

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/19/1773

**Property at 3 Union Road, Grangmouth, FK3 8AB
Land Register Title No. STG33252
("The Property")**

The Parties:-

**Falkirk Council, Suite 1 The Forum, Callendar Business Park, Falkirk, FK1 1RX
("the Third Party Applicant")**

**Miss Charlene Clark, 3 Union Road, Grangmouth, FK3 8AB
("the Tenant")**

**Mr Patrick Gillooly, 10 Grahamdyke Road, Bo'Ness, EH51 9EG
("the Landlord")**

Whereas in terms of their decision dated 20 August 2019, 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 structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the Landlord:-

- (a) To deliver to the tribunal, for approval, a specialist report from a suitably qualified contractor which (i) addresses the construction detail of the drain serving the veranda of the Property, (ii) comments on whether the drain is in a reasonable state of repair and proper working order and, (iii) if not in a reasonable state of repair and not in proper working order, narrates the works required to put it into that state including the provision of a drain cover.
- (b) Once a satisfactory report conforming to the terms of paragraph (a) above has been approved by the tribunal, to carry out such work as is recommended in terms of the report provided the tribunal first confirms its approval of the works specified.

- (c) To repair or replace the skirting board in the lounge and running beneath the window and glazed door to the veranda to include removing the existing sealant and re-sealing.
- (d) To repair or replace the lounge window and glazed door adjacent to the veranda to ensure that they are in a reasonable state of repair and in proper working order, are wind and watertight and capable of being unlocked, opened, closed and locked properly;
- (e) To repair or replace the kitchen window to ensure that the window is in a reasonable state of repair and in proper working order, is watertight and capable of being unlocked, opened, closed and locked properly; and
- (f) To repair and redecorate those areas of plaster work damaged around the front door.

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 type written on this and the two preceding pages are executed by Miss Gillian Buchanan, Solicitor, 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT, Chairperson of the tribunal at Dundee on 20 August 2019 before this witness:-

J Lynch

G Buchanan

_____ witness

_____ Legal Member

U JENNI LYNCH

name in full

40 THORNTONS LAW LLP
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Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RT/19/1773

**Property at 3 Union Road, Grangmouth, FK3 8AB
Land Register Title No. STG33252
("The Property")**

The Parties:-

**Falkirk Council, Suite 1 The Forum, Callendar Business Park, Falkirk, FK1 1RX
("the Third Party Applicant")**

**Miss Charlene Clark, 3 Union Road, Grangmouth, FK3 8AB
("the Tenant")**

**Mr Patrick Gillooly, 10 Grahamdyke Road, Bo'Ness, EH51 9EG
("the Landlord")**

**Represented by Mr Blair Miller, Mam Property Investment Limited, 12 Mungal Mill
Court, Falkirk, FK2 7GH
("the Landlord's Representative")**

Tribunal Members – Gillian Buchanan (Legal Member) and Nick Allan (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) in relation to the Property, and taking account of the evidence led on behalf of the Landlord at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received on 7 June 2019 the Third Party Applicant 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").
2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

3. By letter dated 17 June 2019 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. By email dated 25 June 2019, the Third Party Applicant advised the tribunal that the Landlord's Representative had intimated that all repairs outlined in the application had been completed and appended to the email an Electrical Installation Condition Report ("EICR") dated 11 June 2019 and photographs. The Third Party Applicant requested that the application be withdrawn. The tribunal considered the Third Party Applicant's withdrawal request and determined that the application would continue in terms of Schedule 2, paragraph 7(3) of the Act. The tribunal therefore issued a Minute of Continuation to the parties dated 2 July 2019.
5. On 3 July 2019 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Third Party Applicant, the Landlord, the Landlord's representative and the Tenant.
6. Following service of the Notice of Referral the Landlord's Representative by response dated 9 July 2019 made written representations to the tribunal. The representations stated that the issues raised in the application had been attended to and confirmed with the Tenant. The representations also stated that if there are any issues which the Landlord's Representative is unaware of he will investigate.
7. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Nick Allan, Ordinary Member, inspected the Property on the morning of 13 August 2019. The Landlord's Representative attended the inspection. The Tenant was in attendance and gave access. Neither the Landlord nor the Third Party Applicant was present or represented. Photographs were taken and are contained in the attached Schedule.
8. Following the inspection of the Property the tribunal held a hearing at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP and heard from the Landlord's Representative. The Landlord was not present. The Tenant and the Third Party were neither present nor represented.
9. The Landlord's Representative submitted as follows:-
 - (a) Veranda – When the Landlord's Representative first visited the Property with regard to this complaint earlier in 2019 the water level in the veranda was up to the height of the step. He concluded the communal drain running from the veranda downwards and out through the garage was blocked and asked the Third Party Applicant to clear the drain. Operatives appointed by the Third Party Applicant attended and rodded the drain in March 2019. The water dissipated. The Landlord and other proprietors of the block of flats of which the Property forms part were invoiced by the Third Party Applicant for their proportionate share of the cost of the drainage clearance and the tribunal was shown a copy of that invoice.

The Landlord's Representative stated that the water presently sitting in the drain of the veranda was entirely normal and that that he was 100% certain the drain was not blocked. He confirmed he was happy to have a plumber have another look and to reinstate the drain cover which was missing.

- (b) Lounge Window – The Landlord’s Representative did not accept that any water is leaking in the lounge window which he said is set back from the front of the Property. He considered any water marks to be associated with condensation.
- (c) Bedroom Window – The Landlord’s Representative submitted that the bedroom window was properly sealed and not leaking.
- (d) Kitchen Window – The Landlord’s Representative accepted that the kitchen window did not operate correctly.
- (e) EICR – The Landlord’s Representative submitted that an EICR in acceptable terms had now been submitted to the tribunal.
- (f) Front Door – The Landlord’s Representative submitted that the front door had been replaced and that the contractor ought to have returned to complete the outstanding areas of redecoration required around the new door.

Summary of the issues

10. The issues to be determined are:-

- (a) Whether the drain of the veranda is blocked and in need of repair.
- (b) Whether the windows are wind and watertight, in a reasonable state of repair and in proper working order.
- (c) Whether the front door is in a reasonable state of repair and in proper working order.
- (d) Whether a satisfactory EICR has been produced.

Findings of fact

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

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the Tenant became the tenant of the Property in around March 2013.
- (c) That the drain serving the veranda of the Property is not in a reasonable state of repair and in proper working order.
- (d) That the lounge and kitchen windows are not in a reasonable state of repair and in proper working order.
- (e) That the bedroom window is in a reasonable state of repair and in proper working order.
- (f) That the front door has been replaced and is now in a reasonable state of repair and in proper working order.
- (g) That a satisfactory EICR has been produced being the EICR signed by D Bennet of A.E.S dated 11 June 2019.

Reasons for the decision

12. The tribunal attended at the Property on 13 August 2019. It was sunny and dry during the inspection. Weather conditions in the days preceding the inspection had been wet from time to time.

The Property is located in central Grangemouth and is a first floor flat within a three storey block of flats. The front elevation faces and the common close is entered from Union Road. To the rear of the block are a series of garages at ground floor level.

The Property was furnished and occupied.

The tribunal inspected the Property and considered the alleged defects.

Veranda

The veranda is accessed through a glazed door in the lounge. Whilst the tribunal could see the veranda from the lounge window access onto the veranda was impossible due to a substantial corner sofa obstructing the glazed door which opens inwards into the lounge. The Tenant moved the sofa only enough to allow the glazed door to be opened by a few inches. The veranda itself was clear and dry. A rhone situated towards the front and west side of the of the veranda discharges water from the veranda of the flat above onto the veranda itself and that water then flows into a drain situated generally beneath the rhone. At the time of the tribunal's inspection water was lying in the drain to the extent that the drain looked almost full and the tribunal was concerned that the water was not discharging freely through the drain as ought to be the case. The tribunal was unable to establish to where the drain discharged. The Landlord's Representative suggested the drain discharged the water through the garage and to the rear of the Property. The drain cover was also missing. The tribunal was not satisfied that the drain is in a reasonable state of repair and in proper working order.

Lounge Window

The skirting board running beneath the glazed windows and glazed door in the lounge immediately adjacent to the veranda has detached from the wall and the gap has been very poorly filled with sealant. Damp readings were taken and found to be at 15%. The tribunal was not satisfied that the issues with the skirting board were being caused by condensation as the Landlord's Representative suggested as opposed to water ponding on the veranda and finding its way into the Property. The Tribunal was not satisfied that the lounge window is in a reasonable state of repair.

Bedroom Window

The Tribunal inspected the window in the bedroom about which the Tenant complained. She told the tribunal that water was coming in. The tribunal found no evidence of dampness or water staining around the window which was properly sealed and operated correctly. The tribunal was satisfied that the bedroom window met the repairing standard.

Kitchen Window

The kitchen window did not open correctly as it would not stay open and similarly the window did not close and lock correctly. The kitchen window is not in a reasonable state of repair or in proper working order and it therefore does not meet the repairing standard.

The Tenant stated to the tribunal that she had no issues with any other window in the Property.

Front Door

The tribunal noted that a new front door had been installed which is wind and water tight and operates correctly. However, the Tribunal observed that some reinstatement works are required around the front door to make good the plaster work and decoration.

EICR

In advance of the tribunal inspecting the Property, it had received a fresh EICR dated 11 June 2019 which is in satisfactory terms and on inspection the tribunal observed the new consumer unit which had been installed.

Observation

13. The tribunal observed that the bathroom ceiling light fitting is not appropriate. Any ceiling light fitting in a bathroom should be a sealed unit and therefore the fitting is in need of urgent replacement in the interests of safety.

Decision

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

Right of Appeal

17. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Effect of section 63

18. **Where such an appeal is made, the effect of the decision and of 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/**

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.

G Buchanan

Signed ..

Date 20 August 2019

Legal Member



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



**Photograph Schedule
Flatted property, 3 Union Road, Grangemouth, FK3 8AB**

Case Reference: FTS/HPC/RT/19/1773

Date of inspection: 13/08/2019

Time of inspection: 10.30 am

Weather conditions: Dry and sunny

Present: Miss Gillian Buchanan – Legal Member
Mr Nick Allan – Ordinary Member
Miss Charlene Clark – Tenant
Mr Blair Miller – Managing Agent



Photo 1 – Front elevation



Photo 2 – Damaged facing at balcony door



Photo 3 – Defective sealant on frame



Photo 4 – Smoke alarm in living room



Photo 5 – Heat sensor in kitchen



Photo 6 – Smoke alarm in hallway



Photo 7 – New consumer unit



Photo 8 – New door installation damage



Photo 9 – New door installation damage



Photo 10 – Bathroom light fitting



Photo 11 – Rear elevation

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
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