

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/18/1234

2 Dovemount Place, Hawick, Roxburghshire, TD9 8AZ
("The property")

The Parties:-

Lorraine Gee, 2 Dovemount Place, Hawick, Roxburghshire, TD9 8AZ
("the Tenant")

**James Henry Clamp and Shirley Johnston, 6 Paterson Gardens, Hawick, TD9
ODT, trading as J & J Development (a partnership), 13 O'Connell Street, Hawick
TD9 9HT**
("the Landlords")

Whereas in terms of their decision dated 30 August 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord 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 Landlords had failed to ensure at all times during the tenancy 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 (section 13(1)(c)); and
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f))

the Tribunal now requires the Landlords 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 Landlords to instruct a suitably qualified electrical contractor:

1) To install in the property:

- (a) at least one functioning smoke alarm in the lounge;**
- (b) a heat alarm in the kitchen area;**

and ensure that all of the alarms in the property are interlinked and mains powered in accordance with the Revised Domestic Technical Handbook guidance and the Scottish Government revised statutory guidance on the requirements for smoke alarms.

2) To effect such remedial work as is necessary to address the C2 observations in the EICR report produced to the Tribunal, dated 20 February 2018, being:

- (a) No main bonding to gas pipes;**
- (b) No main protective bonding to water pipes; and**
- (c) No supplementary bonding where required.**

3. To provide confirmation in writing that that said works have been carried out, in order that a copy of the said confirmation may be submitted to the Tribunal.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **six 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 Glasgow on 30 August, before this witness:-

J Devlin

A Stalker

witness

Jordan Devlin name in full
c/o 20 York Street Address
Glasgow G2 8GT

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/18/1234

2 Dovemount Place, Hawick, Roxburghshire, TD9 8AZ
("The property")

The Parties:-

Lorraine Gee, 2 Dovemount Place, Hawick, Roxburghshire, TD9 8AZ
("the Tenant")

James Henry Clamp and Shirley Johnston, 6 Paterson Gardens, Hawick, TD9 0DT, trading as J & J Development (a partnership), 13 O'Connell Street, Hawick TD9 9HT
("the Landlords")

Tribunal Members:

Adrian Stalker (Chairman) and Andrew Taylor (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 Landlords have 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 Landlords 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 received on 25 May 2018, the Tenant sought a determination of 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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (section 13(1)(b));
 - 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));
 - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d));
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f)); and
3. On 5 July 2018, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), 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 5 July 2018.
4. Following service of the notice of referral, no written representations were made by either party.
5. The Tribunal inspected the property on the morning of 16 August 2018. Present at the inspection were:
- the Tenant;
 - the Tenant's sons, Douglas Gee and Alistair Gee, and her daughter Rebecca Gee;
 - Mike Todd, Team Leader (Hawick), Social Work, Borders Council;
 - Angela Howlieson, of Victim Support, Galashiels;
 - Shirley Johnston of the Landlords;
 - John Mitchell, a self-employed tradesman, who has conducted repair work at the property, on the Landlords' instructions.
6. Later that morning, the Tribunal held a hearing at Heart of Hawick Tower Mill, Kirkstile, Hawick. Present at the hearing were:
- the Tenant;
 - the Tenant's son, Douglas Gee, her daughter Julie Gee, and Julie's fiancée, Andrew Kerr;
 - Angela Howlieson, of Victim Support, Galashiels;
 - Shirley Johnston of the Landlords;
 - Louise Simpson, an employee of J & J Development, based at 13 O'Connell Street, Hawick.

Summary of the issues

7. In the application, the Tenant described outstanding repair issues at the property, as follows:
- (a) There is a hole in the frame of the window in the lounge.
 - (b) The kitchen sink was continually blocking.
 - (c) The toilet in the bathroom doesn't always flush.
 - (d) The boiler is faulty – the pressure drops.
 - (e) There is no handle on the door of the cupboard which houses the boiler.
 - (f) The kitchen cupboard doors are falling off. There is no smoke or heat detector in the kitchen, and no smoke detector in the lounge.
 - (g) There is no cover in the electric box.
 - (h) The outside light (outside the flat door) is faulty.
 - (i) The front door does not lock.
 - (j) There is a faulty light switch in the hallway.
 - (k) There is a faulty light in the bathroom.
 - (l) The bathroom window leaks.
 - (m) There is no kitchen fan.
 - (n) There is a cracked socket in the hall.
 - (o) The plaster in the hall is crumbling.

Inspection

8. At the inspection, it was apparent that certain of these outstanding issues had been addressed by repairs carried out by Mr Mitchell on behalf of the Landlords, or by the replacement of damaged or broken items. In particular, items: (a), (e), (f), (i), (j), (k), (l), (n) and (o) had all been addressed by the necessary repair and replacement. This was confirmed and accepted by the Tenant. As regards (d), Mr Mitchell attributed problems with the boiler, in particular the loss of pressure, to leaks in the system, which he had repaired. The Tribunal inspected the boiler. It appeared to be in proper working order. The Tenant accepted that it was currently operating properly. As regards (m), Mr Mitchell informed the Tribunal that the window leak had been addressed by resealing the window and replacing the timber sill. Again, this was accepted by the Tenant. Accordingly, there was no requirement for the Tribunal to make any finding in respect of those complaints.
9. As regards the remaining items in the list at paragraph 7 above:
- (b) The Tenant complained that the kitchen sink had been blocked on numerous occasions, and that on attempting to clear it out, she had found slugs. Mr Mitchell reported that he had unblocked the sink on two occasions. He had found it to be blocked by food waste. The Tribunal found no apparent problem with the kitchen sink, on inspection.
 - (c) The Ordinary member flushed the toilet on three occasions. There was no apparent problem with flushing.

- (g) There was no heat detector in the kitchen, and no smoke detector in the lounge.
- (h) The electric fuse box is housed in a cupboard in the hall. The cupboard appeared to the Tribunal to be adequate for that purpose.
- (p) The Tenant's complaint referred to an area of plaster at the curved wall in the hall. It appeared to the Tribunal that the plaster was in a condition that one would expect, in a building of this age.

Hearing

10. After having confirmed the identity of all persons in attendance at the hearing, the Tribunal sought clarification from Mrs Johnston as to the identity of the Landlords. The tenancy agreement runs in the name of "J & J Development" as landlords. The Tribunal had obtained a copy of the Title Sheet for the property, from the Registers of Scotland. This indicated that the proprietors were James Henry Clamp and Shirley Johnston, 6 Paterson Gardens, Hawick, and James Minto Robert Clamp and Michala Clamp, of 3 Alder Avenue, Jedburgh. The Tribunal had intimated the date of the inspection and hearing to all of the proprietors. However, prior to that date, it had received representations from the James Minto Robert Clamp and Michala Clamp, to the effect that they had sold their interest in the property to James Henry Clamp and Shirley Johnston.
11. Mrs Johnston explained that J & J Development is a partnership, in which James Henry Clamp and Shirley Johnston are the partners. The partnership is in the business of letting properties. As regards this particular property, the proprietors are indeed James Henry Clamp, Shirley Johnston, James Minto Robert Clamp and Michala Clamp. However, James Minto Robert Clamp and Michala Clamp have no interest in the letting of the property, which is carried out by the partnership.
12. Louise Simpson and Shirley Johnston confirmed that J & J Development has moved premises to 13 O'Connell Street, Hawick TD9 9HT.
13. The Tribunal again sought, and obtained, confirmation from the Tenant that she was satisfied that items (a), (d), (e), (f), (i), (j), (k), (l), (m), (n) and (o) in the list at paragraph 7 above had all been addressed. It also confirmed its intention to make a finding that there was no current breach of the repairing standard in respect of items (b), (c) and (h) as the kitchen sink and toilet had been found to be in proper working order at the inspection, and the cupboard for housing the fuse box was adequate. Again, this was accepted by the Tenant.
14. As regards item (p), there was some difference between the parties as to the cause of any problems with the plasterwork. However, as indicated above, the Tribunal found its condition to be adequate, and not in need of repair at the present time.
15. It was accepted by Ms Johnston that there was no smoke detector in the lounge, and no heat detection device within the kitchen area. There was

no evidence, in the form of wiring or otherwise, that the smoke and heat detectors were mains powered or interlinked. There is a smoke detector in the hall. Ms Johnston accepted that the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, under the standards set by the Scottish Government's Guidance on Satisfactory Provision For Detecting and Warning of Fires in Private Rented Properties (Revised November 2016). In particular, the requirement regarding smoke and heat detectors as outlined in the Guidance now states there should be at least:

- one functioning smoke alarm in the room which is frequently used by occupants for general daytime living purposes;
- one functioning smoke alarm in every circulation space, such as hallways and landings;
- one heat alarm in every kitchen;
- all alarms should be interlinked; and
- the alarms should be mains powered.

16. Ms Johnston and Ms Simpson reported that the Landlords had had difficulty complying with the revised standard for fire safety. Ms Johnston said that electricians in the area refused to go to the property. This was apparently due to the fact that, on previous visits, the Tenant and her family had interfered with their work. On questioning by the Tribunal, Ms Johnston accepted that, in fact, two electricians had adopted this position. Ms Johnston also stated that the fitting of interconnected alarms and detectors would, she had been advised, necessitate lifting floorboards. The Tenant had indicated that she would refuse to allow that to happen.

17. The Tenant explained that her adult son Douglas, who lives with her at the property, has a learning disability. When tradesmen come to the house, he tends to be curious about their work, and tries to follow them around. She accepted that he may have acted in a way that could be regarded as interfering or hindering their work. The Tenant gave an undertaking to the Tribunal that, on future visits by electricians, she would arrange to take Douglas out, so that their work would not be hindered. She also disputed the assertion that she had refused to allow the floorboards to be lifted. She confirmed to the Tribunal that she would have no difficulty with that step being taken, as a necessary part of the any electrical work.

18. As the Tenant's complaint included matters relating both to the gas and electrical appliances and fittings, the Tribunal had requested, during the court of the inspection, copies of the current Gas and Electrical Safety Certificates. Copies were provided to the Tribunal, and the Tenant, at the hearing. Ms Johnston and Ms Simpson were reminded that in future, copies of the certificates should be provided to the Tenant, when they are made available to the landlords by the contractors carrying out the certification.

19. The Gas Safety Certificate was dated 13 June 2018. It indicated that the installations in the house for the supply of gas were in a reasonable state of repair and in proper working order.
20. However, included in the list of observations in the EICR report, dated 20 February 2018, are three observations classified as "C2" (potentially dangerous – urgent remedial action required). These are: – 2) No main bonding to gas pipes; 3) No main protective bonding to water pipes and 7) No supplementary bonding where required.
21. These particular matters were not identified in the Tenant's application. The Tenant maintained that she had not previously seen the EICR report. However, the Tenant's application raised several points (being (g), (h), (j) and (k) in paragraph 7 above) which related to the operation of electrical installations and fittings at the property. Her application was accepted by the First-tier Tribunal under section 22(3). In particular, the Tenant's application may be regarded as asserting that work requires to be carried out, before the installations for the supply of electricity can be regarded as in a reasonable state of repair and in proper working order (under section 13(1)(c) of the Act), and before the electrical fixtures, fittings and appliances provided by the Landlords are in a reasonable state of repair and in proper working order (section 13(1)(d)).
22. Ms Johnston explained that the C2 observations in the EICR report had not been addressed, due to the difficulties in arranging for an electrician to attend the property, as described in paragraph 16 above.

Findings in fact

23. The Tribunal finds the following facts to be established: -
- i. The property is subject to a Short Assured Tenancy Agreement, which was executed by the parties on 28 April 2016.
 - ii. The Landlords are James Henry Clamp and Shirley Johnston, trading as J & J Development (a partnership), 13 O'Connell Street, Hawick.
 - iii. The property is a duplex flat occupying the first and second floor within a nineteenth century stone built terraced tenement with a slated pitched roof and a slated mansard loft conversion. A schedule of photographs is attached to this decision.
 - iv. The kitchen sink was in proper working order, and not in need of repair, at the date of the inspection.
 - v. The toilet in the bathroom was in proper working order, and not in need of repair, at the date of the inspection.
 - vi. The cupboard in which the fuse box is sited is adequate for that purpose.
 - vii. The plasterwork at the curved wall in the hall is in a satisfactory state of repair.
 - viii. There was no smoke or heat detector in the kitchen, and no smoke detector in the lounge. There is only one smoke detector, in the hall.

Thus, the property fails to comply with the standards set by the revised Scottish Government Guidance.

- ix. The EICR certificate provided by the Landlords includes three “C2” observations, as described at paragraph 20 above. These must be addressed before the installations for the supply of electricity can be regarded as being in a reasonable state of repair and in proper working order, for the purposes of section 13(1)(c) of the 2006 Act.
- x. Given the undertaking provided by the Tenant, described at paragraph 17, and her acceptance that the lifting of floorboards will probably be necessary, the work required to address findings viii and ix should now be capable of being carried out.

24. The first of these findings follow from the papers obtained by the Tribunal in relation to the application, in particular the tenancy agreement. The remaining points were apparent to the Tribunal members during the course of the inspection, or were based on their discussions with parties at the inspection and hearing.

Reasons for the decision

25. For the reasons stated, the Tribunal was satisfied that most of the issues detailed in the application had been addressed by repair or replacement. [See paragraphs 8 and 13 above].
26. As regards certain of the issues raised in the application, the Tribunal was satisfied that there was, at the time of the inspection, no breach of the repairing standard. [See paragraphs 9, 13, 14 and 23 iv, v, vi and vii]
27. However, it follows from findings in fact viii and ix, at paragraph 23 above that the property falls below the repairing standard, and that it is necessary to make a repairing standard enforcement order, under section 24(2) of the Act.

Decision

28. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
29. In particular, the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(c), given the C2 observations in the EICR certificate. The Tribunal also determined that the property fails to meet the repairing standard in terms of section 13(1)(d); see paragraphs 15 and 23 viii above.
30. 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.
31. The decision of the Tribunal was unanimous.

32. 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.

33. 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 30/8/18

Chairperson



2 Dovemount Place, Hawick, Roxburghshire. TD9 8AZ
FTS/HPC/RP/18/1234
Schedule of Photographs - Inspection Date – 16th August 2018
Weather – Bright and sunny.



1. The property



2. Living room window



3. Living room window repair



4. Kitchen sink – draining well



5. WC suite



6. Central heating pipe repair in bathroom



7. Tiled area and pointing at bath



8. Gas central heating boiler.



9. Carbon monoxide detector in living room



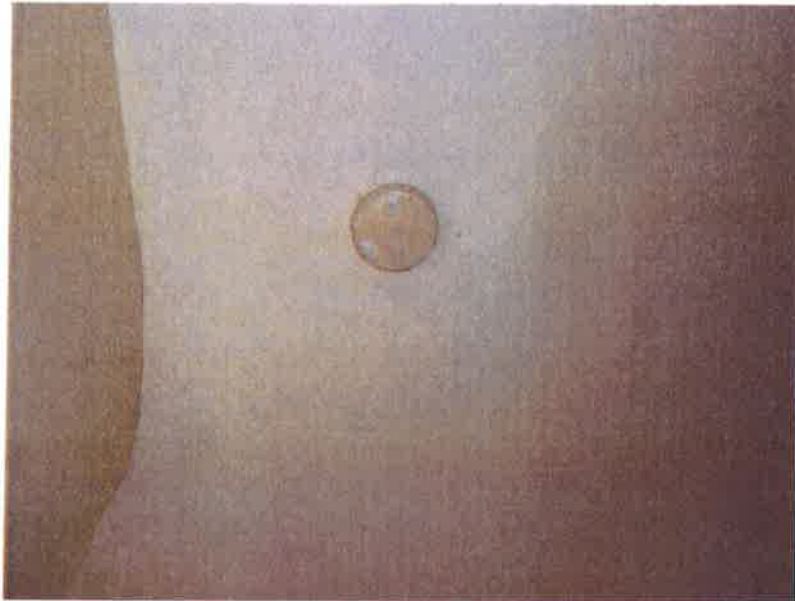
10. Repair to kitchen base unit hinges



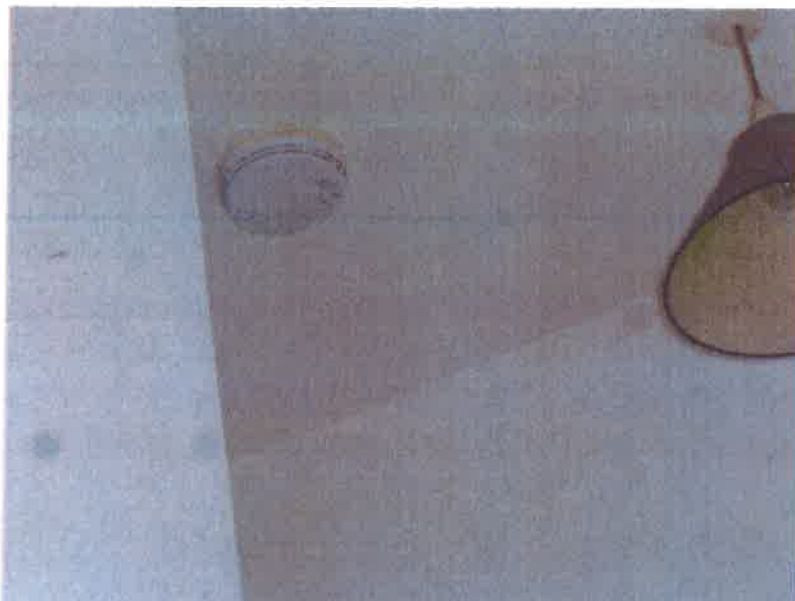
11. Repair to kitchen wall unit hinges



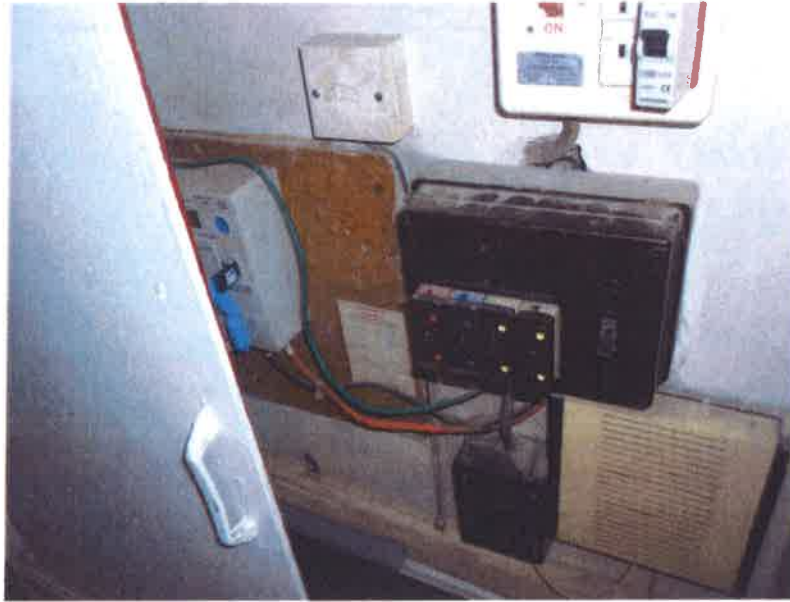
12. Replacement extractor hood fan



13. Smoke detector lower hall



14. Smoke detector upper hall



15. Electric distribution board within cabinet in hall



16. Light above flat entrance door



17. Replacement light switch in lower hall



18. Replacement socket in lower hall



19. Replacement light pendant in bathroom



20. Replacement wall light in bathroom



21, Repairs to window and cill in bathroom



22. Lower hall plasterwork



23. Lower hall plasterwork