

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/RT/18/2235

Title no: STG 30207

111 Milton Gardens, Whins of Milton, Stirling, FK7 0JN ("The Property")

The Parties: -

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG
("the Third Party")**

**Blair McKie and Emma Jane McLaughlin, 111 Milton Gardens, Stirling, FK7 0JN
("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry,
Northern Ireland BT55 7FG ("the Landlord")**

Whereas in terms of their decision dated 6 December 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 that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

(e)The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,

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: -

1. To repair or replace the defective threshold bar between the kitchen and living room to ensure it is safe and in a reasonable state of repair.
2. To instruct a suitably qualified window contractor to inspect the windows in the bathroom and at the landing on the stairs and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows.
3. To repair or replace the defective fan in the bathroom.
4. To install a new bath panel and box in exposed pipework in the bathroom.
5. To replace the sliding doors of the fitted wardrobe in the front bedroom with properly fitting doors and ensure they are in proper working order.
6. To repair or replace the entrance door of the front bedroom so that the door opens and closes properly.
7. To replace the damaged ceiling mounted pendant light fitting in the front bedroom.
8. To replace the external back door in the kitchen with a new door.
9. To instruct a report from a suitably qualified damp proofing and condensation specialist to investigate the cause of dampness and/or condensation on the external wall behind the kitchen sink, exhibit a copy of the report from the specialist to the Tribunal, carry out any recommendations identified in the report and repair all damage.
10. To instruct a Gas Safe registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a Gas Safety Record.
11. To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property, to ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods.
12. To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance, and
13. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection of the entire electrical installation in

the property after the installation of new smoke and heat detectors, carry out any necessary repairs or alterations, and exhibit a satisfactory EICR to the Tribunal.

The Tribunal order that the works specified in this Order must be carried out and completed within the period six weeks 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 Josephine Bonnar, legal member of the Tribunal, at Motherwell on 6 December 2018 in the presence of the undernoted witness: -

Mr Gerard Bonnar

_____ witness

Gerard Bonnar
1 Carlton Place, Glasgow

Ms Josephine Bonnar

_____ Legal Member



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/RT/18/2235

Title Number: STG 30207

111 Milton Gardens, Whins of Milton, Stirling, FK7 0JN ("The Property")

The Parties: -

Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG ("the Third Party")

Blair McKie and Emma Jane McLaughlin, 111 Milton Gardens, Stirling, FK7 0JN ("the Tenants")

Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG ("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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Ms Carol Jones, Ordinary Member

Background

1. By application dated 31 August 2018 the Third Party applied to the First-tier Tribunal for Scotland (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 states that the Third Party considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party states 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 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) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Third Party complains of;- (1) Exposed carpet grippers between living room and kitchen, (2) Hallway – unidentified live wire in cupboard, electrical board tripping, (3) Upstairs hallway – staircase window does not open, (4) Bathroom – expelair fan cover loose, window does not operate properly, bath panel and pipework require to be boxed in following leak, (5) Bedroom 1 – unidentified live wire protruding from wall, faulty radiator, (6) Bedroom 2 – wardrobe doors and bedroom door do not open or close properly, light fitting broken, (7) Bedroom 3 – hole in hole where socket is, filled with wood, (8) Kitchen – back door window panel missing, possible water leak or penetration underneath sink/black mould, no CO detector although gas cooker (9) Gutters leaking and broken, (10) No carbon monoxide detector at boiler, inadequate smoke/heat detectors. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenants do not wish to be treated as a party to the application.

3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection would take place on 12 November 2018 at 11.30am and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.
4. The Tribunal inspected the property on the morning of 12 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant Emma Jane McLaughlin was present. The Landlord did not attend. Thereafter the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2230, 2226, 2229, 2232 and 2227. Mr Paterson attended on behalf of the Third Party. Both Tenants attended. Also present were Shirley Kane and Mandy Rushforth, tenants in two of the other applications before the Tribunal. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord states that he does not wish to attend the hearing. He also states that he is in the process of "sorting this all out" and has engaged a new letting agent, O'Malley Property, who is in the process of doing all the repairs required to bring the properties up to an acceptable standard. He further states that they have had some difficulty in accessing some of the properties.

The Inspection

5. At the time of the inspection the weather was dry. The Tribunal inspected the property which is a 3 bedroom, end terraced former local authority dwellinghouse located in Whins of Milton, Stirling. The Tribunal noted the following; - (a) Living Room – exposed carpet gripper/missing threshold bar, (b) Hall cupboard under stairs - exposed wires capped with terminal block, electrical consumer unit, (c) Landing – Window top light taped shut, (d) Bathroom – extractor fan not fixed properly to wall/exposed wires, window top light defective (does not open and close properly and gap at seals), side bath panel missing, pipes exposed/boxing removed, (e) Bedroom 1 (rear) - exposed wires above skirting board, radiator, (f) Bedroom 2 (front) - loose wardrobe doors, ill-fitting entrance door with gap at top and side and defective hinges, damaged light fitting on ceiling, (g) Bedroom 3 (rear) – electrical socket surrounded by wood (h) Kitchen – lower section of external door/panel missing, severe black

spot mould to base of rear external wall under sink, gas burner cap missing on hob, no CO alarm (i) Exterior – gutter broken/leaks at rear, gutter choked with vegetation/leaking and sagging at front, (j) Ceiling mounted smoke alarm in hall and living room, none on landing, (k) boiler in cupboard in bedroom 2, new wall mounted CO alarm to left of cupboard. During the inspection the tenant, Ms McLaughlin advised the Tribunal that a relative who is an electrician capped the exposed wires in the hall cupboard to make them safe and fixed the problem with the electrical board tripping. She also advised that a gas safety check was carried out at the property, on the instructions of the new agent, in the last few days and that the engineer had fixed a problem with the boiler and fitted the CO detector. She further advised that the socket in the bedroom which is surrounded by wood was fixed by a relative. The socket was hanging off the wall and there was a hole behind it. The socket is now fixed, and the wood covers up the hole. During the inspection the Tribunal also noted that the smoke alarm in the hall is hanging off the ceiling and does not work when tested. The living room alarm appears to be in working order. Lastly, the Tenant advised that the bath panel and boxing around the pipes in the bathroom were removed by the tenants when dealing with an emergency leak in the bathroom which caused a lot of damage. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

6. At the hearing the Tenants confirmed that although the application indicates that they do not want to be treated as a party, they now wish to do so. Mr Paterson advised that he wished to amend the application in terms of Regulation 32 of the First tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017, so that the Tenants could be added as parties to the application. The Tribunal considered the request and allowed the application to be amended. The Tribunal then heard evidence from both Mr Paterson and the Tenants.
7. Mr Paterson advised the Tribunal that at the end of March 2018, while dealing with an unrelated complaint involving the Landlord, he became aware of repairs issues at a number of properties owned by the Landlord, including the property which is the subject of the application. He contacted the Landlord and advised that these repair issues required to be addressed. He received a response from the Landlord confirming that action would be taken. However, further enquiries established that the work was not carried out. Between 13

July and 4 August 2018, Mr Paterson carried out full inspections of the 6 properties. Thereafter, he contacted the Landlord by post and email detailing the work which was required and asking the Landlord to provide action plans with timescales. He failed to do so, and no repairs were carried out. In July 2018 Mr Paterson also had contact from O'Malley Property. They indicated that they might be taking over the management of the properties, and also advised that the properties might be sold. Their appointment was not confirmed until last week, when Mr Paterson received an email from the Landlord saying that he has instructed new agents who would be getting the properties back up to standard. Mr Paterson has also become aware that some of the tenants have now received letters from O'Malley Property.

8. The Tenants advised the Tribunal that their son cut his toe on the exposed carpet grippers between living room and kitchen, which is when they noticed the bar is missing. They confirmed that they have had to arrange for family members, who are electricians, to make the exposed wires in the hall cupboard safe, to stop the electrical board from tripping and fix the socket in the bedroom and cover the hole which surrounded it with a wooden panel. They believe that the wiring throughout the property is old. They confirmed that the defects noted by the Tribunal during the inspection (except for the bath panel and boxing in the bathroom) have been in that condition since they moved into the property. They explained that there was a bad leak in the bathroom during the summer of 2018 and they had to remove the bath panel and boxing round the pipes to investigate and stop the leak. They notified the Landlord's sister, who was the agent at the time, by text. She told them to get it fixed themselves and deduct the cost from the rent, but they have not done so. The Tenants have replaced the floor covering with new vinyl. The Tenants advised that they received a letter from O'Malley Property at the beginning of November advising that they are the new agents. They then contacted O'Malley's to report that their heating was not working. A gas engineer attended on 8 November and carried out a repair to the boiler. The heating is now working, including the radiator in the bedroom upstairs referred to in the application. The engineer carried out an inspection of the heating system and came back on 12 November to fit a CO detector. He mentioned the lack of CO detector in the kitchen. He did not provide them with a gas safety certificate. The Tenants advised the Tribunal that there has been mould under the sink since they moved in, but it has become worse over time. Initially there was some water under the sink, but they have not noticed any since that time. The Tenants stated that they complained about the repairs issues to the Landlord's sister when they first moved in. She said she would deal with them but has not done so. They are currently withholding rent due to the lack of

work and there is no heat detector in the kitchen and the current alarms are not hardwired or interlinked. The Tribunal notes that current guidance does not require a CO detector to be fitted in the kitchen where the only gas appliance is a cooker.

25. The Tribunal noted during the inspection that the exposed wires in the hall cupboard and damaged socket in the bedroom have now been repaired, albeit by the Tenants themselves. Also, that the radiator in the rear bedroom is now working, following the recent visit by the gas engineer. Accordingly, no breach of the repairing standard is established in relation to these items. Lastly, the Tribunal noted that there is an electrical socket under the kitchen sink and a missing burner cap from the hob. These are not in the application so do not form part of the Order issued by the Tribunal. However, the Tribunal would expect all aspects of the electrical installation and associated electrical accessories to form part of an electrical inspection and test and also recommends that the Landlord take steps to replace the gas burner cap.

26. The Tribunal was not persuaded that the Landlord has not been able to access the property to carry out repairs. The only evidence on this issue was provided by the Tenants who confirmed that only one request for access for inspection has been received, on 12 November 2018, and was refused.

27. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a), (b), (c), (d) and (f) of the Act. As a CO detector has now been installed at the property, near to the gas boiler, the Landlord the Tribunal does not find a breach of section 13(1) (g) to be established.

Decision

28. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

29. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

30. The decision of the Tribunal is unanimous.

Right of Appeal.

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.

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Ms Josephine Bonnar

Signed  6 December 2018

Josephine Bonnar, Legal Member

6 December 2018
This is the schedule of photographs referred to
in the decision of the same date
Ms Josephine Bonnar

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 111 Milton Gardens, Whins of
Milton, Stirling FK7 0JN by the First-tier Tribunal for Scotland
(Housing and Property Chamber)
Monday 12 November 2018

Reference Number : FTS/HPC/RT/18/2235



Front Elevation



Living Room/Kitchen - exposed carpet gripper/
missing threshold bar



Ground Floor hall cupboard under stairs -
exposed wires capped with a terminal block



Ground Floor hall cupboard under stairs -
Electrical Consumer Unit



Landing - Main Window opens properly



Landing - Window - top light taped shut



Bathroom - extractor fan, not fixed properly to
wall/exposed wires



Bathroom - Window - top light defective mechanisms/does not open/close properly



Bathroom - Window - top light wide gap at seals when closed from inside



Bathroom - side bath panel missing



Bathroom - pipes exposed following emergency repair - boxing removed



Bathroom - pipes exposed following emergency repair - boxing removed



Bedroom (1) to rear - exposed wires above skirting board



Bedroom (2) to front - defective central ceiling mounted light fitting



Bedroom (2) to front - defective central ceiling mounted light fitting



Bedroom (3) to rear - double socket replaced and surrounding hole covered by tenant



Kitchen - lower section of external door, panel missing to internal side



Kitchen - lower section of external door, panel missing to internal side



Kitchen - severe black spot mould to base of rear external wall under kitchen sink



Bedroom (1) - to rear - radiator



Bedroom (2) to front - Fitted wardrobe doors



Bedroom (2) to front - Ill fitting door - gap at top



Bedroom (2) to front - gap to side of door



Bedroom (2) to front - Door hinges defective/loose screws



Bedroom (2) to front - Door hinges defective/loose screws



Kitchen - severe black spot mould to base of rear external wall under kitchen sink - amber damp meter reading (search mode)



Kitchen - Gas Hob - One gas burner cap missing



Rear Elevation - gutter broken/leaks at joints



Front Elevation - gutter choked with vegetation/ leaking and sagging



Upper Floor Landing - possible site of former smoke alarm - removed



Ground Floor Hall - Ceiling mounted smoke alarm



Ground Floor Hall - Ceiling mounted smoke alarm
- not fixed properly



Living Room - Ceiling mounted smoke alarm



Kitchen - Single socket - located under sink
(Observation)



Bedroom (2) to front - Boiler housed in cupboard
- new wall mounted CO alarm to left of cupboard
door