

Housing and Property Chamber
First-tier Tribunal for Scotland



**Statement of decision of the First-tier Tribunal: Housing and Property
Chamber under Section 24(1) of the Housing (Scotland) Act 2006**

Reference Number: PRHP/RP/16/0292

RE: The Property known as ALL and WHOLE the dwelling house known as and forming 35 Restalrig Road, Leith, Edinburgh EH6 8BD, all as more particularly described in the Disposition by William Baldie in favour of Alexander Inglis dated 16th October 1928 and recorded in the Division of the General Register of Sasines for the County of Midlothian on 19 October 1928 (hereinafter referred to as “the Property”).

The Parties:-

Miss Joanne Frizzel (“the Tenant”)

And

G & L Properties, Mr Giovanni Battista Cortellessa and Gina Linda Cortellessa, 3A Jordan Lane, Edinburgh EH10 4RB; 79 Collington Road, Edinburgh EH10 5DF; 3 Jordan Lane, Edinburgh EH10 4RB (“the Landlords”)

Decision

The First-tier Tribunal: Housing and Property Chamber (“the Tribunal”), having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property and, taking into account the evidence submitted on behalf of the Landlords along with the application by the Tenant, determined that the Landlords have failed to comply with the duty imposed by Section 14(1) of the Act.

The Tribunal consisted of :-

Rory Andrew Burriss Cowan - Legal Member

Robert Buchan - Surveyor/Ordinary Member

Background

- 1. By application of the Tenant comprising of all documents received on 8th September 2016 ("the Application"), the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords had failed to comply with their duties under Section 14(1) of the Act. By schedule 1 of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (the Regulations), determination of and proceedings related to the Application by the Tenant transferred to the First-tier Tribunal: Housing and Property Chamber as at 1st December 2016.**
- 2. The Application stated that the Tenant considered that the Landlords had had failed to comply with their duty to ensure that the Property meets the repairing standard under section 13(1) of the Act and the Tenants brought forward the following breaches:-**
 - That the Property was affected by rising damp**
 - That extractor fans had been fitted incorrectly and inappropriately**
 - That the gutters for the Property were not in a reasonable state of repair or in proper working order**
 - That the en-suite floor was rotten and unusable**
 - That the front door to the Property was not "wind tight"**
 - That the ignition for the gas hob was faulty**

The Tenant therefore considers that the Landlords are in breach of their duties under the Act in relation to the repairing standard and in particular that the Landlord has failed to ensure that:-

- i) the house is wind and water tight and in all other respects reasonably fit for human habitation,**
 - (ii) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, and**
 - (iii) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.**
- 3. By minute dated 7th October 2016, a convener with delegated power under the Housing (Scotland) Act 2014 and the Act intimated a decision to refer the Application to a Private Rented Housing Committee.**

4. On 27th October 2016, the Private Rented Housing Committee (“the Committee”) wrote to the Landlords and Tenant to advise that the Committee intended to inspect the Property on 6th December 2016 at 10am. The letters further confirmed that a hearing had been arranged in relation to the Application to be held in George House, 126 George Street, Edinburgh EH2 4HH at 11.30am. Finally, the letter confirmed that any written submissions required to be received by the Committee by 17th November 2016.
5. By letter dated 14th November 2016, the Landlords indicated that they would not be present at the inspection or hearing, but that they would be represented by a Ms Heather Brass and a Ms Jennifer Cortellesa.
6. By email from the Landlords representatives dated 29th November 2016, the Landlords intimated that the Tenant had vacated the Property and that the Tenant should be treated as having abandoned the Application under schedule 7(1) of the Act.
7. On 1st December 2016, determination of and the proceedings relating to the Application was transferred to the Tribunal under the Regulations.
8. By minute of continuance dated 5th December 2016, the Tribunal with the concurrence of the in-house convener decided to continue to determine the Application.

The Inspection

9. On 6th December 2016, the Tribunal attended at the Property for the purposes of carrying out an inspection of same. The Landlord’s representatives Ms Heather Brass and Ms Jennifer Cortellesa were present at the inspection. The Tenant did not attend the inspection and it appeared that she had vacated the Property.

At the inspection the Tribunal noted the following points:-

- a) The Property comprises of a three apartment ground floor tenement flat which had previously been used as retail premises. The exterior walls are constructed of stone with a further 3 stories above same and a pitched and slated roof. The Property is estimated to be around 108 years old or thereby.
- b) The Property is all on one level comprising a living room, hallway, 2 bedrooms, 2 bathrooms and a kitchen.
- c) That the Property appeared to have been vacated and there was no heating on in same. There was no furniture within the Property and there was damage to some of the kitchen units with handles missing from

drawers. Further there was evidence of recent plastering in and around the window in the main bathroom which remained unpainted. The main bathroom sink was cracked and a temporary repair was evident. Doors for built-in cupboards were hanging off their hinges. The Property was generally in need of cleaning and redecoration.

- d) In the bedroom to the rear of the Property it was noted that there was a significant amount of damp affecting particularly the exterior wall and the adjacent floor area. Positive readings for damp were also noted on an interior wall rising from ground level to approximately 1metre high.
- e) Further readings for damp were noted in the main bathroom and around the kitchen window on the same exterior wall.
- f) Upon inspection to the rear common garden for the Property it was noted that the rear exterior wall of the Property was excessively damp due to a defective rain water system (including vegetation growth evident in the guttering). That there were open joints in the masonry. That there were gaps around the window frames in the rear bedroom, bathroom and kitchen of the Property. That there was vegetation growth in the masonry.
- g) In the en-suite bathroom to the rear bedroom it was evident that there had been a floor covering which had, at some point been removed to expose a plywood sub-layer. This plywood layer showed signs of water leakage and discolouration. Damp meter readings indicated that the floor had dried out. The cause of the dampness appears to have been leakage from the shower and condensation from the toilet and wash-hand basin. There was no significant sign of any rot in the floor.
- h) The extractor fan in the main bathroom appeared to be in working order.
- i) The extractor fan in the kitchen did not activate with the main light switch, nor was the pull-cord accessible to allow operation of same.
- j) The gas hob in the kitchen would not self-ignite.
- k) The front door was situated in a small reception porch which had a tiled floor. There was evidence of retro-fitted weather proofing along the top and down each side of the said door. The floor is tiled and there is no weather bar on floor level. It was noted that, even whilst closed, gaps through to the outside were evident.

The Surveyor Member of the Tribunal took several photographs which form the schedule attached to this decision.

The Hearing

10. The Landlords' representatives Ms Heather Brass and Ms Jennifer Cortellessa attended the hearing on behalf of the Landlords. The Tenant did not attend the hearing.

The Tribunal went through all of the items listed in the Application with the Landlords' representatives and along with reference to the Landlords' earlier written representations dated 14th November 2016 to the Committee and the Tribunal to note their position in relation to each issue raised by the Tenant in the Application.

a) Rising Damp/Dampness

The Landlords' representatives indicated that they had been surprised that the Tenant had made the Application. They indicated that the Landlords had always had a good relationship with the Tenant and that throughout the tenancy, when an issue of disrepair was reported to them they took steps to remedy same within a reasonable period of time. They indicated that previous works had been carried out to the Property under order from the local authority which they had thought had addressed any issues of damp within the Property. The Landlords' representatives, despite the terms of earlier correspondence issued by and on behalf of the Landlords dated 19th September 2016 and 14th November 2016, did not dispute that the Property was affected by damp at inspection.

They indicated that the first they became aware of any continuing issue was by the Tenant's letter received on 8th September 2016. They accepted no inspection of the Property was arranged by them after receipt of the said letter. The reason given was that, at this time (8th September 2016) the Landlords had served notice on the Tenant to bring the tenancy to an end in any event and that they would deal with any required works once the Tenant vacated. It was also suggested that they felt the Application was made in response to the service on the Tenant of their notice to quit the Property. A view was expressed that the Tenant had raised the issues identified in the Application with a view to retaining rent due for the Property before she vacated same. The Tenant was not present to dispute this evidence. However, the Tribunal was not impressed by same. On review of the Notice to Quit and Section 33 Notice (the Notices) lodged with the Application, it is clear that the Notices are dated 13th September 2016, some 5 days after the Landlords received notification of the issues which form the basis of the Application. No comment is made beyond that it would appear that the Landlords' representatives account of this matter was incorrect and that the Notices were issued after receipt of the Tenant's intimation. Whether the Notices were issued as a result of the Tenant's intimation or whether they were being planned in any event is not something the Tribunal requires to consider and would not be relevant to the reasons for this decision.

The Landlords' representatives indicated that the recent plastering work evident in the main bathroom was not carried out by the Landlords and therefore was the responsibility of the Tenant. There was no contrary position advanced, so the Tribunal accepts that position. Again, the matter is not relevant to the reasons for this decision.

That said, notification of a continuing problem with damp was intimated by the tenant and received by the Landlords on 8th September 2016. The Landlords have taken no steps to investigate or deal with the very obvious problem of damp within the Property. Their initial response to the Tenant was to dismiss that there could be any issue.

b) Extractor Fans

Whilst included in the Application form itself and discussed at the inspection, upon review of the Tenant's notification to the Landlords which is undated, but was posted on 7th September 2016, and received by them on 8th September 2016, it was noted that no mention of the extractor fans in the kitchen and the bathroom was made. As such, no order can be made by the Tribunal in respect of same.

c) Gutters

The Landlords' representatives indicated that work had been carried out to the rainwater and drainage following involvement of the local authority. As far as they were aware there had been no further issue as the Tenant had not made any complaint to the Landlords of any further problems following that work until the notification received on 8th September 2016, despite other issues of repair being dealt with during the intervening period. The Landlords' letters of 19th September 2016 and 14th November 2016 were discussed and the Landlords' representatives explained that other proprietors within the tenement building of which the Property forms part had been contacted with a view to jointly instructing investigation and quotes for any necessary works. The Tribunal explained to the Landlords' representatives that the Landlords' duty under section 14(1) of the Act required the Landlords' to ensure the Property met the repairing standard at the beginning and throughout the tenancy. Whilst there were exceptions to this where the Landlords lacked the necessary rights of access or otherwise, the fact that other proprietors may be liable to contribute to communal repairs and had failed to do so, was not such an exception. That being the case, the duty on the Landlords was to ensure any necessary repairs are carried out within a reasonable period of time. However harsh it may seem, that may mean that the Landlords require to carry out the repairs before the other proprietors have paid their share of the cost of the

repairs and in due course recoup the sums expended from the other proprietors. It was noted that the Landlords did not carry out inspections of the Property during the tenancy and relied upon the Tenant to report issues of disrepair to them. Reference was made to a letter dated 10th November 2016 by a Lukasz Ginter who was instructed to inspect the guttering at the Property. This did not seem to dispute that the guttering was not in working order, but merely stated that it was a communal issue for all proprietors to resolve. As explained above, that is not a correct statement of the law.

The Landlords' representatives accepted that intimation had been made by the Tenant of the problems with the guttering and downpipes at the latest by 8th September 2016. As at the date of the inspection, no contractors had been instructed and no works had been carried out.

d) En-suite Flooring

The Landlords representatives indicted that when the tenancy commenced (13th March 2013) the en-suite flooring was intact. As noted above, it appeared that the flooring had been pulled up as remnants of it were left under the aluminium carpet strip between the bedroom and the en-suite bathroom. They suggested that the Tenant was responsible for removing same. As detailed above, there was no evidence of damp or rot on this floor. There was evidence of water damage and discolouration on the ply-wood which had been exposed, which could have been caused by spillage from the shower unit during normal use. It was noted that one of the shower cabinet doors was missing and had been replaced by a fabric curtain. Although the lack of proper flooring is something the Landlords will need to address, as there was no evidence of rot in the floor itself and because the floor covering was likely removed by the Tenant herself, the Tribunal declined to make an order in relation to this issue.

e) Front Door

The Landlords' response dated 14th November 2016 was discussed. A statement by a David Dowell dated 14th November was produced which confirmed draught excluders were fitted to the sides of the front door. This work was carried out on or around November 2015 and the Tenant had been satisfied with that. The Landlords' representatives stated that the Tenant had not been in contact regarding this issue since. They felt they had responded adequately to the Tenant's complaints at the time and the issue had been remedied as far as it could. Notwithstanding, there was no suggestion that further attempts were made to investigate matters following the Tenant's subsequent notification received by the

landlords on 8th September 2016. As noted above, the front door is not wind or water tight. There is no weather bar or threshold strip. There were large gaps at the bottom of the door sufficient to see outside.

f) Gas Hob

The Landlords' representatives provided a copy of the Gas Safety Certificate for the Property dated 6th September 2016. The Gas certificate reported that there was a "*faulty ignition on hob have to light manually*". Again, the position was that the Tenant had not raised this as an issue with them until notification received on the 8th of September 2016. Reference was made to the Landlords' earlier letter of 19th November 2016 where it was claimed that this fault was a "*wear and tear issue*" and was for the Tenant to replace "*just like a light bulb*". It was also suggested that following that letter the Tenant failed to respond with further information. There was no suggestion or misuse by the Tenant.

Given all the circumstances the Tribunal are satisfied that:-

- 1) The Property is not wind and water tight and in all other respects fit for human habitation as a result of the dampness affecting the rear of the Property (in particular the back bedroom, the main bathroom and the kitchen) and as a result of the front door lacking a weather bar and with gaps along the bottom of same;
- 2) The Structure and exterior of the Property (including the drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order as a result of the rain water system being choked with vegetation growing out of same and evidence of excessive dampness on the rear exterior wall of the Property; and
- 3) Fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order as a result of the faulty ignition on the gas hob in the kitchen of the Property.

Decision

11. The Tribunal accordingly determines that the Landlords have failed to comply with the duties imposed upon them by Section 14(1) of the Act. The Tribunal therefore proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required of them by Section 24(1) of the Act.
12. The decision of the Tribunal was unanimous.
13. The Tribunal therefore requires the Landlords to carry out such works as are necessary to ensure that the Property meets the Repairing Standard.

- 14. The Tribunal considered it reasonable to allow a period of 4 months from the date of the RSEO to carry out these works.**

Reason for the Decision

- 15. The Tribunal considers that the Landlords have had sufficient time to investigate and carry out the outstanding repairs. The Tribunal therefore considers that the Landlords have failed in their duty under Section 14(1)(b) of the Act in that they have failed to comply with the Repairing Standard in terms of Section 13(1)(a) of the Act.**

Observations

- 16. Although not included in the notification or the application itself, the Tribunal noted that the fire detection system, where it was evident, did not appear to meet current standards. If it had been included in the application, then an RSEO would likely have been made in that regard.**
- 17. Although no RSEO has been made in relation to the en-suite, it was noted by the Tribunal that one of the shower cabinet doors was missing and had been replaced with a fabric curtain which may have contributed to spillage of water onto the en-suite floor. This is something the Landlords may wish to address.**
- 18. In the back bedroom of the Property, a double-glazed unit in the window has failed. Again, this was not part of the application and no RSEO can be made in relation to same. However, if it were part of a relevant application to the Tribunal, it is likely that an RSEO would be made in relation to same as the window would not be in a reasonable state of repair.**
- 19. The extractor fan in the kitchen is operated by a pull cord, which is too short to reach. Whilst there is no requirement to have such an extractor fan in this location, as one has been provided it would require to be in proper working order. As this was not part of the original notification to the Landlords, no RSEO could be made in relation to same.**

Right of Appeal

- 20. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of Section 63

- 21. Where such an appeal is made, the effect of the decision and of the Repairing Standard Enforcement Order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and the Repairing Standard Enforcement Order will be treated**

as having effect from the day on which the appeal is abandoned or so determined.

Signed
R Cowan

Date: 16th December 2016

Rory A B Cowan

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Front of the block

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Rear of the block

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Detail of rear indicating rainwater spillage



Kitchen window sill and surround

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Vegetation growth in bathroom window sill



Front door threshold

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Dampness in back bedroom



Dampness in floor of back bedroom

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Dampness in bathroom



Dampness inside kitchen window

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Floor of shower-room



Wash-hand basin

Photographs taken during the inspection of
35 Restalrig Road, Leith, Edinburgh EH6 8BD



Kitchen fittings



Extractor fan in the kitchen

Housing and Property Chamber
First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

Reference Number:- PRHP/RP/16/0292

RE: The Property known as ALL and WHOLE the dwelling house known as and forming 35 Restalrig Road, Leith, Edinburgh EH6 8BD, all as more particularly described in the Disposition by William Baldie in favour of Alexander Inglis dated 16th October 1928 and recorded in the Division of the General Register of Sasines for the County of Midlothian on 19 October 1928 (hereinafter referred to as “the Property”).

The Parties:-

Miss Joanne Frizzel (“the Tenant”)

And

G & L Properties, Mr Giovanni Battista Cortellessa and Gina Linda Cortellessa, 3A Jordan Lane, Edinburgh EH10 4RB; 79 Collington Road, Edinburgh EH10 5DF; 3 Jordan Lane, Edinburgh EH10 4RB (“the Landlords”)

NOTICE TO

G & L Properties, Mr Giovanni Battista Cortellessa and Gina Linda Cortellessa, 3A Jordan Lane, Edinburgh EH10 4RB; 79 Collington Road, Edinburgh EH10 5DF; 3 Jordan Lane, Edinburgh EH10 4RB (“the Landlords”)

Whereas in terms of their decision dated 12th December 2016, the First-tier Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) and, in particular, that the Landlord has failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation, the structure and exterior of the Property are in a reasonable state of repair and in proper working order and that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

The First-tier Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing

standard under section 13(1) of the Act and that any damage caused by carrying out of any work required under this Order are made good.

In particular, the First-tier Tribunal requires the Landlord:-

- 1) To instruct specialist damp contractors to inspect the exterior and interior (including THE sub-floor) to ascertain the extent and cause of the dampness affecting the rear of the Property including the kitchen, main bathroom and back bedroom. To carry out all works identified in the specialist report in order to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation and that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order. The specialist contractor's report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.
- 2) To repair or replace the drains, gutters and external pipes to ensure they are in a reasonable state of repair and in proper working order.
- 3) To repair or replace the front door to the Property to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation.
- 4) To repair or replace the gas hob within the kitchen of the Property to ensure that it is in a reasonable state of repair and in proper working order.

The First-tier Tribunal order that works specified in this Order must be carried out and completed within the period of 4 months from the date of service of this Order.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding 2 page(s) are executed by Rory Andrew Burriss Cowan, solicitor, of 16 Royal Exchange Square, Glasgow G1 3AG, chairperson of the tribunal at Glasgow on 16th December 2016 before this witness:-

R Cowan

Chairperson

E Matheson

Witness

EUPHEMIA MATHESON name in full

40 16 Royal Exchange Address

Glasgow

G1 3AG