

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 26(1) and 27 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/16/0321

Title no: DMB65482

**141 Braehead, Bonhill, Alexandria, G83 9NB
("the house")**

The Parties:-

Ms Ann McLaughlin, residing at the house ("the Tenant")

Mr Calum Watt, CPW Property Investment, Centrum Offices, 38 Queen Street, Glasgow, G1 3DX, represented by his agent, Mr John Haughey, Infiniti Property Services ("the Landlord")

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 24 January 2017 in respect of the house and that a Rent Relief Order under Section 27 of the Housing (Scotland) Act 2006 should be made.

The Tribunal comprised:-

Mrs Nicola Weir, Legal Member (Chair)

Mr Robert Buchan, Ordinary (Surveyor) Member

Background

1. On 24 January 2017, the Tribunal issued a determination that the Landlord had failed to comply with his duties under Section 14(1)(b) of the Housing (Scotland) Act 2006, as amended ("the Act"). On the same date, the Tribunal issued an RSEO in respect of the house.
2. The RSEO required the Landlord:-

- (a) To repair, or, as necessary replace, the rear patio door to ensure that it is lockable and otherwise in a reasonable state of repair and proper working order, wind and watertight and in all other respects reasonably fit for human habitation. In particular, the patio door requires to provide a safe means of exit and entry to the house and to conform with building regulations in terms of the width of the door opening, a platform outside the door/the steps down into the rear garden and the handrail. A letter from the local Building Standards section of West Dunbartonshire Council confirming that the patio door conforms to building regulations or is otherwise satisfactory to said Building Standards section requires to be submitted to the Tribunal.
- (b) To repair or replace the exterior render above the living room window to ensure that it is in a reasonable state of repair and proper working order.
- (c) To carry out such works to the house as are necessary to comply with Section 13(1)(g) of the Act by the installation of a carbon monoxide (CO) detection system in accordance with the current Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, a copy of which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (d) To submit to the Tribunal an up to date and satisfactory Electrical Installation Condition Report (EICR) in respect of the installations in the house for the supply of electricity and the electrical fixtures and fittings, including the smoke detectors and heat alarm in the kitchen, from a suitably qualified and registered SELECT or NICEIC electrical contractor, in accordance with the current Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property, which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (e) To make good the plaster repair to the bedroom ceiling by painting/decorating same to provide a satisfactory finish.
- (f) To repair or replace the rear boundary fence to ensure that it is in a reasonable state of repair and proper working order.

The Tribunal ordered that the works specified in the RSEO must be carried out and completed within the period of 2 months from the date of service of the RSEO.

3. On 4 May 2017, the Ordinary Member of the Tribunal re-inspected the house. A copy of his Re-Inspection Report, incorporating photographs, is attached to this Decision.
4. The Ordinary Member's Re-inspection Report was circulated to parties for their comments. The Tenant sent in a completed response form dated 23 May 2017 confirming that she agreed with the findings of the Re-inspection Report. She referred to the fact that the Landlord's agent had stated at the Hearing in

January 2017 that he would have all repairs fixed within 10 days but that it was only in the last week of the period for compliance with the RSEO that workmen had been sent out to carry out repairs. In addition, the Landlord's agent had had an extra month to do the works as the original proposed re-inspection date had been postponed due to personal circumstances of the Tenant. The Tenant confirmed that she wished to attend a hearing and that she felt a Rent Relief Order should be issued. She stated that she considered a 90% rent reduction to be appropriate because the Landlord's agent still had a few things to sort out and she had not seen him again since the re-inspection had been carried out. The Landlord did not submit any response to the Tribunal on these matters.

5. Although the Tenant had confirmed that she wished to attend a hearing, the Landlord had not. The Landlord had not challenged any of the findings in the Re-inspection Report, nor the Tenant's comments in respect of the Re-inspection Report. The Landlord had not made any comments in respect of the possibility of a Rent Relief Order being imposed by the Tribunal. The Tribunal was accordingly of the view that an oral hearing was not required on these matters and that it could make a decision on compliance based on the findings on re-inspection of the house and the subsequent written representations made by the Tenant.

Findings in Fact

6. On re-inspection, the Ordinary Member found the following:-

Works undertaken: *The Landlord has undertaken the following work since the inspection and hearing:*

- 1) *The patio door has been made lockable. The door stop has been removed to widen the maximum door opening from 490mm to 518mm. The temporary step has been made permanent. The loose render has been repaired.*
- 2) *The render above the living-room window has been repaired.*
- 3) *A carbon monoxide detector has been fitted in the kitchen.*
- 4) *The bedroom ceiling has been redecorated.*
- 5) *The garden fence has been repaired.*

Outstanding works:

- i) *The handrail has not been moved. The patio door does not appear to provide a safe means of exit and entry to the house or to conform with building regulations in terms of the width of the door opening, a platform outside the door/the steps down into the rear garden and the handrail. The required letter from the local Building Standards section of West Dunbartonshire Council confirming that the patio door conforms to building*

regulations or is otherwise satisfactory to said Building Standards section has not been provided.

- ii) The repaired render has not been decorated.*
 - iii) The position of the carbon monoxide detector is not as recommended by the guidance or by the installation instructions.*
 - iv) A satisfactory Electrical Installation Condition Report (EICR) has not been provided.*
 - v) The bedroom ceiling appears to have dropped leaving a crack.*
 - vi) The fence gate does not close properly. The means of closure is temporary and has left a protruding screw on the outside.*
7. The Tenant has indicated in her written representations that she agreed with the terms of the Re-inspection Report and that the Landlord has not carried out any further works since. The Landlord has not disputed the terms of the Re-inspection Report, nor the Tenant's representations that no further works have been carried out since the re-inspection.
8. The Landlord has carried out some works required in terms of paragraphs (a), (b),(c),(e) and (f) of the RSEO but has failed to fully comply with the requirements of each of said paragraphs. The Landlord has not complied with paragraph (d) of the RSEO.
9. The time limit for compliance with the RSEO has expired.
10. The Landlord has failed to comply with the RSEO.

Reasons for Decision

11. Around six months have passed since the RSEO was served on the Landlord. In the Tribunal's view, 2 months was a reasonable period within which to complete the required works. The Landlord has not sought extra time to complete the works or put forward any reasonable explanation for his failure to carry out the required works or complete them properly.
12. Although the Landlord has undertaken some works in relation to the house following service of the RSEO, these works have not fulfilled the requirements of any of the paragraphs (a) to (f) of the RSEO, in that some works have not been undertaken at all and other works have been only partially completed or not completed properly. The Tribunal has therefore determined that the Landlord has failed to comply with the RSEO. Where the Tribunal decides that the Landlord has failed to comply with the RSEO, under Section 26(2) of the Act, the Tribunal must (a) serve notice of the failure on the local authority, and (b) decide whether to make a Rent Relief Order. The Tribunal considers that it is appropriate, in the circumstances, to make a Rent Relief Order. In the Tribunal's view, given the delays and failures of the Landlord to date in

addressing the repairs issues raised by the Tenant, it is unlikely that the house will be brought up to the Repairing Standard without such action being taken.

13. In terms of a Rent Relief Order, the Tenant had requested the maximum 90% reduction in rent, citing the further delays of the Landlord and the fact that there are still several issues outstanding. The Landlord had made no representations concerning the amount of any reduction. The Tribunal considered that although some of the outstanding works required are of a minor nature, others have a bearing on the health and safety of the Tenant such as the remaining issues with the patio door, the carbon monoxide detector being incorrectly positioned and the failure to produce a satisfactory EICR. In addition, it is the Tribunal's view that the outstanding issues concerning the patio door have a detrimental effect on the Tenant's enjoyment of the amenity of the rear garden area of the house, which she cannot currently access from the house easily or safely. The Tenant is an older lady, with various health problems, who walks with the aid of a stick. The Tenant has been complaining to the Landlord about some of the repairs issues since she moved into the house in 2014. She has been inconvenienced over a long period of time, waiting to hear back from the Landlord's Agent in response to complaints and waiting in for the Landlord's Agent and/or workmen to attend to carry out repairs. They have frequently failed to show up at appointed times. It appears to the Tribunal that this pattern is continuing, despite the RSEO. Taking all of these circumstances into account, the Tribunal determined that the appropriate reduction in terms of a Rent Relief Order is to reduce the rent payable under the tenancy by 40% until the outstanding repairs have been carried out.

Decision

14. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that the Landlord has failed to comply with the RSEO in terms of Section 26(1) of the Act and that a notice of this failure should be served on the local authority in whose area the house is situated. The Tribunal also determined that a Rent Relief Order under Section 27 of the Act should be made.

15. The decision of the Tribunal was unanimous

Right of Appeal

A landlord, tenant or third party applicant 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.

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..... **N Weir** Date: 16 August 2017

Legal Member and Chair

Glasgow, 16 August 2017

This is the Re-inspection Report referred to in the
Statement of Decision of even date herewith.
N Weir, Legal Member and Chair

Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Housing (Scotland) Act 2006
Re-inspection report**



Property: 141 Braehead, Alexandria, G83 9NB

Date of inspection: 4th May 2017

Chamber Reference Number: PRHP/RP/16/0321

Surveyor: Robert Buchan, FRICS

Circumstances of the inspection: The property was occupied by the tenant, Ms Ann McLaughlin, and full access was provided. The weather was dry and sunny following a prolonged spell of dry weather.

In attendance: The tenant and Mr John Haughey, agent for the landlord.

Repairing Standard Enforcement Order (RSEO)

The Landlord was required to carry out the following work under the terms of the RSEO:

- (a) To repair, or, as necessary replace, the rear patio door to ensure that it is lockable and otherwise in a reasonable state of repair and proper working order, wind and watertight and in all other respects reasonably fit for human habitation. In particular, the patio door requires to provide a safe means of exit and entry to the house and to conform with building regulations in terms of the width of the door opening, a platform outside the door/the steps down into the rear garden and the handrail. A letter from the local Building Standards section of West Dunbartonshire Council confirming that the patio door conforms to building regulations or is otherwise satisfactory to said Building Standards section requires to be submitted to the Tribunal.
- (b) To repair or replace the exterior render above the living room window to ensure that it is in a reasonable state of repair and proper working order.
- (c) To carry out such works to the house as are necessary to comply with Section 13(1)(g) of the Act by the installation of a carbon monoxide (CO) detection system in accordance with the current Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, a copy of which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (d) To submit to the Tribunal an up to date and satisfactory Electrical Installation Condition Report (EICR) in respect of the installations in the house for the supply of electricity and the electrical fixtures and fittings, including the smoke detectors and heat alarm in the kitchen, from a suitably qualified and registered SELECT or NICEIC electrical contractor, in accordance with the current Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property, which can be found at <https://www.housingandpropertychamber.scot/repairs/repairs-application-and-guidance>.
- (e) To make good the plaster repair to the bedroom ceiling by painting/decorating same to provide a satisfactory finish.

To repair or replace the rear boundary fence to ensure that it is in a reasonable state of repair and proper working order.

Works undertaken: The Landlord has undertaken the following work since the inspection and hearing:

- 1) The patio door has been made lockable. The door stop has been removed to widen the maximum door opening from 490mm to 518mm. The temporary step has been made permanent. The loose render has been repaired.
- 2) The render above the living-room window has been repaired.
- 3) A carbon monoxide detector has been fitted in the kitchen.
- 4) The bedroom ceiling has been redecorated.
- 5) The garden fence has been repaired.

Outstanding works:

- i) The handrail has not been moved. The patio door does not appear to provide a safe means of exit and entry to the house or to conform with building regulations in terms of the width of the door opening, a platform outside the door/the steps down into the rear garden and the handrail. The required letter from the local Building Standards section of West Dunbartonshire Council confirming that the patio door conforms to building regulations or is otherwise satisfactory to said Building Standards section has not been provided.
- ii) The repaired render has not been decorated.
- iii) The position of the carbon monoxide detector is not as recommended by the guidance or by the installation instructions.
- iv) A satisfactory Electrical Installation Condition Report (EICR) has not been provided.
- v) The bedroom ceiling appears to have dropped leaving a crack.
- vi) The fence gate does not close properly. The means of closure is temporary and has left a protruding screw on the outside.

This report will be submitted to the relevant parties for their consideration and comment. Once their submissions, if any, have been received, the Tribunal will determine whether the Repairing Standard Enforcement Order has been complied with and what further action is appropriate.

Robert Buchan, FRICS

Date of report: 8th May 2017

Photographs taken during the inspection of
141 Braehead, Bonhill, Alexandria, G83 9NB



Repair over living-room window



Patio door

Photographs taken during the inspection of
141 Braehead, Bonhill, Alexandria, G83 9NB



New step below patio door



Garden fence

Photographs taken during the inspection of
141 Braehead, Bonhill, Alexandria, G83 9NB



Protruding screw on gate



Carbon monoxide detector

Photographs taken during the inspection of
141 Braehead, Bonhill, Alexandria, G83 9NB



Dropped ceiling in the bedroom



Smoke detector in the living-room

Photographs taken during the inspection of
141 Braehead, Bonhill, Alexandria, G83 9NB



Patio door opening – maximum 518mm wide