

# 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 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

**Case Reference Number: FTS/HPC/RP/24/0507**

**Re: 3/1 43 Carnarvon Street (Room 4), Glasgow G3 6HP (“the house”)**

**Land Register Title No: GLA90825**

### **The Parties:-**

**Mr Zekai Zheng, residing at 406H Canvas, 47 Kyle Street, Glasgow G4 0JQ (“the tenant”)**

**Mr Shi Tong Lin, 11 Lindores Drive, Stepps, Glasgow G33 6PD (“the landlord”)**

### **Tribunal Members:**

**Sarah O’Neill (Chairperson) and Greig Adams (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 on him 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 not failed to comply with the said duty. The tribunal’s decision is unanimous.

### **Background**

1. By application received on 1 February 2024, the tenant applied to the tribunal for a determination that the landlord had failed to comply with his duty under Section 14(1) of the Act.

2. In his application, the tenant stated that he believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13(1) (a), (e) and (h) of the Act. His application stated that the respondent had failed to ensure that:
  - the house is wind and watertight and in all other respects reasonably fit for human habitation
  - any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
  - the house meets the tolerable standard
3. The tenant included the following complaints in his application form:
  1. There is mould on the corner of the bedroom.
  2. There is a crack on the bedroom wall at the corner.
  3. There is an infestation of book lice on the chest of drawers.
4. The tenant stated in his application that the following work required to be carried out at the house:
  1. Remove mould and infestation
  2. Repair the cracked wall
5. On 16 February 2024, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 10 June 2024.
6. The landlord was invited to submit written representations no later than 10 May 2024. No written representations were received from him by that date.
7. On 13 May 2024, the tribunal issued a direction to the tenant, noting that he had provided a contact address on his application form which was not that of the house which is the subject of the application. The tenant was directed to confirm whether there was still a tenancy in place between the parties.
8. A response was received from the tenant on 24 May 2024, confirming that there was still a tenancy in place between the parties but that he was currently living with a friend. In another email of the same date, he said that he may be unable to attend the inspection and asked if his flatmate could instead provide access.
9. Further written representations were received from the tenant by email on 6 June 2024.

### **The inspection**

10. The tribunal inspected the house on the morning of 10 June 2024. The weather conditions at the time of the tribunal's inspection were dry and bright. The tenant was not present at the inspection. The landlord was not present or represented at the inspection. Access for the inspection was provided by the tenant's flatmate, Ms Chun Liu.
11. Photographs were taken during the inspection. These are attached as a schedule to this decision.

### **The house**

12. The house is a room ("room 4") within a third floor flat in a modern block of eight flats which is in the region of 30 years old. The flat comprises four bedrooms and a shared kitchen, bathroom and hallway.

### **The hearing**

13. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. Neither party was present or represented at the hearing.
14. The tenant had advised the tribunal in advance in his email of 24 May 2024 that he would be unable to attend the hearing.
15. Notice of the inspection and hearing, together with the application papers, had been served on the landlord by sheriff officers on behalf of the tribunal on 2 May 2024.
16. The tribunal delayed the start of the hearing by 10 minutes, in case the landlord had been detained. No telephone calls, messages or emails had been received from the landlord.
17. 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 parties, in terms of rule 29 of the 2017 rules.

### **Preliminary issue**

18. The tribunal noted that the tenant's written representations of 6 June 2024 were submitted after the date stipulated for written representations, and less than 7 days before the hearing. The tribunal considered that these representations,

consisting of an email of just over one page may be helpful to it in its deliberations. The tribunal therefore decided to take this email into consideration in reaching its decision.

### **The evidence**

19. The evidence before the tribunal consisted of:

- The application form submitted by the tenant.
- Screenshots of an exchange of WhatsApp messages (translated from Chinese into English) between the parties dated 11 January 2024.
- Copy (undated) notification letter attached as a pdf to a further WhatsApp message from the tenant to the landlord setting out the repairs required, together with screenshots of subsequent undated WhatsApp messages between the parties.
- Photographs of the house submitted with the tenant's application.
- Registers Direct copy of Land Register title GLA90825.
- Scottish Landlord Register registration details for the house.
- Tenancy agreement between the parties in respect of the house which commenced on 1 September 2023.
- Written representations received from the tenant on 24 May and 6 June 2024.
- The tribunal's inspection of the house.

### **Summary of the issues**

20. 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 by section 14 (1) (b).

### **Findings in fact**

21. The house is a bedroom (designated as "room 4" in the tenancy agreement) located within a flat which is a house in multiple occupation and which the tenant shares with three other tenants.

22. The house is living accommodation which is, or which is capable of being, occupied as a separate dwelling, and includes the kitchen and bathroom within the flat which are shared common facilities.

23. The house is owned by the landlord.

24. The landlord is the registered landlord for the flat within which the house is located.

25. The landlord entered into a tenancy agreement with the tenant which commenced on 1 September 2023.
26. The tenant notified the landlord of the required repairs more than one month before submitting his application to the tribunal.
27. At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
  - a) "Room 4" was uninhabited. The bed was stripped, the wardrobe was empty and no personal belongings were visible within the room.
  - b) There was no crack in the south east corner of the wall of "room 4". The wall appeared to have been replastered and repainted recently.
  - c) There was minor mould growth along the top of the skirting to the east wall.
  - d) Detailed moisture readings were taken of the south east corner of the room. A "qualitative assessment" utilising a Moisture Profiling technique providing a sub-surface/at depth moisture reading recorded no elevated moisture readings.
  - e) A "quantitative assessment" was also undertaken utilising the pin-mode of the moisture meter. Such meters are calibrated to timber and provide the true moisture content of any timbers tested, with the timber skirting to the south wall within room 4 tested. No elevated moisture meter readings were recorded.
  - f) Various measurements were recorded within room 4 regarding the environmental conditions prevalent within the house in order to assess any "active" condensation such as Relative Humidity of 51.1%, Ambient temperature of 18.2<sup>0</sup>C and Dewpoint of 8.0<sup>0</sup>C. Utilising an infrared surface thermometer setting within the moisture meter, a basic condensation assessment was undertaken scanning the wall surfaces. No "active" condensation was found from this test.
  - g) The condensation assessment then advanced to utilization of thermal imaging and infra-red images were recorded utilising a Thermal Camera. Such Infra-red Images contain an array of colours. The Thermal Imaging System deployed on site detects Infra-red Radiation, which in basic terms means that heat is being observed instead of light. The Thermal Imaging System then automatically allocates a colour palette to the different temperatures which are detected. From thermal scanning of the areas under consideration, there were not noted to be any thermal anomalies where the surface wall temperatures had fallen below dewpoint. No "active" condensation was present during these tests.

- h) There was no visible evidence of book lice within room 4 on the chest of drawers, the mattress or elsewhere, either to the naked eye or via a digital microscope magnified view.

### **Reasons for decision**

28. In making its decision, the tribunal carefully considered all of the evidence before it. In doing so, it applied the civil burden of proof, which is the balance of probabilities. The tribunal considered each of the tenant's complaints in turn, as set out below.

#### **1. There is mould on the corner of the bedroom**

29. At its inspection, the tribunal observed minor mould growth along the top of the skirting to the east wall. The results of the moisture readings carried out by the tribunal are set out in detail at paragraph 28 (d) – (g). The lack of any elevated moisture readings evidence that there is no ongoing penetrating dampness issue within room 4.

30. From review of the photographic evidence provided by the tenant with his application (prior to remedial works being undertaken) it is evident that there has been a previous mould contamination issue. It is noted that Room 4 is no longer occupied and as a result the environmental conditions will have inevitably changed since the date of the tenant's application to the present time. There were no anomalies within the environmental readings, thermal imaging, moisture readings or internal air quality assessments which would give cause for concern, and there was no "active" condensation issue at the time of the tribunal's inspection.

31. In the expert opinion of the ordinary (surveyor) member of the tribunal, the thermal envelope of the house exceeds the requisite standards and any previous condensation issues were (on the balance of probabilities) resultant from moisture imbalance as a result of i) Inadequate Heat-Moisture Regime (relating to low indoor air temperature and high indoor air Relative Humidity levels), ii) Insufficient Ventilation related to high indoor vapour pressure excess (VPE), from internal and external vapour pressure differentials, and high surface Relative Humidity and iii) placement of furniture (for instance the position of the chest of drawers in close proximity to the external wall) preventing adequate air movement and heating of the external wall.

32. The tribunal considers that the minor mould observed along the skirting would be easily removed and that this is not a repairing standard issue.

33. The tribunal therefore determines that the bedroom wall is wind and watertight. As there are no issues with rising or penetrating damp, the house also meets the tolerable standard in that respect.

**2. There is a crack on the bedroom wall at the corner**

34. During its inspection, the tribunal observed that there was no crack in the south east corner of the wall of “room 4”. It appeared from the photographs submitted by the tenant that this was the wall which was the subject of his complaint, and his flatmate Miss Liu confirmed this to be the case. The wall appeared to have been replastered and repainted recently. In his email of 6 June 2024, the tenant confirmed that repairs had been carried out by the landlord.

35. The tribunal therefore determines that the bedroom wall complained about is in a reasonable state of repair and in proper working order.

**3. There is an infestation of book lice on the chest of drawers**

36. At its inspection, the tribunal observed no visual evidence of book lice within room 4 on the chest of drawers, the mattress (which was also referred to in the tenant’s notification letter to the landlord) or elsewhere, either to the naked eye or via a digital microscope magnified view. The photograph submitted by the tenant with his application clearly showed that there were book lice on the chest of drawers, but these were no longer seen to be present.

37. The tribunal notes that book lice are always associated with damp and feed on mould caused by damp conditions.<sup>1</sup> As noted elsewhere in this decision, any previous dampness and/or condensation is no longer present, which may be at least partly because the house is no longer occupied. On the balance of probabilities, the tribunal therefore concludes that there are no longer book lice present in the house.

38. The tribunal therefore determines that the house is otherwise fit for human habitation.

**Summary of decision**

39. On the basis of all the evidence before it, the tribunal determines that the landlord has not failed to comply with the duty imposed by section 14(1) (b) of the Act.

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<sup>1</sup> [Pest advice for controlling Booklice \(Psocids\) \(bpca.org.uk\)](https://www.bpca.org.uk/pest-advice-for-controlling-booklice-psocids)

## Observation by the tribunal

40. The tenant raised a number of issues relating to his tenancy in his email of 6 June 2024, including the impact which the repairs issues have had on his life and his request for a refund of the rent he had paid. He also alleged that the landlord had made false statements stating that he had refunded the rent. The present tribunal is unable to consider these issues. Its role is to consider the issues arising from the repairing standard application only. The tenant may wish to seek advice on these other issues.

## Rights of Appeal

41. 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.

42. 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.....Date: 11 June 2024

Sarah O'Neill, Chairperson