

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/ 19/ 1437

Land Registration Title Number GLA170279

Property at 97 Moraine Avenue, Glasgow, G15 6HU ("The Property")

The Parties:-

**Glasgow City Council, DRS Private Housing, 2nd floor, 231 George Street,
Glasgow, G1 1RX ("The Third Party Applicant")**

**Mr Robert Fergie, 54 Aursbridge Crescent, Glasgow, G78 2TJ and also at 64
Stadyum Caddesi, No 64, Karsiyaka, Girne, Cyprus ("The Landlord")**

**Ms Gabrielle Hughes, 97 Moraine Avenue, Glasgow, G15 6HU ("The Tenant" and
Interested Person)**

NOTICE TO: Mr Robert Fergie ("the Landlord")

Whereas in terms of their decision dated 23rd October 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 structure and exterior of the property (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 for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order; and
- (c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order;

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The tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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 to:-

- a) carry out such works as are necessary to obtain a Gas Safety Certificate in respect of the property by a Gas Safe registered engineer and provide a copy of the Gas Safety Certificate to the tribunal
- b) instruct suitably qualified contractors to replace the cabinets in the kitchen and the gap between the sink and gas cooker to be cleared out, reinstated and boxed in at the same time all as necessary to ensure that the kitchen fittings are in a reasonable state of repair and in proper working order
- c) instruct suitably qualified contractors to box in the sink and pipes in the bathroom and also to box in the gap between the bath panel and the wall as necessary to ensure that the bathroom fittings are in a reasonable state of repair and in proper working order.
- d) instruct suitably qualified contractors to clear and clean the front and rear guttering and rear downpipe as necessary to ensure the gutters and downpipes are in a reasonable state of repair and in proper working order
- e) instruct suitably qualified contractors to repair or replace the fencing at the back of the property to be of a similar size and style to adjacent properties to provide security for the property and to ensure that said fencing is in a reasonable state of repair and in proper working order.

The tribunal order that the works specified in this Order must be carried out and completed within the period of ten weeks 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,

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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 Morag Leck, solicitor, chairperson of the tribunal at GLASGOW on 23rd October 2019 before this witness:-

Morag Leck

Shannon Dunn witness

chairperson

Shannon Dunn

name in full

20 York Street Address

Glasgow

G2 8AT

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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RT/19/1437

Re: Property at 97 Moraine Avenue, Glasgow, G15 6HU ("The Property")

The Parties:-

Glasgow City Council, DRS Private Housing, 2nd floor, 231 George Street, Glasgow, G1 1RX ("The Third Party Applicant")

Mr Robert Fergie, 54 Aursbridge Crescent, Glasgow, G78 2TJ and also at 64 Stadyum Caddesi, No 64, Karsiyaka, Girne, Cyprus ("The Landlord")

Ms Gabrielle Hughes, 97 Moraine Avenue, Glasgow, G15 6HU ("The Tenant" and Interested Person)

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.

The Tribunal consisted of-

Morag Leck (Legal Member and Chair)
Nick Allan (Ordinary Member)

Background

By application which comprises documents received on 14th May 2019 the Third Party Applicant 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").

1. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

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- (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 (as required by section13(1)(b) of the Act);
 - (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 (as required by section13(1)(c) of the Act);
 - (c) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (as required by section13 (1) (g) of the Act).
2. The Third Party Applicant attached details of the following complaints to the application :-
 - 1) *Requested a copy of the Gas Safety Certificate as unsure that the property has gas installation which is safe to use*
 - 2) *Kitchen cabinets are not fit for purpose and need repaired/replaced*
 - 3) *Bath panel needed in bathroom and sink/pipework needs boxed in*
 - 4) *Guttering needs cleaned/cleared*
 - 5) *Back garden needs fence reinstated for security /safety*
3. By Minute dated 12th June 2019 a Convener of the Tribunal with delegated powers intimated a decision to refer the application to a Tribunal for a determination.
4. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, and the Third Party Applicant on 27th June 2019. The tenant of the property Ms Gabrielle Hughes had elected not to be a party to the application and therefore was provided with copies of said correspondence issued by the Tribunal on the same date. An inspection of the Property and a hearing were fixed for 7th August 2019.
5. Following service of the Notice of Referral, no written representations were received from the Third Party Applicant. An email dated 18th July 2019 from the Landlord requested a postponement of the hearing on the basis that he had only just received correspondence from the Tribunal and detailing alleged difficulties with the tenant as regards both arrangements agreed for repairs to be carried out and outstanding rent due. After further clarification from the Landlord regarding his request for postponement the Tribunal agreed to do so. An inspection and hearing date was thereafter fixed for 2nd October 2019.

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6. On 16th August 2019 the Tribunal issued a Direction to the Landlord requiring him to provide the Tribunal by 17th September 2019 with the following :-

A current gas safety record, certifying that the gas installations are in satisfactory working order, from a Gas Safe registered engineer in relation to the property

7. No Gas Safety Certificate was received prior the date of the inspection and hearing.

The Inspection

8. The Tribunal inspected the Property on the morning of 7th October 2019. The weather conditions were dry and sunny.
9. The Property is a former local authority property being a terraced house located within a street of similar properties dating from around the 1950s in the Drumchapel area on the outskirts of Glasgow. The accommodation comprises two bedrooms, living room, kitchen and bathroom.
10. Ms Gabrielle Hughes, the Tenant, was present in the property during the inspection. The Third Party Applicant and the Landlord did not attend the inspection. Ms Eilidh McMillan, Tribunal Clerk accompanied the Tribunal. Photographs were taken and are attached as a Schedule to this decision.

The Hearing

11. Following the inspection of the Property, the Tribunal held a hearing at Glasgow Tribunals Centre, Room 108, 20 York Street Glasgow. There were no parties in attendance at the hearing and the Tenant did not attend as an observer.

Summary of the issues

12. As a preliminary issue the Tribunal observed that no response in relation to the Direction had been made by the Landlord in that a Gas Safety Certificate had not been submitted to the Tribunal. Whilst the Tribunal noted that the Direction had not been complied with, the Tribunal noted the lack of a Gas Safety Certificate would be considered further by the Tribunal when considering the issue set out below. Accordingly the Tribunal agreed that no further action was required in respect of the Direction.
13. Thereafter the issue to be determined is whether the Property meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

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Findings of fact

14. The Tribunal finds the following facts to be established:

- a) The Tenant entered into a Tenancy Agreement with the Landlord which commenced around April/ May 2019. Whilst no lease has been produced, the Tenant has continued to occupy the Property. The Landlord has confirmed that rent is payable at £525 per month. Accordingly the Tribunal is satisfied that it has jurisdiction in this matter.
- b) The Landlord of the Property is Mr Robert Fergie
- c) Mr Robert Fergie is the registered owners of the Property recorded under Land Certificate GLA170279.
- d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- e) The Third Party Applicant notified the Landlord by letter dated 11th March 2019 of all the repair issues detailed in the application.
- f) The Tribunal at its inspection on 2nd October 2019 carefully checked the items which were the subject of the complaint and observed the following in relation to each item:
 - i) Gas Safety Certificate
The Tribunal noted that no Gas Safety Certificate had been received following the issue of the Tribunal's Direction. The Tenant had also commented during the inspection that she was not aware of a Gas Safety Certificate
 - ii) Kitchen cabinets are not fit for purpose and need repaired/replaced
The kitchen cabinets appeared "life expired" and beyond economic repair. There was an exposed area between the sink and the cooker which needed to be cleared out and boxed in. The Tribunal observed that, whilst not included within the terms of the application, the floor covering was broken and in a state of disrepair.
 - iii) Bath panel needed in bathroom and sink/pipework needs boxed in
The bath panel had been replaced. The Tenant commented that she had done so during the inspection. The bath panel did not fit properly and a gap remained. It was noted that the pedestal sink unit and the W.C unit, together with associated pipework, had been partially and crudely boxed in. The Tribunal observed that, whilst not included within the terms of the

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application, the light fitting in the bathroom did not meet appropriate standards and should be replaced by a sealed unit.

iv) Guttering needs cleaned/cleared

The front and rear gutters were blocked by vegetation. In addition a section of the downpipe at the rear elevation was affected by vegetation.

v) Back garden needs fence reinstated for security /safety

The fence was in a serious state of disrepair allowing access to an open lane directly to the rear of the property. Separately, whilst not included within the terms of the application, the Tribunal observed that the garden was in a general state of neglect with various items of abandoned furniture blocking access to the side of the Property

vi) Smoke and heat detectors/ Carbon monoxide detector

The smoke and heat detectors within the Property were interconnected and functioning. The Tribunal also noted that whilst the Third Party applicant had made reference within the terms of the application to a failure to meet the required standard, a carbon monoxide detector was also located appropriately and functioning.

Reasons for the decision

15. The Tribunal were concerned at the state of the Property in general.

The Tribunal noted the references made by the Third Party Applicant in correspondence attached to the application which detailed that the issues regarding repairs had been ongoing for some time and prior to commencement of the current tenancy. The Tribunal also noted references made in initial correspondence from the Landlord requesting an adjournment detailing alleged difficulties with the tenant as regards both arrangements agreed for repairs and outstanding rent due. In the circumstances the Tribunal were of a view that it was appropriate to base its decision on the state of the Property as observed by the Tribunal during the inspection.

16. The Tribunal considered each of the complaints made by the Third Party Applicant in the application namely :-

16.1 Gas Safety Certificate

The Tribunal noted that no Gas Safety Certificate had been provided.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (c)) with regard to the above.

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16.2 Kitchen cabinets are not fit for purpose and need repaired/replaced

The kitchen cabinets appeared “life expired” and beyond economic repair. The Tribunal considered these required to be replaced. In addition the Tribunal considered that the gap between the kitchen sink and cooker also required to be cleared out, reinstated and boxed in appropriately.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (d) with regard to the above.

16.3 Bath panel needed in bathroom and sink/pipework needs boxed in

The bath panel had been replaced. The bath panel did not fit correctly and a gap remained. The Tribunal considered that the bath panel required to be boxed in. The sink and pipework beneath were not boxed in. The Tribunal considered this required to be rectified.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (d) with regard to the above

16.4 Guttering needs cleaned/cleared

The front and rear gutters were blocked by vegetation. In addition a section of the downpipe at the rear elevation was affected by vegetation. The Tribunal considered that extensive clearing and cleaning of the gutters was required.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (b) with regard to the above

16.5 Back garden needs fence reinstated for security /safety

The fence was in a serious state of disrepair allowing access to an open lane directly to the rear of the property. The Tribunal considered this posed a considerable security/safety risk and required to be rectified.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (b) with regard to the above

Observations

17. The Tribunal noted that whilst the following issues were not included in the application the Landlord should also have regard to and address these :-

- i) The kitchen flooring is in a poor state of repair and should be replaced
- ii) The bathroom light fitting does not meet current standards and should be replaced with a sealed unit
- iii) The front and rear gardens are in a general state of neglect and should be tidied up with abandoned furniture removed from the side of the Property.

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Decision

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

Right of Appeal

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.

Morag Leck

Signed

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Date

23/10/19

Chair and Legal Member

This is the Schedule of
Photographs referred to in
the foregoing decision
Morag Leck

Housing and Property Chamber First-tier Tribunal for Scotland



Photograph Schedule 97 Moraine Avenue, Glasgow, G15 6HU

Case Reference: FTS/HPC/RT/19/1437

Date of inspection: 02/10/2019

Time of inspection: 10.00 am

Weather conditions: Dry and sunny

Present: Mrs Morag Leck – Legal Member
Mr Nick Allan – Ordinary Member
Miss Gabrielle Hughes – Tenant + Interested Person



Photo 1 – Front elevation



Photo 2 – Gas boiler in landing cupboard



Photo 3 – Damaged kitchen unit



Photo 4 – Kitchen unit with damaged door



Photo 5 – Exposed area next to sink



Photo 6 – Damaged kitchen floor surface



Photo 7 – Damaged kitchen floor surface



Photo 8 – Unfinished boxing of sink unit



Photo 9 – Unfinished boxing of WC unit



Photo 10 – Bathroom light fitting



Photo – 11 Blocked gutters to rear



Photo 12 – Vegetation on rear downpipe



Photo 13 – Blocked gutters to front



Photo 14 – Rear garden exposed to pathway



Photo 15 – Public path/adjoining fencing

Nick Allan FRICS
Surveyor – Ordinary Member
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Housing and Property Chamber – 21st October 2019