or NAPIT registered) to inspect, test and thereafter repair, renew or upgrade the electric lighting and wall

sockets in the kitchen to ensure that they are in a reasonable state of repair and in proper working order.

- (e) To exhibit an Electrical Installation Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the House is satisfactory in all respects.
- (f) To repair or replace the bath waste pipe to allow for the free egress of water and so that it is in a reasonable state of repair and in proper working order.
- (g) To replace the missing section of skirting in the kitchen under the worktop and repair the surrounding plasterwork.
- (h) To instruct a suitably qualified pest control contractor to eradicate any vermin issue within the House and to produce to the Tribunal a copy of the Report and any works carried out at conclusion of any action taken.
- (i) To commission and produce to the Tribunal a Gas Safety Report for the House from a suitably qualified Gas Safe registered engineer in which the overall assessment of the gas installations in the House is safe in all respects.

The Tribunal ordered that the works specified in the Order be carried out and completed within 28 days from the date of service of the Notice.

### **Re-Inspection and Reasons for Decision**

- 4. A re-inspection of the House took place on 11 August 2017 attended by the Ordinary Member of the Tribunal. A copy of the Re-Inspection Report was issued to the Parties on 23 August 2017 with responses required by 6 September 2017.
- 5. The re-inspection revealed that work required under parts (a)-(d), (f) and (g) had been carried out in part implementation of the Order. However, the Landlord had not produced or made available to the Tribunal the Electrical Installation Report including Portable Testing (PAT), a Report from a suitably qualified pest control contractor and a Gas Safety Report which were also required under parts (e), (h) and (i) of the said RSEO. This in turn cast doubt over whether the work carried out under parts (b) and (d) were completed in line with the requirements of the RSEO.

6. On 29 August 2017 the Tenant's Representative made a representation agreeing with the findings of the Report and stated: that a company called Eon had carried out a gas safety check on the House as part of cladding works carried out on the building, but no certificate was issued, and she had no correspondence from the Landlord; that a Rent Relief Order was sought to the extent of 45%; and that a Hearing was not requested.
7. On 24 September 2017 the Landlord corresponded with the Tribunal office to state he was unable to meet the deadline for submission of documents but that he now had all necessary proof to bring the matter to a close. He requested a further 7 days to provide the Tribunal with the Certificates required.
8. On 2 October 2017 correspondence was received from the Tenant's Representative indicating that the Landlord's application for registration in Renfrewshire as a landlord with Renfrewshire Council's Licensing Section had been removed at a meeting of the Regulatory Functions Board on 20 September 2017.
9. Due to an administrative error the parties were not issued with further correspondence from the Tribunal until 31 October 2017. On or around that date the Parties were advised that the Tribunal would defer making a further formal decision in the case for 7 days during which the original paperwork should be submitted by the Landlord to the clerk of the Tribunal; all paperwork submitted to comply with the terms and requirements of the RSEO. The Landlord was therefore due to respond by 7 November 2017.
10. No documentation was submitted by the Landlord thereafter. The Landlord corresponded on 3 November 2017 to observe that he had not been given much time from the date of issue of the Tribunal's correspondence. He further stated he had been removed from landlord registration.
11. The period within which the RSEO required the work to be completed ended and despite the Landlord suggesting that he had documentation to produce that would satisfy the terms of the RSEO, it was never in fact submitted. This is despite there having been ample time to do so to date and him having been issued with correspondence providing him with the opportunity to do so. In addition, no further information was submitted by him for consideration by the Tribunal which would justify affording the Landlord further time and opportunity to comply fully with the RSEO. Accordingly, the Tribunal determined that a failure to comply was appropriate. The Tribunal determined

that notice of that failure be served upon the local authority in whose area the House is situated.

12. The Tribunal considers that a Rent Relief Order is appropriate as the Landlord's failure to comply with the RSEO by exhibiting an Electrical Installation Report including Portable Testing (PAT), and a Gas Safety Report which were required under parts (e) and (i) of the said RSEO directly impact upon the Tenant's safety. The Tribunal considers the safety of a tenant to be paramount and a landlord has obligations which directly relate to electricity and gas installations. A Report from a suitably qualified pest control contractor has not been produced either. The Tenant's enjoyment of the House has been diminished. Accordingly, the Tribunal considers the rent payable under the tenancy should be reduced by 45% and the Tribunal proceeded to make an Order to that effect.

13. The Tribunal proceeded to serve a Notice on the local authority.

14. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence.

### **Finding in fact**

15. The Landlord has failed to comply with the RSEO of 9 May 2017 with particular reference to parts (e), (h) and (i) of the said RSEO.

### **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 26 November 2017

Susan Christie, Legal Member

Glasgow, 26 November 2017

This is the Re Inspection Report referred to in the Statement of Decision of even date herof under Chamber Reference FTS/HPC/RP 17/0078

Re-inspection Report

*Legal Member*

11 August 2017 at 10.00am



4B Woodbank Crescent

Johnstone

PA5 8ER

FTS/HPC/RP/17/0078

Weather windy/light rain

Summary

The property was first inspected on 3 May 2017 by the Tribunal.

A re-inspection was carried out on Friday 11 August 2017 in attendance were the tenant Leeanne Reilly and Claire Strong Advice Worker Shelter Scotland. The landlord was not present.

Work required under Repairing Standard Enforcement Order (RSEO):-

- (a) To investigate the cause of dampness in the main bedroom gable wall near to the windowsill and to repair as necessary to ensure that all dampness is eradicated and that the property is wind and watertight and in all other respects reasonably fit for human habitation.

- (b) To install sufficient smoke alarms and heat detector that are mains wired and interlinked and otherwise comply with the relevant fire legislation and to produce to the Tribunal such documentation evidencing same.
- (c) To refit a bedroom door between the lounge and the second bedroom.
- (d) To instruct a suitably competent qualified electrician (such as NICEIC, SELECT or NAPIT registered) to inspect, test and thereafter repair, renew or upgrade the electric lighting and wall sockets in the kitchen to ensure that they are in a reasonable state of repair and in proper working order.
- (e) To exhibit an Electrical Installation Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the property is satisfactory in all respects.
- (f) To repair or replace the bath waste pipe to allow for the free egress of water and so that it is in a reasonable state of repair and in proper working order.
- (g) To replace the missing section of skirting in the kitchen under the worktop and repair the surrounding plasterwork.
- (h) To instruct a suitably qualified pest control contractor to eradicate any vermin issue within the property and to produce to the Tribunal a copy of the Report and any works carried out at conclusion of any action taken.
- (i) To commission and produce to the Tribunal a Gas Safety Report for the property from a suitably qualified Gas Safe registered engineer in which the overall assessment of the gas installations in the property is safe in all respects.
- (j) On completion of all the above works, to restore all affected finishes and decoration.

### Inspection

Kitchen – Ceiling lights have been replaced with new LED downlights all in working order



Skirting boards under kitchen worktop have been replaced and made good.



Double power socket in kitchen tested and both sockets are in working order.

The tenant advised no pest control contractor had been instructed to carry out any inspection/works to the property. The tenant also advised that there were no other signs or sightings of mice within the property.

Bathroom – Ceiling lights have been replaced with new LED downlights all in working order



Bath water draining freely



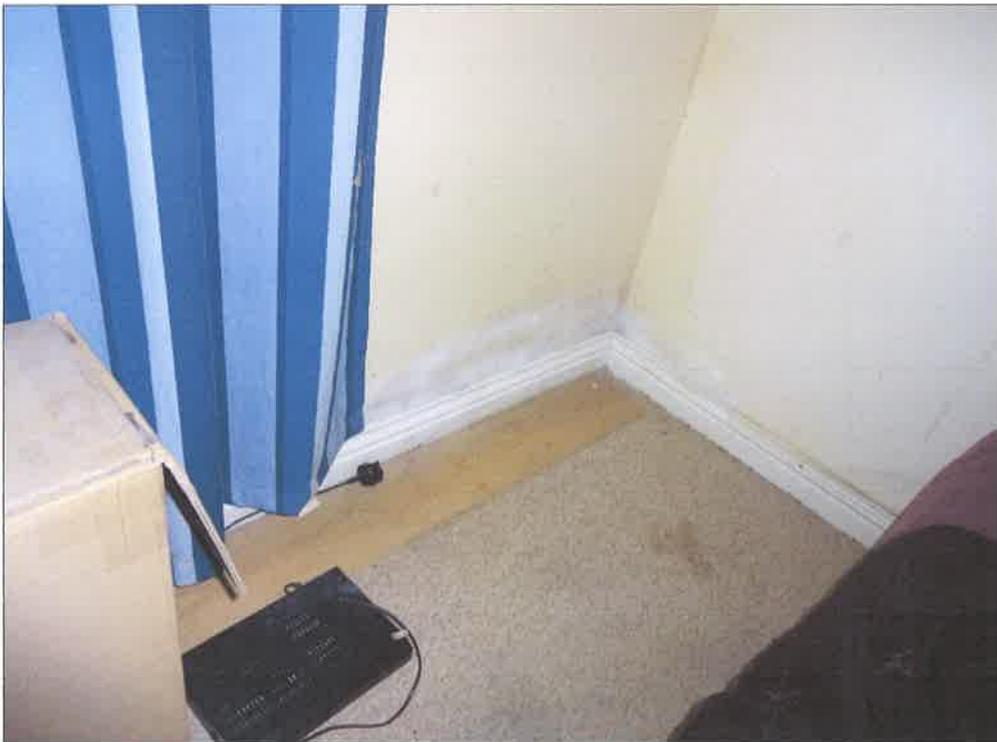
**Bedroom 2 – New door fitted**



Power socket repaired



Bedroom 1 – No signs of high moisture readings on any wall



The property has recently been fitted with External Wall Insulation and the damp area identified 1meter from floor level during the first inspection is now well within the normal range.



The property has now been fitted with a satisfactory provision for detecting fire and giving warning in the event of fire or suspected fire.



The following items are still outstanding and are required to be submitted to the tribunal by the landlord

- 1) Provide Electrical Installation Condition Report (EICR)
- 2) Provide Gas Safety Report
- 3) Provide Pest Control report

Signed *Lori Charles*

Surveyor-Ordinary Member

First- tier Tribunal (Housing and Property Chamber)

Date 11 August 2017