

# 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/19/2637

**77 Neil Street, Greenock, PA16 9JE**

**Title Number REN53733**  
("The property")

The Parties:-

**Nicola Glancy, residing at 77 Neil Street, Greenock, PA16 9JE**

("the Tenant")

**Priya Properties Ltd, Mr Sukhdev Boparai, Mrs Harjinder Boparai, 1 Mansion  
Avenue, Port Glasgow, PA14 6QP**

("the Landlords")

Whereas in terms of its decision dated 11 November 2019, the First-tier tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the respondents 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 respondents had failed to ensure at all times during the tenancy, that:-

- a) the property is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
- b) the structure and exterior of the property is in a reasonable state of repair and in proper working order (section 13(1)(b));
- 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 (section 13(1)(c));

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 to repair or replace the kitchen and living room windows so as to make them wind and watertight, in a reasonable state of repair, and in proper working order, such that the property is in all respects reasonably fit for human habitation.

**Further**, the Tribunal requires the Landlord to produce to the office of the Tribunal an Electrical Installation Condition Report ("EICR") completed by a suitably competent

person, in accordance with paragraphs 10 to 20 of the Scottish Government Statutory Guidance On Electrical Installations And Appliances In Private Rented Property ("the Guidance"). In the event that the EICR identifies any items specifically categorised as C1 or C2 under "section K" in the report where any part of the electrical installation in the property is not in a reasonable state of repair and in proper working order, the Tribunal further requires the Landlord to carry out such work as is necessary to put that electrical installation in a satisfactory state of repair and in proper working order.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **four 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 preceding page(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the Tribunal at Edinburgh on 11 November 2019, before this witness:-

D Dawson

witness

A Stalker

—  
Debbie Dawson name in full  
Parliament House Address  
Edinburgh

# 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/RP/19/2637

**77 Neil Street, Greenock, PA16 9JE**

**Title Number REN53733**  
("The property")

The Parties:-

**Nicola Glancy, residing at 77 Neil Street, Greenock, PA16 9JE**  
("the Tenant")

**Priya Properties Ltd, Mr Sukhdev Boparai, Mrs Harjinder Boparai, 1  
Mansion Avenue, Port Glasgow, PA14 6QP**  
("the Landlords")

## **Tribunal Members:**

Adrian Stalker (Chairman) and Donald Wooley (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) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.**

## **Background**

1. By an application to the Housing and Property Chamber 21 August 2019, the Tenant sought a determination as to whether the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application contended that the Landlords had failed to comply with their duty to ensure that the property meets the repairing standard under

section 13 of the 2006 Act, and in particular, that the Landlords had failed to ensure, at all times during the tenancy, that:

- the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
  - 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 (section 13(1)(c)).
3. On 9 September 2019, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a) of the Act, to refer the application to a First-tier tribunal. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both parties by letters dated 18 September 2019.
  4. The Tribunal members inspected the property on the morning of 25 October 2019. Present at the inspection were the Tenant, and Mr Sukhdev Boparai, of the Landlords.
  5. Later that morning, the Tribunal held a hearing at the Gamble Halls, 44 Shore Road, Gourock. Again, the Tenant and Mr Boparai attended. The Tenant was supported by a Mr John Dunn.

### **Summary of the issues**

6. In the application, the Tenant described outstanding repair issues at the property, as follows:

“Windows not wind and watertight, gaps allowing water and wind to penetrate.

Electricity, Shower socket was a fire hazard according to electrician. Whole property has old wiring which does not meet current government standards.”

As to the nature of the work needing to be done, the application stated:

“Windows:- need to be replaced in living room, kitchen and two bedrooms.

Electricity:- check safe to use shower and rewire property to meet current government standards.”

## Inspection

7. The property comprises a two storey end terraced former local authority house constructed on a relatively steeply sloping south facing site. The living room and kitchen are located on the upper floor and the bedrooms are situated on the lower ground floor reflecting the contours of the site. The outer walls are of brick construction and the roof is mono pitched clad externally in felt. The property is accessed from Neil Street directly into the upper floor level.
8. At the time of the inspection the property was fully furnished. However, the Tenant reported that she has not lived there since June. She feels that the condition of the property is dangerous. She would like to return, but only when any outstanding repairs issues have been addressed.
9. The Tenant and Mr Boparai spent much of the inspection arguing with one another. It was apparent that their relationship has become quite acrimonious.

## Windows

10. The Tribunal members looked at the windows in the kitchen and living room (on the first floor) and both bedrooms (on the ground floor). These windows are all south facing.
11. *Windows in kitchen.* Within the kitchen there are two double glazed casement windows separated by a central deadlight panel. As viewed from within there are missing handles on both of the opening sections. When in the closed position considerable gaps are evident around the frames and draughts through the fittings are evident. There is no safety catch on the window. This is of concern to the Tenant, as she has a young child.
12. *Windows in living room.* The living room windows are of a similar design. Temporary repairs have been completed with the fitting of electrical and/or plastic tape as a draught prevention measure at the left-hand section as viewed from within. The right-hand window was not in operation and could not be opened by the tenant who said that, if forced open, it could not be re-closed. Mr Boparai was also unwilling to attempt to open the window. Again, there is no safety catch on the window.
13. Around both the kitchen and living room windows there are signs of damp staining and while this may be as a result of water ingress, it has been exacerbated by the effects of condensation as a result of recent lack of internal heating.

14. *Windows in both bedrooms.* No significant defects were identified in the bedroom windows. There was damp staining surrounding the frames, but this is almost certainly the result of condensation.

#### Electrical installations

15. The electricity is provided to the property via a pre-payment meter. The electricity was off, at the time of the inspection. The inspection was therefore undertaken without the benefit of artificial lighting. The property has remained unheated for a considerable length of time.

16. There was a dispute between the parties as to why this was the case, which was further discussed at the hearing. The Tenant said that the electricity had been cut off by the suppliers. At least initially (at the inspection) the Tribunal members understood from the Tenant that this was due to the condition of the wiring and the shower unit. However, there was no notice, on the consumer unit or elsewhere, to indicate that the supply had been cut off. Photographs were taken of the distribution board and consumer unit (see the attached schedule). Mr Boparai insisted that there was no supply because the pre-payment meter was in debit.

17. The Tenant maintained that she had never seen an Electrical Installation Report Certificate ("EICR"). This was disputed by Mr Boparai. No EICR was produced prior to the inspection, or at the inspection, but a document bearing to be an EICR was subsequently produced at the hearing.

18. It was accepted by the Tenant that wiring to the shower had been replaced. The electrical shower switch, located on the wall immediately outside the bathroom has been renewed. Due to the lack of power, this could not be tested, although the tenant confirmed that the switch was now functioning satisfactorily.

#### **Hearing**

19. At the hearing, Mr Boparai accepted that there were difficulties with the windows, as described above, which require to be addressed. However, his position on this issue was somewhat equivocal. He mentioned that he had had difficulty getting contractors to carry out the work, which he attributed to conduct on the part of the Tenant. This was disputed by the Tenant.

20. He also asserted that the state of the windows was due to conduct on the part of the Tenant. In particular, he suggested that she had removed the

missing handles on the kitchen window. This was strenuously denied by the Tenant.

21. A document bearing to be an EICR report was made available by Mr Boparai, at the beginning of the hearing. This is a hand-written report dated 2 December 2016. It bears to have been signed by "Lawrie McLaren" of "NES (Scotland) Electrical". This document does not identify the contractor as being SELECT, NICEIC or NAPIT registered. The address of the contractor is not given. Many of the page headings within the report are incomplete. The section of the report headed "Condition Report Inspection Schedule", which records the results of the testing, has not been signed.
22. Under the "Observations" section, the EICR identifies two category C2 defects and one category C1 defect. Category C1 is defined as "Danger present. Immediate remedial action required" and Category C2 is defined as "Potentially dangerous. Urgent remedial action required". Within the "condition report inspection schedule", category C2 items have been identified in sections 4.18, 4.19 and within all three subsections of 5.12. The report also highlights two category C3 defects (improvement recommended).
23. There is no indication in the EICR itself, or in other documentation produced by the Landlords, to confirm that these defects had actually been addressed. Mr Boparai insisted that the necessary work had been done. However, he also indicated that he intended to instruct another EICR imminently, in any event.
24. For her part, the Tenant maintained that, when the last inspection was carried out in 2016, the contractor had stated that the electrical wiring at the property passed that inspection, would not pass the next inspection, when it fell due.
25. As already mentioned, there was a dispute between the parties as to why the electricity was off, at the time of the inspection. However, there was no evidence to support the Tenant's assertion that the electricity had been cut off by the suppliers.

### **Findings in fact**

26. The Tribunal finds the following facts to be established: -
  - i. The property is as described in paragraph 7 above. It has Land Register Title Number 53733, the Title Sheet of which indicates that

the owners are Mr Sukhdev Boparai and Mrs Harjinder Boparai, of 1 Mansion Avenue, Port Glasgow.

- ii. The parties entered into an assured tenancy on 2 November 2015. The landlord named in the tenancy agreement is "Priya Properties Ltd", again of 1 Mansion Avenue, Port Glasgow.
- iii. The kitchen and living room windows are in the condition described in paragraphs 11-13 hereof. They are not in reasonable state of repair and in proper working order.
- iv. As a result of the condition of the windows, the property is also not wind and watertight.
- v. The bedroom windows are in reasonable state of repair and in proper working order.
- vi. There was no electricity at the property on the date of the inspection, because the pre-payment meter was in debit.
- vii. The Landlords intend to instruct a suitably qualified electrical contractor to prepare an EICR, imminently.

27. These findings are derived from the Tribunal members' observations during the course of the inspection, or were based on their discussions with the Tenant and Mr Boparai at the inspection and hearing, as described above.

28. The Tribunal further found, in fact and law, that the EICR certificate produced by Mr Boparai did not conform to section 19B of the 2006 Act, for the reasons stated at paragraphs 21 to 23 above. In particular, it is not clear that the inspection has been carried out by a competent person (section 19B(1)). The address and relevant qualifications of the person who carried out the inspection are not given (section 19B(2)(d)). The person who carried out the inspection has not prepared a record of any action taken to remedy the defect (section 19B(2)(g)).

29. The Tribunal was unable to make any specific finding as regards the condition of the electrical installations at the subjects, as the supply was off at the time of the inspection. The Tribunal preferred Mr Boparai's evidence as to why that was the case. However, given the lack of an EICR in the appropriate form, the Tribunal could not be satisfied, for the purposes of section 13(1)(c) of the Act, that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order.

30. Notwithstanding Mr Boparai's suggestion that the Tenant had removed window handles, the Tribunal was not satisfied that he had shown, on a balance of probabilities, that this was the case. At the hearing, this was the subject of an assertion by Mr Boparai and a strenuous denial by the

Tenant. Accordingly, the Tribunal was not satisfied, for the purposes of section 16(1)(b)(i) of the Act, that the repairs to the kitchen and living room windows were repairs for which the Tenant was liable.

### **Reasons for the decision**

31. It follows from findings in fact iii and iv in paragraph 26, and paragraphs 27 and 28, that the property falls below the repairing standard in terms of section 13(1)(a), (c) and (b). The Tribunal recognises that the application did not assert that section 13(1)(b) had been breached. However, the application does give notice to the Landlords of a complaint of disrepair to the windows, as does the pre-application letter to the Landlords of 27 August 2019. In the circumstances, the Tribunal considered that it was able to find that a breach of section 13(1)(b) was established.
32. However, it also follows from the Tribunal's finding in fact and law, at paragraph 27, that it is appropriate for the Tribunal to require the Landlords to arrange for an electrical safety inspection to be carried out, and certified, in accordance with sections 19A and 19B of the 2006 Act. That is something that Mr Boparai was intending to do in any event. If the inspection is conducted, and any necessary work carried out, that will resolve any outstanding issue as to the condition of the electrical installations.
33. It is accordingly necessary to make an RSEO, under section 24(2) of the Act.

### **Decision**

34. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
35. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.
36. The decision of the Tribunal was unanimous.
37. Parties are reminded that apart from, and in addition to, the right of appeal described below, parties may also ask the Tribunal to review its decision, if it is in the interests of justice to do so. This right is set out in rule 39 of the Procedure Rules. An application for review must be made in writing, and intimated to the Tribunal and the other party, within 14 days of the date on which this decision was sent to the parties.

Right of Appeal

**38. 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.**

39. 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.

A Stalker

Signed .....

Date 11 November 2019

Chairperson