

# 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(1) of the Act 2006

**Chamber Reference number:** FTS/HPC/RP/17/0432

**Parties:** Miss Catherine McGunnigle residing at 25 Ruskin Lane, Kelvinbridge, Glasgow, G12 8EA ("the Tenant") and

Triesman Associates Limited, a company incorporated under the Companies Acts (Company number 07556057) and having its registered office at Hallswelle House, 1 Hallswelle Road, London NW11 0DH ("the Landlords") and represented by Infiniti Properties Management Ltd, 1016, Argyle Street, Glasgow, G3 8LX ("the Landlords' Agents")

**Property:** 25 Ruskin Lane, Kelvinbridge, Glasgow, G12 8EA registered in the Land Register of Scotland under Title Number GLA219095

### **Tribunal Members**

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

### **Background**

1. By application comprising an application form and supporting copy emails and correspondence between and amongst the parties and their respective solicitors received on 17 November 2017 ("the Application"), the Tenant's solicitor applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on it by Section 14 (1) (b) of the Housing (Scotland) Act 2006 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) (e) of the Act.  
Specifically, the Application stated that the Landlords had failed to comply with its duty to ensure that the house meets the repairing standard for the following reasons:-

The gas fire in the living room is not working;  
The oven is defective as the temperature cannot be regulated;  
There is a defective ring on the hob which does not work properly;  
The shower head is broken;  
There is insufficient hot water;  
The kitchen window lock is damaged;  
There are loose electrical wires;  
There is a broken tile in the bathroom and  
The security system is not in working order.

2. 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 and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral dated 27 November 2017, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 24 January 2018 at 10.00 a.m. and 11.30 a.m., respectively.

### **Inspection**

3. The Inspection took place on 24 January 2018 at 10.00 a.m. at the Property. The Tenant was present at the Inspection together with her sister, Ms. Frances McGunnigle, as a Supporter in terms of Regulation 11 of the of First-tier Tribunal for Scotland (Housing & Property Chamber) (Rules of Procedure) Amendment Regulations 2017 ("the Regulations"). Neither the Landlords nor the Landlords' Agent was present at the Inspection. The tribunal inspected the Property all of the matters complained of in the Application, namely:  
The gas fire in the living room;  
The oven and hob;  
The shower head;  
The water cylinder;  
The kitchen window;  
The loose wiring;  
The bathroom tiling and  
The security system.

At the invitation of the Tenant, and in terms of the complaint made under the general heading of Section 13(1)(a) of the Act, the tribunal also inspected the main door to the Property and the paneling at the living room window for draughts.

4. At the Inspection, the tribunal took digital photographs which photographs form the Schedule annexed to this decision.

### **Hearing**

5. Following the Inspection, a Hearing was held at Wellington134-136, Wellington Street, Glasgow G2 2XL on the same day at 11.30 a.m. The Tenant and Ms. Frances McGunnigle, her Supporter were both present at the Hearing. Ms. Angela Wylie of the Landlords' Agents was present at the Hearing.
6. At the outset, the tribunal outlined the role of the Supporter with reference to the Regulations and, for the benefit of Ms. Angela Wylie, outlined the scope of the Inspection.
7. Ms. Wylie addressed the tribunal and, in response to questions from the tribunal, advised that the Landlords' Agents and so the Landlords, were unaware of the complaint made under the general heading of Section 13(1)(a) of the Act of draughts at the Property. She advised the tribunal that no complaint had been made of this matter and that she had no record of this working being required. The Tenant was adamant that the matter of draughts had been raised at meetings and by phone and, in particular, had been raised at a meeting at the Property on 13 October 2017.
8. Ms. Wylie advised the tribunal that works had been carried out at the Property recently and undertook that any remaining works would be carried out promptly. In that regard, Ms Wylie undertook to arrange for tradesmen to call at the Property to attend to all outstanding matters including the draughts and the fitting of a mechanical vent to the kitchen window by Friday, 26 January 2018. In respect of the hot water supply, however, Ms Wylie maintained that the water cylinder in the Property was of sufficient capacity.
9. At the Hearing, the parties agreed that works had been carried out to the Property namely the repair of the gas fire, the replacement of the cooker, the repair of the shower head and that the bathroom tile had been fixed. The parties agreed that the hot water cylinder had been renewed in July 2016 but disagreed in respect of its capacity. Ms. Wylie fairly agreed to have an independent plumber inspect and assess the hot water supply.

### **Summary of the Issues**

10. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a), 13(1) (c), 13(1) (d), and 13(1) (e) of the Act at the date of the Inspection and Hearing.

### **Findings of Fact**

11. The Triesman Associates Limited are the owner of the Property and are Landlords. Miss Catherine McGunnigle is the Tenant.
12. The Property is a lower ground floor conversion forming part of a three storey stone-built town house constructed circa 1870. The Property comprises a living room, a kitchen/ dining area, two bedrooms and a bathroom. The Property is accessed at the rear of the town house, with the main door of the Property appearing to be the original back door of the town house. The Property has a large mature garden surrounded by a brick wall, approximately 6 feet in height.
13. From the Inspection, the tribunal found the following in respect of matters specifically complained of in the Application:
  - i) The gas fire in the living room has been replaced and so appears to be in good working order;
  - ii) The oven and hob have been replaced with a new cooker and so appears to be in good working order;
  - iii) The shower head has been fixed and so appears to be in good working order;
  - iv) The hot water tank is a 100 litre cylinder and it was not possible for the tribunal to assess if the hot water supply is reasonably sufficient for the Property; re is insufficient hot water;
  - v) The kitchen window lock does not appear to be damaged but the window is not capable of being opened and is not vented;
  - vi) There are loose wires in the living room but these appear to be co-axial cable. The smoke alarm in the kitchen is loose from the ceiling and its wiring is exposed;
  - vii) The broken tile in the bathroom is fixed;
  - viii) The security system appears to be in good working order;
  - ix) The kick boards in the kitchen are loose and not fixed in place and
  - x) There are severe draughts at the main door of the Property and at the living room window.

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

14. The tribunal's decision is based on the Application with supporting documents and the Inspection.
15. In respect of the complaint in terms of Section 13 (1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the tribunal found that condition of the main door to the Property and the living room window is such that the Property is not wind and watertight. The tribunal considered the

conflicting positions of the Tenant and the Landlords' Agent in respect of prior notice of this part of the Tenant's complaint and found that, on the balance of probability, as this part of the Tenant's complaint was more serious than some of the others parts notified, it was more likely than not that the Tenant had made the Landlords' Agent aware of the draughts at the main door to the Property and at the living room window and so the tribunal had no difficulty in taking the view that this part of the complaint had been notified to the Landlords prior to the Application being lodged. Accordingly, the tribunal found that at the date of the Inspection and Hearing the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

16. The tribunal had regard to the Tenant's complaint regarding the kitchen window and found that although the Tenant had not indicated that this was a complaint in respect of Section 13(1)(b) of the Act, the tribunal considered that it properly fell into this category. In any event, the tribunal was satisfied that the Landlords had had prior notification of this matter. Therefore, in respect of Section 13(1)(b) of the Act, the tribunal found that at the date of the Inspection and Hearing the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that the kitchen window cannot be opened and, as it is not vented, the Landlords have failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order.
17. In respect of Section 13(1) (c) of the Act, the tribunal found that at the date of the Hearing the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reasons being, firstly, that the tribunal could not be satisfied that the water cylinder is of sufficient capacity to provide an adequate hot water supply and so could not be certain for heating water be satisfied that the installation in the Property for heating water is in a reasonable state of repair and in proper working order, and, secondly, the wiring of the kitchen smoke detector is exposed.
18. In respect of Section 13(1) (d) of the Act, the Committee found that at the date of the Hearing the Landlords have not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the fixtures, fittings and appliances provided by the Landlords under the tenancy appear to have been renewed or repaired and appear to be in a reasonable state of repair and in proper working order.
19. In respect of Section 13(1) (e) of the Act, the Committee found that at the date of the Hearing the Landlords have not failed to comply with the duty imposed by

Section 14 (1) (b) of the Act, the reason being that no complaint was evidenced in this regard.

20. The decision was 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 as required by Section 24 (1) of the Act.

### **Appeal**

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.

### **Effect of Section 63**

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**

Karen Moore

Chairperson

16 February 2018

16 Feb 2018

This is the Schedule of Photographs referred  
to in the foregoing decision. K Moore

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



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

**PHOTOGRAPH SCHEDULE**

PROPERTY: 25 RUSKIN LANE, GLASGOW G12 8EA

REFERENCE: FTS/HPC/RP/17/0432

DATE: 24<sup>TH</sup> JANUARY 2018 – ALL PHOTOS TAKEN ON THIS DATE.



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LOOSE FITTING HEAT DETECTOR IN KITCHEN