

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/18/2342

Sasines Description: 16 Guthrie Court , Gleneagles Village Estate, formerly Flat 62 Guthrie Court, Gleneagles, being the eastmost flat on the ground floor described in the Disposition by Erne Limited in favour of Douglas Andrew Rutherford dated 17 October 1989 and recorded in the General Register of Sasines for the County of Perth on 17 April 1990.

**16 Guthrie Court, Gleneagles Village, Auchterarder, Perthshire PH3 1SD
("The Property")**

The Parties:-

**Miss Aiofe De Castro, 16 Guthrie Court, Gleneagles Village, Auchterarder PH3 1SD
("the Tenant")**

**Mr Douglas Rutherford, 6 Transy Place, Dunfermline KY12 7QN,
(represented by his agent Mr Stuart Dalziell, Abbey Forth Property Management Limited, Balcairn, Viewfield Terrace, Fife KY12 7HY
("the Landlord")**

Whereas in terms of their decision dated 16 November 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) Any fixtures and fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

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 replace the cracked tiles in the main bathroom and renew worn grouting or alternatively replace the existing flooring with suitable vinyl or similar floor covering.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 60 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(s) are executed by Graham Harding, solicitor, 20 York Street Glasgow, chairperson of the Tribunal at Perth on 16 November 2018 before this witness:-
G Harding

E Kenyon

_____ witness

E Kenyon

_____ name in full

[Handwritten signature]
_____ Chairperson

7 WHITEFRIARS CREZ Address

PERTH

PH2 OPA

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/18/2342

**16 Guthrie Court, Gleneagles Village, Auchterarder, Perthshire PH3 1SD
("The Property")**

The Parties:-

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**Mr Douglas Rutherford, 6 Transy Place, Dunfermline KY12 7QN,
(represented by his agent Mr Stuart Dalziell, Abbey Forth Property
Management Limited, Balcairn, Viewfield Terrace, Fife KY12 7HY
("the Landlord")**

Tribunal Members

Graham Harding (Legal Member)

Harry Maclean (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 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 Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 11 September 2018 the Tenant applied to the 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

(a) Any fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order. Specifically the Tenant complained that the kitchen hob was cracked; repairs following a water leak were inadequate; the lounge carpet was damaged and required to be replaced; damaged flooring in the bathroom required to be replaced; there was peeling paintwork in the ensuite bathroom; mould in various areas around the flat; exposed brickwork at front door; old heaters required to be removed; there were no carbon monoxide detectors and sockets in the kitchen were not working .

3. By Minute dated 27 September 2018 a Convenor of the Housing and Property Chamber with delegated powers intimated a decision to refer the application under Section 22 (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 both the Landlord and the Tenants.
5. Following service of the Notice of Referral the Tenant's representative Patricia MacGillivray by email dated 25 October 2018, made written representations to the Tribunal. The Landlord by emails dated 23 and 24 October 2018, made written representations to the Tribunal.
6. The Tribunal received confirmation from the Tenant by email dated 29 October 2018 that she had vacated the property. The Tribunal therefore issued confirmation to the parties that the Tenant was no longer a party to the Application. In view of the nature of the complaints the Tribunal determined to proceed with the inspection and hearing as it was in the public interest to do so.
7. The Tribunal inspected the Property on the morning of 12 November 2018. The Landlord's representative Mr Stuart Dalziell was present during the inspection as were the two remaining tenants of the property. The Landlord was not present. The Ordinary Member of the Tribunal took a series of photographs which are attached as a schedule to this Decision.
8. Following the inspection of the Property the Tribunal held a hearing at Perth and heard from the Landlord and his representative Mr Stuart Dalziell.
9. The Landlord explained that the property had been affected by a leak of water from a washing machine at the property two floors above. He had been made aware of the problem on 28 May 2018 and the remedial works to his property had been commenced on 20 August 2018. He explained that he had not been present whilst the works were carried out and referred the Tribunal to his detailed written submissions. He believed any damaged plaster had been replaced. The kitchen cupboard units had not been taken off the wall or replaced.

10. Mr Dalziell explained that the remedial works had been carried out by Robb Reinstatement under the supervision of a surveyor and loss adjuster appointed by the property's insurers. The Property Factors for the block had also been involved as the claim had involved block common property. Mr Dalziell said that he had been told by the contractors that there was no need to take the kitchen units of the wall and that the mould had been removed from inside them. He had taken photographs of the work once it had been completed. He went on to say that the kitchen hob had been replaced as had the faulty kitchen sockets. The electric heaters throughout the property had been replaced and the old heaters removed.
11. The Landlord confirmed that the lounge carpet had been cleaned and disinfected on 12 September. He said he was aware of the cracked tiles in the bathroom but they were difficult to replace and difficult to match. In the medium term it was his intention to put lino on top of the existing tiles. He explained that it had been necessary when the property had an HMO licence to fix a self-closing fire door at the front door of the property. This had necessitated cutting into the wall at the side of the door to accommodate the self-closing mechanism. It did not affect the integrity of the property. The property no longer had an HMO licence as there were only two tenants.
12. The Landlord went on to explain that any mould in the smallest bedroom which was currently unoccupied had been caused by lack of ventilation with the bed and chest of drawers being placed hard against the wall. He noted that in bedroom two in the wardrobe there had been a slightly raised damp meter reading (14%) on the outside wall. Mr Dalziell indicated that this was something that could be monitored in the coming months.
13. The surveyor member of the Tribunal pointed out that there had also been a moderately high reading on the damp meter at the lower right-hand side of the patio doors in the lounge (19%). The Landlord queried if this would be consistent with the wall drying out as there was a lower reading higher up the wall and the leak had come from above. It was acknowledged that this could be the case if over time the reading continued to reduce. Mr Dalziell indicated that he could monitor the position over the next few months. The surveyor member confirmed that the moisture meter readings in the kitchen had been acceptable at 11%.
14. The Landlord confirmed that there were no gas appliances or open flues in the property and therefore there was no requirement for any carbon monoxide detectors.

Summary of the issues

15. The issues to be determined are whether the remedial work carried out by the Landlord has been done to a reasonable standard so that the fixtures,

fittings and appliances are in a reasonable state of repair and in proper working order.

Findings of fact

16. The tribunal finds the following facts to be established:-

- The Tenant has vacated the property.
- There are currently two other tenants occupying the property.
- The property was subject to water damage from a leak from property two floors above.
- Repairs have been carried out to remove mould and damage to plasterboard in the kitchen and lounge.
- There is no longer any visible sign of damage in the kitchen and lounge.
- Moisture readings in the kitchen and lounge are within acceptable levels and indicate that the walls are drying out.
- There is a raised level of moisture at the base of the wall in the lounge at the right hand side of the patio door but is still within an acceptable level.
- The kitchen hob has been replaced with a new hob that is in good working order.
- The faulty kitchen sockets have been replaced.
- The lounge carpet has been disinfected and is reasonable condition.
- There are no gas appliances or open flues within the property.
- There was no evidence of peeling paintwork in the en-suite bathroom.
- Although the wall at the front door had been exposed this was necessary to accommodate the front door self-closing mechanism.
- The electric heaters in the property have been replaced and the old heaters removed.
- There was mould evident in the currently unused bedroom three due to lack of ventilation.
- There was some evidence of raised moisture level on the exterior wall in the wardrobe in bedroom two.
- There were two cracked tiles on the floor of the main bathroom and the grouting between the tiles was in poor condition.

Reasons for the decision

17. It appeared to the Tribunal that the repairs to the property following the leak from the property above had so far as could be ascertained from a visual inspection and from taking moisture readings been carried out to a reasonable standard. There was no obvious sign of a recurrence of mould or damp. There was still a moderately high moisture reading at the base of the wall in the lounge to the right of the patio door. This could be consistent with the wall drying out but it would be necessary for the moisture level to be monitored over a period of time to ensure that this was

indeed the case. The Tribunal noted that the Landlord's representative Mr Dalziell was prepared to attend to this.

18. The Tribunal were pleased to note that the Landlord had attended to several of the other matters that had been raised in the application. Notably the electric hob in the kitchen had been replaced as had the faulty sockets. The electric heaters throughout the property had been replaced and all the old heaters removed.
19. Although the lounge carpet still had some staining from the water leak it was nonetheless in reasonable condition and did not in the Tribunal's opinion require to be replaced. The Tribunal could see no sign of peeling paintwork in the en-suite bathroom which although would no doubt benefit from being repainted was still in a reasonable state of repair. The Tribunal was also satisfied that any damage to the wall at the front door had been necessary to accommodate the door self-closing mechanism and was purely aesthetic and did not affect the integrity of the property. As there were no gas appliances or open flues in the property the Tribunal accepted that there was no need for the Landlord to provide carbon monoxide detectors. The Tribunal accepted that any mould in bedroom three was likely to have been caused through lack of ventilation. There was no evidence of a problem with damp. The raised moisture reading in bedroom two did not form part of the original application and therefore is not something the Tribunal would adjudicate on but would recommend that the Landlord continue to monitor the moisture levels on the outside wall in case there is a problem in the future.
20. The Tribunal was satisfied that the broken tiles in the bathroom and the poor condition of the grouting meant that in this respect the property failed to meet the repairing standard. Whilst the Tribunal noted the Landlord intended to take some action in the medium term to remedy the situation it was not satisfied that this was sufficient. It is a matter for the landlord to decide whether to replace the broken tiles or all of the tiles or to replace the tiles with a different type of floorcovering.

Decision

21. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
22. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
23. The decision of the tribunal was unanimous.

Right of Appeal

24. 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

25. 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.

G Harding

Signed



Chairperson.

Date

16 November 2018



16 Guthrie Court – Front Elevation, Ground floor flat



R/H side patio door – damp meter 19%



L/H side patio door – moisture meter 10%



Kitchen units – no mould inside. Dry.



Bathroom floor – broken ceramic tiles and poor grout joints



Blockwork exposed in front entrance door reveal



Kitchen – new electrical sockets



Kitchen – new electric cooker hob