

# 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/24/2761**

**Re: Flat 3/3 22 Maxwelltown Street Paisley PA1 2UB (“the house”)**

**Land Register Title No: REN24668**

#### **The Parties:-**

**Mr Elis Dodd, formerly residing at the house (“the former tenant”)**

**Mr Grish Sharma, 17 High Calside, Paisley PA2 6BY (“the landlord”)**

#### **Tribunal Members:**

**Sarah O’Neill (Chairperson) and Nick Allan (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 17 June 2024, the former 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 former 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. On his application form, he had ticked most of the boxes relating to elements of the repairing standard. Based on the contents of the rest of the application form and his notification to the landlord, the tribunal concluded that his complaints related to the aspects of the repairing standard in relation to which he had *not* ticked the relevant box.

3. On this basis, the tribunal consider that his complaints were that the landlord had failed to ensure that:

1. the house is wind and watertight and in all other respects reasonably fit for human habitation
2. the house meets the tolerable standard in the following respects:
  - a) it has an interlinked system of fire and smoke alarms and adequate carbon monoxide alarms
  - b) it has satisfactory provision for natural and artificial lighting, for ventilation and for heating
  - c) it is substantially free from rising or penetrating damp
  - d) it has satisfactory thermal insulation

4. The former tenant included the following complaints in his application form:

1. The roof above the bedroom leaks when it rains.
2. The windows are not windtight and sometimes let in rain.
3. The windows are sealed shut.
4. The external bricks under the kitchen window are exposed and not windtight.
5. Fire alarms are not interlinked.
6. Date of installation on CO alarm is not noted.

5. On 10 July 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 26 November 2024.

6. The landlord was invited to submit written representations no later than 17 October 2024. Written representations were received from the landlord on 3 October 2024. These consisted of: 1) an email which stated that a) an eviction order had been granted by the tribunal and that the tenant was evicted on 6 September 2024 and b) the repairs had been carried out and that there were no outstanding issues in the property, and: 2) a number of attachments, including invoices for repairs, evidence that the former tenant had been evicted and photographs of the property.

7. On 22 October 2024, the tribunal issued a minute of continuation confirming the tribunal's intention to continue with the application. This was on the basis

that the application should be determined on public interest grounds due to the nature of the alleged repairs issues and the potential effects for any future tenants/occupiers if the allegations were substantiated.

### **The inspection**

8. The tribunal inspected the house on the morning of 26 November 2024. The weather conditions at the time of the tribunal's inspection were cold and dry. The landlord and his wife, Mrs Anu Sharma, were present at the inspection.
9. Photographs were taken during the inspection. These are attached as a schedule to this decision.

### **The house**

10. The house is a top (third) floor flat in a four storey Victorian tenement block of 12 flats. It comprises two bedrooms, living room, kitchen, bathroom and hallway.

### **The hearing**

11. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The landlord and Mrs Sharma were present at the hearing.
12. The landlord told the tribunal that the former tenant had made the application to cause trouble for him. He said that the works had all been carried out as soon as the former tenant had raised the repairs issues. The former tenant had caused various issues during his tenancy, including flooding the flat downstairs, and had refused to leave the house when he said he would. The landlord had therefore had to bring eviction proceedings against them.
13. The tribunal chairperson explained to the landlord that, while he had sent invoices for work carried out and photographs of the house, the tribunal wished to inspect the house to satisfy itself that there were no outstanding health and safety issues. The tribunal's role was to decide whether the landlord had met the repairing standard at the time of the inspection and hearing.

### **The evidence**

14. The evidence before the tribunal consisted of:
  - The application form submitted by the former tenant.
  - Copy tenancy agreement between the parties in respect of the house which commenced on 11 August 2022.

- Copy (undated) emails between the former tenant and an environmental health officer at Renfrewshire Council, including the text of a notification letter sent to the landlord by the latter.
- Copy emails between the former tenant and the landlord dated between 24-28 August 2023 regarding access for repairs.
- The written representations received from the landlord on 3 October 2024.
- Registers Direct copy of Land Register title REN24668.
- Scottish Landlord Register registration details for the house.
- The tribunal's inspection of the house.
- The oral representations of the landlord at the hearing.

### **Summary of the issues**

15. 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**

16. The house is owned by the landlord.
17. The landlord is the registered landlord for the house.
18. The parties entered into a tenancy agreement for the house which commenced on 11 August 2022.
19. An invoice for common roof repairs at the tenement within which the house is situated was paid by the owners within the block on 27 March 2023.
20. An invoice for various repairs at the house including some window repairs, painting of the bedroom ceiling water stains, and plasterboard and paint to cover a hole in the kitchen, was sent to the landlord on 3 March 2023.
21. The landlord was notified of the required repairs by a Senior Environmental Health Officer from Renfrewshire Council in around August 2023.
22. An eviction order was granted in favour of the landlord against the former tenant by the First-tier Tribunal on 19 July 2024. The former tenant was evicted from the house on 6 September 2024.
23. At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:

- a) There was no evidence of any current leak or water ingress in bedroom 1. The ceiling had been repainted but there was still evidence of historic staining on the wall. Surface and below-surface damp readings were taken with a radio wave protimeter, but dampness was not detected. The air quality reading taken was also satisfactory.
- b) The single glazed windows throughout the house were of an older type. A very marginal air flow was detected around the windows in places. There was no sign of water ingress through the windows.
- c) The catches were missing on a small number of the windows.
- d) The windows when tested were all capable of being opened.
- e) No exposed bricks were observed underneath the kitchen window.
- f) A plasterboard sheet had been inserted in the cupboard underneath the kitchen window. There was no sign of water ingress and no draughts were detected.
- g) Smoke alarms were installed in the hallway and the living room, and there was a heat alarm in the kitchen. When tested, the alarms all sounded at the same time, it was apparent that the alarms were interlinked.
- h) There was a carbon monoxide alarm secured on the wall in the kitchen close to the boiler. The alarm was of a modern design and looked to be in good condition. When tested, it was found to be working. No installation or expiry date was observed on the alarm.

**Reasons for decision**

24. 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 former tenant’s complaints in turn, as set out below.

**1. The roof above the bedroom leaks when it rains**

25. During its inspection, the tribunal observed that there was no evidence of any current leak or water ingress in bedroom 1. The ceiling had been repainted but there was still evidence of historic staining on the wall. Surface and below-surface damp readings were taken with a radio wave protimeter, but dampness was not detected. The air quality reading taken was also satisfactory.

26. The tribunal was satisfied that bedroom 1 was the bedroom which the former tenant’s complaint related to. The landlord told the tribunal that he had organised a common roof repair on behalf of all the owners within the tenement. The landlord had produced an invoice for common roof repairs within the tenement which had been paid by the owners within the block on

27 March 2023. He had also produced an invoice for various works including painting of the bedroom ceiling water stains dated 3 March 2023.

27. The tribunal was therefore satisfied that the previous leak through the ceiling of bedroom 1 had been addressed. It determined that at the time of its inspection the ceiling was wind and watertight and in all other respects reasonably fit for human habitation.

**2. The windows are not windtight and sometimes let in rain**

**3. The windows are sealed shut**

28. The tribunal observed during its inspection that the single glazed windows throughout the house were of an older type. A very marginal air flow was detected around the windows in places. There was no sign of water ingress through the windows.

29. The tribunal also observed during its inspection that the windows when tested were all capable of being opened.

30. The tribunal also observed that there were a small number of catches missing on some of the windows.

31. While there was a very marginal air flow around the windows in places, the tribunal considered that this was more akin to a trickle vent, which is important to ensure adequate ventilation, than a noticeable draught. The windows were otherwise windtight. The window frames operate by sliding, and were found to do so correctly. Original timber units such as these can therefore never be airtight and completely sealed, as otherwise they would not open.

32. The tribunal's inspection took place on a dry day, and it was therefore to be expected that there were no signs of water ingress through the windows. Nothing was found, however, which would suggest that water ingress would be likely to occur.

33. The tribunal observed that the landlord should consider replacing the missing catches, but that this was not an issue which formed part of the application.

34. The tribunal determined that at the time of its inspection the windows were wind and watertight and were in a reasonable state of repair and in proper working order.

**4. The external bricks under the kitchen window are exposed and not windtight**

35. At its inspection, the tribunal observed that there were no exposed bricks underneath the kitchen window. A plasterboard sheet had been inserted in the cupboard underneath the kitchen window. There was no sign of water ingress and no draughts were detected.
36. The tribunal noted that the landlord had received an invoice for various repairs at the house including plasterboard and paint to cover a hole in the kitchen on 3 March 2023.
37. The tribunal determined that at the time of its inspection the area underneath the kitchen window was wind and watertight and was in a reasonable state of repair and in proper working order.

**5. Fire alarms are not interlinked**

**6. Date of installation on CO alarm is not noted**

38. During its inspection, the tribunal observed that ceiling mounted smoke alarms were installed in the hallway and the living room, and there was a ceiling mounted heat alarm in the kitchen. When tested, the alarms all sounded at the same time. It was therefore apparent that the alarms were interlinked.
39. The tribunal was therefore satisfied that the smoke and heat alarms meet the current requirements set out in [Scottish Government guidance on fire detection in private rented properties](#). The tribunal is required to have regard to this guidance in determining whether the house meets the repairing standard.
40. The tribunal also observed during its inspection that there was a carbon monoxide (CO) alarm secured on the wall in the kitchen close to the boiler. The alarm was of a modern design and looked to be in good condition. When tested, it was found to be working. No installation or expiry date was observed on the alarm.
41. The tribunal considered the current [Scottish Government guidance on carbon monoxide alarms in private rented properties](#). It noted that there is no specific requirement in the guidance for an alarms to state its date of installation. The guidance states: *“CO detectors should only be used within the manufacturers’ recommended lifespan (usually no more than 10 years old). The date of expiry should normally be recorded on the alarm and the alarm replaced before this expiry date.”*

42. The tribunal noted that the CO alarm appeared to have been installed correctly and was working adequately. While it observes that the landlord should continue to ensure that the alarm meets all aspects of the above guidance, it does not consider that there had been any breach of the repairing standard regarding the CO alarm at the time of its inspection.
43. The tribunal therefore determined that the house met the tolerable standard in the respect that it has an interlinked system of fire and smoke alarms and adequate carbon monoxide alarms.

### **Other issues**

44. The tribunal notes that in his application, the former tenant also appeared to complain that the landlord had failed to ensure that the house meets the tolerable standard in the following respects:
  - it has satisfactory provision for natural and artificial lighting, for ventilation and for heating
  - it is substantially free from rising or penetrating damp
  - it has satisfactory thermal insulation
45. Having considered all of the specific complaints made, the tribunal did not consider that any of these related to the aspects of the tolerable standard mentioned above, and did not therefore consider these further.

### **Summary of decision**

46. 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.

### **Rights of Appeal**

47. 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.
48. 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.

S O'Neill

Signed.....Date: 6 December 2024  
Sarah O'Neill, Chairperson

Housing and Property Chamber  
First-tier Tribunal for Scotland



**Inspection Photograph Schedule**  
**Flat 3/3, 22 Maxwellton Street, Paisley,**  
**PA1 2UB**

**Case Reference:** FTS/HPC/RP/24/2761

**Date of inspection:** 26/11/2024

**Time of inspection:** 10.00 am

**Weather conditions:** Clear and damp

**Present:** Ms Sarah O'Neill – Legal Member  
Mr Nick Allan – Ordinary Member  
Mr and Mrs G Sharma - Landlord



Photo 1 – Front elevation



Photo 2 – Damp free Bedroom wall + historic water ingress staining



Photo 3 – Functioning sash window in Bedroom



Photo 4 – Functioning sash window in Living Room



Photo 5 – Functioning sash window in Living room

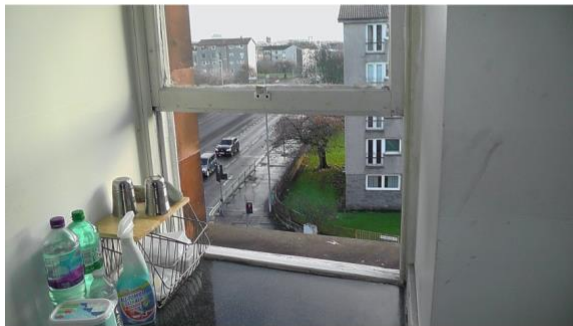


Photo 6 – Functioning sash window in Kitchen



Photo 7 – No issue identified below Kitchen window



Photo 8 – Functioning heat detector in Kitchen

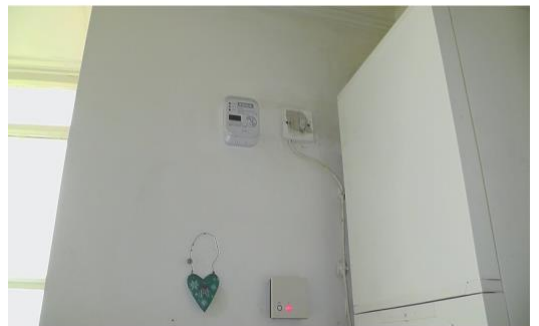


Photo 9 – Functioning CO2 monitor in Kitchen



Photo 10 – Functioning smoke detector in Living Room

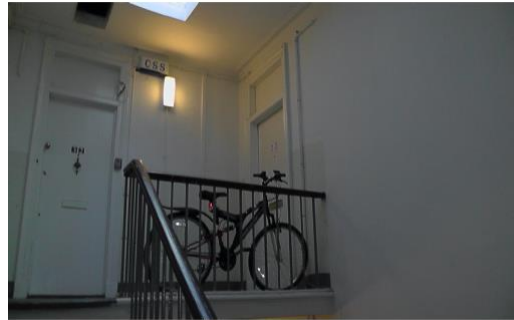


Photo 11 – Access to Flat

### **Inspection Notes**

1. The Tribunal noted the presence of the correctly located smoke and heat detectors within the property. These alarms were tested confirming that they are interconnected and fully functioning.
2. The Tribunal also noted the presence of a Carbon Monoxide detector, and observed that it was fully functioning.

Nick Allan FRICS

Surveyor – Ordinary Member

First-tier Tribunal (Housing and Property Chamber) – 4<sup>th</sup> December 2024