

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Reasons for decision for failure to comply with the Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 section 26 (“the Act”)

Chamber Ref: PRHP/RP/16/0310

Property: 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the property”)

Title Number: MID30943

The Parties:-

Mr Robert Slominski, 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the tenant”)

Mr David Ross, Housing and Regulatory Services, City of Edinburgh Council, City Chambers, 249 High Street, Edinburgh, EH1 1YJ (“the third party”)

Shercor Limited having their registered office at 32 Sir William Wallace Wynd, Aberdeen, AB24 1UW and Ms Lynn Anderson, 1, Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the landlords”)

The tribunal members:

Simone Sweeney (legal chairing member) and David Godfrey (ordinary surveyor member)

Decision

Having made such enquiries as are fit for the purposes of determining whether or not the landlords have complied with the Repairing Standard Enforcement Order (“the RSEO”) the tribunal determines that the landlords have failed to comply with the terms of the RSEO of 23rd February 2017. The tribunal determines that a notice of that failure be served on the local authority.

Background

1. Reference is made to the terms of the RSEO dated 23rd February 2017 issued by the tribunal.
2. The RSEO required the landlords to carry out the following works to the property:
 1. *To repair or replace the windows of the living room to ensure that they are wind and water tight.*
 2. *To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
 3. *To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
 4. *To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
 5. *To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*
3. The tribunal ordered the works, specified in the RSEO, to be carried out and completed within the period of 42 days from the date of service of the RSEO.
4. A re-inspection of the property was undertaken by the surveyor member of the tribunal on 19th May 2017. The findings of the surveyor were set out in his report of 19th May 2017. Reference is made to the terms of the report, a copy of which is attached.
5. Following his re-inspection on 19th May 2017, the surveyor found that no repairs had been carried out at the property.
6. A copy of the surveyor's report of 19th May 2017 was shared with the parties. The landlords responded to the report on 20th June 2017.
7. In response to the report the landlords stated that they did not agree with the findings of the surveyor's re-inspection report. By way of explanation it was

stated that, *"the inspection does not address the common areas of the property. The fabric of the property is under shared ownership."*

8. By way of explanation for the failure to complete the works necessitated by the RSEO, the landlords stated that this was because of, *"weather conditions and suitable access."*
9. Other relevant information which the landlords felt the tribunal should know before making its decision was noted as, *"felt missing from common area, cracked tiles on common roof and gutter leaking. All common areas."*
10. The landlords opposed a Rent Relief order being issued because the *"tenant has not complained."*
11. The landlords requested another hearing in the written response.
12. A second re-inspection and hearing was assigned for Monday 11th December 2017.
13. In attendance at the second re-inspection was the tenant; neighbour Katarzyna Neumann who resides in the property below the tenant at flat 5/1; Malei Wong, landlord of flat 5/1 and the tribunal members. There was no appearance by the landlords nor representation on their behalf.
14. Both Katarzyna Neumann and Malei Wong advised the tribunal that the property at Flat 5/1 had sustained damage from water ingress from the tenant's property during the course of the preceding few years. Reports had been made to the local authority. Ms Wong advised the tribunal that she had raised the issue with the landlords but their response was that the water was coming from the roof of the building which was common property and the responsibility of the local authority. Ms Wong and Katarzyna Neumann confirmed that there had been no issues with water ingress at Flat 5/1 for some months.

15. The tribunal identified that there had been no repairs undertaken to the living room window or the door in the living room leading to the balcony.
16. On the balcony of the property, the tribunal identified that a grey coloured water proof sealant had been applied to the decking of the balcony, on the lower part of the wall below the living room window and around the exterior of the doorway leading into the living room of the property.
17. The tribunal identified that black bitumen remained on the surface of the balcony base and on the wall below the living room. The grey water proof sealant appeared to have been applied over parts of the black bitumen.
18. The findings of the second inspection including photographs are contained in the report of the surveyor member dated 11th December 2017. A copy of this report is attached.
19. A hearing took place at George House, 126 George Street, Edinburgh on 11th December at 11.30am. There was no attendance by or representation on behalf of any of the parties at the hearing.
20. In reaching its decision, the tribunal considered its findings from the second inspection and the written representations of the landlords in their written response of 20th June 2017.
21. The tribunal found no evidence of any works having been taken to repair or replace the windows at the living room.
22. The tribunal found no evidence of any works having been taken to repair or replace the door and door frame leading from the living room to the balcony.
23. The tribunal was not satisfied that there had been any repairs undertaken to ensure that the window of the living room was fully operational.

24. The tribunal accepts that the landlords had applied water proof sealant to parts of the walls and decking of the balcony. However, the tribunal found no evidence that the flashing at the foot of the exterior wall of the balcony had been replaced. The tribunal was not of the view that the landlords had made the property wind and water tight. The water proof sealant does not satisfy the terms of the RSEO.
25. The tribunal found no evidence that the landlords had re-pointed the exterior face of the brick infill below the living room window to ensure that the property was wind and water tight.
26. The tribunal did not consider that any of the reasons set out in the landlords' written representations of 20th June 2017 provided a satisfactory justification for their failure to carry out the works. The areas specified within the RSEO as requiring repairs are not common parts of the building. All repairs were particular to the property over which the landlords have responsibility. The RSEO was issued in February 2017. The landlords have had a period of 11 months to carry out the works. Inclement weather conditions and finding a suitable time to access the property are not a sufficient reason for the landlords' failure. The application before the tribunal is brought by a third party. The fact that the tenant has made no complaints to the landlords is irrelevant. The property has been inspected on three occasions since February 2017. On each occasion the tribunal has been satisfied that the property does not meet the repairing standard.
27. No request has been made by the landlords requesting further time to complete the works. There is no requirement on the tribunal to consider a variation of the RSEO in terms of section 25(3) of the Act.
28. The tribunal found that the terms of the RSEO had not been met. The landlords had not completed the works required by the RSEO. The tribunal determines that the landlords have failed to comply with the RSEO without reasonable excuse. In terms of section 26(2) of the Act the tribunal is obliged

to serve notice of the failure on the local authority. The tribunal resolves to do so.

29. Section 26(2) requires, also, that the tribunal gives consideration as to whether or not a Rent Relief Order should be issued. In view of the fact that the property is occupied; that the works are significant; and that the landlords have made no serious effort to satisfy the terms of the RSEO, the tribunal determines it appropriate to issue a Rent Relief Order. The tribunal orders a reduction of the rental charge at the rate of 75% in the circumstances.

30. The decision of the tribunal was unanimous.

Appeal provisions

31. 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.

32. 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 Sweeney

Simone Sweeney, Legal chairing member, 19th December 2017

Housing and Property Chamber First-tier Tribunal for Scotland



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

Rent Relief Order under section 27 of the Housing (Scotland) Act 2006 as amended (“the Act”)

Chamber Ref: PRHP/RP/16/0310

Property: 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the property”)

Title Number: MID30943

The Parties:-

Mr Robert Slominski, 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the tenant”)

Mr David Ross, Housing and Regulatory Services, City of Edinburgh Council, City Chambers, 249 High Street, Edinburgh, EH1 1YJ (“the third party”)

Shercor Limited having their registered office at 32 Sir William Wallace Wynd, Aberdeen, AB24 1UW and Ms Lynn Anderson, 1, Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the landlords”)

NOTICE TO THE LANDLORD

Whereas in terms of its decision dated 23rd February 2017, the tribunal determined in terms of section 26(1) of the Act that the landlords have failed to comply with the Repairing Standard Enforcement Order (“RSEO”) made by the tribunal in relation to the property.

The tribunal determined to make a Rent Relief Order in terms of Section 27 of the Act reducing the rent payable under the tenancy for the house by an amount of 75% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the Act. To ascertain the last date on

which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

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.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

S Sweeney

Legal chairing member

L Wardlow

Laura Wardlow

Case worker, First Tier Tribunal (Housing and Property Chamber) 1, Atlantic Quay,
45 Robertson Street, Glasgow, G2 8JB

19th December 2017



RE-INSPECTION REPORT



Property: FLAT 7, 1 SOUTHOUSE SQUARE, EDINBURGH, EH17 8DN

Ref no: PRHP/RP/16/0310

Surveyor: David Godfrey

Inspection: The property was inspected at 4.00 pm Friday 19th May 2017.

Access: Mr. Slominski (Tenant) was present and provided access to the property.

Shercor Ltd was not represented.

Access to Flat 5, 1 Southouse Square, was provided by the occupier, Katarzyna Neumann.

Repairing Standard Enforcement Order:

the tribunal now requires the landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 landlords:-

1. *To repair or replace the windows of the living room to ensure that they are wind and water tight.*

2. *To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
3. *To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
4. *To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
5. *To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*

The tribunal order that the works specified in this Order must be carried out and completed within the period of 42 days from the date of service of this Notice.

General Remarks:

The property was initially inspected at 10.00 am Friday 10th February 2017 by Simone Sweeney and David Godfrey.

Works in Repairing Standard Enforcement Order completed since original inspection:

1. The balcony decking has been partially painted with a water proof sealant.

Works in Repairing Standard Enforcement Order outstanding following re-inspection:

1. No repairs appear to have been carried out to the living room windows.
2. No repairs appear to have been carried out to the living room door/frame.
3. The living room window is not fully operational.
4. The flashing at the foot of the exterior wall of the balcony has not been replaced.
5. The exterior face of the brick infill below the living room window has not been repointed.

Photographs

1. Lounge window interior
2. Lounge window exterior
3. Lounge door – exterior detail
4. Lounge door – flashing at threshold
5. Balcony flashing
6. Balcony flashing (2)
7. Open joints in brickwork below Lounge window
8. Ceiling of flat below
9. Ceiling of flat below (2)



Lounge window interior



Lounge window exterior



Lounge door – exterior detail



Lounge door – flashing at threshold



Balcony flashing



Balcony flashing (2)

S Sweeney



Joints in brickwork below Lounge window



Ceiling of flat below



Ceiling of flat below (2)

David Godfrey, MRICS

19th May 2017

S Sweeney



2nd RE-INSPECTION REPORT



Property: FLAT 7, 1 SOUTHOUSE SQUARE, EDINBURGH, EH17 8DN

Ref no: PRHP/RP/16/0310

Tribunal: Simone Sweeny and David Godfrey

Inspection: The property was inspected at 10.00 am Monday 11th December 2017.

Access: Mr Slominski (Tenant) was present and provided access to the property.

Shercor Ltd was not represented.

Repairing Standard Enforcement Order:

the tribunal now requires the landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 landlords:-

1. *To repair or replace the windows of the living room to ensure that they are wind and water tight.*

2. *To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
3. *To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
4. *To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
5. *To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*

The tribunal order that the works specified in this Order must be carried out and completed within the period of 42 days from the date of service of this Notice.

General Remarks:

The property was initially inspected on Friday 10th February 2017 by Simone Sweeney and David Godfrey. The first re-inspection of the property was carried out by David Godfrey on Friday 19th May 2017

Works in Repairing Standard Enforcement Order completed since original inspection:

1. The balcony decking has been partially painted with a water proof sealant.

Works in Repairing Standard Enforcement Order outstanding following second re-inspection:

1. No repairs appear to have been carried out to the living room windows.
2. No repairs appear to have been carried out to the living room door/frame.
3. The living room window is not fully operational.
4. The flashing at the foot of the exterior wall of the balcony has not been replaced.
5. The exterior face of the brick infill below the living room window has not been repointed.

Photographs

1. Lounge window interior
2. Lounge window exterior
3. Lounge window exterior (2)
4. Lounge door – exterior detail
5. Lounge door – flashing at threshold
6. Balcony flashing
7. Balcony flashing (2)
8. Open joints in brickwork below Lounge window
9. Balcony
10. Balcony (2)



Lounge window interior



Lounge window exterior

S Sweeney



Lounge window exterior (2)



Lounge door – exterior detail



Lounge door – flashing at threshold



Balcony flashing

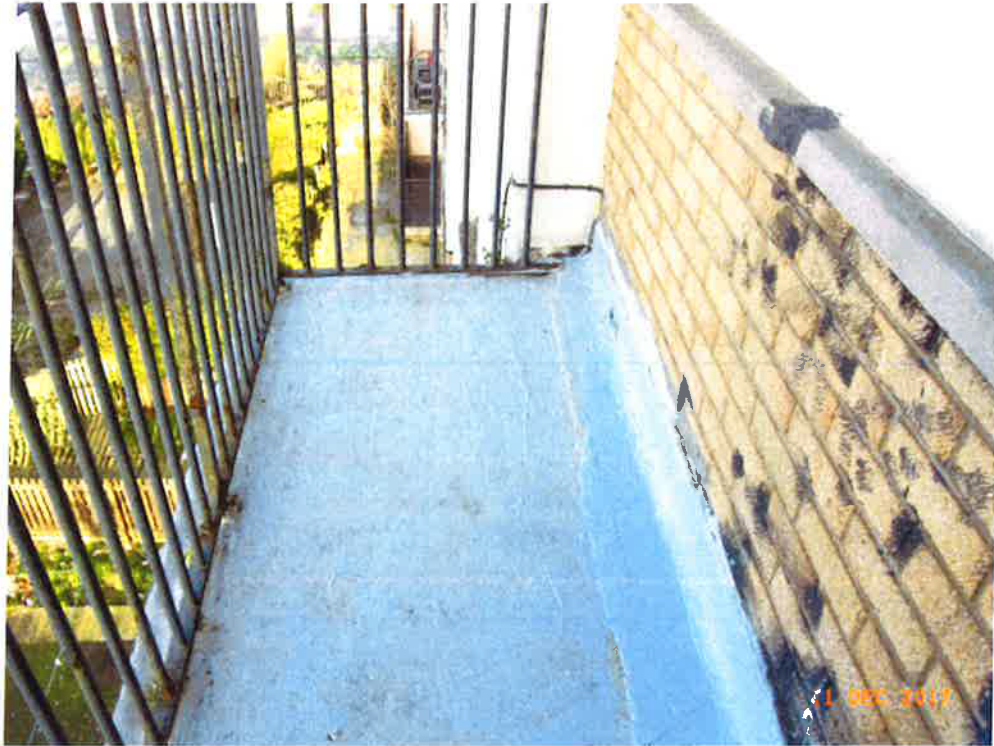
S Sweeney



Balcony flashing (2)



Joints in brickwork below Lounge window



Balcony



Balcony (2)

David Godfrey, MRICS

11th December 2017

S Sweeney