

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/19/0779

Title no: ANG84215

50 Ravensraig Road, Dundee DD2 4ND ("The House")

The Parties:-

- **Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA represented by their agent (Mr Stuart Cuthill) ("the Third Party Applicant")**
- **Miss Vicky Pratt, 50 Ravensraig Road, Dundee DD2 4ND**
- **Ms Alishya Sangster, 7 Taylor Street, Dundee DD2 3DU ('the Landlord')**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr Mark Andrew

Whereas in terms of their decision dated 29th May 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: -

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

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 smoke detectors in the upstairs hall, downstairs hall and living room and a heat detector in the kitchen to ensure that the house has satisfactory provision for detecting fire and for giving warning in the event of fire or suspected fire. This should be in accordance with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government.
- (b) To provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 6 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.

In terms of Section 63 of the Act, 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 pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Dundee on 29th May 2019 in the presence of the undersigned witness: -

AL Head

G Miller

witness

chairperson

DR ALISON LAURA HEAD name in full

Caladairan House Address

Greenmarket
DUNDEE

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/19/0779

Title no: ANG84215

50 Ravenscraig Road, Dundee DD2 4ND ("The House")

The Parties:-

- **Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA (represented by their agent (Mr Stuart Cuthill)) ("the Third Party Applicant")**
- **Miss Vicky Pratt, 50 Ravenscraig Road, Dundee DD2 4ND**
- **Ms Alishya Sangster, 7 Taylor Street, Dundee DD2 3DU ('the Landlord')**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Mark Andrew	-	Ordinary Member

Decision

1. 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 and taking account of the evidence led by the Tenant and 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

2. By application received 12th March 2019, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Third Party stated that it was considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that the installations in the house for the supply of the water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that the House does not have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. In particular, the complaints consisted of:-
 - a) There were no smoke or heat detectors;
 - b) There was not a current EICR; and
 - c) There was not a valid energy performance certificate.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Third Party, the Landlord and the Tenant dated 9th April 2019. Representations were requested no later than 30th April 2019.
5. Between 23rd January 2019 and 20th February 2019, the Third Party had written and emailed the Landlord. Copies of these letters and the email had been provided to the Property and Housing Chamber. The correspondence related to the matters within the application.
6. On 14th May 2019 the Tribunal issued a direction to the Landlord. The direction required the EICR to be submitted to the Housing and Property Tribunal no later than close of business on 22nd May 2019.

The Inspection

7. The Tribunal attended the House on the morning of 24th May 2019. Only the Tenant and the Third Party were present. The Landlord did not attend. The Tenant let the Tribunal into the House to carry out the inspection. It was a dry and clear day.
8. The House comprises a two-storey semi detached property, constructed of brick with a roughcast finish. The House has a shallow pitched and tiled roof. The House was furnished and there were floor coverings in place with exception of the bottom of the stairs and first floor landing.
9. The House was inspected for smoke or heat detectors. At the top of the hall upstairs there was battery smoke detector ceiling fitting. The main unit had been removed. The kitchen, living room and lower hall were all inspected but there were no signs of any other smoke or heat detector units found.
10. The bathroom was also inspected as the light fitting was not working. The Tribunal agreed that this would fall within the remit of the EICR. It was noted that the spot lights, which were the only source of lighting in the bathroom, did not work and all four of the lights were heavily corroded from rust.

11. The fuse box was inspected next. It was housed under the stair in a cupboard. It was an old fuse box but still working.
12. The hot water cylinder and immersion heater was inspected. It was seen to have no insulation.
13. The Tenant and the Third Party confirmed that neither had received a current EICR.
14. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
15. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

16. The hearing took place at the Caledonia House, Greenmarket, Dundee. Neither the Tenant nor the Landlord were present. Mr Stuart Cuthill, the Third Party Applicant was present.
17. The list of complaints were discussed one by one.
18. The smoke and heat detectors were discussed first. The Ordinary member noted that there were no wires to the smoke detector fitting on the upstairs hall landing and that it had probably been a battery operated device. The fitting was in the hall but the smoke detector unit had been removed. There was also not a smoke detector in the living room and ground floor hallway nor a heat detector in the kitchen.
19. The EICR was discussed next. It was again confirmed that this had not been submitted to either the Tenant or the Third Party Applicant.
20. Mr Cuthill was asked for any further comments. At this point it was explained to him that the energy performance certificate was not a matter for the Tribunal. Mr Cuthill accepted this point. He will pursue it through the appropriate avenue.

Summary of the issues

21. The issues to be determined are: -
 - a) Whether the fire alarms are functional,
 - b) Whether there was a current EICR.

Findings of fact

22. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy has been ongoing for approximately 10 years.
- b) There were no smoke or heat detectors in the House.
- c) The Landlord has not submitted an EICR to either the Tenant, the Third Party or to the Tribunal. The Landlord has failed to comply with the direction issued on 14th May 2019.

Observation:

- 23. On inspecting the hot water cylinder and immersion heater it was noted that there was no insulation around the cylinder.

Reasons for the decision

- 24. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Third Party Applicant at the hearing.
- 25. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
- 26. The Tribunal was in no doubt, from its inspection, that the House did not meet the Repairing Standard.
- 27. There was clear evidence there were no operable fire alarms in the House. The House should comply with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government. The Tribunal has concerns for the Health and Safety of any tenant in the House without these regulations being met.
- 28. There was no clear evidence to support that there was an EICR in place for the House.
- 29. Accordingly, in view of its findings, the Tribunal had no option but to conclude that the Landlord and was in breach of the duty to comply with the Repairing Standard.
- 30. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
- 31. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

G Miller

G Miller, Chair

29th May 2019



Front elevation and gable wall.



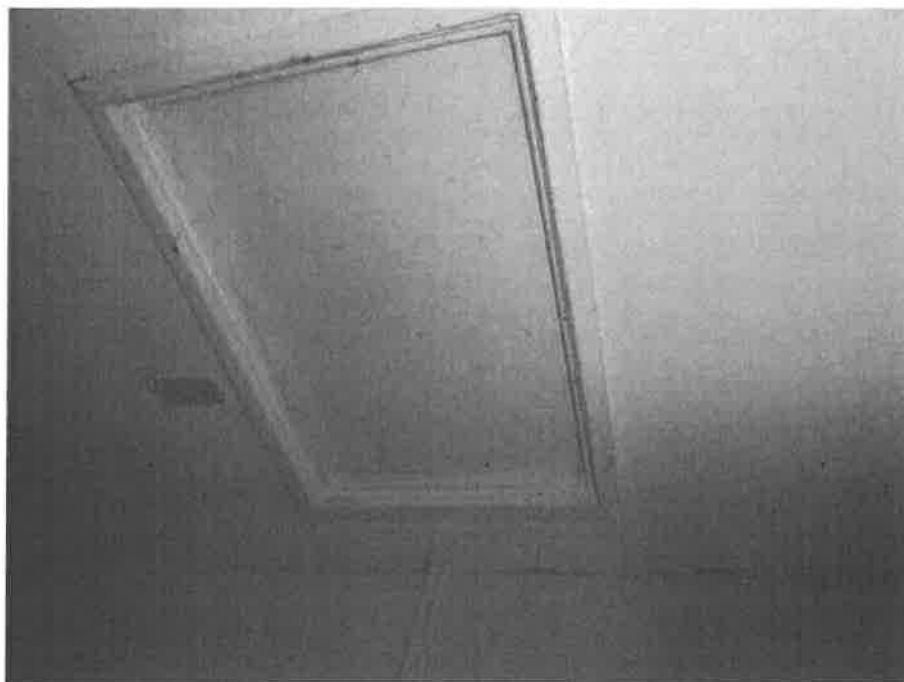
Living room ceiling – no smoke alarm



Kitchen ceiling – no heat alarm



Entrance hall ceiling – no smoke alarm



Landing ceiling – no smoke alarm



Bathroom ceiling – lights corroded and not working



Hatch to hotwater cylinder and immersion heater – no insulation around cylinder.