

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act**

**Chamber Reference number: FTC/HPC/RT/24/0445**

### Parties:

1. Glasgow City Council per its employee Ms. Janice Carey, Neighbourhood, Regeneration and Sustainability, 231, George Street, Glasgow, G1 1RX as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Khalid Malik residing at Flat 1/1, 46, Herriet Street, Glasgow G41 2JY (“the Tenant”)
3. Mohammed Ashfaq and Yasrat Bibi both residing at 17, Laggan Road, Glasgow G43 2SY (“the Landlord”)

**Property:** Flat 1/1, 46, Herriet Street, Glasgow G41 2JY being the subjects registered under title sheet number GLA173308

### Tribunal Members

Karen Moore (Chairperson) and Nick Allan (Surveyor and Ordinary 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 Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13(1)(c), 13 (1) (d) and 13(1) (h) of the Act and that for the reasons set out below.

### Background

1. By application received between 29 January 2024 and 13 February 2024 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the

Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c), 13(1)(d), and 13(1) (h) of the Act.

2. The Application comprised the tribunal chamber's standard application form and copy emails sent by the Third-party Applicant to Mr. Ashfaq of the Landlord detailing the extent of the works require and advising that the Property may not meet the Repairing Standard and the Tolerable Standard. The email correspondence called on the Landlord to ensure that the Property meets the Repairing Standard and to exhibit statutory Certificates for the Property.
3. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
  - i) There is no heating or hot water;
  - ii) The boiler needs to be repaired or replaced;
  - iii) Several windows in the Property need to be repaired or replaced;
  - iv) There is no shower screen or curtain;
  - v) The electrical switch for the shower needs to be repaired or replaced;
  - vi) There is a leak at the bath and
  - vii) The flooring throughout needs to be repaired or replaced as it is causing a trip hazard.
4. A Convener of the Chamber, with delegated powers under Section 96 of the Housing ( Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act determined to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act the First-tier Tribunal for Scotland served Notice of Referral upon the parties on 16 February 2024 and fixed an Inspection and Hearing for 6 June 2024 at 10.00 and 11.45, respectively.

### **Inspection**

5. The Inspection took place on 6 June 2024 at 10.00 a.m. at the Property. The Third-party Applicant was not present and not represented. The Tenant and his wife were both present. The Landlord was not present and not represented.
6. The Tribunal inspected the Property in respect of the matters raised in the Application as a whole. At the Inspection, the Tribunal took photographs which form the Inspection Report.

### **Hearing**

7. The Hearing was held at 11.45 by telephone conference call on 6 June 2024. The Third-party Applicant was not present or represented. The Tenant was not present. The Landlord was not present or represented.
8. The Tribunal discussed the Property as viewed at the Inspection.

### **Findings of Fact**

9. The Tribunal's findings in fact were made from the Application and the Inspection.

10. The Tribunal found the following matters established: -
- i) The Landlord owns the Property which is subject to a tenancy to the Tenant;
  - ii) The Property is a first floor flat within a three storey tenement built around 1900 and is of traditional construction with sandstone external walls under a pitched roof ;
  - iii) The Property is accessed via a shared common entry close;
  - iv) The Property comprises a hallway, living room, three bedrooms, kitchen and bathroom;
  - v) There is a gas heating system in the Property with the boiler situated in an alcove in the kitchen and covered by a thin curtain. The boiler appears to be of a of around 15 years old;
  - vi) There are radiators in each room of the Property and in the hallway. The radiators are of a significant age and appear to leak at the pipe connection valves as water damage resulting from leaks can be seen at those points;
  - vii) The heating and hot water system does not appear to operate effectively and does not appear to comply with Annex D: Installations for space heating by a fixed heating system of the “Scottish Government’s Repairing Standard Statutory Guidance for Private Landlords Directive”;
  - viii) The sash windows throughout the Property are likely original, single glazed and have been poorly maintained;
  - ix) There are broken or cracked window panes in the living room and two of the bedrooms;
  - x) The flooring coverings throughout the Property are in a poor condition. The carpeting in the hallway is wrinkled and forms a trip hazard in many places. The floor coverings in both the bathroom and kitchen are broken and damaged in places causing trip hazards;
  - xi) The floor boards in the Property are not secure. In the hallway, in particular, the floor boards at the thresholds to the other rooms have collapsed/part-collapsed causing trip hazards. A section of floor at the entrance to the Kitchen has completely collapsed;
  - xii) The floor of the bathroom is wet at the side of the bath and is saturated in places and it appears to allow water to egress to the ground floor property below. The source of this excessive dampness may be a potential leak coupled with the absence of a shower curtain or screen;
  - xiii) The plumbing in the bathroom does not appear to function properly, and there is excessive noise and vibration when the WC is flushed and taps run;
  - xiv) The plaster on the bathroom wall next to the WC is exposed;
  - xv) The electric switch for the shower is loose and is not fixed securely or safely to the wall;

- xvi) The gas cooker in the kitchen is not fully operational with only one of five gas rings being in working order.
- xvii) There appears to be no Electrical Installation Condition Report (EICR) and Gas Safety Certificate for the Property.
- xviii) There is only one smoke alarm in the Hallway, and a heat sensor in the Kitchen. They are not wirelessly connected, interconnected, hard-wired to the mains supply, and they might also potentially not have long life batteries. There is no smoke alarm in the Living room.
- xix) There is no carbon monoxide detector in the Property;

### **Summary of the Issue**

- 11. The issue to be determined by the Tribunal are whether or not the Property meets the Repairing Standard as notified to the Landlord in terms of Section 22 of the Act.
- 12. The Tribunal had regard to Section 22 (2) of the Act which states: *“(2)An application under subsection (1) or (1A) must set out the tenant's, or as the case may be, the third party applicant's reasons for considering that the landlord has failed to comply with that duty”* and Section 22 (3) of the Act which states: *“(3)No application under this section may be made unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with that duty.”*
- 13. The Tribunal had regard to the Application as a whole and was satisfied the Landlord had been given sufficient notice in terms of Sections 22 (2) and 22 (3) of the Act in respect of failures to comply with Sections 13 (1) (a), 13 (1) (c), 13(1)(d), and 13(1) (h) of the Act.

### **Decision of the tribunal and reasons for the decision.**

- 14. Section 24 (1) of the Act states: *“The First-tier Tribunal, must in relation to an application under section 22(1) or (1A) decide whether the landlord has complied with the duty imposed by section 14(1)(b)”* and Section 24 (2) of the Act states: *“(2)Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a “repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purposes of ensuring (a)that the house concerned meets the repairing standard, and (b)that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good.”*
- 15. Therefore, the Tribunal was bound to make a decision on the Application. The Tribunal's decision is based on the Application and the Inspection.
- 16. In respect of the complaint in terms of Section 13(1) (a) that the house is wind and watertight and in all other respects reasonably fit for human habitation,

having found that the windows in the Property are in poor repair with cracked and broken window panes, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

17. In respect of the complaint in terms of Section 13(1) (c) that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, having found that (i) the fixed heating system does not appear to comply with the Scottish Government's Repairing Standard Statutory Guidance for Private Landlords Directive, (ii) the gas cooker is not fully operational (iii) the switch for the electric shower is loose and is not attached safely or securely to the wall, (iv) the plumbing in the bathroom does not appear to function properly and (v) there appears to be no EICR and no Gas Safety Certificate, the Tribunal could not be satisfied on that the installations are in a reasonable state of repair and in proper working order. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
18. In respect of the complaint in terms of Section 13(1)(d) that any fixtures, fittings and appliances furnishings provided by the Landlord are capable of being used safely for the purpose for which they are designed, having found that the flooring coverings are in a poor state of repair and that the gas cooker is not fully operational the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
19. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, the absence of an EICR, a Gas Safety Certificate, the lack of a sufficient number of interconnected smoke alarms and a carbon monoxide detector and the exposed plasterwork are such that the Property does not meet the Tolerable Standard. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
20. The decision is unanimous.

#### **Repairing Standard Enforcement Order**

21. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24 (2) of the Act.

#### **Appeal**

22. 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.

23. 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.

K Moore

Signed

Karen Moore, Chairperson

Date 6 June 2024