

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

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

(Hereinafter referred to as "the tribunal")

Case Reference Number: FTS/HPC/RP/19/2089

Re: Flat 0/2, 36 Garturk Street, Glasgow G42 8JF ("the house")

Land Register Title No: GLA125116

The Parties:-

Mr Atif Aziz Khawaja, residing at the house ("the tenant")

Mr Mohammed Arshad, c/o AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB ("the landlord")

NOTICE TO: Mr Mohammed Arshad (the landlord)

Whereas in terms of its decision dated 9 October 2019, the tribunal determined that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that 1) the house is not wind and watertight and in all other respects reasonable fit for human habitation; 2) the house does not meet the tolerable standard, as it is not substantially free from rising or penetrating damp; and 3) the kitchen floor, which is a fixture provided by the landlord under the tenancy, is not in a reasonable state of repair and in proper working order.

The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

The tribunal now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the house meets the repairing standard, and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular, the tribunal requires the landlord to:

1. Instruct an appropriate contractor to carry out the replacement or repair as necessary of all areas of defective pointing to the front and rear elevation of the building.
2. Instruct a suitably qualified specialist contractor to make good or repair or replace the defective damp-proof course to the rear elevation of the building, and to provide evidence of that contractor's qualifications to the tribunal.
3. Deliver to the tribunal, for approval, a specialist report from a suitably qualified building surveyor, who is a professional member or fellow of the Royal Institution of Chartered Surveyors, to address the requirements for a property of this form of construction to make the property wind and watertight and substantially free from rising or penetrating damp, and to comply with the Repairing Standard. This report should include investigation of any issues contributing to the rising and /or penetrating damp which may have originated from the flat above or elsewhere within the tenement building.
4. Once a satisfactory report has been approved by the tribunal, to carry out such work as is recommended in terms of the report, provided that the tribunal confirms its approval of the works specified in the report.
5. Instruct a suitably qualified contractor to check whether the extractor fans within the house are in a reasonable state of repair and in proper working order. If any of these are found not to be operating satisfactorily, repair or upgrade the relevant fan/s, to ensure that they are in a reasonable state of repair and in proper working order.
6. Once item 5 above has been completed, provide an up to date Electrical Installation Condition Report (EICR) in respect of the house, showing that all electrical installations, appliances and fixtures and fittings, and in particular the extractor fans, have been checked and are working safely. The EICR must be produced by either:
 - a suitably qualified and registered SELECT or NICEIC contractor
 - a member of NAPIT, or
 - a contractor who is able to provide evidence that they are a 'competent person' i.e. a completed and signed checklist, as set out at Annex A on page 13 of the guidance by Scottish Ministers on Electrical Installations and Appliances in Private Rented Property, which can be found on the [Chamber's website](#).
7. Provide an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all gas installations and appliances,

and in particular the boiler and radiators, have been checked and are in a reasonable state of repair and in proper working order.

8. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal orders that the works specified in this order must be carried out and completed within the period of **six months** from the date of service of this notice.

Rights of Appeal

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.

Please note that in terms of section 28(1) of the Housing (Scotland) Act 2006, 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 typewritten on this and the preceding page are signed by Sarah Frances O'Neill, solicitor, Chairperson of the First-tier Tribunal (Housing and Property Chamber), at Glasgow on the ninth day of October, Two Thousand and Nineteen before this witness –

J Spence _____ witness **S O'Neill** Chairperson

Soyce Spence _____ name in full

SCTS, 20 York Street, _____ address

Glasgow, G2 8GT. _____

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as "the tribunal")

Under Section 24(1) of the Housing (Scotland) Act 2006 ("the Act")

Case Reference Number: FTS/HPC/RP/19/2089

Re: Flat 0/2, 36 Garturk Street, Glasgow G42 8JF ("the house")

Land Register Title No: GLA125116

The Parties:-

Mr Atif Aziz Khawaja, residing at the house ("the tenant")

Mr Mohammed Arshad, c/o AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB ("the landlord")

Tribunal Members – Sarah O'Neill (Chairperson); Sara Hesp (Ordinary (Surveyor) Member)

Decision

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 all the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The tribunal's decision is unanimous.

Background

1. By application received on 5 July 2019, the tenant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

2. In his application, submitted on his behalf by his representative Mr Chris Waite of Govanhill Law Centre, the tenant stated that he believed the landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in section 13 (1) (a) and (h) of the Act. His application stated that the landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonably fit for human habitation
- the house meets the tolerable standard

3. The tenant made the following complaints in his application:

- 1) There is dampness in all three bedrooms, hallway, kitchen, bathroom and living room. There is black mould on the walls.
- 2) The kitchen floor is damaged.
- 3) There is water damage to the kitchen ceiling and wall.

There was no evidence before the tribunal that item 3) above had been notified in writing to the landlord. This could not therefore be considered by the tribunal as part of the application as a complaint in its own right. As discussed later in this decision, however, it is likely to be related to item 1.

4. On 18 July 2019, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President under section 96 of the Housing (Scotland). On 6 August 2019, the tribunal administration issued a notice of referral and hearing to both parties, advising that an inspection and hearing would be held on 19 September 2019, and requesting written representations by 27 August 2019. Written representations were received from AQA Property Ltd on behalf of the landlord on 13 August and 11 September 2019. No written representations were received from the tenant.

5. On 4 September 2019, an email was received from AQA Property Limited on behalf of the landlord, asking the tribunal to reschedule the inspection and hearing on the grounds that its representative was unable to attend on a Thursday or Friday. In considering this request, the tribunal noted that the landlord's representative had been sent a notice of the inspection and hearing on 6 August 2019, and had returned the form attached to on 13 August, stating that they would attend the hearing.

6. The tribunal did not consider that the landlord's representative had provided a good reason for the postponement and noted that it was open to them to send an alternative representative to the hearing. The tribunal administration therefore notified the parties on 9 September that the tribunal had decided to refuse the

postponement request and intended to proceed with the inspection and hearing as planned.

The inspection

7. The tribunal inspected the house on the morning of 19 September 2019. The weather conditions at the time of the tribunal's inspection were dry and overcast. The tenant and his representative, Ms Wendy Malloy, Co-ordinator and Senior Adviser at Govan Law Centre, were present at the inspection. The landlord was not present or represented. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

The house

8. The house is a ground floor flat within a four-storey sandstone Victorian tenement block. It comprises three bedrooms, living room, kitchen, bathroom and hallway.

The hearing

9. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The tenant was represented by Ms Malloy, who gave evidence on his behalf. The landlord was not present or represented. The tribunal was satisfied that the requirements of rule 24 (1) of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the 2017 rules') regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the respondent, in terms of rule 29 of the 2017 rules.

The evidence

10. The evidence before the tribunal consisted of:
 - The application form completed by the tenant's representative.
 - Registers Direct copy of Land Register title GLA125116, which confirmed that the house is owned by Mohammed Arshad.
 - Short assured tenancy agreement between AQA Property Ltd (which was stated to be the landlord) and the tenant and Ms Samina Aziz in respect of the house dated 3 August 2016 and signed by the parties on the same date.
 - Copy notification letter from Govanhill Law Centre to AQA Property Ltd dated 25 April 2019, setting out the required repairs, together with proof of sending by recorded delivery and proof of delivery.
 - Copy email correspondence between Govanhill Law Centre and AQA Property Ltd regarding the repairs dated between 29 April and 1 May 2019.

- Mandate signed by the tenant in favour of Govanhill Law Centre dated 23 April 2019.
- The written representations received from the AQA Property Ltd on behalf of the landlord on 13 August and 11 September 2019.
- The tribunal's inspection of the house.
- The oral representations of the tenant's representative at the hearing.

Summary of the issues

11. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

12. The tribunal made the following findings in fact:

- The house is owned by Mohammed Arshad, who is the registered landlord in respect of the house.
- The tenant entered into a short-assured tenancy agreement with AQA Property Ltd on 3 August 2016 to rent the house for a period of six months from that date, with the tenancy continuing by tacit relocation thereafter.
- The tenancy of the house is managed on behalf of the landlord by AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. There was an area of damp staining on the rear wall of the living room. High dampness readings were taken in this area. (photographs 3 and 4)
 - ii. High damp meter readings were also taken on the wall to the right of the bay window in the living room.
 - iii. Damp meter readings found no evidence of dampness at the front wall of the living room. (photograph 1)
 - iv. Dampness readings were taken in bedroom 1 to the front, but no evidence of dampness was found.
 - v. High dampness readings were taken on the rear outside wall in bedroom 2 to the rear of the house. (photograph 7)
 - vi. There was plaster damage to the ceiling in bedroom 2. (photograph 6)
 - vii. There was rot evident in the bathroom floor next to the shower tray (photograph 9)
 - viii. Moderate dampness levels were found in the bathroom (photograph 11)
 - ix. High dampness readings were taken on the wall in bedroom 3 at a low level near the window (photographs 12 and 13)

- x. There was evidence of damage to plaster on the ceiling and staining to the upper wall in bedroom 3 (photograph 14)
- xi. There was a large patch of damp plaster behind the radiator in bedroom 3 (photograph 15).
- xii. There was extensive water staining on the ceiling and upper wall in the kitchen (photograph 16)
- xiii. The kitchen floor was damaged in several places (photograph 17)
- xiv. High dampness readings were taken on the rear wall in the kitchen (photograph 18)
- xv. High dampness readings were found on a patch of wall in the hallway, below the gas meter cupboard and in an area of thicker plaster. The tenant told the tribunal that this damp patch had recently been painted over.
- xvi. To the exterior of the house, there were signs of dampness around the windows of bedroom 3 to the rear (photograph 21)
- xvii. There was evidence around the rear exterior walls that a damp-proof course had previously been installed in the building.
- xviii. There were signs of some defective pointing to the front and rear elevations (photographs 20 to 27).

Reasons for decision

13. It was clear from the tribunal's inspection that there was both penetrating and rising damp throughout the house. This confirmed the findings of a dampness survey report carried out at the house by Wise Property Care Ltd in September 2018. This report had been instructed by the landlord, who had provided it to the tribunal with his written representations of 11 September 2019.
14. That report identified the following issues:
- Defective pointing to stonework – front and rear elevations
 - Rising damp to internal walls throughout
 - Penetrating damp - front and rear elevations
 - Damp due to leakage from shower
 - Severe condensation and mould growth due to insufficient ventilation and lifestyle issues
15. The report recommended major refurbishment of the house, based on a further inspection and detailed specification. It stated that the house would need to be empty in order for the treatment to be carried out.
16. In an email to the tenant's representative dated 1 May 2019, AQA Property Ltd stated that a previous major damp-proof treatment had been carried out by the property factor, Govanhill Housing Association, and was under its warranty. He said that the tenant's complaints had been reported to the property factor, which

had inspected the house and advised that in order to carry out any works, the house needed to be vacant. There was however no further evidence before the tribunal- for example, correspondence from the property factor - to indicate that the property factor was aware of the problems and/or would be involved in any future damp-proofing treatment. Ms Malloy told the tribunal that neither she nor the tenant had had any direct contact with the property factor, and she did not know whether the property factor was aware of the dampness issues.

17. In a letter to the tribunal dated 11 September 2019, AQA Property Ltd stated that the tenant had been asked over a year previously to find suitable alternative accommodation so that the works could be carried out. The letter said that they had offered the tenant similar alternative properties in the area, which he had declined. It said that they were ready to carry out the necessary damp proofing work, but they were unable to do this until the tenant has moved out and the property is empty.
18. Ms Malloy told the tribunal that AQA Property Ltd had to date only offered one alternative property to the tenant, within the same tenement building. She said that the tenant had declined this offer because that flat was in a state of disrepair and unsuitable for his family's needs. She confirmed that the tenant would be willing to move into another suitable property in the area, were this to be offered to him.
19. Ms Malloy also told the tribunal that the landlord had served a notice to quit on the tenant, which had expired on 2 January 2019. The landlord had, however, taken no further action to evict the tenant. This was confirmed by email correspondence between the tenant's representative and the landlord which was before the tribunal.
20. The tribunal has no hesitation in determining on the basis of the evidence before it, including its inspection and the Wise Property Care Ltd report that: 1) the house is not wind and watertight and in all other respects reasonable fit for human habitation and 2) the house does not meet the tolerable standard, as it is not substantially free from rising or penetrating damp. It was also clear from the evidence that the landlord accepts that there are dampness issues within the house.
21. The tribunal takes the view, however, that the underlying causes of the dampness are unclear and potentially complex. There appear to be a number of interrelated factors which may be causing and/or contributing to the problem. These will require to be investigated further, however, and it is not possible to identify the causes definitively until the house is vacated and stripped out. This is reflected in the actions required by the accompanying Repairing Standard Enforcement Order.

22. The tribunal considers that the penetrating and rising damp may be dealt with by external repointing and possibly a new damp proof course to the rear elevation. It considers that there may also be issues with the subfloor, particularly in the kitchen. The rot in the bathroom floor may be mainly caused by overflow from the shower tray.
23. During its inspection, the tribunal also observed extensive water staining on the ceiling and upper wall in the kitchen (photograph 16). There was also damage to the ceilings of bedrooms 2 and 3. Such staining appears to have resulted from leaks from the flat above, which the Wise Property report does not seem to have noted. Such leaks will have an impact on the moisture levels in the house and may make condensation more likely. It is also possible that the problems originated from somewhere higher up the building than just the flat directly above. The suggestion that the property factor had previously been involved with carrying out a damp proofing course may indicate that there is a communal issue within the building. Regardless of whether an issue is communal, however, the landlord still has a responsibility to ensure that the house meets the repairing standard.
24. The tribunal did not find any particular evidence of condensation or mould other than in the bathroom, where this might be expected to some degree. Problems with condensation and/or mould may be seasonal, however. The tenant told the tribunal at the inspection that there was black mould in some rooms, which he had removed, and said it was worse in the winter. The tribunal reminds the tenant that it is important to use the central heating and keep the extractor fans clean, to help limit any condensation issues. Any potential problems with the operation of the extractor fans, radiators and/or the boiler may also be contributing to the dampness issues. It is therefore also necessary to have all of the items checked to ensure that they are operating correctly.
25. The tribunal recognises that it will be necessary for the tenant to move out of the house in order for the work to be carried out. The tribunal recommends that the landlord identifies a suitable property for the tenant and his family quickly, so that any necessary works can be completed.
26. The tribunal also observed at its inspection that the kitchen floor was damaged in several places. It considers that this may be related to the damp/rot problems. The tribunal determined that the vinyl floorcovering, which is a fixture provided by the landlord under the tenancy, was not in a reasonable state of repair and in proper working order.

Observations made by the tribunal

27. The tribunal observed two issues at its inspection which were not included in the tenant's application. It could not therefore make a formal determination regarding these matters. The landlord may wish to address these, however. It would be open to the tenant to make a further application to the tribunal about these matters.
28. Firstly, the tribunal noted that the wall mounted gas boiler (photograph 19) appeared to be of some age, and the tenant told the tribunal at the inspection that it loses pressure and he has to re-pressurise it daily.
29. Secondly, at the inspection, the tenant showed the tribunal that the wall lights in the living room were not operating correctly, and that the socket they were wired into has been sealed off. He said that the lights had never been operational since he had moved in to the house. The tribunal noted that there was no central ceiling light in the living room, and that the room must therefore be very dark at night, particularly during the winter months.

Summary of decision

30. On the basis of all the evidence before it, the tribunal determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that 1) the house is not wind and watertight and in all other respects reasonable fit for human habitation; 2) the house does not meet the tolerable standard, as it is not substantially free from rising or penetrating damp; and 3) the kitchen floor, which is a fixture provided by the landlord under the tenancy, is not in a reasonable state of repair and in proper working order.
31. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

32. 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.
33. 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.

Signed... **S O'Neill**
Sarah O'Neill, Chairperson

.....Date... 9/10/19

Housing and Property Chamber First-tier Tribunal for Scotland



FTS/HPC/RP/2089 Schedule of photographs taken during inspection of Flat 0/2, 36 Gartuck Street, Glasgow G42 8JF

Photograph 1:



External front elevation

FTS/HPC/RP/19/2089

This is the photograph schedule referred to in the Wreghing
decision dated 9th October 2019

S O'Neill

Photographs 2,3 and 4: Living room



Photograph 2: Damp meter reading by TV (front of room)



Photograph 3: damp staining – rear of room



Photograph 4: damp meter reading in damp staining – rear of room

Photographs 5, 6 and 7: Bedroom 2 (rear)



Photograph 5: rear wall



Photograph 6: plaster damage to ceiling



Photograph 7: damp meter reading – external wall

Photographs 8,9,10 and11: Bathroom



Photograph 8: general view



Photograph 9: floor at shower tray



Photograph 10: extractor fan



Photograph 11: damp meter reading near sink

Photographs 12,13,14 and 15: Bedroom 3



Photographs 12 and 13: low level damp meter readings near window



Photograph 14: ceiling and upper wall



Photograph 15: radiator

Photographs 16, 17, 18 and 19: Kitchen



Photograph 16: general view



Photograph 17: floor threshold with hall



Photograph 18: damp meter reading – rear kitchen



Photograph 19: wall mounted gas boiler

Photographs 20,21,22 and 24: outside rear elevation



Photograph 20 – Kitchen window



Photograph 21 – Bedroom 3 and bathroom



Photograph 22 - bedroom 2



Photograph 23 – General view

Photographs 25,26 and 27: outside front elevation



Photograph 25 – bedroom 1 window



Photograph 26 – living room bay window



Photograph 27 – bedroom 1 window