

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Reference number: FTS/HPC/RP/21/0233

Re: Property at Basement Left, 7 Niddrie Square, Glasgow, G42 8QX registered in the Land Register of Scotland under Title Number GLA106463 (“the Property”)

The Parties:

Mr Saif Monir (“the Applicant” and “the Tenant”)

Mrs Allison Hussain, 430 Shields Road, Glasgow, G41 1NS; 94 Ormonde Avenue, Glasgow G44 3SW (“the Respondent” and “the Landlord”)

Tribunal Members: Martin McAllister (Legal Member) and Colin Hepburn, surveyor, (Ordinary Member)

Background

1. By application dated 21st January 2021, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”). The application is in terms of Section 22 of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act in the following respects: The house is not reasonably fit for human habitation, the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order, the Property has not got satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the Property does not meet the tolerable standard as set out in the Act.

3. The application gave detail on why the applicant considered that the Property did not meet the repairing standard:

- 3.1 The Property must be secured against access from rats.
- 3.2 The central heating is malfunctioning.
- 3.3 The external door is not secure.
- 3.4 Fire alarms are not installed.
- 3.5 Emergency access in building blocked by iron bars.
- 3.6 Dishwasher is malfunctioning.
- 3.7 Extractor fan in bathroom malfunctioning.
- 3.8 Extractor hood in kitchen is malfunctioning.

4. On 8th February 2021, a legal member of the Tribunal, acting under delegated powers, had referred the application to a tribunal for determination. Parties were notified of this. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

5. Case management discussions were held on 13th March 2021 and 12th May 2021. Directions were made, under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, on 31st March 12th May, 27th July and 28th July all 2021.

Inspection

6. Ms Christie, legal member and Mr Hepburn, surveyor, ordinary member inspected the Property on 28th July 2021. A copy of the pre- hearing inspection summary and schedule of photographs is attached to this Decision. The Applicant and Mr Hussain, husband of the Respondent were both present at the inspection.

The Hearing

7. A Hearing was held by audio conference on 18th August 2021. The Applicant was not present. Mr Saquib Deen of Apex Properties represented the Respondent and Mr Usman Hussain, husband of the Respondent attended and spoke.

Preliminary Matters

8. The Tribunal intimated to Mr Deen and Mr Hussain that it was disappointed that the Directions issued by it on 12th May 2021 and 27th July 2021 had not had any substantive response. They were reminded of the obligations to provide information requested by the Tribunal and the possible penalties on failure to do so. Mr Deen apologised for this and said that he had forwarded them to Mr Hussain. Mr Deen said that the reason for non- compliance was that he had not read the terms of the Notices of Direction. He said that he could supply information requested and the Tribunal decided to adjourn the Hearing for thirty minutes to allow him the opportunity to do so.

9. When the Hearing re-convened, Mr Deen said that he had managed to find some information and had emailed copies of an electrician's qualifications. The Tribunal had raised an issue about whether or not the electrician providing the EICR was a member of an accredited registration scheme. It was pointed out to Mr Deen that the fact that the electrician was in possession of certain qualifications did not provide evidence that he was a member of such a scheme.

10. The Tribunal had directed the Respondent to produce evidence of the title to the Property. Mr Deen said that he had identified a Title number GLA106463 and the Tribunal explained that it was in possession of this but that it seemed to be for 9 Niddrie Square rather than 7 Niddrie Square. Mr Hussain explained that the Property, which is a basement flat, had been split from number 9 some years ago. He said that his wife owned no other flat in the tenement and that no member of the family did. It was noted that the proprietor of Title GLA106463 is the Respondent.

11. The Direction of 27th July 2021 had required the Respondent to provide information on her landlord registration and HMO licence. Mr Deen said that the Property is not a house in multiple occupancy and that no licence was therefore required.

He said that, during the adjournment, he had discovered that the Property is not registered in the Scottish Register for Landlords and that the registration had lapsed in April 2021. He said that he had advised that urgent steps be taken to rectify matters.

12. The Tribunal went through the matters detailed in the application, some of which were no longer live:

12.1 Rats

The ordinary member said that there was evidence of rodent droppings in the kitchen cupboards and he referred to the schedule of photographs. He said that there were gaps behind the kitchen cupboards which would allow access to rodents. Mr Hussain said that he is having a dishwasher installed in the Property the next day and that he would get the person carrying out the installation to attend to this.

12.2 Central Heating

The ordinary member said that the Applicant stated at the inspection that he was having to re-pressurise the central heating system four or five times a day. Mr Dean said that this had not been reported to him and he said that a new pump had been fitted which he thought had rectified any issues there had been.

12.3

The ordinary member said that the issue with the door had been resolved.

12.4

The ordinary member said that there are interlinked smoke detectors in the Property and that they had been tested at the inspection and had been found to be working.

12.5

The ordinary member said that the Applicant had confirmed that he had keys for the window bars.

12.6

Mr Hussain said that a replacement dishwasher is due to be installed the next day.

12.7

The ordinary member confirmed that the extractor fan and extractor hood were found at inspection to be functional.

12.8

The Tribunal considered the terms of the EICR and indicated to Mr Deen and Mr Hussain that there were two issues.

It was not clear that the electrician who provided the certificate is a member of an accredited registered scheme operated by a recognised body and Mr Deen said that he would provide evidence of this.

The terms of the EICR dated 4th February 2021 shows that there are three items under the section "Observations and recommendations for action to be taken." Item one is the need for a new consumer unit, item two is relating to the need for the ring main to be repaired/ part rewired and item three is blank. In this section of an EICR, any matters requiring action have a category set against them. There are no such categories set against the observations and recommendations made. Neither Mr Deen nor Mr Hussain could offer an explanation.

12.9

The Tribunal considered the terms of the Gas Safety Record dated 4TH May 2021. It was pointed out to Mr Deen and Mr Hussain that the document disclosed that there are two items which have been disclosed to "the customer" but that it is not clear what action, if any has been taken. Mr Hussain said that he is sure that the issue of the flue has been dealt with and he said that the lack of earth bonding at the meter would be dealt with by his electrician.

13. The Issues

Sections 13(1) (a), (c), (d) and (f) of The 2006 Act provide that the house has to be reasonably fit for human habitation, the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order, any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order, and the house must have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The specific issues which the tribunal required to address were those detailed in the application and referred to in this Decision.

14. Findings

The Tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the House fails to meet it.

14.1 The tribunal had concerns about the electrical and gas safety of the Property. It did not consider that the EICR and Gas Safety Record are in appropriate terms and that the Respondent should submit others in satisfactory terms.

14.2 It is not certain that the heating system provided by the Landlord is functioning properly and the Tribunal requires to be satisfied in this regard.

14.3 There is sufficient provision of smoke detectors.

14.4 The external door is functioning.

14.5 The extractor fan and extractor hood are satisfactory.

- 14.6 The Respondent has keys for the window bars.
- 14.7 The dishwasher requires to be repaired or replaced.
- 14.8 There is evidence of the presence of rodents in the Property and the Respondent requires to take action to mitigate this by blocking holes behind the kitchen cupboards.

15. Reasons

The tribunal had regard to what it had found at the inspection, the evidence of Mr Hussain and the representations of Mr Deen. The inadequacies in the EICR and Gas Safety Record were self-evident. The existence of a Gas Safety Record does not, in itself, evidence that the central heating system is in proper working order. The Tribunal was satisfied that the relevant title for the Property is GLA106463.

16. Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

- 1. The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist.
(Section 13(1)(c) of the 2006 Act)**
- 2. The Landlord is required to produce a report from a suitably qualified heating engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property.
(Section 13 (1) (c) of the 2006 Act)**
- 3. The Landlord is required to replace or repair the dishwasher.
(Section 13 (1) (d) of the 2006 Act)**
- 4. The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.
(Section 13 (1) (c) of the Act).**
- 5. The Landlord is required to make effective repairs in the kitchen to combat access for rodents.
(Section 13 (1) (a) of the 2006 Act)**

The Landlord requires to comply with the repairing standard order within five weeks of its service on her.

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.

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.

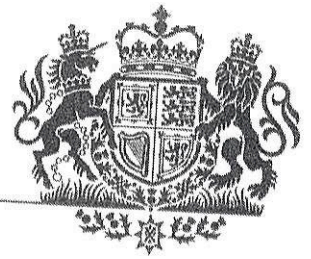
NOTE

The Tribunal was concerned at the Respondent's failure to comply with its Notice of Direction dated 27th July 2021. It expects it to be complied with since this will assist it in assessing compliance with the repairing standard enforcement order.

M McAllister,

Martin J. McAllister,
Solicitor, legal member of the First-Tier Tribunal for Scotland
Tribunal.
19th August 2021

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order

Housing (Scotland) Act 2006: Section 24

Reference number: FTS/HPC/RP/21/0233

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Tribunal Members: Martin McAllister (Legal Member) and Colin Hepburn, surveyor, (Ordinary Member)

NOTICE TO

Mrs Allison Hussain

Whereas in terms of their decision dated 18th August 2021, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the 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 tribunal now makes a repairing standard enforcement order (RSEO) in the following terms and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

The tribunal determined to make a repairing standard enforcement order in the following terms:

1. The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist.
(Section 13(1)(c) of the 2006 Act)
2. The Landlord is required to produce a report from a suitably qualified heating engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property.
(Section 13 (1) (c) of the 2006 Act)
3. The Landlord is required to replace or repair the dishwasher.
(Section 13 (1) (d) of the 2006 Act)
4. The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.
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5. The Landlord is required to make effective repairs in the kitchen to combat access for rodents.
(Section 13 (1) (a) of the 2006 Act)

The Landlord requires to comply with the repairing standard order within five weeks of its service on her.

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.

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 typewritten on this and the two preceding pages are executed by Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland at Saltcoats on 19th August 2021 before Stephen Cavani, 68 Hamilton Street, Saltcoats.

M McAllister