

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/18/1411

Title no/Sasines Description: BER4559

**Whitefoord, Cove, Cockburnspath, TD13 5XD
("The House")**

The Parties:-

Mrs Jane McAllister and Mr Glen McAllister, Whitefoord, Cove, Cockburnspath TD13 5XD ("the Tenants")

and

Mr Graeme Biggin, c/o FBR Ltd, Abbey Row, Kelso, Roxburghshire TD5 7JF ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having made such enquiries as it saw fit for determining whether the landlord has complied with the duties 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 duties imposed by Section 14(1)(b) of the Act.

The tribunal consisted of –
Mark Thorley, Legal Member
Greig Adams, Ordinary Member

Background

1. By application dated 6 June 2018 the applicants 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"). The application states that the applicants considered that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard and in particular the landlord had failed to ensure that:-
 - (a) No carbon monoxide alarm has been fitted at the address.
 - (b) The boundary wall was excessively leaning and was dangerous.

- (c) The ground floor bathroom had a slow onset of progression leading to gaps and a sway in one corner.
 - (d) The combi boiler is not working properly.
 - (e) The ceiling in the livingroom following upon a leak requires to be plastered and painted.
2. Following service of the notice representations were received from the landlord and also the applicants.

The inspection

1. The tribunal inspected the property on the morning of 22 October 2018. The weather conditions were dry and sunny.
2. The property is a detached property in a small village. There is both an upstairs and downstairs to the property.
3. The tenancy is a joint tenancy held between the applicants namely Mrs Jane McAllister and Mr Glen McAllister. At the inspection both of the applicants were present. The landlord did not attend. Photographs were taken and are attached as a schedule to this decision.

The hearing

1. Following inspection of the property the tribunal held a hearing at Dunbar Town House, 126 High Street, Dunbar, East Lothian EH42 1JG. At the hearing Mr Glen McAllister was present. The landlord was not present.
2. The tribunal considered the issues in the following order:-
 - (i) No carbon monoxide alarm. It was noted that there were no carbon monoxide alarms although it was understood that these were to be fitted. There were solid fuel fires and accordingly carbon monoxide alarms required to be fitted.
 - (ii) The boundary wall. There is a significant issue with the boundary wall. The boundary wall in part has been taken down. The boundary wall where it runs down to the main road is significantly leaning and has been fenced off to some extent. The boundary wall nearer the house has been propped up with breeze blocks. The boundary wall is clearly needing significant urgent attention and should be removed/demolished and either replaced or simply taken down.
 - (iii) The ground floor bathroom clearly requires some form of investigation. There is a suspicion of potential timber decay underneath the shower tray. The shower tray needs to be taken out, inspected and thereafter replaced and sealed.
 - (iv) The combi boiler apparently has no hot water in the morning. It is an ongoing issue. It needs to be inspected by a suitably qualified engineer.

- (v) The leak in the livingroom ceiling has clearly been dealt with but has been patched on a temporary basis and requires to be plastered and painted.

Summary of issues

The issue is whether the house meets the repairing standard is laid down in Section 13 of the Act and whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Findings in fact

The tribunal finds the following facts to be established:-

1. The applicants entered into a short assured tenancy with the landlord on with a commencement date of on or about 30 October 2015.
2. The landlord is the registered owner of the property. The landlord's title is registered in the Land Register title no. BER4559.
3. An application was made to the tribunal by application dated 6 June 2018.
 - (i) Carbon monoxide alarms will require to be fitted within the property.
 - (ii) The boundary wall requires to be either removed or demolished and either replaced with a new boundary wall or simply left without a boundary divide.
 - (iii) The ground floor bathroom requires to have the shower tray taken out and thereafter for there to be an inspection for potential timber decay underneath the shower and following upon that inspection any works required to be undertaken need to be undertaken before then the shower tray is replaced and sealed. This work requires to be undertaken by a suitably qualified timber preservation expert.
 - (iv) The boiler requires inspection by a heating engineer to establish that it is in a reasonable state of repair and in proper working order and any works identified in said inspection require to be undertaken.
 - (v) The temporary repair on the ceiling of the livingroom requires to be plastered and painted.

Reason for decision

The tribunal determined the following:-

1. There were no carbon monoxide alarms within the property and there were solid fuel fires and accordingly there required to be a carbon monoxide alarm(s). It is understood that these were to be placed in the property but they were not there at the time of the inspection.

2. The boundary wall on inspection was clearly in a state of disrepair. At the bottom end of the garden towards the main road the wall is excessively leaning and is dangerous. This part has been subject to a temporary fence which prevents access to it. Part of the wall has already been demolished. The wall nearer the house is supported by breeze blocks. The wall needs to come down in its entirety and thereafter either be replaced with another wall/fencing or simply left down. It is appreciated that there may be issues surrounding the neighbour but the wall is in not just a state of disrepair but in a dangerous condition.
3. In the ground floor bathroom there is a sway to the corner. It may be that there has been water penetration which has resulted in timber decay underneath the shower tray. The shower tray needs to be taken out and thereafter there needs to be an inspection by an appropriate timber preservation expert to identify whether any works need to be undertaken. If so those works need to be undertaken and thereafter the shower tray needs to be replaced and sealed.
4. The combi boiler has not been working properly and in particular no hot water has been provided in the morning. Accordingly there requires to be an appropriate heating engineer to inspect the combi boiler and to report and following that report work needs to be undertaken in respect of any recommendations made thereafter.
5. The leak in the livingroom ceiling has been patched and repaired but is temporary. The ceiling requires to be plastered and painted.

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.

In witness whereof these presents type written on this and the preceding page are executed by Mark Thorley, chairperson of the tribunal at Edinburgh on 22 October 2018 before this witness:-

Mark Thorley

Alison Gibson

_____ witness

_____ chairperson

ALISON GIBSON name in full

20 HOPETOWN Address

STREET, EDINBURGH

EH7 4QH

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/18/1411

Title no/Sasines Description: BER4559

**Whitefoord, Cove, Cockburnspath, TD13 5XD
("The House")**

The Parties:-

Mrs Jane McAllister and Mr Glen McAllister, Whitefoord, Cove, Cockburnspath TD13 5XD ("the Tenants")

and

Mr Graeme Biggin, c/o FBR Ltd, Abbey Row, Kelso, Roxburghshire TD5 7JF ("the Landlord")

Whereas in terms of their decision dated 30 October 2016 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 the house is:-

- (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.
- (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.
- (c) 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:-

- (i) To install carbon monoxide alarms where appropriate in the property.
- (ii) To remove or demolish the boundary wall and either replace with another wall/fencing or left without.

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 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 are executed by Mark Thorley, chairperson of the tribunal at Edinburgh on 22 October 2018 before this witness:-

Mark Thorley

Alison Gibson

_____ witness _____ chairperson

ALISON GIBSON name in full

20 HOPE TOWN Address

STREET, EDINBURGH

EH7 4QH



**Property at Whitefoord, Cockburnspath, Cove,
Berwickshire, TD13 5XD (“the Property”)**

Chamber Ref: FTS/HPC/RP/18/1411

SCHEDULE OF PHOTOGRAPHS



1 Gap opening up at junction between floor tiles and sealant.



2 Noticeable gap at junction with shower tray.



3 Further view of noticeable deflection at shower tray.



4 Shower tray.



5 Wall adjoining shower tray.



6 Close view of wall adjoining shower and water damage.



7 Hairline cracking at skirting.



8 Vertical hairline cracking at corner.



9 Hall separating wall at Bathroom.



10 General view of Bathroom.



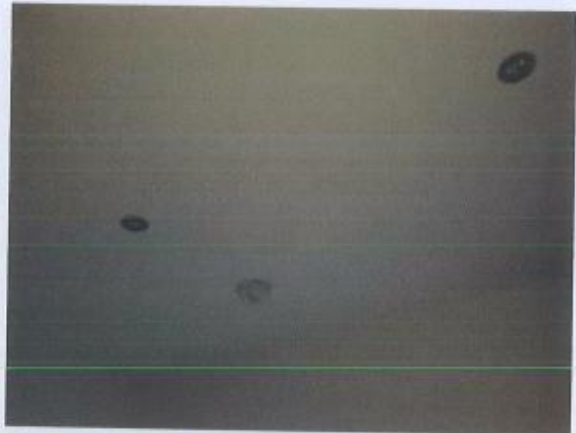
11 Tiled Bathroom floor.



12 Staircase.



25 Boiler data.



26 Smoke detector.



27 Front Elevation.



28 Boundary wall.



29 Boundary wall.



30 Boundary wall.



31 Boundary wall.