

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.

PROPERTY: 24 Park Crescent, Strathaven, ML10 6NH; Title Number LAN78425

Case Reference: FTS/HPC/RT/19/3549

PARTIES:

Mr Martin Bradbury and Mrs Wendy Bradbury, residing at 24 Park Crescent, Aforesaid ("the tenants")

South Lanarkshire Council, Housing Department, Council Offices, Civic Centre, East Kilbride G74 1AB ("the third party")

Mr Scott Brownlie, care of Daniel Brownlie, The Loudoun Hill Inn, Strathven Road, Darvel KA17 0LY ("the landlord")

Tribunal Members: David M Preston (Legal Member) and Mrs Sara Hesp, Surveyor (Ordinary Member) ("the tribunal")

Decision

The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") in relation to the property, and taking account of the representations by all parties:

Determined that the landlord had failed to comply with the said duty; and

Determined to issue a Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Act.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of three months from the date of service of this Notice.

Background:

1. By application dated 4 November 2019, the third party applicant applied to the First-tier tribunal, Housing and Property Chamber 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 house meets the repairing standard at the start of the lease and throughout its duration and in particular that the landlord had failed to ensure that:-
 - The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - The structure and exterior of the house (including drains, gutter and external pipes) are in a reasonable state of repair and in proper working order;
 - The installations in the house for the supply of water, gas, electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - Any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - The house has satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire

3. In particular the third party applicant made the following complaints:
 - 1) Front path cracked
 - 2) Living room floor issues by the central heating
 - 3) Hole in the wall under the stairs
 - 4) Wires on show in the kitchen
 - 5) Cracked ceiling in the dining area
 - 6) Pipes on show in the conservatory
 - 7) Panel behind the toilet not secure
 - 8) No handrail by the stairs
 - 9) Conservatory windows leaking
 - 10) Wires in the conservatory on show
 - 11) Back fence panels missing
 - 12) Bath taps incorrect, issues with hot and cold
 - 13) Hole in conservatory wall outside not been bricked up
 - 14) Electrics don't work properly
 - 15) No tenancy agreement from Landlord issued since last filed for possession court order.

4. By Minute of Decision dated 27 November 2019, a legal member of the Tribunal, having delegated power for the purpose, referred the application under Section 23(1) of the Act to the tribunal. In terms of the Minute the application paperwork comprises documents received by the Tribunal on 5 November 2019.

5. A Notice of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act was served on all parties on 10 December 2019.

6. Following service of the Notice of Referral written representations dated 17 December 2019 were received from the landlords. Written representations were received by email on 20 December 2019. No further representations were received from the third party applicant or from the tenants.

Inspection:

7. The tribunal inspected the property on the morning of 22 January 2020. The tenants were in attendance throughout the inspection. The landlord did not attend the inspection and was not represented.
8. The property is a former Local Authority semi-detached dwellinghouse of traditional construction located in a scheme of similar residential properties.
9. In respect of the items complained of the inspection revealed:
 - 1) Front path cracked
The front path had evidently been recently tarred. The tenant advised that this had been done within the previous week.
 - 2) Living room floor issues by the central heating
The floor in the living room appeared sound and the tenants advised that they had no issue since the central heating pipes had been repaired.
 - 3) Hole in the wall under the stairs
The hole in the wall had been repaired.
 - 4) Wires on show in the kitchen
The tribunal noted some wires evident behind the tumble drier machine.
 - 5) Cracked ceiling in the dining area
The ceiling in the dining area had been re-plastered.
 - 6) Pipes on show in the conservatory
The pipes in the conservatory had been mainly trunked.
 - 7) Panel behind the toilet not secure
The panel behind the toilet had been secured
 - 8) No handrail by the stairs
Handrails on either side of the staircase had been fitted.
 - 9) Conservatory windows leaking
The tribunal noted that the windows in the conservatory were in very poor condition and that there was no latch or lock on an opening skylight.
 - 10) Wires in the conservatory on show
Any wires or cables in the conservatory had been trunked.
 - 11) Back fence panels missing
The fence to the side of the house had been partially demolished.
 - 12) Bath taps incorrect, issues with hot and cold
The bath taps were in working order and the tenants advised that they had been sorted.

13)Hole in conservatory wall outside not been bricked up

The tribunal did not inspect the reported hole in the outside wall as to do so would have required access through a neighbouring garden. In any event the tenants reported that the hole had been filled in.

14)Electrics don't work properly

The tenants advised that a new consumer unit had been fitted within the past week and in any event a satisfactory Electrical Installation Condition Report date 14 January 2020 was presented to the tribunal at the hearing.

15)No tenancy agreement from Landlord issued since last filed for possession court order.

This was not a matter within the jurisdiction of this tribunal.

10. The tribunal noted that there were adequate and appropriate fire, Carbon Monoxide and heat detectors in the property.

11. A series of photographs was taken throughout the inspection and form the Schedule attached hereto.

Hearing:

12. Following the inspection of the property the tribunal held a hearing at Brandon Gate Tribunals Centre, Hamilton. Mr Daniel Brownlie attended along with his partner, Ms Christine MacCallum. Mr & Mrs Bradbury attended on their own behalf. The third party applicant did not attend and was not represented.

13. At the start of the hearing the convener confirmed the procedure which it was intended to be followed.

14. It was clarified that the title to the property stands in the name of Mr Scott Brownlie who is Mr Daniel Brownlie's son. Mr Daniel Brownlie looks after the property on his son's behalf and manages it for him as his agent. The tribunal noted that the Private Residential Tenancy Agreement describes the landlord as Mr Daniel Brownlie. The tribunal advised that if a Repairing Standard Enforcement Order (RSEO) were to be issued, it would run on both names.

15. Mr Brownlie submitted the EICR dated 14 January 2020. He said that the works specified in the application had been completed and he was satisfied that the property now complied. He said that he was not aware that the conservatory windows leaked and that if they did, he considered it would be minimal. He was not aware that the skylight had no lock or closing mechanism. He said that the area was a utility space and that it was of some age. He thought it was possibly 15 years old.

16. The tenants made no substantive representations at the hearing but confirmed that they were content with the items completed. They did confirm that they had erected the fence to the side of the house to separate the garden from the parking area. They acknowledged that they had not obtained permission for the fence and

understood that the landlord therefore had no obligation to maintain or repair it. They said that the local authority had included this within the application. They also understood that if they vacated the property, they would require to remove the fence.

Reasons for the decision:

17. In reaching its decision the tribunal had regard to:

- a. The application, including the accompanying documents;
- b. Landlords' representations dated 17 December 2019;
- c. The oral representations made at the hearing.

18. From its inspection, the tribunal was satisfied that the property failed to meet the repairing standard in relation to the conservatory.

19. The tribunal noted Mr Brownlie's comments about the age and condition of the conservatory, however the tribunal has an obligation to ensure that the property complies with the repairing standard. In this regard the property must be wind and watertight throughout and the structure and exterior of the property must be in a reasonable state of repair and in proper working order.

20. The conservatory structure evidently falls below that standard. The window frames were rotten in parts and the skylight had no locking or closing mechanism as can be seen in the photographs appended hereto.

21. With regard to Mr Brownlie's contention that this was a utility area, the tribunal finds that it has been installed as a conservatory area and it is not sufficient for it to have been allowed to deteriorate to the extent that it is unusable for its purpose and thereby be regarded as a utility area.

22. The tribunal therefore determined to issue a Repairing Standard Enforcement Order and considered that a period of three months for the work to be completed was a reasonable time for completion.

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.

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.

D Preston

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



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Schedule of photographs taken on 22 January 2020

Quasios 30/1/2020

this is the Schedule of Photographs referred
to in the foregoing Statement of Reasons.

D Preston

Chairman



Photograph 1: Front elevation

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Photograph 2: Hallway: replacement consumer unit



Photograph 3: Dining area: ceiling



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Photograph 4: Kitchen: pipes and wiring behind appliance



Photograph 5: Conservatory: general view



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Photograph 6: Conservatory: roof lights



Photograph 7: Conservatory: pipes and cabling



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Photograph 8: Conservatory: floor level trunking



Photograph 9: Staircase: with handrail



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Photograph 10: Bathroom: panel behind toilet



Photograph 11: Front garden: path



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Photograph 12: side garden: missing fence panels



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