

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: PRHP/RP/16/0348

**Flat 3/3, 9 Maxwellton Street, Paisley, PA1 2TZ
("The Property")**

The Parties:-

**Mr. Paul Young, residing at the property
("the Tenant")**

**Chesnutt Skeoch Limited, formerly at 1 Woodside Terrace, Glasgow, G3
7UY and now at 30 East Main Street, Darvel, Ayrshire, KA17 0HP
("the Landlord")**

Decision

The First-Tier Tribunal for Scotland (Housing and Property Chamber) ('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) in relation to the house concerned, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Lori Charles	-	Ordinary Member

Background

1. By application comprising documents received between 11 November 2016 and 19 December 2016, the Tenant applied to the Private Rented Housing Panel ("PRHP") (which body was succeeded by the First-Tier Tribunal (Housing and Property Chamber) on 1 December 2016) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with its duty to ensure that the house meets the repairing standard and that the failure was established as follows: -

- (a) The windows in the living room and bedroom do not function correctly with a crack in one of the windows in the living room and one window painted shut.
- (b) There is damp and mould on the living room and bedroom walls and ceilings.
- (c) The kitchen sink leaks.
- (d) Electrical sockets in the living room do not work.
- (e) There are no smoke or heat detectors.

The Tenant considered that the Landlord is in breach of its duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. By Minute dated 22 December 2016 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.

4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.

5. The Tenant thereafter advised the tribunal that he wished to withdraw his application. The tribunal then issued a Minute of Continuation dated 3 February 2017 under Schedule 2 Paragraph 7(3) of the Act, having decided that the application should be determined on public interest grounds.

6. Following service of the Notice of Referral (by letter dated 12 January 2017), the Landlord submitted written representations to the tribunal by way of a letter dated 6 February 2017 which was received by the tribunal on 7 February 2017. The Landlord advised that the dampness had been rectified as it had been due to a leak from the common roof, the walls had been redecorated and the windows had been repaired both at the front and the back of the property. The Landlord included in the letter a copy of

the Electrical Installation Condition Report (“EICR”) dated 20 January 2017 and the Gas Safe Record dated 17 January 2017.

7. The tribunal attended at the property for the purposes of inspection on 16 February 2017. The Landlord was represented at the inspection by Mr. Ken Johnstone, Director of the Landlord. The painter and decorator of the Landlord also attended at the property. The tribunal attempted to gain access to the property but, despite several knocks on the front door of the property, there was no reply and the tribunal could not gain access. There was a handwritten note appended to the front door of the property which bore to have been written by the Tenant. Within the note, the Tenant advised that he had obtained legal advice and was not required to provide access to the property and that he was not willing to provide access to the property. The hearing took place on the same date at 11.30 within Wellington House in Wellington Street, Glasgow. Mr. Johnstone attended at the hearing on behalf of the Landlord. The painter and decorator, Mr. James Neil, also attended the hearing. The tribunal took the decision to adjourn the hearing and advised the Landlord that if it did not gain access to the property at the next date arranged for inspection then the tribunal would consider obtaining a warrant to gain entry to the property.

The Inspection

8. A further inspection and hearing were arranged for 28 March 2017 at 10 am and 11.30 am respectively. The tribunal attended at the property. The Tenant provided access to the property. The Landlord, represented by Mr. Johnstone, was already in attendance at the property when the tribunal arrived. The tribunal noted the following at inspection:-
 - There was no sign of damp on the walls and ceilings in the living room and the bedroom. Damp meter readings were green showing that there was no dampness present.
 - The tribunal allowed water to run from the cold tap in the kitchen for approximately five minutes. There was no leak from the kitchen sink.
 - The windows in the living room and the bedroom could be opened and closed freely.
 - There was a heat detector located in the ceiling above the open plan kitchen and living room area with another smoke detector located in the ceiling in the hallway.
 - There was no carbon monoxide detector located in the living room where there was a gas fire located.

The inspection report prepared by the ordinary member is attached to this decision.

The Hearing

9. Mr. Johnstone appeared on behalf of the Landlord and submitted as follows: -

- The roof had been repaired in September 2016.
- The Tenant had made the present application as he owed the Landlord rent arrears and money for a broken door. The Tenant was annoyed that he was being chased for money by the Landlord.
- The Tenant had been difficult about providing access to the Landlord to allow the Landlord to carry out the works required in terms of the Tenant's application.
- The EICR and Gas Safe Record had both been obtained in January 2017.
- The electrical sockets had been fixed at that time.
- A carbon monoxide detector had been fitted at that time but the Tenant had admitted to the Landlord that he had removed it.
- The Landlord gave an undertaking to the tribunal that he would have a new carbon monoxide detector fitted in the property and would provide written confirmation of this from Mr Crawford, his gas fitter, that this had been carried out. He undertook that this would be completed within five days.
- The Landlord further confirmed that Mr. Crawford would fit the new carbon monoxide alarm the day after the hearing.

Summary of the issues

10. The issue to be determined is whether the repairing standard has been met in light of the submissions made by the Landlord.

Findings of fact

11. The tribunal finds the following facts to be established: -
- The Landlord is the registered owner of the property.
 - The Landlord had, at the time of the hearing on 28 March 2017, completed all of the repairs highlighted in the application by the Tenant and only the issue of the carbon monoxide detector remained outstanding at the time of inspection.
12. On 30 March 2017, the tribunal received from the Landlord a letter dated 29 March 2017 and written by Crawford & Sons Gas Services Ltd which confirmed that David Crawford had attended at the property on 29 March 2017 and installed a new carbon monoxide detector within the property.

Reasons for the decision

13. At the hearing, the Landlord was clear that the Tenant had been difficult about providing access to the Landlord to carry out the necessary repairs. The Tenant had been difficult about providing access to the tribunal. Furthermore, it was clear from the terms of the Gas Safe Record that a carbon monoxide detector had been installed at the time of the gas safety

inspection in January 2017. Further to the hearing, the Landlord provided written confirmation from Mr. Crawford that a further carbon monoxide detector had been installed in the property the day after the inspection and hearing.

Given all of the circumstances, the tribunal is satisfied that the house is wind and watertight and in all other respects reasonably fit for human habitation; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Decision

14. The tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.
15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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.

P Pryce

Signed

Date 28 March 2017

Chair and Legal Member

Housing and Property Chamber First-tier Tribunal for Scotland



Flat 3/3 9 Maxwellton Street Paisley
RP/16/0348



Inspection - 28th March 2017 at 10:00am
Weather – dry

Inspection

The property is a four storey traditional tenement situated to the west of Paisley town centre in an area of similar properties and close to usual amenities.

Access is by way of a common close and stairwell.

The tenant Mr Young and Mr Johnstone from Chesnutt Skeoch Ltd were present during the inspection.

- 1) Dampness to lounge and bedroom wall.



Lounge wall had no visible signs of dampness and the protimeter showed reading to be in the normal range.



Bedroom walls had no visible signs of dampness and the protimeter showed reading to be in the normal range.

Mr Johnstone advised roof was repaired September 2016.

- 2) Electric sockets broken lounge – all sockets are in working order
- 3) Lounge and bedroom windows not opening – all windows checked and opening.
- 4) Leak under kitchen sink – repaired dry at time of inspection



5) No hard wired smoke or heat detector fitted – heat and smoke detector fitted.



Smoke detector



Heat detector

6) No carbon monoxide detector fitted.

Signed.....Lori Charles..... 28/03/17

