

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(2)**

Chamber Ref: FTS/HPC/RP/17/0441

Title no/Sasines Description: Land Register Title number MID73499

**16 Clermiston Grove, Edinburgh, EH4 7DE
("The House")**

The Parties:-

**Ms Hayley Buyers, residing at 16 Clermiston Grove, Edinburgh, EH4 7DE
("the Tenant")**

**Ms Veena Shepherd or James, residing at 83 Arden Street, Coventry, West
Midlands, CV5 6FB, formerly residing at 37 Belmont Avenue, Breaston, Derby,
DE72 3AA and 1F2, 95 East Claremont Street, Edinburgh**

("the Landlord")

**represented by her agent, Orchard and Shipman, 2 Anderson Place, Sugar
Bond, Third Floor, Edinburgh, EH6 5NP**

("the Landlord's Representative")

NOTICE TO MS VEENA SHEPHERD OR JAMES (the LANDLORD)

**WHEREAS in terms of its decision dated 26 February 2018 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 and in particular that the
Landlord has failed to ensure that the House meets the repairing standard in
the following respects:**

*"(a) the house is wind and water tight and in all other respects reasonably fit for
human habitation,*

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the tribunal requires the Landlord:

1. To investigate the cause of the dampness within the flooring adjacent to the W.C. in the bathroom and carry out all necessary repairs and/or renewals in order that the House is watertight and reasonably fit for human habitation.
2. To provide a written report as to the works on the pipework for the sewage and drainage system at the House, including any findings and recommendations; and to put into effect any recommendations to ensure that the house is watertight and reasonably fit for human habitation.

The tribunal orders that the works specified in this Order must be carried out and completed within 30 days from the date of service of this Notice.

Right of Appeal

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 an 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 two preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, Legal Member and chairperson of the tribunal at Edinburgh
S Tanner

____ Chairperson

signed on 26 February 2018 (date) at Edinburgh

before this witness:-

L Smith

Witness

MRS. LOUISE SMITH

name in full

1, RATTRAY WAY,

Address

GREENBANK VILLAGE

EDINBURGH

EH10 5TU

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

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

Chamber Ref: FTS/HPC/RP/17/0441

Title no/Sasines Description: Land Register Title number MID73499

**16 Clermiston Grove, Edinburgh, EH4 7DE
 (“The House”)**

The Parties:-

**Ms Hayley Buyers, residing at 16 Clermiston Grove, Edinburgh, EH4 7DE
 (“the Tenant”)**

**Ms Veena Shepherd or James, residing at 83 Arden Street, Coventry, West
 Midlands, CV5 6FB, formerly residing at 37 Belmont Avenue, Breaston, Derby,
 DE72 3AA and 1F2, 95 East Claremont Street, Edinburgh
 (“the Landlord”)**

**represented by her agent, Orchard and Shipman, 2 Anderson Place, Sugar
 Bond, Third Floor, Edinburgh, EH6 5NP
 (“the Landlord’s Representative”)**

Tribunal members:

**Susanne Tanner Q.C., Legal Member and Chairperson
 Mike Links, Ordinary Member**

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as are 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 (hereinafter “the 2006 Act”) in relation to the House, and taking account of the written documentation attached to the Application and the parties' written and oral representations, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

The House

4. The House is the subjects at 16 Clermiston Grove, Edinburgh, EH4 7DE, as more particularly described in Land Register Title number MID73499.
5. The House is an end terraced ground floor flat with a living room/kitchenette, one bedroom, and an en-suite showerroom. (See external and internal views in attached *Schedule of photographs.*).

Parties and parties' supporters / representatives

6. The Tenant making the application is as designed above. She is a student and lives on her own in the House. She received assistance from an employee at Edinburgh Napier University in relation to her written submissions to the tribunal. The Tenant originally indicated that she would arrange for the employee to attend as a supporter at the hearing in terms of Rule 11 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations ("the 2017 Rules"). On the date of the inspection and hearing the Tenant indicated that the supporter was not attending but the Tenant was happy to proceed in her absence.
7. The Landlord is as designed above. The Landlord has appointed an agent at Orchard & Shipman to manage the tenancy of the House. The Landlord's agent acted as her representative to deal with the application on her behalf in terms of Rule 10 of the 2017 Rules. The Landlord's Representative advised the tribunal that it would attend the inspection and hearing on 6 February 2018 but nobody attended on the day and no contact was made by the Landlord's Representative to explain the non-attendance.

The Tenancy

8. The Tenant has a Short Assured Tenancy which began on 16 August 2017 and has an expiry on 16 August 2018. The Tenant advised at the hearing that as a result of the repairs issues giving rise to the Application she has asked the Landlord's Agent if the lease can be terminated early and although a verbal

response has been given she has not received a written response as at the hearing date.

9. The House is let furnished and equipped but the Tenant advised that the Landlord's Representative has never provided the Inventory to the Tenant as referred to in Clause 4 of the Short Assured Tenancy agreement.

Procedural Background

10. By application received on 24 November 2017 (hereinafter referred to as "the Application"), the Tenant applied to the tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the 2006 Act.

11. The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the 2006 Act:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation"

(b) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order

12. In the Application, the Tenant complained that:

- a. There has been no hot water at all since moving in on 16 August 2017.
- b. The bedroom is damp with bad mould beside the window and in the corners.
- c. There is serious mould and damp in the bathroom.
- d. The windows have condensation which could be making the mould and damp worse.

13. The Tenant lodged documents with the tribunal which included her correspondence with the Landlord's representative dated from 17 August to 14 October 2017, notifying of the repairs issues listed in the Application (together with other repairs issues which are not in the Application).

14. By letter of 27 December 2017, the tribunal intimated a Minute of Decision of 12 December 2017 to refer the application under section 23(1) of the Act to the tribunal, for determination. A hearing was fixed for 6 February 2018. In terms of Rule 9(1)(b) of the 2017 Rules, parties were advised that any written

representations or a request to make oral representations must be made and returned to the tribunal's offices by 17 January 2018.

15. On 11 January 2018 the Tenant contracted the tribunal's offices to request extra time in order to submit her written representations to the tribunal as she was receiving help from an employee of Edinburgh Napier University Students' Association as the Tenant has some difficulty with written correspondence.
16. The tribunal considered the Tenant's request and on 15 January 2018 the tribunal issued a Direction dated 15 January 2018 allowing both parties until 24 January 2018 to lodge written representations, if they so wished; to indicate whether they wish to make oral representations; to lodge a list of any documents upon which the parties wished to rely at the hearing; and to lodge a list of any witnesses upon which the parties wished to call to give evidence at the hearing.

Parties' Written Representations

17. On 15 January 2018, Lee Richards from the Landlord's Representative confirmed that he wished to attend the hearing.
18. On 15 January 2018 the Landlord's Representative lodged written representations on behalf of the Landlord. The Landlord's Representative stated that the delay in repairs being effected was as a result of a lack of internal communication following a management restructure and not due to any action or inaction on the part of the Landlord. It was indicated that some repairs had already been completed, further works would take place the week commencing 16 January 2018 and the works required to repair the defects in the Application would be completed prior to the inspection and without further delay.
19. On 16 January the Tenant confirmed that she wished to attend the hearing and stated that she wished to be accompanied at the hearing by a supporter from Edinburgh Napier University Students' Association (in terms of Rule 11 of the 2017 Rules).
20. On 16 January 2018 the Tenant submitted written representations. She indicated that her health conditions of fibromyalgia, asthma and mental health conditions have been exacerbated due to the living conditions, her electricity bills had increased as a result of the repairs issues and the mould had caused damage to camera equipment and clothing, causing losses. She stated that the Landlord's representative had failed to communicate with her on a number of occasions over the period since the complaints were first made in August 2017.

21. On 5 February 2018 at 1535 the Tenant contact the tribunal asking whether she could withdraw the Application as the works in the flat had finally been carried out. The tribunal members were notified after 1600h. Given the timing of the Tenant's email and the fact that the Tenant had not notified the Landlord or its representative in writing that she wished to withdraw the Application the tribunal decided that the inspection and hearing the following day should go ahead. The tribunal's administration contacted the Tenant and the Landlord's representative to advise that the inspection and hearing would proceed as scheduled and that access to the House would be required from one of the parties at 1000h, with the hearing to follow at 1130h. Parties were advised that they may attend the hearing but were not required to do so. The Tenant indicated that she would give access for the inspection. The Landlord's representative indicated that it would attend the inspection and hearing.

Summary of the Issue to be determined by the tribunal

22. The issue to be determined is whether the House meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

Inspection and Hearing – 6 February 2018

23. The tribunal inspected the House on 6 February 2018. The Tenant was present. The Landlord's Representative did not arrive or contact the tribunal's administration and the tribunal proceeded with the inspection in the absence of the Landlord's Representative.

24. A hearing took place thereafter at George House, 126 George Street, Edinburgh at 11.30. The Tenant attended the hearing. The Landlord's Representative did not attend the hearing or contact the tribunal's administration and the tribunal proceeded with the hearing in the absence of the Landlord's Representative.

Inspection and Schedule of photographs

25. The tribunal confined its inspection on 6 February 2018 to the repairs issues detailed within the complaint letter and contained in the Application. It was noted that there were a number of other repairs issues notified by the Tenant to the Landlord's Representative which were not contained in the Application.

26. Photographs were taken at the inspection, and a Schedule of Photographs is appended to and forms part of this Decision.

27. The weather at the time of the inspection was dry and cold. It had been snowing during the night and earlier that morning and there was snow lying on the ground outside.
28. Schedule of Photographs nos. 1 and 2 show external front and rear views of the House. The House is the ground floor property on the right hand side of Photograph 1. There is a front door and a window to the livingroom on the front elevation. On the rear elevation there is a bedroom window and a bathroom window.
29. At the start of the inspection the Tenant advised the tribunal that the Landlord's Representative had sent contractors to do some repairs work during the two weeks leading up to the hearing. Claire Chester, the Operational Excellence Manager came out in January to look at the House. Ms Chester emailed the Tenant on 15 January 2018 to say that there was still work to be done and that contractors had been asked to quote for repairs. The Tenant asked if she could end her lease early in May because of the problems at the House. Claire Chester said that was fine because the Landlord is selling the House but nothing has been confirmed in writing. The Tenant told Claire Chester that the contractor finished painting on 17 January.
30. The Tenant further stated that the Landlord's Representative had telephoned her the day before the hearing (5 February 2018) to ask if the work had been done. The Landlord's Representative asked her whether she would now withdraw her Application to the tribunal which is why the Tenant had contacted the tribunal yesterday (5 February 2018).
31. The tribunal explained to the Tenant that as advised to parties yesterday the tribunal had decided that the inspection and hearing should go ahead. The Tenant confirmed that as some works were outstanding she did not wish to withdraw her Application and the inspection and hearing proceeded on that basis.
32. The tribunal proceeded with the inspection, in the presence of the Tenant, who provided additional information in relation to each of the issues listed in the Application and the works which had been carried out since the Application was lodged.
33. The inspection revealed the following with reference to each of the Tenant's complaints:
- 33.1. **"No hot water at all since moving in on 16 August 2017"**

- i. The Tenant advised that the boiler which was in the House when she moved in on 16 August 2017 did not work. From the start of the tenancy until Saturday 4 February 2018 she has had no hot water in the taps in the kitchen and bathroom. The shower is electric and does not rely on the boiler so she has been able to have a hot shower throughout the period since she moved in.
- ii. The Tenant advised that she notified the Landlord's Representative by email about the repairs issues the day after she moved in (17 August 2017). After a delay, the Landlord's representative sent an electrician round in October. The electrician removed the thermostat on the boiler and advised the Tenant that it would be fine to leave the boiler switched on. On 12 October 2017 there was an explosion which caused boiling hot steam to come up from the drains. The fire alarm went off. The details and dates are all in an email she sent to the Landlord's Representative on 14 October 2017, which is lodged with the Application paperwork.
- iii. The Tenant advised that a new boiler for heating water had been installed the previous weekend, on Friday 3 and Saturday 4 February 2018.
- iv. It was observed that a new water heater was in place under the sink in the kitchen (See **Schedule of Photographs no 8**).
- v. The Tenant also advised that the hot water tap in the bathroom had not been working since she moved in. The hot tap would not turn on at all. The hot tap was repaired on 4 February 2018 and she now has hot water from the bathroom tap.
- vi. It was observed that the hot water tap in the bathroom could be turned on and off and provided hot water. (See **Schedule of Photographs no 7**).
- vii. It was observed that the shower in the bathroom was electric and did not rely on the water heater.

33.2. **"Damp bedroom with bad mould beside window and in corners"**

33.3.

- i. The Tenant advised that there had been extensive mould along three walls. It made her clothes mouldy and damp and caused

damage to some items. Her camera equipment which she requires for her University course got mouldy and damp and some of it was unable to be used as a result.

- ii. The Tenant advised that some redecoration works had recently been carried out in the bedroom. The Tenant advised that prior to the redecoration works there had been extensive mould in the bedroom.
- iii. It was observed that the decoration appeared fresh and there was no visible mould (See **Schedule of Photographs nos. 12 and 13**).
- iv. It was observed that the only heating in the bedroom was an oil filled radiator which the Tenant advised had been provided to her by the Landlord. It was observed that the only heating in the living room / kitchen was a wall mounted electric heater which the Tenant advised was broken and a small halogen heater which the Tenant had purchased herself.
- v. It was observed that the bedroom window was open at the time of the inspection (see **Schedule of Photographs no. 11**).
- vi. The Tenant advised that she has to open the bedroom window every day to ventilate the room but she does not open it at night because it is too cold to do so.

33.4. **"Serious mould and damp in the bathroom"**

33.4.1. The Tenant advised during the inspection that the Landlord's Representative has carried out some repair and redecoration work in the bathroom in the last couple of weeks. The contractor was meant to come on 17 January 2018 but the Tenant had not heard anything. The contractor came on 23 January 2018 and was in the House for three days. The only repair work which was done in the bathroom was replacing the top piece of wood behind the toilet as the previous piece was rotten. The area beside the toilet has been cleared of mould. The whole bathroom has been painted. The Tenant was told by the contractor that there was no leak found from the toilet. The original linoleum has not been replaced. She was advised by the contractor that because the floor was solid no work was required to the floor and the linoleum did not need to be replaced. The Tenant told the tribunal that there were ongoing investigations in relation to pipes outside. Contractors had been in the

garden the day before (5 February 2018) and she understood that they were coming back but did not know when.

33.4.2. It was observed that the decoration in the bathroom looked fresh and there was no mould evident on the walls. (See **Schedule of Photographs no 3**).

33.4.3. It was observed that the floor under the linoleum looked wet in an area around the base of the W.C. A reading was taken with a damp meter which showed a high level of dampness in the floor beside the W.C (See **Schedule of Photographs no 4**).

33.4.4. It was observed that there is a ventilation unit in the bathroom window (See **Schedule of Photographs no 5**).

33.4.5. The Tenant advised that the ventilation unit does switch on but does not work that well. She advised that she also opens the window to ventilate the room.

33.4.6. It was observed that there was slight damp in the floor under the linoleum next to the shower tray. A meter reading was taken which confirmed this. (see **Schedule of Photographs no. 6**).

33.4.7. The tribunal inspected the common garden ground to the rear of the House. There has been excavation of the garden ground to expose the drainage and sewage system on the rear elevation (See **Schedule of Photographs, nos. 2, 14 and 15**).

33.5. **"Windows have bad condensation which could be making mould and damp worse"**

33.5.1. It was observed that there was condensation on the bedroom window, which was open at the time of the inspection. There was a towel on the window ledge which was wet (See **Schedule of Photographs no. 11**).

33.5.2. The Tenant advised that she closed the window at night.

33.5.3. It was observed that the only heating provision in the bedroom was an electric oil filled radiator (See **Schedule of Photographs nos. 12 and 13**).

33.5.4. The only other heaters in the House were a wall mounted electric heater in the living room/kitchenette (which she advised was

broken) (see **Schedule of Photographs no 9**) and a free standing halogen heater in the living room / kitchenette which the Tenant had purchased.

33.5.5. It was observed that there is mechanical ventilation in the kitchen as well as the bathroom window.

33.5.6. The Tenant advised that she does not use the mechanical ventilation in the kitchen but she uses the extractor fan (recirculating) above the hob when cooking.

33.6. **Other matters at inspection**

33.7. The tribunal observed that there was a combined smoke / heat alarm on the ceiling of the living room (See **Schedule of Photographs no. 10**).

33.8. The Tenant showed the tribunal a Minor Works Installation Certificate for the installation of the alarm dated 4 October 2016 which had been provided to her by the Landlord's representative.

33.9. The Tenant advised that the wall-mounted panel heater in the living room (See **Schedule of Photographs no 9**) works to the extent that it provides heat but it makes a really loud noise intermittently. The Tenant played a recording of the noise which she had made on her mobile phone on 22 January 2018. She has notified the Landlord's representative that it is broken and is still awaiting a repair or replacement. She is not using the heater in the meantime and uses the free standing halogen heater which she purchased. The Tenant produced a PAT Test certificate dated 21 March 2017 which includes the panel heater along with the washing machine and the bedroom heater. The issue with the living room heater is not included in the Application.

33.10. The Tenant also produced an EICR (dated 17 March 2015) as well as a Legionella Risk Assessment (dated 4 October 2016). The tribunal looked at the four documents produced by the Tenant during the inspection. It was noted from the EICR that the condition of the electrical installation was assessed as being unsatisfactory, four potentially dangerous items were listed with urgent remedial action required and one improvement was recommended. The tribunal asked the Tenant if she would be willing to provide copies of the documents to be lodged at the hearing. She agreed to bring the documents to the hearing.

33.11. No inspection was carried out in respect of the other repairs issues in the complaint letter that were not contained in the Application.

The Hearing

Attendance at hearing

34. The hearing took place at George House, 126 George Street, Edinburgh. It was due to start at 11.30.
35. The Tenant attended and was ready to commence the hearing at 11.30.
36. The Landlord's Representative was not in attendance at 11.30. As the Landlord's Representative had stated that it was attending the hearing the tribunal waited until 11.45. The Landlord's Representative did not attend the hearing or contact the tribunal's administration. The tribunal proceeded with the hearing at 11.45 in the absence of the Landlord's representative.

Late lodging of documents by the Tenant

37. The Tenant lodged a number of documents at the hearing with the consent of the tribunal, namely:
- 37.1. a Domestic Electrical Installation Condition Report (EICR) dated 17 March 2015;
 - 37.2. a Portable Appliance Testing Report dated 21 March 2017;
 - 37.3. a Minor Electrical Installation Works Certificate in respect of the installation of a combi heat/smoke detector in the lounge dated 4 October 2016; and
 - 37.4. a Legionella Risk Assessment dated 4 October 2016.
- 37.5. The tribunal was satisfied that the Tenant had a reasonable excuse for late lodging in terms of Rule 22(2) of the 2017 Rules as she had not realised that the documents might be relevant to the issues under consideration and she showed them to the tribunal members during the inspection in response to questions from the tribunal members about electrical certification. As all the documents had been provided to the Tenant by the Landlord's representative the tribunal was of the view that there was no prejudice to the Landlord or the Landlord's Representative in allowing late lodging of the documents.

Oral submissions by Tenant

38. By way of background the Tenant advised that she had moved into the House on 16 August 2017, on a one year lease. As she advised during the inspection, she has recently asked the Claire Chester of the Landlord's Representative if she can

move out early because of the problems in the House. She is waiting for written confirmation from the Landlord's Representative.

39. In relation to the Tenant's complaints in the Application, the Tenant advised that she first noticed the problems when she moved into the House and that she complained to the Landlord's representative by email the following day (17 August 2017).

40. The tribunal informed the Tenant that it had noted all that she had said during the inspection about the issues in the Application and that she did not need to repeat the same information during the hearing.

41. The Tenant lodged correspondence with the Application which forms part of the Application paperwork. It can be summarised as follows:

41.1. On 17 August 2017 (which was the day she moved into the House) the Tenant complained by email to Craig Laurie who was the property manager at the time. She sent him a list of complaints and attached photographs. The list included:

- "really bad mould in the bathroom (see pictures)",
- "bathroom hot tap doesn't turn on and drips",
- "hot water in kitchen doesn't work",
- "slight mould under fridge",
- "bathroom fan is broken (may be causing the mould)",
- "slight mould in bedroom, wall between bathroom and bedrooms",
- "shower really dirty / mould and some cracks".

41.2. On 18 August 2017, Craig Laurie acknowledged the Tenant's email and said he would look into it before the end of the day.

41.3. On 21 August 2017 the Tenant emailed again asking when someone would come out to look at the issues. The main issue was the lack of hot water.

41.4. On 28 August 2017 Craig Lawrie emailed and said that a company called "No Letting Go" would contact the Tenant soon to come to do a complete inventory and look at all repairs. He said that should be done very soon and then he would get the repairs actioned.

41.5. On 5 September 2017 the Tenant emailed Craig Lawrie to enquire about the outstanding maintenance, to advise that nobody had been in contact with her and to state that she had had no hot water since moving in on 17 August 2017. She also advised that the mould in the bedroom was getting worse which was not good for her as she had a chronic illness. She asked for a dehumidifier if the mould issue does not get fixed as soon as possible.

- 41.6. On 6 September 2017, Craig Lawrie emailed the Tenant to say that he would contact "No Letting Go" to obtain a date and time and later that day he advised the Tenant that they would come "on Friday".
- 41.7. On 11 September 2017, Craig Lawrie contacted the Tenant again to say that the Inventory report had been returned to him and he would organise repairs that day with the Landlord. He said he would get back at lunchtime that day with timescales.
- 41.8. On 12 September Craig Lawrie said that the repairs were with a company called SPS which he had asked to contact the Tenant within 48 hours. They were instructed to repair the water and tap issues on arrival and look at treating the mould, which might take several visits.
- 41.9. On 21 September 2017 the Tenant emailed Craig Lawrie to say that SPS still had not been in touch with her regarding the repairs. Another Craig, Craig Laing, from the Landlord's Representative had come out to look at the House. Craig Laing told the Tenant to contact Craig Lawrie with another list of the repairs that required to be done. She listed the repairs still needing done, which included:
- 41.9.1. "bathroom mould",
 - 41.9.2. "hot water not working",
 - 41.9.3. "hot water tap in bathroom won't turn on" and
 - 41.9.4. "damp in bedroom".
- 41.10. On 14 October 2017 the Tenant emailed Craig Lawrie in relation to a serious incident with the boiler which had occurred on Thursday 12 October 2017. She advised the Landlord's Representative that she was in her bedroom and heard a really loud bang and when she looked into the living room it was full of really hot steam, which caused the fire alarm to go off. She knew it was the boiler, so she carefully switched it off and it took a minute or two for it to calm down. The steam was coming out of the kitchen sink, like a fire extinguisher and was also coming out of the shower drain. There was also smelly dirt from the drains which came up and went all over the kitchen. The water from the taps turned orange. The Tenant had expected the Landlord's Representative to send somebody out on 13 October but nobody had attended that day. She also repeated the fact that she had had no hot running water since she moved into the House in August. She said that she did not think that the Landlord's Representative was taking it seriously enough. An electrician had come two weeks before and removed the thermostat from the boiler and said that he would come back and replace it but that the boiler was safe to use in the meantime. The Tenant had called a week later to ask when he was coming back and also to report steam coming out of the drain and the tap being too hot to touch. At that time the Landlord's representative said that he would be out again within a few days. The Tenant called again, twice, and she was told again that the electrician would be out in a few days to fix it. Then the incident with the boiler exploding occurred on 12 October. She attached photographs to her email showing the mess that it had caused and she said that she was considering getting advice from

Citizens Advice because she did not think that matters were being taken seriously enough.

41.11. After 14 October 2017 the Tenant emailed the Landlord's representative again *[the tribunal noted that only the time and not the date is on the email printout which has been lodged with the Application]*. An employee from Aspect Electrical had attended with a part for the boiler/water heater. The Tenant advised Craig Lawrie what had happened during this visit, including the fact that the electrician had not been told by the Landlord's Representative about the incident on 12 October. He was unable to fit the new part because the boiler was not functioning at all. The Tenant repeated the fact that she had had no hot water since 16 August and was also waiting for the dampness and mould to be attended to. In her email she advised the Landlord's Representative that the House does not meet the repairing standard and as a result she had been in contact with the Edinburgh City Council, Citizens Advice and is now making a referral to the tribunal to get this sorted. That is the last email which was lodged as part of the Application paperwork.

42. In her oral representations the Tenant expanded on the issues raised in the correspondence, including events between October 2017 and the date of the hearing.

42.1. She said that when the lady from "No Letting Go" had come to the House to carry out the inventory she told the Tenant that the mould was present during the previous tenancy, as were some of the other repairs issues. As at the date of the hearing the Tenant still has not been provided with a copy of the Inventory.

42.2. With reference to the 12 Sept 2017 email from Craig Lawrie saying that SPS would look at tap and mould, the Tenant said that someone from SPS had come out, had taken a look and had reported back to the Landlord's Representative that they could not do anything about it. The Landlord's representative then got DGS to look at it. However, the repair was not carried out until the week of the hearing in February 2018.

42.3. The hot water tap was fixed and the boiler was replaced on Friday 3rd and Saturday 4th February.

42.4. There were no emails from the Landlord's representative after her email in October advising that the boiler exploded. Craig Lawrie left and no one told the Tenant. The Tenant sent further emails and they were not going to anyone.

42.5. The Tenant phoned the Landlord's Representative. Craig Wannacot got in contact with her and promised that things would get sorted out as he was taking over management. He looked at everything that needed to be done and within a month he left.

- 42.6. Whenever the Tenant phoned she either could not get through or was told that someone would phone back.
- 42.7. Her recent contact had been with Claire Chester, as described during the inspection.

43. Tenant's Response to Landlord's Representative's Written Submissions

- 43.1. The Tenant says that the Landlord's Representative has never told her that a lack of internal communications following a significant restructure has caused a delay in repairs taking place (as stated in page 1 of the written representations). She first found out about this when she saw the written representations. In her dealings with them, they would either not reply or say that they are waiting for the Landlord to get in contact with them.
- 43.2. The Tenant disputed that her complaint was first made on 12 September 2017 as stated in the Landlord's Representative's submissions. She repeated that her complaint was made the day after she moved in, by her email of 17 August 2017.
- 43.3. The Tenant said that there was an issue with different companies doing the work. She was told that SPS was doing the work. She was not given a number or a date and she could not contact them.
- 43.4. The Tenant said that she was not told that SPS would be unable to remove the mould, only treat it as stated in the representations. She remembers DGS coming round and having a look at the mould and telling her that it would have to be removed. The DGS contractor also told the Tenant that the bathroom floor would have to be replaced because it was damp. The Tenant also told him about the hot water issues as he had only been sent out to look at the mould. He told the Tenant that he would phone his boss about that as they have to go through Orchard & Shipman.
- 43.5. The Landlord's Representative has not mentioned her correspondence about the boiler explosion in its written representations.
- 43.6. With reference to page 2 of their representations, the Tenant said that she was never told about the restructure in the office. She presumes that is when the people she had been corresponding with left. She had no idea who her property manager was.
- 43.7. The Tenant said that the "further repair work" which the Landlord's Representative says was due to commence on 16 January actually commenced later. The works have been carried out as she described during the inspection and in her submissions. The hot water repair was only finished yesterday (5 February). She does now have a supply of hot water and both taps in the bathroom work. There was no work done to the bathroom floor as suggested in their written representations.

43.8. The Tenant said that the external works appear to be ongoing and incomplete. She has not had any updates. The contractors were in the garden yesterday (5 February 2018) but she does not know what they are doing.

43.9. The Tenant said that she has been told by DGS that someone will be coming back to do repairs to the wall heater in the living room. She thinks that they will replace it but no date has been scheduled for that.

43.10. She is waiting for a repair to the bathroom extractor fan.

Other matters dealt with at hearing

44. The Tenant was advised that the tribunal would issue a written Decision to parties following the hearing.

45. As noted during the inspection and hearing, on 17 August 2017 the Tenant notified a list of complaints to the Landlord's representative, some of which she advised were outstanding. The tribunal noted other potential repairing standard issues during the inspection. The Tenant was advised that the tribunal could not deal with these other issues in its Decision but that if the Tenant wished to do so, she could make another application to the tribunal in respect of any other repairs issues.

46. The tenant was also advised that the tribunal could not deal with financial claims for damage to property in relation to the schedule of loss that she had lodged.

Reasons for the Decision

47. The tribunal made the following findings-in-fact:

- a. The Landlord is the registered owner of the House.
- b. A tenancy exists between the Landlord and Tenant which started on 16 August 2017 and will expire on 16 August 2018.
- c. The Tenant took possession of the House on 16 August 2017.
- d. The provisions of Chapter 4 of Part I of the 2006 Act apply to the tenancy.
- e. On 17 August 2017 the Tenant first contacted the Landlord's representative with a list of repairs issues which included the issues which now form the basis of the Application to the tribunal.

- f. The Tenant continued to complain about the repairs issues to the Landlord's Representative by email and telephone.
- g. The Landlord's Representative instructed an electrician to inspect the boiler.
- h. In September or October 2017, the electrician removed the thermostat from the boiler and advised the Tenant that it was safe to use the appliance.
- i. The boiler exploded on 12 October 2017 causing an escape of hot steam in the House.
- j. In late January 2018 the mould was treated in the bathroom and bedroom and both rooms have been decorated so that there is no visible mould.
- k. The boiler was replaced on 3 and 4 February 2018.
- l. The House has had a hot water supply since 4 February 2018.
- m. The hot water tap in the bathroom was repaired on 4 February 2018.
- n. On 6 February 2018 there was condensation on the bedroom window which caused pooling of water on the window ledge.
- o. On 6 February 2018 the floor around the W.C. in the bathroom was wet and showed a high reading on a damp meter. The cause of the dampness is unknown.
- p. On 6 February 2018 the garden ground to the rear of the House had been excavated to expose sewage and drainage pipes. The purpose and duration of the works is unknown.

48. The tribunal is satisfied that in respect of the following items in the Application, as notified to the Landlord's Representative, the House does not meet the repairing standard:

48.1. The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the 2006 Act).

48.1.1. There is an area of damp flooring in the bathroom next to the W.C. with a high damp meter reading. The cause is unknown. The flooring was not replaced during the recent works which were carried out

in the bathroom. The cause of the dampness requires to be identified and remedial works are required to remove the dampness. The flooring requires to be repaired or replaced.

48.1.2. There are ongoing works to the sewage and drainage system in the rear common garden but the tribunal has not been made aware of the nature and timescale of these works and whether they are related to the dampness next to the W.C. Further explanation is required from the Landlord's Representative as to what investigations have been carried out, what findings have been made, what repairs have been done to date, what is being proposed and the timescale for the same.

49. In respect of the remaining items in the Application, no order was made for the following reasons:

49.1. The hot water heater has been replaced and the hot tap in the bathroom has been fixed so the House has a supply of hot water including hot water from the hot water tap in the bathroom.

49.2. The damp and mould in the bedroom has been treated and the walls have been redecorated.

49.3. The damp and mould in the bathroom has been treated and the walls have been redecorated.

49.4. It was observed during the inspection that there was a lot of condensation on the bedroom window (which was open at the time of the inspection) and there was a towel on the sill to soak the pooling water. The cause of the condensation could be lifestyle related. The Tenant confirmed that the window is left shut through the night due it being too cold to keep it open. The only heater in the bedroom is an electric oil-filled radiator. In the circumstances, the tribunal did not find that there was a failure to meet the repairing standard in relation to the condensation on the window.

50. Because the tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the repairing standard and have therefore issued a Repairing Standard Enforcement Order in terms of Section 24(2) of the 2006 Act.

Repairing Standard Enforcement Order (RSEO)

51. The tribunal made a RSEO.

52. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 30 days having regard to the length of time for which these works have been outstanding, since the first day of the tenancy

Observations

53. As noted above, there are other repairs issues which were included in the Tenant's notifications to the Landlord but not included in the Application and the Landlord's Representative's written submissions included details of outstanding works, in particular the replacement of the extractor fan in the bathroom and the electric panel heater in the lounge. Some, or all, of these repairs issues could form the basis of another application to the tribunal should the Tenant so wish.

54. The tribunal observes that the EICR dated 17 March 2015 included an overall assessment of the electrical installation as being unsatisfactory as at that date and indicated that remedial work was required, with four items requiring urgent remedial work and one recommended improvement. It is not known if the Landlord or the Landlord's Representative have attended to these matters in the period since 17 March 2015. If they have not done so, then the issues could form the basis of another application to the tribunal should the Tenant so wish.

Right of Appeal

55. 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

56. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S Tanner

Signed
Chairperson of the tribunal

.....Susanne L M Tanner, Queen's Counsel

Date 26 February 2018

Housing and Property Chamber First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

PROPERTY: 16 CLERMISTON GROVE, EDINBURGH

REFERENCE: FTS/HPC/RP/17/0441

DATE: 6TH FEBRUARY 2018

PHOTOGRAPHS: ALL PHOTOGRAPHS TAKEN ON DAY OF INSPECTION



1. FRONT ELEVATION



2. REAR ELEVATION



3. AREA BESIDE WC CLEARED OF MOULD

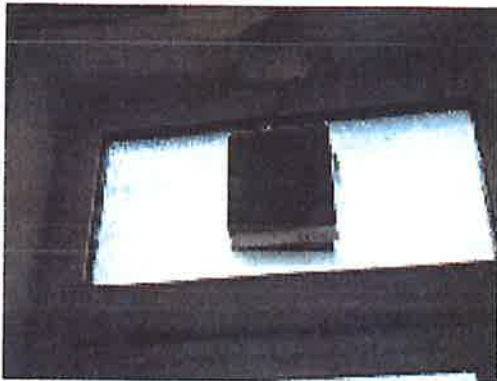


4. HIGH LEVEL OF DAMPNES IN FLOOR BESIDE WC

This is the Schedule of Photographs referred
to in the foregoing tribunal decision of
26 February 2018.

S Tanner

SUSANNE L M TANNER Q.C.
26 February 2018



5. VENTILATOR IN SHOWER RM WINDOW



6. SLIGHT DAMP IN FLOOR AT SHOWER TRAY



7. WASH BASIN HOT TAP OPERATING



8. HOT WATER BOILER UNDER KITCHEN SINK



9. ELECTRIC RADIATOR IN LIVING ROOM



10. COMBINED HEAT/SMOKE DETECTOR IN LR/K'ETTE



11. CONDENSATION ON BEDROOM WINDOW



12. WALLS IN BEDROOM CLEARED OF MOULD



13. REAR WALL IN BEDROOM CLEARED OF MOULD



14/15. EXCAVATION OF DRAINAGE SYSTEM AT REAR ELEVATION