

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/18/0675

Title no: STG61542

House at Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("The Property")

The Parties:-

Mr William Harland, Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("the Tenant")

Mr Archibald Tannock & Mrs Jacqueline Tannock, 48 Gartmore Road, Paisley, PA1 3NQ
("the Landlords")

Whereas in terms of their decision dated 5 June 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have 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:-

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.

the tribunal now requires the Landlords 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 Landlords to carry out the following works:-

- (a) (i) Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the safety, suitability and effectiveness of the boiler.
- (ii) Follow the recommendations of the report referred to in paragraph (a)(i) above to ensure that the boiler is safe and in proper working order.
- (iii) To produce to the tribunal a valid Gas Safety Certificate.

- (b) (i) To repair or replace the ceiling light fitting in the hall, the spotlights in the unused bedroom accessed from the utility room, the extractor fan and the ceiling spotlights in the bathroom, and to make safe the cabling serving the former wall lights located in the lounge.
- (ii) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.
- (iii) On completion of the works referred to in paragraph (b)(i) and (ii) above to provide to the tribunal a copy of the EICR.
- (c) To carry out any and all making good and decoration associated with the foregoing works.
- (d) To instruct a reputable contractor to carry out an investigation of and prepare a report on the septic tank and all associated underground pipework, to identify the reasons for the septic tank not operating correctly and to repair or replace the septic tank and any associated underground pipework to ensure the septic tank and the associated underground pipework is in a reasonable state of repair and in proper working order and to make safe the hole in the lawn to the rear of and make good any other damage caused to the Property.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 4 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 pages are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 5 June 2018 before this witness:-

J Hynd

G Buchanan

_____ witness

_____ Chairperson

THORNTONS LAW LLP
WHITEHALL HOUSE
33 YARMAN SHORE
DUNDEE
DD1 4BJ

name in full

Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/18/0675

Title no: STG61542

**House at Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("The Property")**

The Parties:-

**Mr William Harland, Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("the Tenant")**

**Mr Archibald Tannock & Mrs Jacqueline Tannock, 48 Gartmore Road, Paisley,
PA1 3NQ
("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 have complied with the duty imposed by Section 14(1)(b) in relation to the Property determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application, which application comprises documentation received on 21 March 2018, ("the Application"), 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 stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-

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.

3. By letter dated 28 March 2018 the Convenor 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 the Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant by letter dated 24 April 2018 intimated to the tribunal his intention to attend a hearing on his application. By email dated 8 May 2018 the Tenant advised the tribunal that the gas boiler had been replaced on 4 May 2018. By further email dated 11 May 2018 the Tenant advised the tribunal that the correct fitting date of the boiler was 3 May 2018 and that he had not received a Gas Safety Certificate thereafter. The Landlords made no representations.
6. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Mr Nick Allan, Ordinary Member inspected the Property on the morning of 24 May 2018. The Tenant and his wife, Mrs Catherine Harland, were present. The Landlords were neither present nor represented.
7. It was dry and bright during the inspection. Photographs taken are produced in the attached Schedule.
8. Following the inspection of the Property the tribunal held a hearing at Wallace House, Maxwell Place, Stirling, FK8 1JU. The Tenant and Mrs Catherine Harland were present at the hearing. The Landlords were neither present nor represented.
9. The Tenant and Mrs Catherine Harland made the following submissions:-

The Boiler:-

- (i) That a contractor employed by the Landlords, Advanced Heating, replaced the boiler on 3 May 2018 following which the central heating and hot water supplies appear to operate correctly.
- (ii) That the Landlords' letting agent, Martin & Co, asked the Tenant for a copy of any Gas Safety Record left by Advanced Heating. No such Gas Safety Record was left with the Tenant by Advanced Heating.
- (iii) Subsequently Martin & Co advised the Tenant that they had the Gas Safety Record and would send a copy to the Tenant. No such copy has been received by the Tenant.

The Electrical Installations:-

- (i) That no Electrical Installation Condition Report was produced to the Tenant by the Landlords or their agents at the commencement of the tenancy on 4 August 2017.
- (ii) That the issues with the electrical installations were identified when the Tenant first viewed the Property prior to the tenancy commencing and were not rectified by the date upon which the Tenant and his family moved in.

- (iii) That the Tenant and his wife have repeatedly mentioned to the Landlords' agents, Martin & Co, that repairs to the electrical installations are required. No repairs have been carried out.
- (iv) That on moving into the Property there was a loose wire hanging from the ceiling light in the hall which the Tenant removed on taking occupation.
- (v) That the spotlights located in two of the corners of the spare bedroom accessed from the utility room cannot be used as there is no switch with which to turn the lights on or off.
- (vi) That in the lounge the wall lights had been removed leaving loose cables, and that exposed wiring had been observed on the wall section behind the television.
- (vii) That in the bathroom, the extractor fan within the light fitting located in the ceiling above the shower does not operate.
- (viii) That in the bathroom, one spotlight in the ceiling is hanging down and another spotlight is missing.

The Septic Tank:-

- (i) That the septic tank is not operating correctly in that the contents backfill into the toilet and the shower.
- (ii) That the septic tank has not operated correctly for 7 months.
- (iii) That the septic tank has required to be emptied on 4 occasions since the Tenant and his family moved into the Property.
- (iv) That the Landlord's agents, Martin & Co., instructed a contractor to investigate the position and whose camera became stuck in associated pipework which is understood to have collapsed.
- (v) That the Tenant has involved the Environmental Health Department of the local authority.

Summary of the issues

10. The issues to be determined are:-

- (i) Whether the newly installed gas boiler is in a reasonable state of repair and in proper working order.
- (i) Whether the following installations in the Property for the supply of electricity are in a reasonable state of repair and in proper working order:-
 - the former ceiling light fitting in the hall,
 - the light fittings in the bedroom to the rear of the house accessed from the utility room,
 - the former wall lights in the lounge, and the apparent exposed wiring on the wall section behind the television,
 - the ceiling lights and extractor fan in the bathroom.
- (ii) Whether the septic tank and all associated pipework is in a reasonable state of repair and in proper working order.

Findings of fact

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

- (a) That the Landlords are the heritable proprietors of the Property.
- (b) That the Tenant and his wife are the tenants of the Property in terms of a Lease dated 4 August 2017.
- (c) That with regard to the required repairs intimated by the Tenant:-
 - (i) That at the time of the tribunal's inspection a new boiler was found to have been installed in a cupboard located under the wooden stairs leading to the loft space but no Gas Safety Record relating thereto had been produced to the Tenant.
 - (ii) In the absence of a Gas Safety Record the tribunal could not be satisfied that the boiler was in a reasonable state of repair and in proper working order.
 - (iii) That there was no light fitting in the ceiling in the hall, no such light fitting having been installed by the Landlords at the date of the tenancy commencing and the Tenant having removed a loose electric cable left by the Landlords hanging therefrom.
 - (iv) That in the bedroom accessed from the utility room and presently unoccupied, the two spotlights located in two of the corners of the bedroom do not operate due to a switch to operate the lights not being capable of being found.
 - (v) That in the lounge there is exposed wiring on the wall from the previous removal of a wall light, and the possibility of further exposed wiring behind the television in an area currently inaccessible to visual inspection.
 - (vi) That in the bathroom the extractor fan in-built into the spotlight in the ceiling above the shower does not operate.
 - (vii) That in the bathroom ceiling, one spotlight is missing and another is hanging down.
 - (viii) That the installations in the Property for the supply of electricity are not in a reasonable state of repair and in proper working order.
 - (ix) That the septic tank is not in a reasonable state of repair and in proper working order.
 - (x) That a Gas Safety Record and an Electrical Installation Condition Report have not been produced.

Reasons for the decision

12. The Property is a bungalow with a garden to the front and to the rear.

The Property has an oil fired central heating system with radiators throughout. The Property was occupied and furnished at the time of the tribunal's inspection.

- (i) The boiler is located within a cupboard under stairs leading to the roof space. The boiler appeared to be a new Worcester boiler supporting the Tenant's statement that it had been installed on 3 May 2018. The Tenant reported that the central heating and hot water systems now appeared to be operating correctly but that no Gas Safety Record had been produced to them relative to the new boiler. The tribunal could not be satisfied that the boiler is in a reasonable state of repair and in proper working order and therefore meets the repairing standard.
- (ii) On moving into the Property there was a loose electric cable hanging from the ceiling light in the hall which the Tenant removed on taking occupation. The tribunal found no ceiling light in the hall where the loose cable had been removed. In the absence of a light fitting the electrical installations in the hall are not in a reasonable state of repair and in proper working order.
- (iii) The spotlights located in two of the corners of the unoccupied bedroom accessed from the utility room cannot be used as there is no switch with which to turn the lights on or off. The tribunal could not locate a switch. In the absence of a switch the electrical installations in the bedroom are not in a reasonable state of repair and in proper working order.
- (iv) In the lounge the wall lights had been removed when the Tenant took entry and loose cables had been left hanging down. The Tenant tidied the loose cables and hung ornaments over the holes in the wall where the light fittings ought to be located. The Tenant has also positioned the television in front of a section of wall at a location where further exposed wiring is thought to exist. The tribunal could not be satisfied in these circumstances that the electrical installations in the lounge are in a reasonable state of repair and in proper working order.
- (v) In the bathroom, the extractor fan within the light fitting located in the ceiling above the shower does not operate. In addition another spotlight in the ceiling is hanging down and a third spotlight is missing. The electrical installations in the bathroom are not in a reasonable state of repair and in proper working order.
- (vi) The tribunal found a hole in the lawn to the rear of the Property dug to locate the septic tank and from which investigations had been carried out by both a contractor employed by the Landlords' letting agent and the Environmental Health Department of the local authority. The septic tank is not operating

correctly in that the contents backfill into the toilet and the shower. The septic tank has not operated correctly for 7 months and has required to be emptied on 4 occasions since the Tenant and his family moved into the Property. The septic tank and the associated pipework is not in a reasonable state of repair and in proper working order.

Decision

13. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the tribunal was unanimous.

Right of Appeal

- 15. 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.**

Effect of section 63

16. 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.

G Buchanan & Nick Allan

Signed

..... Chairperson & Legal Member

Date 5 June 2018

Dundee s/b/18

This is the Schedule referred to in the foregoing
Decision G Buchanan

Housing and Property Chamber
First-tier Tribunal for Scotland



Inspection - Photograph Schedule
Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF

Case Reference: FTS/HPC/RP/18/0675

Date of inspection: 24/05/2018

Time of inspection: 10.30 am

Weather conditions: Dry and bright

Present: Miss Gillian Buchanan – Legal Member
Mr Nick Allan – Ordinary Member
Mr William Harland – Tenant
Mrs Catherine Harland



Photo 1 – Front elevation



Photo 2 – Recently installed combi boiler



Photo 3 – Boiler components



Photo 4 – Carbon Monoxide detector



Photo 5 – Lounge wiring concern



Photo 6 – Wiring concern behind television



Photo 7 – Exposed wiring in hallway



Photo 8 – Broken extractor above shower



Photo 9 – Exposed wiring in bathroom



Photo 10 – Defective light in spare bedroom



Photo 11 – 2nd defective ceiling light



Photo 12 – Location of septic tank



Photo 13 – Rear elevation

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
Housing and Property Chamber - 4th June 2018