

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

Repairing Standard Enforcement Order (“RSEO”) under section 24 (1) of the Housing (Scotland) Act 2006

Chamber Reference number: FTS/HPC/RT/18/2245

Title number: DMF19962

Re: Property at 30 Well Street, Moffat, DG10 9DP (“the property”)

The Parties:

Mr Ryan Bothwick (“the tenant”)

Mrs Rebecca Horn, 13 Castlegate, Penrith, CA11 7HZ (“the landlord”)

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD (“the Third Party Applicant”)

The Tribunal members: Simone Sweeney (legal chairing member) and Geraldine Wooley (ordinary surveyor member)

NOTICE TO

Mrs Rebecca Horn, 13 Castlegate, Penrith, CA11 7HZ and currently c/o, Field House, Blencow, Penrith, CA11 0DF (“the landlord”)

Whereas in terms of their decision dated 28th January 2019 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 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))

Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13 (1) (e))

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 house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (section 13 (1) (g))

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:-

1. *To produce a valid Electrical Installation Condition Report ("EICR") by a contractor approved by NICEIC or Select which confirms that:*
 - *The electrical installation throughout the property is satisfactory.*
 - *There are no items listed as C1 or C2.*
 - *An interconnected smoke and heat alarm system is installed in accordance with current regulations, has been tested and confirmed to be in working order.*

2. To produce a valid Gas Safety record from a Gas Safe registered engineer which confirms that:

- All necessary repairs have been completed to the gas boiler.*
- The gas boiler has been tested and is in full working order.*
- The gas boiler provides adequate central heating and hot water at the property.*
- All gas appliances have been tested and confirmed to be in working order.*
- Carbon monoxide detectors are fitted within the proximity of the boiler and the gas hob.*
- The carbon monoxide detectors are fitted in accordance with current regulations.*

3. To produce evidence that Portable Appliance Tests (PAT) have been undertaken to all electrical appliances (where appropriate) throughout the property.

4. To produce evidence of a Portable Appliance Test (PAT) having been undertaken to the dishwasher.

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 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 page and the preceding page are executed by Simone Sweeney, legal chairing member of the Tribunal at Glasgow on 28th January 2019 before this witness:-

S Sweeney

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Simone Sweeney, legal chairing member, 28th January 2019

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)

Reference number: FTS/HPC/RT/18/2245

Title number: DMF 19962

Re: Property at 30 Well Street, Moffat, DG10 9DP (“the property”)

The Parties:

Mr Ryan Bothwick (“the tenant”)

Mrs Rebecca Horn, 13 Castlegate, Penrith, CA11 7HZ (“the landlord”)

**Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street,
Dumfries, DG1 2AD (“the Third Party Applicant”)**

The Tribunal members: Simone Sweeney (legal chairing member) and Geraldine Wooley (ordinary surveyor 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) 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.

Background

1. By application received 6th September 2018, the third party applied to the Housing and Property chamber for a determination of whether the landlord has failed to comply with the duties imposed by section 14 (1) (b) of the Act.
2. The application of the third party stated that the landlord had failed to comply with the duty to ensure that the house meets the repairing standard under section 13 of the Act and in particular, that the landlord had failed to ensure 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))

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))

Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13 (1) (e))

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 house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (section 13 (1) (g))"

3. The third party specified the issues of disrepair at the property as:-

*"The gas central heating boiler/water heater does not work
no current landlords gas safety certificate*

Consumer unit trips when multiple kitchen appliances are used

No portable appliance test (PAT) label on the dishwasher

No carbon monoxide detectors within the proximity of the boiler

No carbon monoxide detectors within the proximity gas hob

No interlinked hard wired smoke or heat detectors present ”

4. Within the application, the third party identified which works they considered necessary at the property to be:

“Central heating boiler to be serviced and be (sic) in working order.

Electrical points and circuits to be checked by and (sic) Electrician

EICR to be completed by a certified Electrician, inc. PAT insp.

Smoke, Heat and CO detectors to fit.

Landlord gas safety certificate to be sought for gas appliances”

5. By minute dated 12th September 2018 a convenor of the Private Rented Housing Panel with delegated powers under section 96 of the Housing (Scotland) Act 2014 intimated a decision to refer the application to a tribunal.
6. The tribunal served a Notice of Referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and the third party. Details of the date and time of an inspection and hearing were intimated to these parties as 13th December 2018 at 10am for an inspection and 11.30am for a hearing at, Moffat Town Hall, High Street, Moffat, DG10 9HF. By letter of 11th November 2016 the Tribunal’s administration intimated to the tenant the date and time of the inspection and hearing. The letter advised that, that as an interested person to the application, the tenant was receiving intimation for information purposes only.

Procedural history

7. Having considered the allegations of the third party’s application and having considered the photograph produced in support of the application, the Tribunal issued a direction dated 21st November 2018. The Tribunal directed the landlord to produce the following information:
- *“A current Gas safety certificate for the property;*
 - *A current Electrical Installation Condition Report (“EICR”) for the property;*

- *Evidence of Portable Appliance Testing ("PAT") having been undertaken to the dishwasher."*

8. The direction provided,

"The Landlord is hereby given notice of the terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016, which state that in any proceedings before the First-tier Tribunal it is an offence for any person to—

- a) make a false statement in an application in a case;*
- b) alter, conceal or destroy, or fail to produce, something that is required to be produced in accordance with Tribunal Rules; or*
- c) fail to attend or give evidence, when required to do so in accordance with Tribunal Rules.*

A person who commits an offence as described above is liable —

- a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);*
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £5,000 (or both)."*

9. A deadline of close of business on Friday 6th December 2018 was provided to the landlord to produce the documentation directed by the Tribunal.

10. The landlord failed to produce any of the documentation directed.

11. On 4th December 2018, the Tribunal's administration received an email from Citizen's Advice, Carlisle and Eden. The email provided a copy email which purported to have been sent to Citizen's Advice from the landlord. The landlord requested that the inspection and hearing of 13th December be postponed. The email read,

"I am unable to be involved in the Tribunal at 11.30am due to ill health. I have been without money to attend to the repair to the boiler but wish to be co-operative. I am trying to raise money but so far unsuccessful."

12. The email also provided an alternative contact address for the landlord. It read,

"Please send letter to C/O Field House, Blencow, Penrith, CA110DF as I am staying here until further notice while I am ill."

13. The email concluded with,

"sent on behalf of above client from Citizen's Advice 2 Sandgate Penrith CA11 7TP."

14. A copy of this email was shared with the third party's representative, Mr Rome.

15. By email of 7th December 2018, Mr Rome contacted the Tribunal's administration. The email advised that the tenant was no longer residing at the property. It read,

"I have spoken to the tenant today and she confirmed that the living conditions for her family were too extreme with no central heating and they have now moved out to seek alternative accommodation."

16. Whilst it was accepted by the Tribunal that the landlord would not be in attendance, the Tribunal sought confirmation from the landlord that access would be provided to allow the inspection to proceed on 13th December. A deadline of midday on 12th December was provided to the landlord.

17. No response was received by the landlord or Citizen's Advice on her behalf by the deadline. An email was received from Dan Abel at Citizen's Advice at 15:22 hours on 12th December. The email read,

"I apologise for being unable to contact you before 12pm. I have not been able to contact the client. Citizens Advice Carlisle and Eden do not have any access to this property and would only be able to assist by contacting the client. We are not currently representing this client in this matter."

18. Satisfied that there was good reason to do so, the Tribunal discharged the inspection and hearing of 13th December. Reference is made to the content of the Tribunal's direction of 19th December 2018.

19. A second inspection and hearing were arranged to take place on Friday 11th January 2019. The inspection was scheduled for 11am. A hearing was

assigned for 12.30pm at Fountain Hall, Abbeygreen, Lesmahagow, ML11 0HD. Letters of intimation were issued to all concerned.

20. Letters intimating the new inspection and hearing were sent to all relevant parties on 19th December 2018.

21. To ensure that the inspection and hearing could proceed, the Tribunal's administration contacted the landlord requesting her confirmation that access would be provided on 11th January 2019. An email was sent to the landlord on 21st December 2019. It read,

"Mrs Horn, can you confirm you will grant access to the above property on 11th January 2019? Respond by 28 December 2019."

22. There being no response to the email from the landlord by 4th January 2019, the Tribunal issued a direction dated, 7th January 2019. The Tribunal confirmed that the inspection could not proceed on 11th January, there being no confirmation that access would be provided to the property. The Tribunal sought the landlord's confirmation that she would be in attendance at the hearing at Lesmahagow on the same date. The Tribunal provided a deadline of 12 noon on 9th January for the landlord to respond. Reference is made to the content of the direction of 7th January 2019.

23. The direction of 7th January 2019 was intimated to the landlord by email address and by first class recorded delivery post to the address which she had provided to the Tribunal. The landlord signed for the recorded delivery post on 9th January 2019.

24. The direction was issued with a covering letter. The letter provided,

*"A Direction may instruct all parties on how the case will proceed, or specifically instruct individual parties to supply information, or provide witnesses at a Hearing. Any instruction given to you must be complied with. **Failure to do so, without reasonable excuse, is an offence and liable on summary conviction to a fine not exceeding level 3***

of the standard scale in terms of Schedule 2 paragraph 3 (3) (c) of the Housing (Scotland) Act 2006.”

25. No response was received from the landlord. Beyond the email from Citizen's Advice on 4th December, there has no contact from the landlord to the application.

Decision to proceed without an inspection

26. The landlord has made reference to illness but no medical evidence has been produced to indicate that the landlord is unable to participate in proceedings. The landlord advised the Tribunal in her email of 4th December that she intended to be, “co-operative.” However to date, the landlord has failed to satisfy any of the orders of the Tribunal without reasonable excuse and failed to respond to any requests made by the Tribunal's administration. The landlord has failed to provide the Tribunal with access to her property on two dates, 13th December 2018 and 11th January 2019. As a result the Tribunal has been unable to inspect the property. The landlord has not provided the Tribunal with any indication that access will be permitted in the future.

27. The application includes allegation of repairs which raise potential issues of health and safety. Although the property is currently vacant, there is a potential risk that it could be re-let without the alleged repairs having been addressed. The alleged repairs raise issues which require the opinion of suitably qualified electrical and gas safety engineers. The landlord has never disputed the allegations. The landlord has confirmed that no attempt has been made to remedy the undisputed defects. In light of the nature of the alleged repairs and the landlord's failure to dispute the allegations, the Tribunal is satisfied that the application can be considered without a further inspection or hearing being assigned.

Evidence before the Tribunal

28. Before the Tribunal were the application of the third party and a colour photograph produced by the third party in support of the application. The

photograph purported to show the boiler at the property. The photograph was dated, 15th August 2018.

29. Of the photograph, the Ordinary Surveyor member made the following observations:

- The boiler appears to be a floor-standing Caradon Ideal Mexico model.
- This style of boiler ceased to be manufactured in 1988, so this model may have been installed over 30 years ago with a useful life of approximately 20 years.
- Even if it were in working order, it is unlikely that the boiler would perform to current standards.
- Repairs to the boiler would be difficult to achieve as spares may no longer be available or difficult to source.
- The photograph shows that the front of the boiler casing has been removed. This might indicate that the boiler is undergoing inspection and/or repairs.
- There may be some corrosion to the pipework of the boiler given its age.

30. In addition there were photographs of two pages of a document headed, *"Tenancy Agreement creating an Assured Shorthold Tenancy"* for the property. The date of the agreement was 2nd July 2016. The parties to the agreement were the landlord and the tenant. The term of the agreement was described as a, *"rolling contract."*

31. A copy of the title from the Land Register was also produced.

Summary of the issues

32. The issues to be determined are whether the gas boiler at the property is in working order; whether there are carbon monoxide detectors and interlinked hard wired smoke or heat detectors present in the property; whether all electrical installation and appliances are in working order; whether all gas appliances are in working order and, if so, whether this amounts to a breach of the repairing standard.

Findings in fact

33. That the tenancy is an assured tenancy which commenced on 2nd July 2016.
34. That the title identifies the landlord as the owner of the property, that the property is within the local authority area of the third party and that the third party has a legal basis to bring the application before the Tribunal.
35. That the tenancy agreement identifies the landlords of the property as, *"Rebecca Horn."*
36. That the property is currently unoccupied.
37. That, attached to the application of 6th September 2018, the third party had submitted a colour photograph of a gas boiler, dated 15th August 2018.
38. That the landlord makes no comment about the photograph.
39. That the Tribunal accepts that this is a photograph of the gas boiler at the property.
40. That the boiler is an outdated model, unlikely to meet current standards and in a state of disrepair.
41. That the landlord does not dispute the allegation of the third party that the gas boiler does not work.
42. That the gas boiler does not provide central heating or hot water to the property in its current state.
43. That the gas boiler does not meet the repairing standard.
44. That the landlord does not dispute the allegation of the third party that there is no current gas safety certificate.
45. That, by direction of 21st November 2018, the Tribunal ordered the landlord to produce a current gas safety certificate no later than close of business on 6th December 2018 but the landlord failed to do so.
46. That there is no valid gas safety certificate in place for the property.
47. That the landlord does not dispute the allegations of the third party that the consumer unit trips when multiple kitchen appliances are used or that there is no Portable Appliance Test (PAT) label on the dishwasher.

48. That, by direction of 21st November 2018, the Tribunal ordered the landlord to produce a current Electrical Installation Condition Report ("EICR") no later than close of business on 6th December 2018 but the landlord failed to do so.
49. That there is no valid EICR in place for the property.
50. That, by direction of 21st November 2018, the Tribunal ordered the landlord to produce evidence of Portable Appliance Testing ("PAT") having been undertaken to the dishwasher no later than close of business on 6th December 2018 but the landlord failed to do so.
51. That there is no valid PAT for the dishwasher at the property.
52. That there are no carbon monoxide detectors within the proximity of the boiler or gas hob.
53. That there are no interlinked hard wired smoke or heat detectors present in the property.

Reasons for decision

54. The third party made various allegations of disrepair at the tenancy in its application of 6th September 2018. These allegations have never been disputed by the landlord. The landlord failed to produce the information requested by the Tribunal in its direction of 21st November 2018 which, had it been made available, may have provided some challenge to the allegations. There is no evidence available to the Tribunal to challenge the third party's allegations. By email of 4th December the landlord confirmed that no works had been taken to address issues with the boiler. It was not suggested that any works had been carried out to address the other allegations. The Tribunal take the view, therefore, that the landlord has done nothing to address any of the allegations made by the third party. On that basis, the Tribunal accepts the allegations of the third party and finds that the repairing standard is not met. The landlord indicated that she was without funds to complete the repairs. The Tribunal does not consider this just cause for the property to remain in its current state and orders the landlord to complete repairs.

Decision

55. The Tribunal accordingly determines that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by section 24 (1) of the Act in the following terms:-

1. *To produce a valid Electrical Installation Condition Report ("EICR") by a contractor approved by NICEIC or Select which confirms that:*

- *The electrical installation throughout the property is satisfactory.*
- *There are no items listed as C1 or C2.*
- *An interconnected smoke and heat alarm system is installed in accordance with current regulations, has been tested and confirmed to be in working order.*

2. *To produce a valid Gas Safety record from a Gas Safe registered engineer which confirms that:*

- *All necessary repairs have been completed to the gas boiler.*
- *The gas boiler has been tested and is in full working order.*
- *The gas boiler provides adequate central heating and hot water at the property.*
- *All gas appliances have been tested and confirmed to be in working order.*
- *Carbon monoxide detectors are fitted within the proximity of the boiler and the gas hob.*
- *The carbon monoxide detectors are fitted in accordance with current regulations.*

3. *To produce evidence that Portable Appliance Tests (PAT) have been undertaken to all electrical appliances (where appropriate) throughout the property.*

4. To produce evidence of a Portable Appliance Test (PAT) having been undertaken to the dishwasher.

56. The Tribunal considers it reasonable to allow a period of **28 days** from the date of service of the RSEO to carry out these works.

57. The decision of the Tribunal was unanimous.

58. The Tribunal require the landlord to carry out such works as are necessary to ensure that the property meets the repairing standard.

Right of Appeal

59. 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

60. 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 such an 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 determined.

S Sweeney

Legal chairing member

Simone Sweeney 28th January 2019