

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/18/3050

Title no: ANG 69782

**8A Laing Street, Dundee DD3 7BW
("The Property")**

The Parties:-

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee DD1
3BA
("the Third Party Applicant")**

**Mr Cameron Burr, 8A Laing Street, Dundee DD3 7BW
("the Tenant")**

**Miss Zahraa Al-Safar
(represented by their agent Baillie Shepherd, Solicitors, 37 Union Street,
Dundee DD1 4BS
("the Landlord"))**

Whereas in terms of their decision dated 25 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:-

- (a) The installations in the property 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;
- (b) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
- (c) The property 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:-

- (a) To provide evidence that Mr C Docherty is a person authorised to carry out an inspection and testing of the electrical installations at the property and certified to issue an Electrical Installation Condition Report failing which to provide a new report by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT.
- (b) To have all electrical appliances in the property provided by the landlord PAT tested and provide documentary evidence that they have been checked and are in a safe condition.
- (c) To install a combined heat and smoke detector in the kitchen and smoke detectors in all other rooms and circulation areas except bathrooms. These must all be mains wired and interlinked and certified by a competent electrical contractor registered with SELECT or NICEIC.
- (d) To install a carbon monoxide detector in accordance with current regulations in the kitchen of the property.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 30 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 25 January 2019 before this witness:-

G Harding

A Wipat

witness

Chairperson

ANGELA PATRICIA WIPAT name in full

7 WHITEFRIARS CRESCENT 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/RT/18/3050

**8A Laing Street, Dundee DD3 7BW
("The Property")**

The Parties:-

**Dundee City Council, Private Sector Services Unit, 3 City Square,
Dundee DD1 3BA
("the Third Party Applicant")**

**Mr Cameron Burr, 8A Laing Street, Dundee DD3 7BW
("the Tenant")**

**Miss Zahraa Al-Safar
(represented by their agent Baillie Shepherd, Solicitors, 37 Union Street,
Dundee DD1 4BS
("the Landlord"))**

Tribunal Members

Graham Harding (Legal Member)

Debbie Scott (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 both the Third Party Applicants and the Tenants at the hearing and the Landlord's representatives written representations, 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 2 November 2018 the Third Party Applicants 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 Third Party Applicants stated that the Third Party Applicants considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

(a) The installations in the house for the supply of water, gas, and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.

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

(c) 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 Applicants were concerned as there ought to be mains wired and interlinked smoke detectors in every room other than the bathroom and a heat detector in the kitchen. There also needed to be a carbon monoxide detector in the kitchen and the Landlord had to provide satisfactory up to date Electrical Installation Condition and Gas Safety Reports.

3. By Minute of Decision dated 16 November 2018 a Convener with delegated powers intimated a decision to refer the application under Section 23 (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 the Third Party Applicants, the Landlord and the Tenants.
5. Following service of the Notice of Referral the Landlord's representatives (by letter dated 27 December 2018), made written representations to the Tribunal.
6. The Tribunal inspected the Property on the morning of 14 January 2019. The Tenant was present during the inspection. Neither the Landlord nor the Landlord's representatives nor the Third Party Applicants were present. A schedule of photographs taken by the Ordinary Member of the Tribunal at the inspection is attached to this Decision.
7. Following the inspection of the Property the Tribunal held a hearing at Dundee Carers Centre, 132-134 Seagate, Dundee and heard from both the Tenant and the Third Party Applicants who were represented by Mr Lindsay Watson and Ms Terri Kean. The Landlord did not attend the hearing nor was she represented.
8. The tenant confirmed he had been served with a Notice to Leave and that he was seeking advice in this regard from Shelter. With regards to the

Landlord's representative's suggestion that the tenants had entered into an illegal scheme to bypass the Houses in Multiple Occupancy Regulations the Tenant explained that as far as he was aware there had always been four tenants in the property but only two had been asked to sign the lease. He had been a tenant for two years but had only been named on the lease commencing on 1 August 2018. He said that in the previous year all the tenants had paid the rent into one tenant's bank account and the whole month's rent had then been paid into the Landlord's bank account. At the commencement of this year all four tenants had paid their rent separately but after a month or two had been asked by the Landlord's father to either pay the rent from one tenant's account or from two tenants accounts but not from all four. The tenant thought this had happened after the issues regarding the house being an HMO had arisen. The Tenant did not agree that he or the other tenants had deliberately been parties to an illegal scheme. They had just done as they had been asked by the Landlord's father. The Tenant went on to say that he had not yet received the Private Residential Tenancy Agreement from Shelter that the Landlord's representatives had referred to in their letter.

9. The Tenant went on to say that the smoke alarms in the downstairs bedroom and rear hall which were battery operated had been provided by his father who had raised concerns about the lack of alarms in the property. He confirmed that throughout his time at the property the landlord had not provided a carbon monoxide detector. There were hard wired smoke alarms in the upstairs and downstairs halls but not in any other rooms and the downstairs hall alarm was not working.
10. The Tenant was unsure as to which electrical appliances were provided by the landlord but was sure that the fridge and washing machine had been provided by the Landlord. He was not sure about other items such as the kettle or toaster.
11. For the Third Party Applicants Mr Watson advised the Tribunal that the Landlord had now been registered but that the issue with regards to the property being used as an unlicensed HMO was continuing. Mr Watson accepted that this did not form part of the application to the Tribunal at this time. Mr Watson advised the Tribunal that having had sight of the EICR and Gas Safety Report he had no comment to make on them but left it to the Tribunal to determine if they were satisfactory.

Summary of the issues

12. The issues to be determined are: -
 - i) Whether the Landlord's Representatives submissions regarding there being a pacta illicita has any bearing on the Tribunals jurisdiction.
 - ii) Whether or not the EICR and Gas Safety Report provided by the Landlord's representatives are satisfactory.
 - iii) Whether the property has satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire and for giving

warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings of fact

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

- The tenancy is a private residential tenancy.
- There are currently four persons occupying the property.
- The EICR submitted to the Tribunal has not been prepared by a member of SELECT or NICEIC or NAPIT and there is no record of any electrical appliances having been PAT tested.
- The Gas Safety Report is satisfactory but records that there is no carbon monoxide detector in the property.
- The existing mains wired smoke detector in the downstairs hall is inoperative.
- There are no other mains wired interlinked smoke detectors in the property other than in the upstairs hall.
- There is no mains wired interlinked heat detector in the kitchen.
- The Tenant has been served with a Notice to Leave that ends on 25 January 2019.
- The reason given for terminating the tenancy is that the Landlord wishes to sell the property.

Reasons for the decision

14. The Tribunal was satisfied that there was a Private Residential Tenancy Agreement between the Tenant and the Landlord. Although the Tenant had signed a Short Assured Tenancy Agreement this would be deemed to be a Private Residential Tenancy by virtue of the coming into force of the Private Housing (tenancies)(Scotland)Act 2016. Rent is being paid by the Tenant to the Landlord and the Tribunal is satisfied that it has jurisdiction irrespective of any issues that may arise as to whether or not the property ought to have an HMO licence.

15. Although the EICR provided by the Landlord's representatives bears to have been prepared by an approved electrician it does not appear that Mr C Docherty is a member of SELECT or NICEIC and therefore the Tribunal requires further information to satisfy it that the contractor is properly qualified or else a further report must be provided. In addition, as it appears that the Landlord has provided electrical appliances all of these require to be PAT tested and confirmation of this added to the EICR.

16. The Tribunal was particularly concerned to discover that the property did not have mains wired interlinked smoke detectors in every room and a heat detector in the kitchen. The landlord had been given notice of the need for these in the Third Party Applicant's letter of 24 September 2018 but had done nothing to remedy the situation.

17. Similarly, the Tribunal were concerned that the Landlord had failed to provide the Tenant with a carbon monoxide detector in the kitchen where the gas boiler was located. This could be very dangerous and put the lives of all the occupants of the property at risk.
18. In considering whether to issue a Repairing Standards Enforcement Order the Tribunal took account of the fact that it was apparently the Landlord's intention to sell the property. However, it may take some time before any existing tenancy is brought to an end notwithstanding the end date of the Notice to Leave and in the interim the safety of the Tenant and any other occupants of the property is paramount.
19. Whilst not a matter for the Tribunal to consider as part of this application it was noted at the inspection that the downpipe at the rear right hand side of the property was detached from the gutter allowing water to flow directly onto the side wall of the property. The Tribunal would suggest that it would be in all parties' interests for the Landlord to have this fixed before any lasting damage is caused to the property.
20. Having considered all of the documentation provided by and on behalf of the parties and from the observations at the inspection and the evidence gathered at the hearing the Tribunal was satisfied that the property did not meet the repairing standard.

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



Graham Harding, Chairperson.

Date

25 January 2019

8A Laing Street, Dundee, DD3 7BW
FTS/HPC/RP/18/3050

8A Laing Street, Dundee, DD3 7BW

FTS/HPC/RP/18/3050



Front Elevation – End terraced Villa

This is the Schedule of photographs referred to
in the foregoing decision,
G Harding

Chieipeneth

8A Laing Street, Dundee, DD3 7BW
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Central Heating boiler located within the Kitchen. No Carbon Monoxide monitor.



Kitchen ceiling – No smoke or heat detector

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Battery operated smoke detector in hallway installed by tenant



No smoke detector within bedrooms

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Consumer unit located in cupboard underneath staircase. Date inspected on 18th November 2018.
Next inspection on 18th November 2023.



Smoke detector located in entrance vestibule. No sound when tested.

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Condensation staining on ceiling



Top of the staircase

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Gable and rear elevation



Portion of downpipe missing