

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/RP/17/0394

Title no: ANG58388

Flat 2R (2F) 33 Arklay Street, Dundee DD3 7LJ (“The House”)

The Parties:-

- **Miss Agnieszka Lukaszuk, Flat 2R (2F) 33 Arklay Street, Dundee DD3 7LJ (“the Tenant”)**
- **Mr Paul Goodman, Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Landlord”)**

Whereas in terms of their decision dated 1st June 2018 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: -

- (a) that the installations in the house for the supply of water, gas and electricity, for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- (b) That 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 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 boiler with a new boiler and ensure that the new boiler is fully working with all the appropriate certification.
- (b) To instruct a plumber to investigate reason for the water not mixing in the shower and for that fault then to be fixed to ensure that the shower is in proper working order.
- (c) To replace and make good the tiles on the bathroom wall which are broken with shrapnel edges located between the bath and the sink.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months 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 type written on this and the preceding pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Dundee on 1st June 2018 in the presence of the undernoted witness: ^M
G Miller

S O'Connor

witness

chairperson

SINEAD O'CONNOR name in full

132-134 SEAGATE Address

DUNDEE

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/17/0394

Title no: ANG58388

Flat 2R (2F) 33 Arklay Street, Dundee DD3 7LJ (“The House”)

The Parties:-

- **Miss Agnieszka Lukaszuk, Flat 2R (2F) 33 Arklay Street, Dundee DD3 7LJ (“the Tenant”)**
- **Mr Paul Goodman, Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Landlord”)**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Ms Debbie Scott - Ordinary Member

Decision

1. 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 House and taking account of the evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application received 18th October 2017, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by Tenant stated that she considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that the installations in the House for the supply of the water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order. In particular, the complaints consisted of:-
 - a) The shower is broken insofar as the water is not mixing but remaining either hot or cold,
 - b) The boiler needs restarting regularly,
 - c) There are broken tiles in the bathroom,
 - d) Rusty and leaking radiator in bedroom.
4. Though the Tenant had not specifically ticked the box for section 13(1)(c) we accepted that she had referenced points within the application form to indicate that she considered the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant dated 29th November 2018.
6. A hearing date was initially fixed for 12th January 2018 but was postponed to 2nd March 2018 due to illness of a Tribunal member. The hearing on 2nd March 2018 was postponed until 11th May 2018 due to adverse weather conditions.

The Inspection

7. The Tribunal attended the House on the morning of 11th May 2018. Only the Tenant was present. The Tribunal waited outside the House until 10.15 to allow time for the Landlord to arrive. The Tribunal was let into the property by the Tenant thereafter. It was clear, dry and of moderate temperature on the day of the inspection.
8. The House is a third floor flat in a three-storey tenement located in an urban setting within Dundee. The accommodation comprises of a living room, a bedroom, bathroom and kitchen. Access to the House is via stone close and stone stair with an entry system at the main door to the tenement building. There are five other similar flats in the block.
9. The hall was inspected first. The consumer unit (fuse box) was looked at and appeared to be in order.
10. The bedroom was inspected next. The radiator in the bedroom had been replaced with a new one.

11. The living room was inspected next. There was a gas fire in the living room. This was separate from the boiler. The gas fire was not listed within the gas safety certificate. The Tenant informed the Tribunal that she has been told not to use the gas fire. There was a wired smoke detector in the living room which was tested and appeared to be operational.
12. The kitchen was inspected next. The kitchen included a large walk in cupboard that housed the boiler. The Tribunal observed that the ventilation fan was not fully fixed to the wall and hanging off, that there was a smoke and heat detector and that the hob had two broken knobs. This limited cooking to two of the gas rings on the hob. The Tenant needed to use a lighter to ignite the gas rings. There was a gas central heating boiler located within the kitchen walk-in cupboard. The tenant demonstrated to the Tribunal how the boiler functions at the inspection. The boiler required to be restarted, at the time it was noted that the boiler started after several attempts. The Tenant informed the Tribunal that a new pump was installed to improve the pressure within the system. The boiler requires to be restarted each day as noted by the tenant. The boiler appears to be over 30 years old as noted by the inspection dates on the boiler. Underneath the boiler there was a large pad such as would be used for puppy training. It has brown staining on it that looked as though water had dripped on it. The marks did not look fresh.
13. The bathroom was inspected next. The bathroom consisted of a three-piece bathroom suite. The shower was located over the bath with a mixer tap. The functionality of the shower was tested it was noted that the water either runs cold or boiling hot, unable to gain a reasonable temperature at the time of inspection. There are sharp and broken tiles fixed to the wall within the bathroom underneath the sink adjacent to the bath.
14. It was noted that there was no carbon monoxide detector in the House.
15. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place at Kirkton Community Centre, Derwent Avenue, Dundee. The Tenant and Landlord were present.
18. The House was discussed room by room.
19. It was noted that the electrical consumer unit was in the hall. Neither party had issues arising from this.

20. The bedroom was discussed first. The radiator had been replaced in September 2017 (invoice date 28th September 2017). Both parties were in agreement that the issues were now resolved with regard to the radiator.
21. The living room was discussed next. The Ordinary Member raised that the gas fire was not included in the gas safety certificate. The Landlord informed the Tribunal that it had been capped and had been since he purchased the House approximately 5 years ago. The Landlord informed the Tribunal that the gas fire has not been mentioned in any of the previous gas safety certificates.
22. The kitchen was discussed next. The Ordinary Member noted that the hob was not fully functioning. The two left gas rings did not work and the two right gas rings needed to be ignited with a lighter rather than with the starter on the hob. The Tenant demonstrated this to the Tribunal. The gas safety certificate noted that the hob was faulty but did not say that it was not working. The Landlord noted the faults with the hob. The boiler was discussed next with the Ordinary Member narrating that the boiler was not lit and the Tenant demonstrated lighting it before the Tribunal. It needed to have several attempts before the Tenant managed to light it. The Landlord advised the Tribunal that he had recently had a pump installed with the aim of improving the pressure of the system. The pump had cost £480. He was aware that it was an old boiler. He had offered to replace the boiler through the Green Deal Scheme. He believed that this would cost him between £1200 - £1300. He had the pump installed on the recommendation of the gas engineer who serviced the boiler. The Tenant advised that she had been reluctant to allow the boiler to be replaced as she did not want to be without heating in winter for a week. The heating had failed on 11th December 2017. She had reported this to the Landlord but did not get an extra heater until 15th December 2017. She was without heating for those days and was reluctant to be without heating again. The Tenant had taken advice with regard to allowing entry for the boiler to be replaced. She had been told to refuse this as the case was going to court (Tribunal). In addition to this she had been left without accommodation when dry rot had to be treated throughout the whole tenement block and this made her reluctant to approve the boiler being replaced. The Ordinary Member raised that there was a large pad under the boiler. The Tenant confirmed that this was left over from when the pump had been installed. She was told that there would be some leaks due to the installation. She did not believe that it was continuing to leak. Both parties confirmed that discussions started in January 2018 regarding replacing the boiler. The Ordinary Member further raised that there was not a carbon monoxide alarm in the property and that the ventilation fan was hanging off its fittings. The Landlord advised that he had not been aware that he was required to have a carbon monoxide alarm. The Ordinary member stated that he did require this in his property. He noted this and advised that he will put it in his property. He noted the issue with the ventilation fan.
23. The bathroom was discussed next. Ordinary Member was narrated that the bathroom had broken tiles which were sharp and required to be

repaired. The Landlord confirmed that he has not been in the property for several years and could not confirm the state of the tiles. The Tenant confirmed that they have been like this since she moved in. The Landlord was of the view that the bathroom was habitable. The Ordinary Member raised that the shower mixer does not mix the temperature of the water. The Landlord advised that the only resolution would be to replace the boiler.

24. There was some discussion about whether PAT testing was required in the property. The Landlord was of the view that he did not provide anything other than the cooker that would need to be PAT tested. The Tenant confirmed that the washing machine and tumble dryer were in the property when she moved in. The Landlord was of the view that this belonged to the previous tenant and she used at her own risk. The Tenant advised that the Landlord had replaced the washing machine when it stopped working. The Landlord did not recall replacing the washing machine.
25. All parties were asked if they wished to make any further comment. The both parties advised that they felt that everything had been covered in the Hearing.
26. It was explained to the parties that the Tribunal had the option of making a RSEO should they believe that there was merit to do so. The Landlord asked that he be given at least 6 weeks for the boiler to be replaced should there be an RSEO because it would take 4-6 weeks for an application to be processed by the Green Deal Scheme. He raised that he had spent £700-£800 on the House in the last 6 months. He stated he would get a carbon monoxide alarm installed in the House.

Summary of the issues

27. The issues to be determined are: -
- a) Whether the shower was broken insofar as the shower mixer tap was not mixing the water temperature,
 - b) Whether the boiler needed to be restarted regularly and
 - c) Whether there were broken tiles in the bathroom and if this was a matter for the Tribunal.
 - d) Rusty and leaking radiator in bedroom

Findings of fact

28. Having considered all the evidence, the Tribunal found the following facts to be established: -
- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 30th May 2015 for a period of 6 months. It has continued by tacit relocation thereafter.

- b) The mixer tap for the shower in the bathroom does not mix the water temperature. It is either cold or very hot.
- c) There are sharp and broken tiles fixed to the wall within the bathroom underneath the sink adjacent to the bath.
- d) The radiator in the bedroom has been replaced. There are no on going issues with it.
- e) The boiler is very old and needs to have the pilot light ignited on a frequent basis. The boiler needs replaced.

Reasons for the decision

- 29. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant and the Landlord at the hearing.
- 30. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
- 31. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.
- 32. There was clear evidence the boiler was not in a proper working order. The boiler is approximately 30 years old and needs to be replaced with a new boiler. The Landlord accepted that the boiler is old and needs to be replaced.
- 33. There was clear evidence that the shower mixer tap was not in proper working order as it was not mixing the water with the water being either very hot or cold. This will need a plumber to investigate the route of the problem then fix it so that it is in proper working order.
- 34. There was clear evidence in the bathroom of tiles that are broken which are sharp and require to be repaired.
- 35. The Tenant had raised issues regarding the radiator in the bedroom. The radiator has now been replaced with both parties content that there is not an ongoing issue. We were satisfied that this matter did not require further consideration.
- 36. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
- 37. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".

38. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

39. The Tribunal would wish to point out that a Carbon dioxide detector should be provided in the property, that the hob needs to be fixed, that the ventilation fan in the kitchen was hanging off the wall and needs to be repaired. We were of the view that the gas fire in the living room should be included in the gas safety certificate. There were electrical items in the kitchen belonging to the Landlord, namely the washing machine and tumble dryer. These should be PAT tested. We did not accept the Landlord's view that these were not his as they did not belong to the Tenant.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chair

1st June 2018

Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ
FTS/HPC/RP/17/0394

Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ

FTS/HPC/RP/17/0446



Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ
FTS/HPC/RP/17/0394



Rear elevation



Radiator in bedroom

Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ
FTS/HPC/RP/17/0394



Gas boiler located in kitchen cupboard



Broken tiles adjacent to the bath

Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ
FTS/HPC/RP/17/0394



Consumer unit in Hallway plus smoke detector

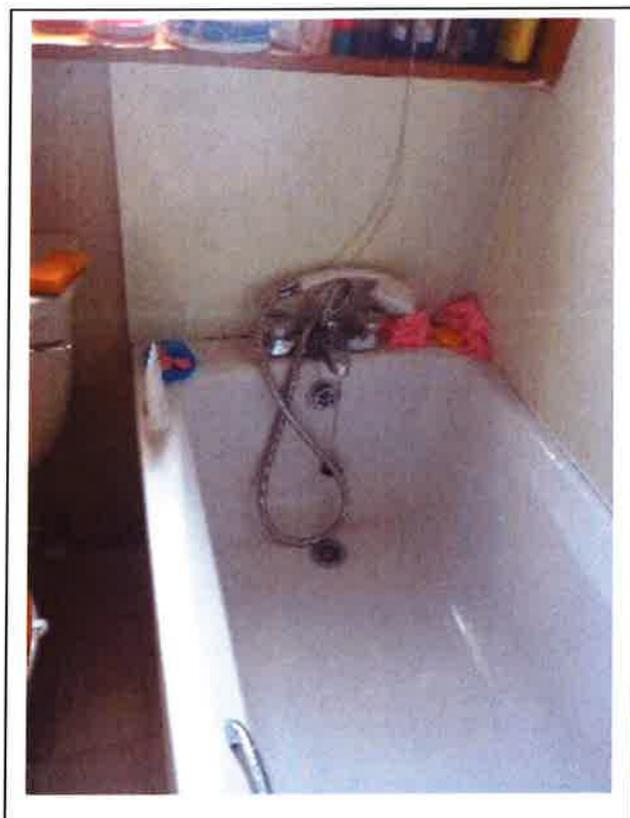


Gas fire within living room – not operational

Flat 2R (2F), 33 Arklay Street, Dundee, DD3 7LJ
FTS/HPC/RP/17/0394



Dampness below gas boiler



Bathroom shower