

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Re: Flat 2/2, 528 Victoria Road, Glasgow, G42 8BG (“the House”)

Title number: GLA 148038

Chamber Ref: FTS/HPC/RT/23/2294

Parties:-

Glasgow City Council – Neighbourhood, Regeneration & Sustainability Service, 231 George Street, Glasgow, G1 1RX (“Third Party Applicant”)

Ms Molly McEwen, Mr Euan Gibb, residing at the House (“the Tenant”)

Mr Paul McGunnigle, Ms Lesley Stewart, 250 Wond Chuk Wan Village, Sai Kung, Hong Kong (“the Landlord”)

Tribunal Members:

Nicola Weir (Legal Member) and Lorraine Charles (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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral 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 received on 11 July 2023, the Third Party Applicant submitted an application to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The Tenant is a party to the application. The repairs issues identified in the application and which had been notified by the Third Party Applicant to the Landlord by email in advance of submitting the application to the Tribunal, were as follows:-
 - Flooring at various points throughout damaged and causing splinters;
 - Bathroom floor tiles;
 - Damp in bathroom walls/ceilings;
 - Service windows throughout; not currently wind, watertight and fully operational;
 - Cracks in hallways walls/ceiling – possibly cosmetic but advised to investigate and confirm.

Supporting documentation was submitted with the application, including a chronology of events and proof of intimation of the repairs issues by the Third Party Applicant on the Landlord by email on 20 February 2023, several months prior to the application being submitted to the Tribunal.

The Tribunal obtained a copy of the title deed and Landlord Registration details in respect of the House and it was noted that both are in the name of the Landlord and appeared to be in order.

2. On 13 September 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 1 November 2023, requesting that any written representations should be lodged with the Tribunal by 22 November 2023. The Inspection and Hearing were fixed to take place on 13 December 2023.
3. On 11 December 2023, the Inspection and Hearing were postponed at the request of the Tenant who advised that they had received late intimation of the Inspection and Hearing. It was noted by the Tribunal that intimation to the Landlord had been made by post to a Hong Kong address, which contained no postcode or similar and that there had been no contact from the Landlord to the Tribunal, nor representations lodged. Accordingly, the Tribunal instructed intimation of the application on the Landlord via the email address used by the Third Party Applicant to communicate with the Landlord. In response to this intimation, the Landlord contacted the Tribunal Administration by email on 11

December 2023 and were thereafter provided with full details of the application. The email from the Landlord provided some background information, claiming that the complaints regarding the House were unfounded and that the Tenant was in arrears of rent amounting to over £8,000. The email indicated that their letting agent would be in contact with the Tribunal regarding representation of the Landlord at the Tribunal. The Landlord's email was circulated to the Third Party Applicant and Tenant. The Tenant responded by email dated 14 December 2023, confirming that rent was being withheld due to the repair issues but denying the other claims being made by the Landlord.

4. A fresh Inspection and Hearing were fixed to take place on 21 March 2024 and details intimated to the parties on 20 February 2024. There was no further contact from the Landlord and no contact from the Landlord's letting agent prior to the Inspection and Hearing.
5. On 5 March 2024, the Tenant emailed the Tribunal Administration to advise that they had been offered alternative accommodation and would be vacating the House soon. They wished to continue with the Tribunal application meantime and sought advice regarding their position. The Tribunal Administration referred them to the Third Party Applicant for advice on their position and requested that the Tenant inform the Tribunal if they vacated the House meantime. No such intimation was received from the Tenant or the Third Party Applicant prior to the Inspection and Hearing, although the Tenant confirmed by email on 20 March 2024 that the Tribunal would be given access to the House for the purposes of Inspection on 21 March 2024.
6. The Tribunal Members inspected the House on 21 March 2024 at 10am. The Tenant, Ms Molly McEwan, was in attendance.

Findings on Inspection

7. A Schedule of Photographs taken during the Inspection by the Ordinary (Surveyor) Member and dated 21 March 2024 is attached to this Statement of Decision. Site observations were as follows:-
 - The House is on the third floor of a tenement building, the ground floor properties being commercial premises, with three storeys of flats above. Access to the House is via a common entrance door, common close and stairwell. The House is a three bedroom flat and was noted to be almost empty, the Tenant indicating that they were moving out and would be handing back the keys to the House shortly;
 - There was significant cracking to the walls and cornice/ceiling of the hall above the kitchen and bathroom doors and on the corresponding kitchen wall above the door to the hall;

- There were significant patches of black mould visible on the bathroom ceiling. Damp meter readings taken on the walls around the shower and bath were within the normal range;
- The windows throughout were single-glazed sash windows which were difficult to open and close. The windows appeared to be warped and ill-fitting, the opening and closing mechanism did not work smoothly or properly, with some of the windows sticking and not fully opening or, in the case of the middle bedroom window, jamming open and being unable to be closed again. When in the closed position, cold air and draughts could clearly be felt around the window frames;
- The flooring throughout, with the exception of the bathroom, was exposed timber floorboards. There was visible evidence of wear and tear and areas of splintering or missing shards of wood throughout. Some areas appeared to have been sanded or were taped over;
- New vinyl flooring has been fitted in the bathroom.

Evidential Hearing

8. Following the Inspection of the House, the Tribunal held an in-person Hearing at 11.45am at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant, Ms Molly McEwen, was in attendance. The commencement of the Hearing was delayed by 5 minutes to give the Landlord or any representative an opportunity to attend late but they did not do so.
9. Following introductions and introductory comments from the Legal Member, a summary of what had been noted by the Tribunal at the Inspection of the House earlier was presented and Ms McEwan commented on same and provided further background information in respect of the various issues affecting the House and her communications with the Landlord's letting agents in respect of same.
10. Ms McEwen confirmed that the tenancy commenced in December 2017 and that the rent was £700 per month. She lived there initially with her partner, the joint tenant, but latterly also with their two children, aged 3 ½ and almost 2. There was a long history to the repairs issues, with her reporting issues to the Landlord since 2018. Eventually, after the living room ceiling fell in around July 2022, they started withholding some rent due to the repairs issues not being addressed by the Landlord. They sought advice from Glasgow City Council and the local authority became involved in correspondence with the Landlord on their behalf. The Landlord has been using letting agents, The Property Zone, to manage the property, with their contact being "Tariq" but they have not recently heard from him in relation to the repair side of things. They have had

communications from the Landlord's solicitor and have been issued with three separate Notices to Quit, the first in May 2023 on the basis that the Landlord intended to sell, the second on the basis of rent arrears and the third on the basis that the Landlord's daughter intends to reside in the property. The most recent notice period has not yet expired but Ms McEwen confirmed that none of the earlier notices, nor the rent arrears, have led to Tribunal proceedings being raised by the Landlord. They applied to housing associations from 2018 due to the condition of the property and the lack of action by the Landlord in relation to repair issues. They also contacted the local authority about homeless accommodation when they received the first Notice to Quit and have looked at alternative private lets over the years but, due to the pressures of the pandemic, could not secure alternative accommodation to enable them to move out. However, Ms McEwen confirmed that they have now secured alternative accommodation and moved there with most of their furniture and belongings. They have almost vacated the House and will be handing the keys back to the letting agent shortly.

11. As to the living room ceiling falling in, Ms McEwen stated that they had initially reported a crack in the ceiling during 2018/2019 which gradually worsened. At that stage, in 2019, a tradesman who was also a family member of the Landlord (cousin or cousin's son) came to the House and said that this matter urgently needed repair and that this would be reported back to the Landlord. However, again, nothing was done, despite repeated complaints being made. Around March/April 2022, the ceiling started to bow. This was reported to the Landlord. Ms McEwen sent three emails and attached photographs showing the bowing in the ceiling. However, there was no response and around July 2022, the ceiling came down. Her young children had been in the living room just before this happened and, otherwise, the consequences could have been far worse. The ceiling was repaired and they were provided with two weeks temporary accommodation as they could not live there whilst the repairs were being carried out and due to the debris and dust. However, Ms McEwen said that this was an unacceptable situation for her family to be living in and considers that she has been justified in withholding rent as a consequence of the Landlord failing to deal with the repair issues.
12. Ms McEwen said that she thinks there were cracks in the hall when they moved in but that these have also worsened over time. She mentioned that there was a lot of work carried out at some point outside the flat on Victoria Road, with the formation of a cycle lane, but does not know if this contributed to the cracking becoming worse. The cracks in the hall were not as evident as the crack in the living room ceiling and it was Ms Campbell from Glasgow City Council who came out to the House in 2023 who considered that this cracking should be investigated, given the background with the living room ceiling. The issue was reported to the Landlord but nothing has been done, so this was included in the Tribunal application.

13. As to the issues with the flooring, Ms McEwen confirmed that the floor was in quite poor condition when they moved in in 2017 but that this was not a great concern to them at that time as they did not have children. However, as time went on, the floor started splintering in places and catching on things, such as the mop when she mopped the floor, and splinters of wood would lift off. They reported this issue, together with other issues, to the Landlord in 2019. The Landlord's tradesman/family member confirmed that the floorboards needed re-sanded but nothing was done. Ms McEwen confirmed that this became more of a safety issue when she had her children as they frequently got splinters in their feet and hands and their socks and slippers would catch on the splinters. They would remove raised splinters of wood to try and make the floor safer and tried to keep the affected areas covered with rugs or black tape, some of which is still in situ.
14. The Landlord's tradesman/family member had also looked at the bathroom flooring in 2019. There were previously ceramic tiles on the bathroom floor which were cracked and broken near the doorway. The cracking was also in existence when they moved in in 2017. Ms McEwen explained that this is the only issue in the application that has been attended to by the Landlord. New vinyl flooring was laid last year after Glasgow City Council became involved on their behalf. The bathroom flooring is therefore no longer an issue.
15. Ms McEwen cannot recall exactly when the mould in the bathroom was first reported but the Landlord's tradesman/family member did look at it in 2019 so it was before then. Apart from the mould on the ceiling, it also affected the backsplash and silicon sealing. Ms McEwen confirmed that if it is cleaned or the silicon sealing removed, it just comes back. Ms McEwen confirmed that she ventilates the bathroom by keeping the window open as much as possible.
16. As to the windows, again, Ms McEwen confirmed that they have complained and raised issues frequently with the Landlord. The Landlord's tradesman/family member stated in 2019 that the windows needed replacing but only minor things concerning the windows have ever been addressed. The condition of the windows and the draughts the windows let in make the House difficult to heat. They tried to alleviate drafts by applying draught-proofing but a tradesman arranged by the Landlord's letting agent painted over it by basically painting the windows shut. When Ms McEwen then tried to open the windows, this tore all the draught-proofing off. Ms McEwen confirmed that, when they moved in, some of the windows had no strings at all in the sash windows mechanism. None of the living room windows would open at all but now one does. They previously had water coming in above and at the side of the living room window, around 2021, but this does not happen now. The side and back bedroom windows are particularly difficult to open but all the windows are stiff and have a tendency to jam when they are being opened or closed. New weights and strings were put in at some point but

a part was screwed into some of the window frames and this causes the windows to catch, particularly in the living room and front bedroom.

17. Ms McEwen stated that she first sought advice about the condition of the House in 2018 from a local charity but they were not much help. She has complained to the Landlord since 2018 but, when it became apparent that the Landlord was not willing to spend any money on the House in attending to repairs, she has been trying to obtain alternative accommodation, particularly from 2019 when she became pregnant with her first child. However, the pandemic stalled things and they had no option to stay in the House as they were not prepared to go into a homeless shelter. Following the living ceiling collapse, Ms McEwen sought help from Glasgow City Council and she was referred to various departments, including public health, before Ms Campbell, who submitted the Tribunal application, became involved. She came out to the House and looked at the various issues which she reported to the Landlord and gave the Landlord a timeline within which to address the issues. There were emails back and forth. The bathroom floor was attended to. There were also some issues with the electrics, with lights flickering and one of the sockets in the front bedroom would 'fizz'. Ms McEwen does not know if an EICR was carried out but confirmed that a tradesman did come out, PAT-tested items and said that nothing urgent needed done. The light flickering has resolved and the bedroom socket was taped over and is not used. Ms McEwen thinks that Gas Safety checks were done and she was told that the difficulties in heating the House are not due to problems with the boiler or heating system as such, but, rather, that the radiators are not sufficient to heat the size of the rooms.
18. Ms McEwen was asked for her comments in relation to the claims made by the Landlord, Ms Stewart, in her email to the Tribunal. Ms McEwen denies any suggestion that she is exaggerating the repair issues or playing the system just to try and justify her withholding rent. As she has stated, she has genuinely been trying to find alternative accommodation over several years and was justified in withholding rent. She denies having been difficult over the Landlord's tradesmen getting in to inspect or carry out repairs, or having refused tradesmen access. Ms McEwen stated that the Landlord's letting agent was difficult to communicate with. For example, she said that she was told to clear all floor areas and when she asked for clarification on what rooms had to be cleared or, in what order, she was accused of being difficult. She also said that tradesmen appointed by the letting agent would just show up at funny times and not have tools with them to do any work and things like that.
19. The Tribunal drew the Hearing to a close and confirmed that parties would be advised of the Tribunal's decision in writing as to whether the Tribunal decided to make a Repairing Standard Enforcement Order ("RSEO") in respect of the House and, if they did so, what repairs were required and the timescale for these to be carried out. Ms McEwen was thanked for her attendance at the Inspection and Hearing. The Tribunal

also requested that Ms McEwen advise the Tribunal Administration once she has vacated the House and handed back the keys. It was explained that, in these circumstances of the tenancy coming to an end, in terms of the legislation, the Tenant is deemed to have withdrawn from the Tribunal process and further communication would then be with the Third Party Applicant and Landlord only.

Findings in Fact

1. The tenancy in respect of the House between the parties commenced in or around 2017 (tenancy agreement not produced).
2. The Landlord is resident abroad and had letting agents, The Property Zone, acting for them in the management of the tenancy.
3. The Tenant has had communication with both the letting agents and the Landlord directly regarding repairs issues.
4. The Tenant first reported repair issues in or around 2018 and has required to report issues repeatedly.
5. Some repair works have been carried out from time to time, but some issues have not been addressed by the Landlord.
6. In or around 2023, the Tenant sought advice from the Third Party Applicant regarding the condition of the House and their housing situation.
7. The Third Party Applicant corresponded directly with the Landlord regarding the repair issues on behalf of the Tenant.
8. The Third Party Applicant formally intimated the outstanding repairs to the Landlord on 20 February 2023, prior to submitting the Tribunal application.
9. The Tribunal application was submitted by the Third Party Applicant on behalf of the Tenant on 11 July 2023.
10. The Landlord attended to the issue with the bathroom flooring and some electrical issues following the involvement of the Third Party Applicant, but other issues were not resolved.
11. The Landlord submitted brief written representations to the Tribunal on 11 December 2023.
12. Neither the Landlord, nor any representative of the Landlord, attended the Inspection and Hearing on 21 March 2024.
13. Reference is made to the Tribunal's Findings on Inspection.

14. The only issue included in the application which had been attended to prior to the Inspection was the bathroom flooring.
15. All other repair issues included in the application were still outstanding at the time of Inspection.
16. The House does not meet the Repairing Standard in several respects.
17. The Tenant intended to vacate the House and return the keys shortly after the Inspection and Hearing.

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the supporting documentation submitted by the Third Party Applicant on behalf of the Tenant, the written representations from the Landlord dated 11 December 2023 and the oral evidence heard from the Tenant at the Hearing.
2. The Tribunal was satisfied from the information before it that the Tenant had been complaining of repairs issues affecting the House since 2018 and that the Third Party Applicant had notified the Landlord of the alleged repairs issues and works required in advance of the Tribunal application being made, all in terms of Section 14(3) of the 2006 Act. The Tribunal was also satisfied from the evidence before it that the Landlord had not carried out the works required within a reasonable period of time, in terms of Section 14(4) of the 2006 Act. The only repair issue raised in the application which had been attended to was the bathroom flooring.
3. Given the present condition of the House, the Tribunal was satisfied that repairs and remedial works were required in order for the House to meet the Repairing Standard in all respects, in terms of the issues raised in the application.
4. The Tribunal was satisfied that the single-glazed sash windows throughout the House are not wind and watertight and not in a reasonable state of repair or proper working order. They are ill-fitting, allow drafts in and cannot be opened or closed easily. The Tribunal was satisfied that both Sections 13(1)(a) and (d) of the Repairing Standard were not met in these respects.
5. The Tribunal considered that the large cracks on the hall wall (and corresponding kitchen wall) and cornicing/ceiling should be assessed by an appropriate expert to ascertain the cause(s) of the cracking and if there is a structural issue that requires to be addressed to avoid further damage occurring or any health and safety risks to occupants of the House. The Tribunal was satisfied that any recommended remedial

works should be carried out to ensure that Section 13(1)(b) of the Repairing Standard is met.

6. The Tribunal considered that the mould in the bathroom and the extent of any damp contributing to the mould should be assessed by an appropriate expert to ascertain the cause(s) of same and any remedial action required to rectify same. The Tribunal was satisfied that this action is required to ensure that Section 13(1)(a) of the Repairing Standard is met.
7. The Tribunal considered that the timber flooring throughout the House should be assessed by a flooring contractor as to the appropriate remedial action to be taken to rectify the condition of same. The Tribunal was satisfied that this action is required to ensure that Section 13(1)(a) of the Repairing Standard is met.
8. The Tribunal is accordingly of the view that it requires to make a Repairing Standard Enforcement Order (“RSEO”) in respect of the outstanding matters specified in paragraphs 4,5,6 and 7 directly above. Given the nature of the required works, the Tribunal is of the view that a period of 8 weeks is an adequate and reasonable timescale for these works to be completed.

Decision

9. The Tribunal accordingly determined that the Landlord had failed to comply with duties imposed by Section 14(1)(a)(b) and (d) of the 2006 Act to ensure that the House meets the Repairing Standard.
10. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
11. 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.

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.

N Weir

Signed
Nicola Weir, Legal Member of the Tribunal

Date: 8 April 2024

Housing and Property Chamber First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property Flat 2-2 528 Victoria Road, Glasgow G42 8G

Ref No: FTS/HPC/RT/23/2294

Tribunal members Mrs Weir Legal member and Ms Charles Ordinary member
(Surveyor)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10:00am on 21/03/24. The tenant Ms McEwan gave access to the property.

Lori Charles

BSC (Hons) MRICS

Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
21/03/2024

Appendix 1

Schedule of photographs taken during the inspection on 21/03/24

Kitchen and Hall



Cracking visible in hall above door to Kitchen.
Cracking visible in hall at door to Bathroom.



Cracking visible in hall.

Kitchen



Cracking in kitchen above door to hall.

Bathroom



Mould visible on bathroom ceiling all moisture readings were within the normal range.

Lounge and bedroom windows



All windows appear to be original single glazed sash windows. Tenant advised replacement weights and strings have been fitted to most of the windows with the exception of the kitchen, however some of the windows were difficult to open and close also cold air/draughts were noted at the time of inspection.

Middle bedroom window was opened and failed to closed.

Lounge, rear bedroom and hall flooring





The flooring with the exception of the bathroom is exposed timber floorboards. There is evidence of wear and tear and areas of missing shards of wood. Some areas in the hall have been taped over to prevent further damage and injury.

Bathroom floor



Ceramic tiles have been removed and new vinyl flooring has been fitted.