

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

(Hereinafter referred to as “the tribunal”)

**Under Section 26(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 (Legal Member) and Sara Hesp (Ordinary Member, Surveyor)**

### **Decision**

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.

The tribunal's decision was unanimous.

### **Background**

1. The tribunal issued a decision on 9 October 2019 requiring the landlord to comply with the Repairing Standard Enforcement Order (RSEO) relative to the property issued by the tribunal on the same date.
2. The RSEO required 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 ordered that the works must be carried out and completed within the period of six months from the date of service of the RSEO.

3. On 5 April 2020, at the request of the landlord's agent, AQA Property Ltd, the tribunal varied the RSEO to extend the period for completion of the works for a further six months until 9 October 2020. The tribunal considered that, given the extensive nature of the repairs required, and in light of the restrictions which were in place due to the coronavirus outbreak at that time, and which were likely to continue for some months, it was reasonable to allow the landlord further time to comply with the RSEO.
4. On 15 September 2020, a further request for an extension of time was received by email from the landlord's agent on his behalf. The email stated that some of the repairs had been completed and requested further time to complete the remaining works, as due to renewed coronavirus restrictions, the agency's contractors were not going into properties to carry out work.
5. Having considered this request, the tribunal issued a further variation of the RSEO on 29 September 2020, extending the period for the completion of the works for a further twelve weeks until 31 December 2020. In its decision of 29 September 2020 to grant the variation, the tribunal noted that items 2, 3, 4, 6 or 7 of the RSEO did not appear to have been addressed. While the tribunal accepted that it had been difficult to arrange repairs due to the current pandemic, it noted that the landlord had at that point had almost a year to address these issues. The tribunal therefore stated in the decision that if the remaining works were not completed by 31 December 2020, it was likely to issue a failure to comply decision.
6. Further communication was received from the landlord's agent on 1 December 2020, In that email, the landlord's agent requested further time to allow its contractors to complete the rest of the work, stating that they were not currently working due to the coronavirus restrictions. The tribunal issued a further direction to the landlord on 15 January 2021, directing him to provide some further information by 8 February 2021.
7. A case management discussion (CMD) was held on 10 February 2021 to discuss the application in the absence of the landlord or his representative. A failure to comply decision and a rent relief order were issued on 3 March 2021. The landlord appealed against the decision to the Upper Tribunal on the grounds that he had been provided with the wrong date for the CMD and therefore did not attend the CMD and was denied the opportunity to attend or

be represented at the CMD as a result. In its decision of 4 August 2021, the Upper Tribunal granted the appeal and remitted the case to the tribunal for reconsideration.

8. The tribunal arranged a re-inspection of the house on 30 September 2021 and a hearing on 7 October 2021.

### **The re-inspection**

9. The tribunal carried out a re-inspection of the house on 30 September 2021. The tenant was present at the inspection. The landlord was not present or represented at the inspection.
10. Photographs were taken during the inspection. A pre-hearing inspection summary and schedule of photographs, a copy of which is attached to this decision, was sent to the parties prior to the hearing.

### **The hearing**

11. A hearing was held on 7 October 2021 by telephone conference call. The landlord was represented on the conference call by Mr Mo Bukhari of AQA Property Ltd. The tenant was present on the call, as was his representative, Ms Wendy Malloy, a housing adviser at Govan Law Centre.
12. The tribunal heard evidence from both parties on whether there had been compliance with each of the items within RSEO in turn. The submissions of both parties are summarised below.
  - 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.*
13. Ms Malloy told the tribunal that she understood that the pointing work had been carried out. Mr Bukhari also said that the work had been carried out.

- 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.*



- 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.*

14. Items 2, 3 and 4 were interrelated, as all concerned the dampness issues which had been identified by the tribunal. In relation to the damp proof course, Ms Malloy told the tribunal that it was her understanding that following the specialist dampness survey being carried out on 28 January 2021, the walls of the bedroom next to the shower room (labelled as 'bedroom 3 (rear)' in the attached photograph schedule) had been plastered, and this had then been painted. She said that the tenant did not believe that this had solved the problem, which he thought was related to the shower room next door.
15. Mr Bukhari said that he believed that the contractors carried out work in that bedroom some time ago but conceded that it was possible that the mould had reappeared in that room more recently. The tribunal noted that it had taken high damp readings along the left-hand wall adjacent to the shower room at its re-inspection (photographs 18-20 of the photograph schedule).
16. The tribunal had also taken high damp readings along the rear wall of bedroom 2 (rear), as shown in photographs 5 and 6 of the attached photograph schedule, in bedroom 1 (front) (photograph 30) and to the rear of the kitchen (photograph 27).
17. Mr Bukhari said that the landlord had provided two dampness reports to the tribunal. The first was a report carried out by Wise Property Care on 13 September 2018, which had been before the tribunal at its original hearing on 19 September 2019.
18. He then stated that he had sent to the tribunal a report produced by Advanced Preservation Specialists (APS) following their survey of the house on 28 January 2021. The tribunal had no record of having received a copy of this report. Mr Bukhari then said that having checked, while he had thought he had sent the report to the tribunal in February 2021, it appeared that he had not done so. During the course of the hearing, he sent to the tribunal by email a copy of the APS report dated 4 February 2021, together with a quotation for the works and a sketch produced by the surveyor. The tribunal adjourned the hearing for 30 minutes to allow the tribunal and Ms Malloy to read the report.
19. On reconvening the hearing, the tribunal noted that the APS report recommended the installation of a chemical damp proof course. When asked by the tribunal specifically why the damp proof course had not been replaced or repaired, Mr Bukhari said that this had not been done because it was not possible to do it while the tenant was living in the property.
20. The tribunal chairperson asked Mr Bukhari why the landlord had not instructed the specialist dampness report much earlier, given the length of time which had

elapsed since the RSEO was issued. He said that it had been difficult to commission such a report due to the coronavirus restrictions, and that he had been unable to find a company who were willing to go out to the house before January 2021. The tribunal asked Mr Bukhari why the landlord had not instructed the report during the five-month period between the issue of the RSEO and the start of lockdown in March 2020, he was unable to provide a satisfactory answer.

21. When asked why the landlord had not provided a report to the tribunal for approval as required by item 3 of the RSEO, Mr Bukhari said that he had thought the 2018 Wise Report which had already been provided to the tribunal would comply with item 3. He then said that he believed that he had produced the APS report to the tribunal in February 2021, and that he had just realised during the hearing that he had not done so.

22. The ordinary (surveyor) tribunal member noted that the APS report referred to water staining to the upper wall in the kitchen and asked Mr Bukhari whether the cause of these leaks had been established. He replied that the leak had originated from the boiler in the flat upstairs and stated that repairs and redecoration had been carried out to the kitchen ceiling. The ordinary member pointed out that the tribunal had observed water staining above and around the boiler in the kitchen at its inspection (photograph 24 of the photograph schedule). Mr Bukhari said that he was unaware of this issue.

*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.*

23. Mr Bukhari told the tribunal that the extractor fans in the shower room and the kitchen had been fixed and were now both working properly. Ms Malloy agreed that she understood that the fans were now operating correctly.

*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.*

24. Mr Bukhari told the tribunal that the landlord had complied with this item of the RSEO. He pointed to the two EICRs which had previously been provided to the tribunal. The tribunal noted that it had some concerns about the two EICRs which had been produced. Both EICRs were dated 'October 2020', with no specific date stated. The first EICR (EICR 1), which was provided by the landlord's agent on 1 December 2020, was produced by Andrew Gilbert of High Chapelton, Stewarton KA3 3ED. The tribunal had been unwilling to accept this EICR as the contractor did not appear to be registered with either SELECT or NICEIC, or to be a member of NAPIT, and had not provided evidence that he was otherwise a 'competent person', as required by the RSEO. The tribunal had therefore directed the landlord to produce a further EICR from a suitably qualified and registered contractor.
25. A second EICR (EICR 2) was provided by the landlord's agent in response to the tribunal's direction of 15 January 2021. The tribunal has several concerns about EICR 2. Firstly, despite having been produced in response to the tribunal's direction, it was dated October 2020, the same date as EICR 1. Secondly, while it was produced by a SELECT registered firm, C. Dickson Electrical Ltd of Rhindmuir Grove, Swinton, Glasgow, the name of the electrician who carried it out was given on the certificate as Andrew Gilbert. It therefore appeared that EICR 2 was produced by the same individual contractor as EICR 1 and was carried out at the same time. Given these issues, the tribunal noted that it had concerns about the validity and authority of EICR 2, and asked Mr Bukhari to address these.
26. Mr Bukhari explained to the tribunal that Mr Gilbert works for Mr Dickson, who is the director of the SELECT registered firm. EICR 2 was produced following some electrical works which had been carried out after EICR 1 had been produced. During the course of the hearing, Mr Bukhari sent to the tribunal by email an invoice received from C. Dickson Electrical Ltd dated 26 November 2020, which related to the EICR and various electrical works which had been carried out. The tribunal noted that EICR 1 stated that the electrical installation was satisfactory but barely passing, and that EICR 2 stated that the installation was poor but passable.
27. Ms Malloy indicated that she had some concerns about the reliability of the two EICRs, given the concerns expressed by the tribunal.
- 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.*
28. The tribunal noted that it had been satisfied with the gas safety certificate dated 6 July 2020 which had previously been produced by the landlord's agent. Given the time that had passed since then, a further gas safety inspection should now have been carried out. The tribunal asked Mr Bukhari if he could

provide evidence of this more up to date certificate. During the course of the hearing, Mr Bukhari sent by email a gas safety certificate dated 24 June 2021 in respect of the house to the tribunal. The tribunal noted that it was concerned that this certificate stated that the boiler was in the bedroom, when in fact it was in the kitchen. The certificate also did not mention the gas hob in the kitchen.

29. A further gas safety certificate in respect of the house dated 23 September 2021 and produced by EP Gas, Glasgow, a registered gas safety engineer was received from Mr Bukhari on 11 October 2021.

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

Mr Bukhari told the tribunal that some plastering and interior decoration had been carried out at the house, prior to the commissioning of the APS dampness report. Ms Malloy said that she was unable to comment on this issue, given that questions remained over some of the previous issues relating to the RSEO. The tribunal noted that this item was intended to relate to decorative work required once the other works contained in the RSEO had been carried out.

### **Access issues**

30. Mr Bukhari told the tribunal that the landlord did not deny that major works required to be done within the house, and that the landlord was willing to do the work. However, it would be necessary for the tenant to move out before the work could be done. He repeatedly said that the landlord had carried out all of the works that it was possible to carry out while the tenant was still living in the house. It was not possible to carry out the major works required, which involved the use of dangerous chemicals, and required walls and floors to be stripped back, while the tenant and his family were living in the house.

31. He said that ever since the Wise report had been produced in 2018, it had been clear that the tenant would need to move out for the work to be carried out. He suggested that the dampness issues had in fact become worse because the tenant had remained in the property. He said that he had been asking the tenant to move out for 3 years, and he expressed the view that the tenant should have been able to find alternative accommodation along time ago. He said that the landlord had now made an eviction application to the First-tier Tribunal on the grounds that the repairs needed to be carried out and the tenant was preventing this from taking place.

32. Mr Bukhari said that he had been trying to assist the tenant to find somewhere else to live. He had offered the tenant the other ground floor flat within the same tenement around two years ago, but the tenant had turned it down. More recently, he had assisted the tenant by finding potential properties on various websites, but the tenant had said that they were not suitable. It appeared that

the assistance referred to by Mr Bukhari was referring to consisted of identifying potential rental properties on the websites of other agencies.

33. Ms Malloy told the tribunal that the tenant and his family had been registered as homeless with the local authority some time ago and were still waiting for an offer of suitable housing.
34. The tenant told the tribunal that the properties he had been offered by the landlord's agent were not suitable for his family's needs. He said that (as noted in the tribunal's original decision of 9 October 2019), he had declined the offer of the flat opposite as it was in a worse state of repair than his existing flat and was unsuitable for his family's needs. Mr Bukhari said that he was aware of, and was sympathetic to, the tenant's needs and that this was why he had offered him the other ground floor flat in the tenement. He said that he had offered to do any repairs required to let him move in, but the tenant said that no repairs had been done and the other flat was still in poor condition.
35. He said that a couple of other flats had been offered to him by Mr Bukhari, but these were not ground floor flats and were therefore not suitable, as his mother who lives with his family, is disabled and uses a wheelchair. He said that he was trying to find other accommodation. He had applied to housing associations and was unable to find any private rented properties which were affordable and suitable for his family.
36. Ms Malloy said that the landlord could have been more proactive in dealing with the issues, rather than appearing to blame the tenant, and had not complied with most of the issues in the RSEO, despite being given plenty of time to do so. She asked the tribunal, should it decide that the landlord had failed to comply with the RSEO, to consider making a Rent Relief Order restricting the rent payable by 90%, the maximum which could be awarded, given the condition of the property and the length of time the issues had been ongoing.
37. Mr Bukhari again said that the landlord had done his best to do the works that it was possible to carry out while the tenant was still living in the property. It was not possible to do the remaining works until the tenant and his family moved out. He therefore opposed the making of a Rent Relief Order.

### **Reasons for decision**

38. In light of all the evidence before it, the tribunal considered whether the landlord had complied with each part of the RSEO in turn, as set out below.

#### **Item 1- the pointing**

39. The tribunal noted at its re-inspection (see photographs 32-38 in the schedule of photographs) that the defective pointing to the front and rear elevation of the building had been replaced. All of the cracked areas were covered. While the

tribunal noted that in some areas the work did not appear to have been carried out to a high standard, it considered that on balance the work had been done to an adequate standard. The tribunal therefore determined that the landlord had complied with item 1 of the RSEO.

Items 2, 3 and 4- dampness issues

40. A survey report from Wise Property Care Ltd in respect of the house had been produced for the landlord on 13 September 2018. That report, which was not comprehensive, found dampness throughout the house. It did not recommend any specialist treatment at that stage but stated that the property required major refurbishment. The report proposed that a further inspection, including the sub-floor, should be carried out once the property was empty. That report was before the tribunal when it first made a decision on the tenant's application in October 2019.
41. The tribunal noted in its original decision of 9 October 2019 that the Wise report did not comment on the extensive water staining on the ceiling and upper wall in the kitchen which it had noted at its inspection on 19 September 2019. This appeared to have resulted from leaks from the flat above, which would have an impact on the moisture levels in the house and may make condensation more likely. Given that the Wise report did not mention this, and in view of the time which had then passed since that report had been produced, the tribunal considered that a more comprehensive and up to date report should be instructed to ascertain the current position.
42. The RSEO therefore required the landlord to 1) deliver a specialist report from a suitably qualified surveyor to the tribunal for its approval, investigating any issues contributing to the rising and/or penetrating damp (item 3 of the RSEO) and 2) once a satisfactory report had been approved by the tribunal, to carry out such work as was recommended in the report (item 4 of the RSEO).
43. No such report had been produced to the tribunal until the date of the present hearing, two years after the tribunal's original decision and RSEO. The landlord's agent had instructed APS, a specialist dampness surveyor, to provide a dampness report for the house on 22 January 2021. A surveyor from APS had carried out an inspection of the house on 28 January 2021, and a report dated 4 February 2021 had subsequently been produced by them. That report recommended that various major works be carried out to address the dampness issues.
44. In its direction of 15 January 2021, the tribunal had directed the landlord to provide by 8 February 2021 certain information, including evidence of any written communication with any specialist contractor/suitably qualified building surveyor regarding the work required at items 2 and 3 of the RSEO. A response was received on 1 February 2021, including an email from Mr Bukhari to APS dated 22 January 2021 instructing the survey and a reply dated 28 January

2021, stating that the surveyor would go out to the house that afternoon. Nothing else was received from the landlord in relation to the report.

45. The tribunal concludes from the evidence before it that the landlord has not complied with items 2, 3 or 4 in the RSEO. While the tribunal appreciates that the coronavirus restrictions made it more difficult to carry out works, it notes that the landlord had a period of more than 5 months between the issue of the RSEO and the start of lockdown in March 2020 to instruct a dampness report. There was also a period of several months during summer 2020 when the restrictions on contractors entering properties were relaxed. Yet the landlord had not instructed a dampness survey until late January 2021.
46. Moreover, while the APS report appears to include an investigation of all of the dampness issues in the house, it was not produced by a suitably qualified building surveyor, who is a professional member or fellow of the RICS, as required by item 3 of the RSEO. The specialist report which was obtained was not delivered to the tribunal for its approval within the timescale provided for in the RSEO as varied i.e. by 31 December 2020. It has not therefore been approved by the tribunal. Finally, the works recommended in the report have not been carried out, as required by item 4 of the RSEO.
47. With regard to item 2 of the RSEO - instruction of the repair or replacement of the existing damp proof course - it appeared to the tribunal that Mr Bukhari was perhaps confusing this issue with items 3 and 4 of the RSEO. The RSEO required the landlord to instruct a suitably qualified specialist contractor to carry out this work independently of the other issues included in items 3 and 4 of the RSEO. Mr Bukhari told the tribunal that this work could not be carried out while the tenant was still residing in the property.
48. The tribunal considered the argument put forward by Mr Bukhari that the landlord was unable to comply with the order because it was not possible to obtain access to the house to carry out the works due to the continued presence of the tenant and his family.
49. In terms of section 26 (3) (b) of the Act, the tribunal may not decide that a landlord has failed to comply with an RSEO if the tribunal is satisfied, on the submission of the landlord or otherwise-
  - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights, or
  - (ii) that the work required by the order is likely to endanger any person.
50. The tribunal understands, as recognised in its original decision, that it will be necessary for the tenant to move out of the house in order for major dampness works to be carried out. It notes, however, that while Mr Bukhari said that he had been asking the tenant to move out for 3 years, the landlord was not

present or represented at the original hearing on 19 September 2019 and did not put forward a similar argument under section 16 (4) of the Act. This section is in similar terms to section 26 (3) (b), and states that a landlord is not to be treated as having failed to comply with the duty imposed by section 14 (1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights.

51. The tribunal is not satisfied that the landlord has demonstrated that he is unable to comply with the order for the reasons set out at section 26(3) (b). Firstly, the fact that the tenant may have to move out for the works to be done is not an adequate excuse for failing to deliver a dampness report to the tribunal within the extended timescale set out in the RSEO as varied i.e. by 31 December 2020 (item 3). The tribunal has previously notified the landlord twice that, unless it was satisfied that there were good reasons for the failure to carry out the works in the RSEO, it was likely to issue a failure to comply decision.
52. While the tribunal appreciates that the coronavirus pandemic presented additional challenges for the landlord, the landlord has now had almost two years to comply with the RSEO. There were significant periods during that time when it would have been possible to engage a surveyor to come out to the property, both before and during the coronavirus lockdown. The tribunal does not therefore consider that the landlord has demonstrated that he was unable to comply with item 3 of the RSEO in terms of section 26(3) (b).
53. The tribunal also considered whether the landlord may have an argument under section 26 (3) (b) in relation to his purported failure to comply with items 2 and 4 of the RSEO within the extended timescale allowed. The tribunal did not consider that the landlord had clearly demonstrated that he had taken reasonable steps for the purposes of acquiring rights of access. While it appeared that some effort had been made to secure alternative accommodation for the tenant, the tribunal was not persuaded by the evidence before it that any serious efforts had been made by the landlord in this regard.
54. No written evidence of any offers of accommodation to the tenant or any other assistance to the tenant had been provided to the tribunal. While the landlord now appeared to have raised eviction proceedings, this only appeared to have been done recently. The tribunal does not therefore consider that the landlord has demonstrated that he was unable to comply with items 2 or 4 of the RSEO in terms of section 26(3) (b).

#### *Item 5 – the extractor fans*

55. At its re-inspection, the tribunal found that both the extractor fan in the shower room and the extractor hood in the kitchen appeared to be operating correctly. They therefore appeared to be in a reasonable state of repair and in proper working order. The landlord's agent had provided to the tribunal a letter dated



26 January 2021 from Andrew Gilbert, the electrical contractor who produced both EICRs for the property (as discussed below), stating that the extractor fans seem to be in working order. The tribunal therefore determines that the extractor fans are in a reasonable state of repair and in proper working order.

#### Item 6- the EICR

56. The tribunal has some concerns regarding the two EICRs, both dated 'October 2020', which have been produced by the landlord's agent. The first EICR (EICR 1), which was provided by the landlord's agent on 1 December 2020, was produced by Andrew Gilbert of High Chapelon, Stewarton KA3 3ED. The tribunal was unwilling to accept this EICR as the contractor did not appear to be registered with either SELECT or NICEIC, or to be a member of NAPIT, and had not provided evidence that he was otherwise a 'competent person', as required by the RSEO. The tribunal therefore directed the landlord to produce a further EICR from a suitably qualified and registered contractor.
57. A second EICR (EICR 2) was provided by the landlord's agent in response to its direction of 15 January 2021. The tribunal has several concerns about EICR 2. Firstly, despite having been produced in response to the tribunal's direction, it is dated October 2020, the same date as EICR 1. Secondly, while it has been produced by a SELECT registered firm, C. Dickson Electrical Ltd of Rhindmuir Grove, Swinton, Glasgow, the name of the electrician who carried it out is given on the certificate as Andrew Gilbert. It therefore appears that EICR 2 was produced by the same individual contractor as EICR 1 and was carried out at the same time. Given these issues, the tribunal has concerns about the validity and authority of EICR 2.
58. Moreover, both EICR certificates state that while the installation is assessed as being satisfactory but describe it as 'poor but passable' (EICR 2) and 'barely passing' (EICR 1). Both recommend that the installation is further inspected and tested by October 2021, rather than the usual five-year period. The tribunal is concerned that this suggests that there is some doubt as to whether the electrical installation is in fact satisfactory. Given this, taken together with the concerns discussed in the paragraph above, the tribunal determines that on the balance of probabilities, the landlord has failed to comply with item 6 of the RSEO.

#### Item 7- the gas safety certificate

59. The tribunal is satisfied that the landlord has complied with item 7 of the RSEO. The tribunal is content that the gas safety certificate relating to the house dated 23 September 2021 which was produced by the landlord's agent on 11 October 2021 provides evidence of compliance with item 7 of the RSEO.

#### Item 8 – restoration of finishes and decoration

60. Finally, the tribunal is unable to make a determination as to whether the landlord has complied with item 8 of the RSEO as some of the other works have not yet been completed, as discussed above.

#### The floor in the shower room

61. The tribunal particularly wishes to draw the landlord's attention to the current state of the floor in the shower room (photographs 15 and 16 in the attached schedule). At its initial inspection in September 2019, the tribunal noted that there was rot evident in the floor next to the shower tray. At its recent inspection, the tribunal noted that the floor had further deteriorated during the intervening two years. The tribunal considers that the floor now poses a risk to the health and safety of the tenant and his family. It therefore brought this issue to Mr Bukhari's attention at the hearing.

#### **Decision**

62. The tribunal determines that the landlord has failed to comply with items 2,3,4 and 6 of the RSEO. The landlord has complied with items 1 and 5 of the RSEO. The tribunal is unable to make a determination on whether the landlord has complied with item 8, as this is consequent on items 2,3 and 4 being addressed.
63. The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

#### **Rent relief order**

64. The tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It determined that given the extent of the landlord's failure to comply with the RSEO, despite having been given a total of two years to do so, such an order should be made.
65. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The tribunal noted that the dampness issues are extensive which must have had a major impact on the health and wellbeing of the tenant and his family. The issues have also been ongoing for a considerable period of time, and as noted above, the landlord appears to have done little to address them. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **90%** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

## **Right of Appeal**

66. 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.

67. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

Signed.....  
**Chairperson**

Date.....

This is the pre-hearing inspection summary and  
schedule of photographs referred to in the foregoing  
Statement of reasons dated 25th October 2024

Sarah O'Neill

## Housing and Property Chamber First-tier Tribunal for Scotland



### Pre-hearing inspection summary and schedule of photographs



*Street view / Front elevation*

**Property** Flat 0/2, 36 Garturk Street, Glasgow G42 8JF

**Ref No:** FTS/HPC/RP/19/2089

**Tribunal members** Legal Chair: Mrs S O'Neill;  
Ordinary (Surveyor Member): Mrs S Hesp

### **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 10.30 am on 30 September 2021. Also in attendance was the tenant, Mr Atif Aziz Khawaja and family members

*Sara Hesp*

Ordinary (Surveyor) Member  
First-Tier Tribunal for Scotland  
1 October 2021

## **Appendix 1 Schedule of photographs taken during inspection on 30 September 2021**

### **Living room**



*Photograph 1*



*Photograph 2*



*Photograph 3*



## Bedroom 2 (rear)



*Photograph 4*



*Photograph 5 – showing damp meter readings of high moisture content to rear wall*



*Photograph 6 – showing damp meter readings of high moisture content to rear wall*



*Photograph 7*





*Photograph 8*

**Shower room**



*Photograph 9*



*Photograph 10*



*Photograph 11*



*Photograph 12*



*Photograph 13*





*Photograph 14*



*Photograph 15*



*Photograph 16*

**Bedroom 3 (rear)**



*Photograph 17*

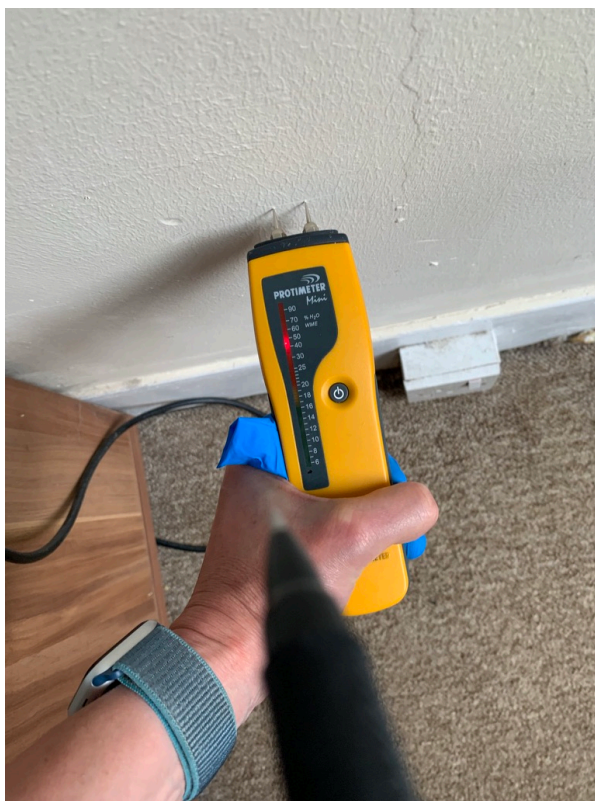




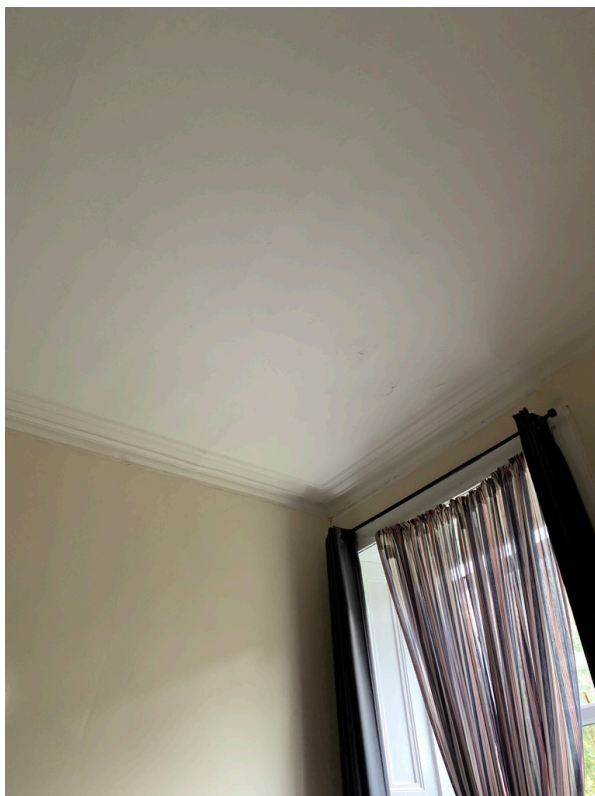
*Photograph 18*



*Photograph 19 - showing damp meter readings of high moisture content to left hand internal (adjacent shower room)*



*Photograph 20 - showing damp meter readings of high moisture content to left hand wall*





*Photograph 21*



*Photograph 22*

**Kitchen**



*Photograph 23*

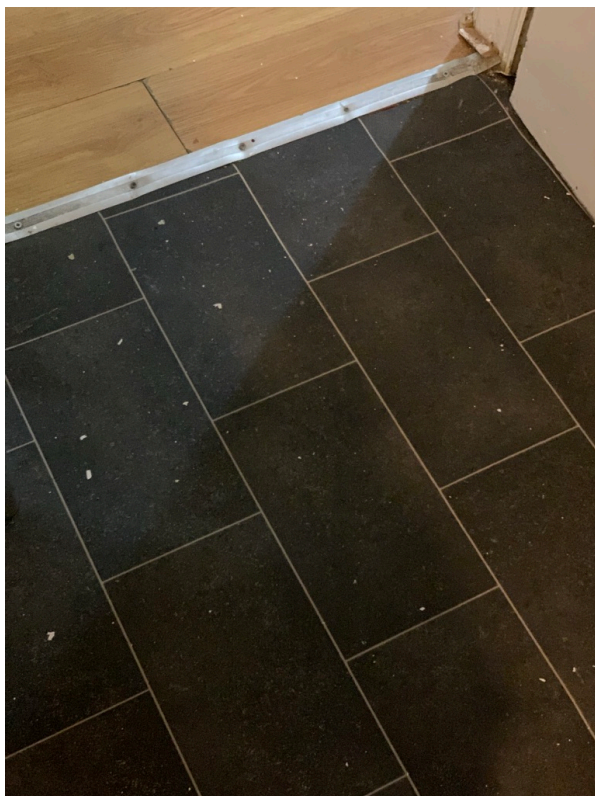




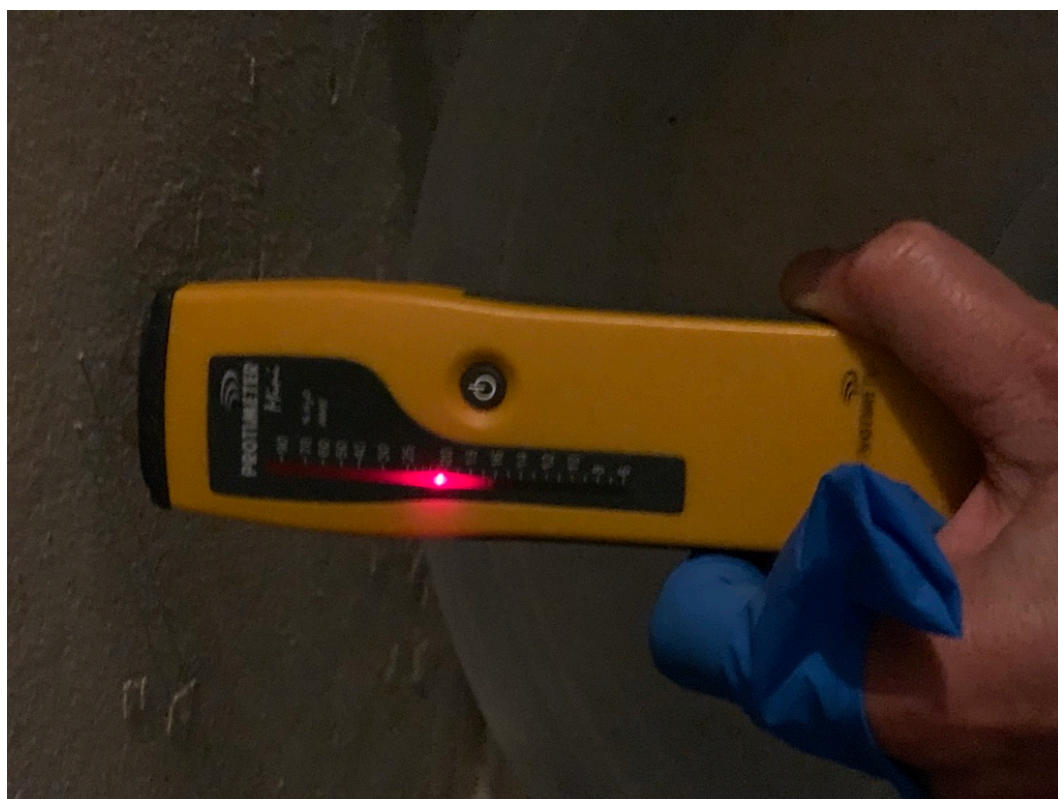
*Photograph 24*



*Photograph 25*



*Photograph 26*



*Photograph 27 showing damp meter readings of high moisture content to rear kitchen  
(behind door)*



**Bedroom 1 (front)**



*Photograph 28*



*Photograph 29*



*Photograph 30 – showing damp meter readings of high moisture content*

## **Hallway**



*Photograph 31*



**External rear elevation**



*Photograph 32*



*Photograph 33*



*Photograph 34*



*Photograph 35*



**External front elevation**



*Photograph 36*



*Photograph 37*



*Photograph 38*



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Rent Relief Order**

**by the First-tier Tribunal for Scotland (Housing and Property Chamber)**  
(hereinafter referred to as “the tribunal”)

**Under Section 26(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 (Legal Member) and Sara Hesp (Ordinary Member, Surveyor)**

### **NOTICE TO Mr Mohammed Arshad (“the Landlord”)**

Whereas in terms of its decision dated 25 October 2021, tribunal determined in terms of section 26(1) of the Housing (Scotland) Act 2006 (‘the Act’) that the landlord has failed to comply with the Repairing Standard Enforcement Order dated 9 October 2019 in relation to the house.

The tribunal determined to make a Rent Relief Order in terms of section 27 of the Act, reducing the rent payable in respect of the property by **90%**. The rent reduction will take effect 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

### **Rights of Appeal**

1. 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.

2. 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 Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

S O'Neill

Signed.....  
**Chairperson**

Date...25 October 2021.....