

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: PRHP/RT/16/0360

Title no: DMF11581

**20 Gladstone Road, Dumfries, DG2 7HA
("The Property")**

The Parties:-

**Mr. Alan Glendinning, HMO and Landlord Registration Manager, Dumfries & Galloway Council, Council Offices, Buccleuch Street, Dumfries, DG1 2AD
("the Third Party")**

**Miss Lynne Robertson, residing at the property
("the Tenant")**

**Mrs. Lesley McCrone, Dee House, Main Street, Kirkconnel, DG4 6LU
("the Landlord")**

Whereas in terms of their decision dated 25 January 2017, 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:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health,

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 repair or replace the draught excluder surrounding the front door to ensure that it is in a reasonable state of repair and in proper working order.
- (b) To replace the cracked pane of glass located adjacent to the front door with replacement glass which is in accordance with current building standards.
- (c) To repair or make good the area of defective and missing sealant around the base of the living room window frame and its junction with the internal window cill to ensure that that is in a reasonable state of repair and in proper working order.
- (d) To replace the thermostatic radiator valves on the radiators in the hallway and the living room so that they are in a reasonable state of repair and in proper working order.
- (e) To produce an Electrical Installation Condition Report by a suitably qualified and SELECT or NICEIC registered electrician.
- (f) To produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances in the property.
- (g) To install hard-wired and interlinked smoke and heat detection devices in accordance with current regulations.
- (h) To install a carbon monoxide detector in accordance with current regulations.

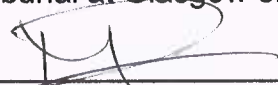
The tribunal order that the works specified in this Order must be carried out and completed within the period of 28 days from the date of service of this Notice.

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 page are executed by Patricia Anne Pryce, solicitor, Atlantic Quay, Glasgow, chairperson of the tribunal at Glasgow on 25 January 2017 before this witness:-


 _____ witness
 Nicholas Pryce
 _____ name in full

Patricia Pryce

55 BLYTHS WOOD ST, GLASGOW Address


 Chairperson

**First-tier
tribunal for
Scotland
(Housing and Property Chamber)**

Housing and Property Chamber First-tier Tribunal for Scotland



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

Chamber Ref: PRHP/RT/16/0360

**20 Gladstone Road, Dumfries, DG2 7HA
("The Property")**

The Parties:-

**Mr. Alan Glendinning, HMO and Landlord Registration Manager, Dumfries
& Galloway Council, Council Offices, Buccleuch Street, Dumfries, DG1
2AD
("the Third Party")**

**Miss Lynne Robertson, residing at the property
("the Tenant")**

**Mrs. Lesley McCrone, Dee House, Main Street, Kirkconnel, DG4 6LU
("the Landlord")**

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 house concerned, and taking account of the evidence led by the Third Party and the Landlord's representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Donald Wooley	-	Ordinary Member

Background

1. By application comprising documents received on 18 November 2016 the Third Party applied to the Private Rented Housing Panel (which was succeeded by the Housing and Property Chamber of the First-tier Tribunal on 1 December 2016) 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 by the Third Party stated that the Third Party considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that said failure was established as follows : -

- (a) There was a stain on the bedroom ceiling which may indicate a leak from the roof requiring further investigation.
- (b) Various double glazed sealed units have failed and condensation is forming between the panes.
- (c) The Tenant is unable to produce a gas safety certificate for the property.
- (d) The light switch in the hall is broken and the bedroom light switch works intermittently. The property needs an Electrical Installation Condition Report ("EICR").
- (e) The Tenant highlighted draughts from the windows and the entrance door to the property.
- (f) The sidelight at the front door is cracked.
- (f) The guttering is integrated into the almost flat roof and there is a gap around the downpipe which passes through the eaves, allowing birds into the eaves.
- (g) There is only one battery operated smoke detector which is located in the hall of the property.
- (h) No carbon monoxide detectors have been installed in the property.
- (i) Various thermostatic radiator valves (TRVs) are inoperative or broken.

The Third Party considers that the Landlord is in breach of her duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

- (iii) 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.
 - (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (v) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By Minute dated 1 December 2016 the Convener of the First-tier Tribunal (Housing and Property Chamber) , with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(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 Landlord, the Third Party and the Tenant. The Tenant chose to be a participating party in the present application.
 5. Following service of the Notice of Referral (by letter dated 20 December 2016), the Third Party made no further written representation to the tribunal other than to advise that he wished to attend the hearing. The Landlord made no written representations to the tribunal. The Tenant made no written representations to the tribunal.
 6. On 6 January 2017, the tribunal issued a Notice of Direction requiring the Landlord to produce to the tribunal an Electrical Installation Condition Report (“EICR”), a Portable Appliance Test (“PAT”) Certificate, a Gas Safe report and an Energy Performance Certificate (“EPC”). The Landlord did not produce any of these required documents to the tribunal. The tribunal notes that the Landlord therefore failed to comply with the Direction as she did not produce any of these documents.
 7. The tribunal inspected the Property on the morning of 25 January 2017. The Third Party, the Tenant and the Landlord’s husband, Mr. Keith Robert Burns McCrone, were present during the inspection. Mr. McCrone confirmed that he was there to represent his wife, the Landlord.
 8. Following the inspection of the Property the tribunal held a hearing at the Georgetown Community Centre in Dumfries and heard from both the Third Party and the Landlord’s husband and representative, Mr. McCrone. The Tenant did not attend the hearing and had advised the tribunal at the inspection that she did not wish to attend the hearing and needed to return to work.

The Hearing

Preliminary Issue

9. The tribunal asked Mr. McCrone to explain why the Direction issued by the tribunal had not been complied with. He advised that the gas safety inspection had taken place on 30 December 2016 and that the Gas Safe Certificate had been given to the Tenant and that the Landlord did not have a copy of this. In relation to the EICR, he confirmed that this had not yet been carried out and was due to be carried out and issued by his electrician in approximately two weeks' time. He confirmed that there was no EPC in respect of the property. In relation to the PAT certificate, he advised that the Landlord did not have any portable appliances in the property. The Third Party confirmed that the Tenant had advised him that the property had been let to her in an unfurnished state and that there was therefore no need for a PAT certificate.

Mr McCrone was adamant that the Landlord did not have a copy of the Gas Safe record to provide to the tribunal and he accepted that there was, at the time of the hearing, no EICR in existence in respect of the property to provide to the tribunal. He did not offer any other explanation for the noncompliance with the Direction.

Given the foregoing, the tribunal would recommend that the Landlord is reported to Police Scotland in respect of her failure to comply with the Direction.

10. The Third Party and Mr McCrone submitted as follows: -

- The Third Party stated that the Tenant had advised the Third Party that she had lived at the property since 2014, despite the tenancy agreement being signed and dated in 2015.
- Mr McCrone initially submitted that the Tenant had resided at the property for a number of years but, when questioned by the tribunal, he accepted that she had only resided there since 2014.
- The Third Party accepted that the stain on the ceiling was now dry and historical in nature but had included this in the present application as he wanted the Landlord to investigate this to ensure that there were no leaks from the roof.
- Mr McCrone advised that the roof was inspected regularly.
- The Third Party advised that he was concerned about the condensation in the windows as the seals had failed causing this.
- Mr McCrone advised that the windows were over twenty years old and installed while the property was still in the ownership of the local authority. He confirmed that there were no trickle vents which, together with a lack of brick ventilation in the property, caused condensation to form on the inner pane of the window fitting within the living room. However, in relation to the condensation between the window panes, he submitted that this did not mean that the windows were not wind and water tight. He advised that the windows were wind and watertight.

- When questioned by the tribunal about the gap which runs along the bottom of the window frame where it meets the internal window cill in the living room, Mr McCrone did not accept that this was part of the window and his argument was that the windows were wind and watertight. Further, he argued that light could not be seen through this gap. He also advised that properties needed to breathe.
- Both parties accepted that the light switches in the hallway and bedroom had been repaired.
- The tribunal questioned Mr McCrone about the missing draught excluder around the front door and he accepted that a section of this had slipped.
- Mr McCrone accepted that the lower glass panel adjacent to the front door was cracked but advised that he did not know who had caused this damage. When questioned, he confirmed that he had carried out an inspection before the Tenant had moved into the property but that he could not confirm or deny whether the crack was in existence at that time.
- Both parties agreed that the gap around the downpipe had been fixed.
- Both parties accepted that the TRVs on the radiators in the hallway and living room were missing.
- Mr McCrone accepted that there was no carbon monoxide detector in the property.
- When questioned about the existence of only one battery operated smoke detector located within the property, Mr McCrone initially tried to excuse this by saying that the Tenant had been living in the property for so long that the new requirements for hard-wired and interlinked detectors had not been in existence the last time an electrical inspection had been carried out at the property. However, he later accepted that the Tenant had only resided in the property since 2014.

Summary of the issues

11. The issue to be determined is whether the repairing standard has been met in light of what the tribunal observed at the inspection together with the submissions made by the Third Party and Mr. McCrone.

Findings of fact

12. The tribunal finds the following facts to be established: -
 - The Tenant has resided in the property since 2014.
 - The property comprised a two-apartment single storey bungalow located in a residential area of Dumfries and was predominantly of brick and rendered construction under a shallow mono-pitched felt covered roof.
 - The property comprises a hallway, kitchen, bathroom, living room and one bedroom.

- The stain located on the ceiling of the bedroom is historical in nature and dry when tested using a damp meter.
- The glass side panel adjacent to the front door is cracked.
- The draught excluder surrounding the front door is incomplete.
- There is a gap located between the base of the living room window frame and the internal window cill.
- There is condensation between the panes of one of the bedroom windows and one of the living room windows as the seals on these windows have failed.
- The radiators located in the hallway and the living room of the property do not have TRVs.
- There is no gap located around the top of the external downpipe below the integrated gutter outside of the property.
- The light switches in the bedroom and hallway function properly.
- There is no heat detection device located in the kitchen.
- There is one battery operated smoke detection device located in the hallway and there are no other smoke detection devices located in the property.
- There is no carbon monoxide detector located in the property.

Reasons for the decision

13. At the inspection, the tribunal noted that some of the works mentioned in the application had been completed, namely, that the defective light switches in the hallway and bedroom had been repaired, the gap around the downpipe had been filled and the missing section of the waste disposal pipe had been replaced. However, the tribunal noted that a number of works in terms of the application remained outstanding. In particular, the tribunal noted that:

- (1) The glass panel adjacent to the front door was still extensively cracked.
- (2) The draught excluder surrounding the door was incomplete.
- (3) There was a clear gap located at the bottom of the window frame in the living room at its junction with the window cill.
- (4) The radiators in the hallway and the living room did not have TRVs.
- (5) There was no heat detection device in the kitchen.
- (6) There was only one battery operated smoke detection device in the hallway and no hard-wired or interlinked smoke detection devices anywhere else within the property.
- (7) There was no carbon monoxide detector installed in the property but there was a gas boiler located in the hall cupboard of the property.

The ordinary member of the tribunal took several photographs which form the Schedule attached to this decision.

The tribunal accepts that the Landlord has made the effort to carry out a couple of the repairs but a number of repairs remain outstanding. The tribunal is concerned that the Landlord does not seem to appreciate that a number of the outstanding repairs issues impact directly on the health and safety of the Tenant. Furthermore, despite repeated requests by the Third Party, the

Landlord failed to address the outstanding works. Indeed, when giving evidence, Mr McCrone seemed more interested in whether he would be able to appeal the decision of the tribunal rather than acknowledging the serious nature of the outstanding works. He was assured by the tribunal that appeal provisions are included in the written decisions of the tribunal.

Given all of the circumstances, the tribunal is not satisfied the house is wind and watertight and in all other respects fit for human habitation as (i) part of the draught excluder surrounding the front door is missing allow a draught of air to enter the house, (ii) there is a gap at the base of the living room window frame at its junction with the internal window cill and (iii) the glass panel beside the front door is extensively cracked. The tribunal is satisfied that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order as the downpipe and the waste pipe were repaired. The tribunal is not satisfied 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 as (i) the Landlord did not produce an EICR or Gas Safe record when ordered to do so by the tribunal and (ii) the radiators in the hallway and living room are missing TRVs. The tribunal is satisfied that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire. The tribunal is satisfied that the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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. 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

18. 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.

Patricia Pryce

Signed

Date 25 January 2017

Chairperson

20 Gladstone Road Dumfries DG2 7HA

Schedule of photographs taken at the inspection on 25th January 2017



Photograph 1 :- Battery operated smoke detector in Hall.



Photograph 2 :- Missing TRV 1



Photograph 3 :- Missing TRV 2



Photograph 4 :- Base of living room window.



Photograph 5 :- Cracked glass panel at entry door.



Photograph 6 :- Front entry door and surround