

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

**Case Reference Number: FTS/HPC/RP/18/1724**

**Re: 2/1, 136 Torphin Crescent, Glasgow G32 6QD (“the house”)**

**The Parties:-**

**Mr Danny Hall, residing at the house (“the tenant”)**

**Mr Conal Rogers, c/o 1-2-let, 104 Bellgrove Street, Glasgow G31 1AA (“the landlord”)**

**Tribunal Members – Sarah O’Neill (Chairperson); Nick Allan (Ordinary (Surveyor) Member)**

### **Decision**

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has not failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The tribunal’s decision is unanimous. The tribunal makes some observations in its decision, however, regarding the tenant’s complaint about the failure of the letting agent to provide keys to the house at the start of his tenancy.

### **Background**

1. By application received on 11 July 2018, the tenant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

2. In his application, the tenant stated that he believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13(1) (d) of the Act. His application stated that the landlord had failed to ensure that any fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order
3. The tenant included one complaint in his application form. His complaint was that he had not been provided with keys for the house, and that he was therefore unable to gain access to the house. He stated in his application that the following work required to be carried out at the house: keys for the building to be cut.
4. On 25 July 2018, the tenant forwarded to the tribunal office an email which he had sent to the landlord's agent on 30 June 2018, notifying the agent of various further repairs issues at the house, as follows:
  - Bathroom tap/shower unit leaking from multiple places when in shower mode
  - Front door handle is not functioning and hanging off
  - One drawer needs a back, so that cutlery does not fall out constantly
  - Window fixture is snapped, and does not sit flush with frame or open properly
  - Hallway carpet needs replacing
5. On 31 July 2018, a Convener of the panel, with delegated powers under Section 96 of the Housing (Scotland) Act 2014, issued a minute of decision stating that he considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that he had considered the application paperwork submitted by the tenant, comprising documents received between 11 July 2018 and 25 July 2018; and intimating his decision to refer the application to a tribunal for determination.
6. The tribunal office wrote to the parties on 7 August 2018, notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 18 September 2018. Written representations were requested by 28 August 2018. The tenant confirmed in writing on 20 August that he wished to attend a hearing; he did not send any further written representations. Written representations were received from the landlord's agent on 27 August 2018.
7. On 21 August 2018, the tribunal issued a direction to the parties, confirming that, at its inspection and hearing, it intended to consider:
  - a) the issue mentioned in the tenant's application form i.e. a lack of keys to enter the property; and

- b) the repairs issues listed in the email from the tenant dated 30 June 2018, sent to the landlord's agent, 1-2-let Ltd.
8. The direction stated that the tribunal considered that the tenant's email of 30 June 2018 provided sufficient notification of the repairs issues mentioned in that email, as required in terms of section 14 (3) of the Act. As stated in the minute of referral issued on 31 July 2018, the tribunal considered the application to include all documents received between 11 July 2018 and 25 July 2018. The tenant's application therefore included his email to the landlord's agent dated 30 June 2018, which was received from the tenant on 25 July 2018.

### **The inspection**

9. The tribunal inspected the house on the morning of 18 September 2018. The weather conditions at the time of the tribunal's inspection were dull and overcast. The tenant was present at the inspection. The landlord was not present or represented at the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

### **The house**

10. The house is a second (top) floor former local authority flat within a block of multiple flatted units. It is in the region of 50 years old, and comprises: a hallway, living room, kitchen, bedroom and bathroom.

### **The hearing**

11. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The tenant was present and gave evidence on his own behalf. The landlord was not present or represented. The tribunal noted that in its written representations, the landlord's agent had indicated that it did not wish to attend a hearing. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. It therefore proceeded with the hearing in the absence of the landlord, in terms of rule 29 of the 2017 rules.

### **The evidence**

12. The evidence before the tribunal consisted of:

- The application form completed by the tenant
- Registers Direct copy of Land Register title GLA134639, which confirmed that the house is owned by Mr Conal Gerard Rogers.

- Tenancy agreement between the landlord and the tenant in respect of the house dated 28 June 2018.
- Copy notification emails from the tenant to 1-2-let Ltd, the landlord's agent, setting out the repairs alleged to be required, sent on 30 June, 4 July and 17 July 2018.
- The written representations received from the landlord on 27 August 2018.
- An email from the tenant to the tribunal dated 17 September 2018.
- The tribunal's inspection of the house.
- The oral representations of the tenant at the hearing.

### **Summary of the issues**

13. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14 (1) (b).

### **Findings of fact**

14. The tribunal made the following findings in fact:

- The house is owned by Mr Conal Gerard Rogers, who is the landlord of the house.
- The landlord's agent, 1-2-let Ltd, 104 Bellgrove Street, Glasgow G311AA, manages the letting of the house on his behalf.
- The tenant entered into a Private Residential Tenancy Agreement with the landlord to rent the house from 28 June 2018.

15. The tribunal at its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:

- i. The tenant now had a key for the front door of the house, together with keys for the main close front door and the close back door.
- ii. The tap/shower unit in the bathroom had been replaced, and this was functioning correctly.
- iii. The front door handle had been replaced, and a new lock mechanism had been fitted.
- iv. The kitchen drawer which the tenant had complained about had been repaired - a new panel had been fitted to the rear of the drawer.
- v. A component part of the window frame in the living room had been replaced, and when tested, the window opened and operated correctly.
- vi. The hall carpet was heavily stained, but it appeared to be otherwise intact and safely fitted.

## **Reasons for decision**

16. The tribunal's determinations in relation to each of the tenant's complaints are set out below.

### **1. Failure to provide keys to the house**

17. The tenant told the tribunal that at the start of his tenancy, the landlord's agent had provided him with only one key. This was a mortice key for the top lock on the front door to his flat. At that point, there were two locks on the front door; the bottom lock had later been removed. He had not been given keys for either the main front door or the back close door. He had been able to move his possessions into the flat at the start of his tenancy, as someone had left the main front door on the latch, but was later unable to access the close again, as the door had been taken off the latch. As he often worked late, he did not wish to disturb other residents in the block by asking them to let him in every time he came home. He told the tribunal that as a result, he had had to sleep in his car on some occasions.
18. Having further requested keys several times from the landlord's agent, he had eventually been given a key for the back close door, and later a key for the front close door. The lock and handle had also been replaced on the front door of the flat. Photograph 3 on the attached schedule refers. The tenant agreed that he was now in possession of all of the keys required to gain access to the flat. The tribunal therefore determines that there was no breach of the repairing standard in respect of this issue at the time of its inspection. The tribunal makes some further observations on this matter, however, at paragraphs 24-26 of this decision.

### **2. Bathroom tap/shower unit**

19. The tribunal observed at its inspection that the tap/shower unit in the bathroom had been replaced, and that this was functioning correctly. Photograph 4 on the attached schedule refers. The tenant agreed that the new unit was operating properly. The tribunal therefore determines that the tap/shower unit is in a reasonable state of repair and in proper working order.

### **3. Front door handle**

20. The tribunal observed at its inspection that the front door handle had been replaced, and a new lock mechanism had been fitted. The tenant told the tribunal that he was happy that the new door handle and lock mechanism were working correctly. The tribunal therefore determines that the front door handle is in a reasonable state of repair and in proper working order.

#### **4. Kitchen drawer**

21. The tribunal observed at its inspection that the kitchen drawer which the tenant had complained about had been repaired - a new panel had been fitted to the rear of the drawer. The tenant told the tribunal that he was happy that the drawer was now functioning properly. The tribunal therefore determines that the kitchen drawer is in a reasonable state of repair and in proper working order. Photograph 5 on the attached schedule refers.

#### **5. Living room window**

22. The tribunal observed at its inspection that a component on the window frame in the living room, which the tenant confirmed was the window referred to in his application, had been replaced. Photograph 6 on the attached Schedule refers. When tested, the window was found to be opening and operating correctly. The tenant told the tribunal that he was happy that the window was now opening and operating properly. The tribunal therefore determines that the window is in a reasonable state of repair and in proper working order.

#### **6. Hallway carpet**

23. The tribunal observed at its inspection that the hall carpet was heavily stained, but it appeared to be otherwise intact and safely fitted. The tribunal therefore determined that the carpet is in a reasonable state of repair and in proper working order, and that it is capable of being used safely for the purpose for which it is designed. The tribunal observes, however, that the carpet would benefit from thorough cleaning or replacement. Photographs 7 & 8 on the attached schedule refer.

#### **Observations by the tribunal**

24. While the various repairs issues complained about had been resolved, it was clear that the tenant's primary complaint was that he was unable to access the house for several weeks after the tenancy began, despite paying rent. He told the tribunal that he had been unsure as to whether this was a repairs issue. The tenant considers that the letting agent should refund the rent which he paid during the period when he was unable to gain access to the property. His tenancy began on 28 June 2018, and he was paying rent from that date. The landlord's agent stated in its written representations which were received on 27 August 2018 that the front and back door keys were provided to the tenant on 23 July 2018, three and a half weeks after the tenancy began. The tenant confirmed to the tribunal that he believed this date to be correct.
25. The tenant told the tribunal that he had asked the letting agent about giving him a refund or reduction in his rent to reflect the fact that he was unable to live in

the house during this period. The letting agent had not agreed to do this. The tribunal observes that the provision of keys to a tenant for access to a property from the start of the tenancy must be a fundamental implied term of the tenancy agreement.

26. While the tribunal has considerable sympathy with the tenant, however, it was only able to consider the repairs issues raised by the tenant regarding his repairs application. The tribunal notes that it would, however, be open to the tenant to make a separate letting agent application to the tribunal, should he consider that there has been a failure to comply with the Letting Agent Code of Practice regarding the failure to provide the keys at the start of his tenancy.
27. The tribunal also noted during its inspection that the light fitting on the bathroom ceiling did not appear to be the appropriate type of light fitting for installation in a bathroom.

### **Summary of decision**

28. On the basis of all the evidence before it, the tribunal found that at the time of its inspection, the house was in a state of repair which met the repairing standard in terms of section 14 (1) (b) of the Act, as regards the issues complained about by the tenant. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the tenant's application.

### **Rights of Appeal**

29. 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.
30. 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.

S O'Neill

Signed.

Sarah O'Neill, Chairperson

.....Date..... 25/9/18

This is the photograph schedule referred to in the foregoing  
decision dated 25th September 2018.

S O'Neill

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



**Photograph Schedule**

**2/1 (Top floor), 136 Torphin Crescent, Glasgow, G32 6QD**

**Case Reference:** FTS/HPC/RP/18/1724

**Date of inspection:** 18/09/2018

**Time of inspection:** 10.00 am

**Weather conditions:** Dull and overcast

**Present:** Sarah O'Neill – Legal Member  
Nick Allan – Ordinary Member  
Danny Hall – Tenant



**Photo 1** Front elevation



**Photo 2** Rear elevation





**Photo 3** Replacement door lock



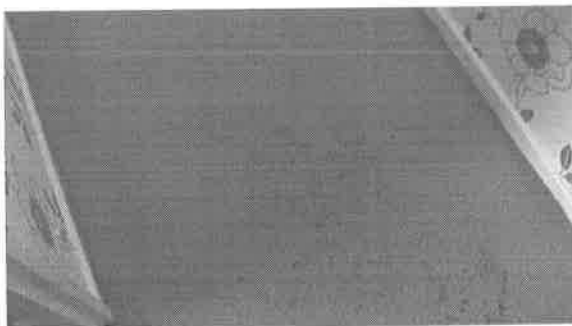
**Photo 4** Functioning shower unit



**Photo 5** Functioning drawer unit



**Photo 6** New Window component



**Photo 7** Staining on hall carpet



**Photo 8** Staining on hall carpet

Nick Allan – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber – 25<sup>th</sup> September 2018