

Housing and Property Chamber
First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE
HOUSING (SCOTLAND) ACT 2006**

Case Reference FTS/HPC/RP/23/4043

Property at Flat 0/1, 4 Lochend Path, Glasgow, G34 0NN ("the Property"), being the subjects registered in the Land Register of Scotland under Title Number GLA103193.

The Parties: -

Ms Nicola O'Rourke, residing at Flat 0/1, 4 Lochend Path, Glasgow, G34 0NN ("The Tenant"),

And

A.M.I. Development and Lettings Limited, a private limited company having a registered office at Iais Level One, 211 Dumbarton Road, Glasgow, G11 6AA ("The Landlord")

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 Landlords have complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act, and has determined to make a Repairing Standard Enforcement Order ("RSEO").

The Tribunal comprised: -

Mr. A Cowan, Legal Member, and
Ms. C Jones, Ordinary Member (Surveyor)

Background

1. By application dated 14th November 2023 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for determination as to whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of The Housing (Scotland) Act 2006.

2. The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure the House meets the Repairing Standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

13(1) a. The house is wind and watertight and in all other respects reasonably fit for human habitation.

13(1) b. The structure and exterior of the house (including drains gutters and external pipes) are in a reasonable state of repair and in proper working order.

13(1) h. The house does not meet the tolerable standard.

3. The Tenant has provided within the Application details as to why she considers that the Landlord has failed to meet the Repairing Standard. By letter dated 31st October 2023 the Tenant had intimated to the Landlords a list of defects which the Tenant considered the Landlords required to repair in order to bring the Property up to the Repairing Standard.
4. In the Application the Applicant has referred to two reports which have been prepared in relation to the Property. These reports are:
 - a. Architect's report prepared by Professor Tim Sharpe, dated 26th March 2023, and
 - b. Structural Engineer's report prepared by A J Balfour Associates Limited, dated 16th June 2023.
5. A summary of the issues which were intimated to the Landlord, and which were referred to in the Application are: -
 - a. The reports referred to in paragraph 4 above have concluded that there has been (and continues to be) structural movement in the Property which has caused significant cracking to the walls between the bathroom and the hall, the kitchen and the hall and between the bathroom and the kitchen at the Property. The door frames to the bathroom, kitchen and living room at the Property have been significantly distorted by structural movement. These doors are not able to be properly closed. There is a significant slope to the hall,

bathroom, and kitchen floor of the Property. There is apparent settlement of the dividing brick wall between the kitchen and the bathroom with no apparent formal support to the masonry "stack" wall between the kitchen and the bathroom at the Property. The design of the joists fails under the applied vertical load. As a consequence, the Applicant maintains that the Property does not meet the tolerable standard as it is not structurally stable and as a result the structure of the Property is not in a reasonable state of repair.

- b. There is water ingress into the Property at ceiling level within the bathroom which has caused significant damp and mould at that part of the bathroom ceiling and wall below.
 - c. The boiler at the Property is not fully operational.
6. The Application was accepted by the Chamber President on 29th November 2023 and was referred for this Tribunal's consideration.
7. The Tribunal advised they would inspect the property on 23rd February 2023 at 10am. Parties were advised that a hearing would then be held at 11:45am on the same date at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. Parties were invited to complete a form indicating whether they wished to attend the hearing to make oral representations and/or submit written representations.
8. By email dated 30th January 2024 the Landlord's solicitors, Messrs. Patten & Prentice, lodged written representations with the Tribunal.

Property Inspection

9. The Tribunal inspected the property on 23rd February 2024. The Tenant was present at the time of the inspection. The Landlord was represented at the inspection and hearing by Mr. Zubair Anwar of Property 4U, the Landlord's letting agents. Photographs were taken during the inspection by the Tribunal. Copies of the photographs taken by the Tribunal, together with a summary of the Tribunal's general observations at the inspection, are attached as a schedule to this decision.

The Hearing

10. A hearing in relation to the Application was held on 23rd February 2024 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.

The Tenant attended the hearing. She was represented at the hearing by Ms Laura Simpson of Govan Law Centre and gave evidence to the Tribunal.

In advance of the hearing Mr. Ken Caldwell, solicitor had emailed the Tribunal. Mr. Caldwell explained that he was instructed by the Landlord in relation to the Application, but that he was unable to attend the hearing. He confirmed that he did not seek an adjournment of the hearing on behalf of the Landlord and referred the Tribunal to the written representations which had been lodged with his email.

Mr. Zubair Anwar, from the Landlord's letting agents, attended the hearing and represented the Landlord at the hearing.

11. At the start of the hearing the Tribunal outlined their observations from their inspection of the property. The property comprises a ground floor former local authority flat situated in a 4 storey tenement constructed in the 1960's. It is located in an area of similar properties within the Lochend neighbourhood of Easterhouse, around 6 miles east of Glasgow city centre. The property is of traditional cavity wall construction with a roughcast exterior and a pitched concrete tiled roof. The accommodation comprises a hall, living room, 2 bedrooms, kitchen and bathroom. The property has uPVC double glazed windows and a gas central heating system.

Complaint regarding Structural defects at the Property

12. In relation to the Tenant's complaint that the Property has been (and continues to be) affected by structural movement in the Property the Tribunal outlined their own observations from their inspection of the Property. The inspection had identified a significant slope to the floors of the hall, bathroom, and kitchen of the Property. The Tribunal had noted cracking to the walls between the bathroom and the hall, the kitchen and the hall and between the bathroom and the kitchen at the Property. The Tribunal had noted that the door frames to the bathroom, kitchen and living room at the Property have been significantly distorted by structural movement. These doors are not able to be properly closed.
13. Mr. Anwar accepted, on behalf of the Landlord, that the Property had been affected by structural movement. He accepted the observations of the Tribunal without

challenge. He accepted that, because of the effect of the structural movement at the Property, the structure of the Property is not in a reasonable state of repair. He accepted that the Property does not meet the Repairing Standard in relation to this matter.

14. The Tribunal noted the terms of the written submissions made on behalf of the Landlord in relation to this complaint. The Landlord's agents have made repeated calls on the factors of the building in which the Property is situated to investigate the structural issues which affect the Property and to instruct the necessary rectification works. The Landlord maintains that they are unable to authorise and progress remedial works until the issue is fully investigated and loss adjusters appointed in terms of the building insurance policy.
15. The Tenant confirmed in the Application that she has made repeated requests to the Landlord to rectify the structural issues at the Property. The Landlords have acknowledged that works are required at the Property to rectify the structural defects. The Tenant has instructed an independent inspection of the Property by Professor Tim Sharpe who has confirmed that there are significant structural defects at the Property and who has suggested necessary remedial measures required to address those structural issues. It is the Tenant's position that despite the Landlord being made aware of the structural issues with the Property they have failed to meet their obligations in terms of section 14 of the Act to ensure that the Property meets the Repairing Standard and to address the issues in a reasonable period of time.

Complaint regarding water ingress and dampness in the bathroom of the Property.

16. In relation to the Tenant's complaint that there is water ingress and dampness in the bathroom of the Property, the Tribunal outlined their own observations from their inspection of the Property. The Tribunal had noted evidence of dampness and water ingress immediately above the toilet in the bathroom.
17. The Tenant confirmed, in the Application, that she has made repeated requests to the Landlord to rectify water ingress and dampness in the bathroom. She explained that in December 2022 the Landlord had instructed works to replace the ceiling in the bathroom. That work was completed, but the Tenant had thereafter observed further

significant water ingress into the bathroom and the growth of further mould on the ceiling. The Tenant believed that the water ingress was coming from the flat above the Property. It is the Tenant's position that despite the Landlord being made aware of the water ingress and dampness within the bathroom of the Property they have failed to meet their obligations in terms of section 14 of the Act to ensure that the Property meets the Repairing Standard and to address the issues within a reasonable period of time.

18. Mr. Anwar accepted on behalf of the Landlord that the bathroom of the Property had been affected by water ingress. He accepted the observations of the Tribunal without challenge. He accepted that the Property does not meet the Repairing Standard in relation to this matter. It is not known if the cause of the water ingress is related to the structural defects of the Property. The written submissions made on behalf of the Landlord in relation to this complaint make no mention of this part of the complaint made by the Tenant in the Application.

Complaint regarding the boiler at the Property.

19. The Tenant confirmed in the Application that she has made repeated requests to the Landlord to rectify issues with the boiler at the Property. She explained in her evidence to the Tribunal that, over a period of at least a year, she repeatedly, and frequently, required to re-pressurise the boiler by manually topping up the water pressure. The boiler would frequently cut off or not operate. Immediately prior to this Tribunal hearing the Landlord had instructed an engineer to carry out necessary repairs to the boiler. As at the date of the Tribunal hearing the boiler was operational. The Tribunal noted at the inspection of the Property that the boiler was not modern and that the pressure gauge on the boiler had dropped to a low level. The Tenant does not believe that the boiler is operating correctly as it is, again, losing pressure. The Tenant said it has not been serviced since she moved in. Mr Anwar said a gas safety inspection was due very soon. The written submissions made on behalf of the Landlord in relation to this complaint make no mention of this part of the complaint made by the Tenant in the Application. No further submissions were made by Mr. Anwar in relation to this part of the Application at the hearing.

Findings in Fact

20. Having viewed the Property and having considered the available written evidence along with the further evidence given by parties at the hearing, the Tribunal make the following findings in fact.

- a) The Landlords and the Tenant are parties to a tenancy agreement in respect of the Property at Flat 0/1, 4 Lochend Path, Glasgow, G34 0NN.
- b) The Tenant has occupied the Property from October 2012.
- c) The Tenancy has not, as at the date hereof, been terminated.
- d) The Property has been (and continues to be) affected by significant structural movement. This has caused significant sloping to the floors of the Property and has led to cracking on walls and misaligned doors within the Property. The structure of the house is not in a reasonable state of repair.
- e) There is water ingress into the bathroom of the Property along with associated dampness and mould. The Property is not watertight and in all other respects reasonably fit for human habitation.
- f) The boiler in the Property is not in a reasonable state of repair or in proper working order.
- g) The Tenant has notified the Landlord of the requirement to carry out necessary repairs to the Property. The Landlords have failed to carry out such repairs as are necessary to rectify the issues identified by the Tenant.
- h) The Property does not currently meet the Repairing Standard and the Landlord has failed to comply with Section 13(1) of the Act.
- i) The Property does not meet the Tolerable standard as required by subsections (h), of Section 13(1) of the Act and section 86 of the Housing (Scotland) Act 1987.

Reasons for Decision

21. The Landlord has accepted that the Property has a substantial structural defect. The Landlord further accepts that the Property does not meet the Repairing Standard in that respect.

22. The Landlord has made efforts to get the factor of the building to have the issue

investigated and to have loss adjusters appointed in terms of a common buildings insurance policy. These are matters for the Landlord to resolve. The Landlord's submission that they require to claim under a common buildings insurance policy relates to issues as to what work is required to repair the building, and how such work is to be paid for. They do not alter the fact that the Property does not meet the Repairing Standard, nor do they absolve the Landlord of the responsibility to ensure that the Property meets the Repairing Standard at all times during the tenancy between the parties, as required by Section 14 of the Act.

23. The Landlord accepts that there is water ingress into the bathroom of the Property and that there is dampness within the bathroom.

24. The boiler at the Property has recently been repaired, but there is evidence that the boiler is not maintaining the required water pressure. The Tribunal have determined that given the age of the boiler, taken with the history or repeated problems with the boiler's operation, that the boiler requires to be inspected by a qualified operative who should certify the boiler as being in a reasonable state of repair and in proper working order.

Decision

25. The Tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

26. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act. The Tribunal determined to require the Landlord to: -

a. Instruct a suitably qualified specialist to

- i. Prepare a proposed specification of works (along with a method statement for the completion of such works) outlining any necessary works required to rectify the structural issues which affect the Property so that the structure of the Property is in a reasonable state of repair.
- ii. Provide the Tribunal with an estimate of the length of time to complete the required works once they are instructed.
- iii. Submit the specification and method statement for rectification of the structural defects at the Property to the Tribunal for further consideration

and, thereafter, carry out all works which are then further determined by the Tribunal as are necessary to ensure that the property meets the Repairing Standard.

b. Instruct a suitably qualified contractor to

- i. prepare a report on the cause and full extent of water ingress and dampness in the bathroom of the Property and
- ii. prepare a proposed specification of works outlining any necessary works required to ensure that the Property is watertight and in a reasonable state of repair.
- iii. Submit the report and specification of works required to ensure that the Property is watertight to the Tribunal for further consideration and, thereafter, carry out all works which are then further determined by the Tribunal as are necessary to ensure that the property meets the Repairing Standard.

27. Instruct a suitably qualified "gas safe" engineer to Service and repair the boiler/central heating system, so that it is in a reasonable state of repair and in proper working order. The Tribunal order that the actions and works specified in the RSEO must be carried out and completed by 26th April 2024.

28. The decision of the Tribunal is unanimous.

Right of Appeal

29. 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.

A Cowan

Chairperson
A Cowan

Date 23rd February 2024

Housing and Property Chamber

First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of Flat 0/1, 4 Lochend Path
Glasgow G34 0NN by the First-tier Tribunal for Scotland (Housing and Property
Chamber) on Friday 23 February 2024

Reference Number : FTS/HPC/RP/23/4043



Front Elevation

	
<p>Kitchen - severe vertical settlement crack to party wall between kitchen and bathroom adjacent to window</p>	<p>Kitchen - further settlement crack to party wall between kitchen and bathroom towards door</p>
	
<p>Kitchen - cracks to cornicing adjacent to door</p>	<p>Kitchen - door misaligned and does not close/ floor sloping in hall/kitchen and door frame out of square</p>



Hall - crack through bathroom door frame and wall above, door frame not square







Hall - cracks at cornicing above kitchen and bathroom doors

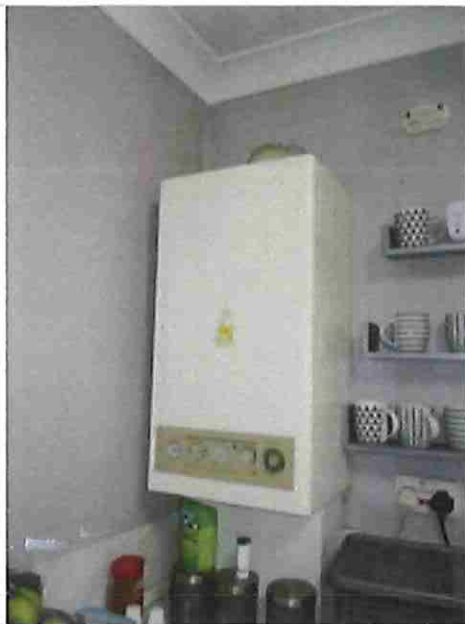


Bathroom door - misaligned and does not close/ floor sloping and door frame not square



Bathroom - party wall between hall and bathroom - severe settlement crack through door frame and wall above

	
<p>Bathroom - large damp patch to ceiling above toilet - severe black spot mould and water dripping from cornice</p>	<p>Bathroom - wall to rear of toilet - wallpaper peeling</p>
	
<p>Bathroom - damp patch to wall above toilet cistern</p>	<p>Bathroom - temporary floor repair - new section of plywood sheeting/vinyl part removed/damaged</p>



Kitchen - wall mounted "Sabre" boiler



Kitchen - free standing CO alarm (observation)



Kitchen - wall mounted heat detector (observation)



Hall - Ceiling mounted smoke detector/loose fitting (observation)



Living Room - Ceiling mounted smoke detector (observation)



Rear elevation - external view of ground floor subject flat showing Kitchen and Bathroom windows