

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Certificate of Compliance and Statement of Reasons: Section 25 and paragraph 6 of Schedule 2 of the Housing (Scotland) Act 2006 ("the Act")**

**Chamber Ref: FTS/HPC/RP/17/0364**

**The Property:** ALL and WHOLE that dwellinghouse consisting of five rooms, kitchen and closets, being the south-most of the two houses in the first flat of the tenement forming numbers One Hundred and Five, One Hundred and Seven, One Hundred and Eleven, One Hundred and Thirteen, One Hundred and Fifteen and One Hundred and Seventeen Lothian Road, Edinburgh and entering by the common stair number One Hundred and Eleven Lothian Road, formerly known as number Five Lothian Road, aforesaid in the City of Edinburgh and County of Midlothian being the subjects more particularly described secundo in the Disposition by David Scott Threshie in favour of Doctor William Menzies dated the Twelfth day of May and recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh (now Midlothian) on the Fourth day of June in the year Eighteen Hundred and Seventy Seven;

### **The Parties:-**

**Mr Oliver Winkler, residing at the property** ("the tenant")

**and**

**Mrs Delizia Maria di Resta, c/o Homes 4 You Scotland Ltd, 3 Waverley Industrial Units, Waverley Street, Bathgate, EH48 4JA, her agents** ("the landlord")

**and**

**Mrs Delizia Maria di Resta, aforesaid, KATHLEEN BAKER MORE, Solicitor, of Nineteen Dublin Street, Edinburgh, ANDREW PURDIE, Solicitor, of Sixty Four South Bridge Street, Bathgate and STEWART MCFEAT, residing at Fifteen Carrongrove Avenue, Falkirk as Trustees for The Delizia Maria Di Resta 2013 Trust** ("registered proprietors")

### **THE TRIBUNAL:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):**

**David M Preston (Legal Member) and Greig Adams, Surveyor (Ordinary Member)**

**Determination:**

The Tribunal, having made such enquiries as are necessary to enable it to determine whether the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") in relation to the Property determined that the Landlord has complied with that duty.

**Background:**

1. By undated application received by the administration offices of the Tribunal, the tenant sought a determination that the landlord had failed to comply with the duty imposed by Section 14 of the Act.
2. The application stated that the tenant considered that the landlord had failed to ensure that:
  - a. 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.
  - b. Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - c. The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular the tenant complained that:
  - a. An external pipe has been leaking sewer water on a bedroom window for months.
  - b. The kitchen floor has wooden panels that are not fixed and keep moving underfoot.
  - c. The fire alarm goes on every time the bedroom door from bedroom number one is being closed.
4. By Minute of Decision dated 24 October a legal member with delegated powers under Section 23a of the Act so to do, referred the application to the tribunal for a determination.

### **Inspection:**

5. On 14 December 2017 the tribunal attended at and carried out an inspection of the property.
6. Present at the inspection were: the tenant; the landlord; and Ms Karen Stephens of the landlord's agents. Other co-tenants were also present during the inspection.
7. Bedroom Window: The tribunal inspected the window in the bedroom occupied by the applicant who described the intermittent problem of what was described as foul smelling liquid which appeared to come from above and run down to window. He complained that it did not necessarily occur during rain showers. He said that it had been particularly bad during the summer when it was not raining. The smell had caused him headaches and to feel unwell. The landlord and Ms Stephen advised that they had the problem inspected by a plumber but no problem could be identified. The tribunal observed that there were no foul down pipes in the vicinity and the pipes adjacent to the window were rainwater goods which appeared to be in a reasonable condition. Photographs were taken by the tribunal which are attached hereto as a Schedule of Photographs.
8. Kitchen Floor: it was reported to the tribunal by the tenants that the kitchen flooring had been repaired earlier in the week of the inspection and now appeared to be in order. The tribunal nonetheless inspected the flooring which was a laminate wooden floor, any loose panels on which appeared to have been secured. The landlord advised that she intended to replace the laminate floor during the summer.
9. Fire Alarm: The landlord and the tenants agreed that a new fire detection and alarm system had been installed on 12 December 2017 and the landlord said that a certificate in respect of the installation would be made available to the tribunal.

### **Hearing:**

10. Following the inspection, a hearing was convened at George House, George Street, Edinburgh.
11. The parties attended the hearing. A co-tenant, Mr George Skelly who was in attendance as an observer also, in the absence of any objection from the landlord, provided information to the tribunal.
12. The convener outlined the procedure which it was intended to follow. He reminded the parties that the tribunal could only deal with the issues raised in the application and that although the tenant had made reference in his representations to other matters, they would have to be the subject of further application if so advised.
13. The tenant reiterated his concerns about the liquid at the window. The landlord and her agents initially suggested that the smell could be from the nearby brewery. However it became apparent that the parties had identified that there may be an issue coming from the upstairs flat. The tenant and Mr Skelly advised that they had seen matter coming from upstairs and suspected that liquids and other material were being thrown from the window. The landlord said that she would carry out further investigations through her agents in an effort to identify the problem and seek a solution.
14. Ms Stephens said that she had received an emailed copy of the fire alarm Modification Certificate and advised that she had forwarded it to the administration office.

### **Reasons:**

15. In reaching its decision the tribunal had regard to:
  - a. The application and accompanying photographs and copy emails;
  - b. The written representations from the tenant dated 16 November 2017; and
  - c. The written representations from the landlord dated 22 November 2017.

d. The Modification Certificate dated 12 December 2017 from AFA Fire & Security Ltd.

16. The inspection revealed no apparent defect which could have given rise to the issues complained of. There was no evidence of any water ingress and no signs of any dampness were detected by the surveyor member using a thermographic camera and a thermal imaging moisture meter.
17. If the problems emanated from the upper flat, which by the time of the hearing was recognised by all parties as a possibility, there was nothing which the tribunal could do in respect of ordering the landlord to undertake any work. Section 16(4) of the Act provides that a landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. The tribunal considered that the landlord was in the process of addressing the issue and that there was no other apparent cause which would allow the tribunal to determine that the landlord had failed in her duty.
18. The tribunal was satisfied that the remedial work which had been carried out to the kitchen flooring had addressed the issue complained of and in light of the tenant's acceptance of that position; it determined that the landlord had not failed in her duty in that regard.
19. Notwithstanding the tenant's acceptance of the situation with regard to the installation of the fire alarm and detection system, the tribunal considered that the public interest in relation to the health and safety of those occupying the property was sufficiently important to require that they had sight of the installation certificate. Following the hearing the tribunal was provided with the Modification Certificate in respect of replacement of the Control Panel which confirmed that following the modification the system had been tested in accordance with the recommendations of 46.4.2 of BS 5839-1:2017. A copy of the Modification Certificate is attached hereto as Schedule 2. Accordingly the tribunal determined

that the landlord had not failed in her duty in regard to the fire detection and warning system.

**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.

**D Preston** Chairman

20 December 2017

20 December 2017

This is the Schedule of Photographs referred to in the foregoing Certificate of Compliance and Statement of Reasons.

**D Preston** .... Chairman



1. General view of front elevation.



2. Bedroom Window subject to complaint.



**3. Close view from Bedroom Window.**



**4. Close view of Kitchen flooring.**





**5. Remedial works completed to Kitchen floor.**

20 December 2017

This is Schedule 2 referred to in the foregoing Certificate of Compliance and Statement of Reasons.

**D Preston**

## A.F.A. Fire & Security Ltd Modification Certificate

Certificate of modification for the fire system at: **1F1 111 LOTHIAN ROAD**

Address:-

**EDINBURGH**

I/we being the competent person(s) responsible (as indicated by my/our signatures below) for the modification of the fire alarm system, particulars of which are set out below, CERTIFY that the said modification work for which I/we have been responsible has to the best of my/our knowledge and belief been carried out in accordance with the recommendations of 46.4 of BS 5839-1:2017, except for variations, if any, stated in this certificate.

Name (in block letters):

**ROSS WILSON**

Position: FIRE ALARM ENGINEER

Signature:



Date: **12 DEC 2017**

For and on behalf of: A.F.A. FIRE & SECURITY LTD

Address: THE UNIT, INGLESIDE, 3 ARMADALE ROAD, WHITBURN, WEST LOTHIAN

Post Code: EH47 0ET

The extent of the liability of the signatory for and on behalf of A.F.A. Fire & Security is limited to the system described below.

Extent of system covered by this certificate:

**REPLACEMENT CONTROL PANEL  
ONLY**

Variations from the recommendations of 46.4 of BS 5839-1:2013:



Following the modifications, the system has been tested in accordance with the recommendations of 46.4.2 of BS 5839-1:2017.



Following the modifications, "as fitted" drawings and other system records have been updated as appropriate.

I/we the undersigned confirm that the modifications have introduced no additional variations from the recommendations of BS 5839-1:2013, other than those recorded below:

Signed:



Capacity:

(e.g. maintenance organisation, system designer, consultant or user representative)

