

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: FTS/HPC/RP/16/1014

Property: the ground floor flat situated at and known as 10 Harefield Drive, Glasgow, G14 9AW, being the subjects registered in the Land Register of Scotland under Title Number: GLA20538 ("The Property")

The Parties:-

Ms Jacqueline Canning, residing at 10 Harefield Drive, Glasgow, G14 9AW ("the Tenant")

and

Mr Rohit Sajwan and Mrs Seema Sajwan, both formerly residing at Flat 2/2, 1030 Argyle Street, Glasgow, G3 8LX, and now residing at 857 Sector 22, Faridabad Haryana India, 121005, India ("the Landlords")

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 Landlords have complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property concerned, and taking account of the evidence provided by both the Landlords and the Tenant in writing, together with the further evidence provided by the Tenant at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:-

Mr Andrew Cowan – Chairperson

Mr Nick Allan – Surveyor Member

Background

1. By application received by the Housing and Property Chamber on 2 December 2016, the Tenant applied for a determination of whether the Landlords have 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 states that the Tenant considers that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlord has failed to ensure that:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act);
- (b) The installations in the Property 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 (as required by section 13(1)(c) of the Act);
- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order (as required by section 13(1)(d) of the Act);
- (d) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed (as required by section 13(1)(e) of the Act);
- (e) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section 13(1)(f) of the Act); and
- (f) The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (as required by section 13(1)(g) of the Act).

3. The Tenant noted in her application that she considers that repairs are required to bring the Property up to the repairing standard. The Tenant alleges that:-

- (a) The window in the main bedroom has a hole in the pane and a large crack in it;
- (b) The small side window and entrance to the Property also has a crack in it;
- (c) The Landlords have not produced a gas safety certificate for the boiler after repeated requests;
- (d) The gas hob is not connected;
- (e) The ceiling light in the kitchen needs to be rewired and the spotlights in the kitchen have loose wires and do not work; and
- (f) There are no smoke detectors or carbon monoxide detectors in the Property.

4. By letter dated 23 December 2016, the President of the Housing and Property Chamber intimated a decision to all parties to refer the application under Section 22 (1) of the Act to a tribunal.
5. Following service of the Notice of Referral the Landlords, by email dated 25 January 2017, lodged written representations with the tribunal. The Tenant made no further written representations.
6. The tribunal inspected the Property on 2 February 2017. The Tenant was present during the inspection. The Tenant's Representative, Miss Louise McCarthy, Advice Worker, Shelter, Glasgow, was also present at the inspection as were the Tenant's mother and son. The Landlords did not attend the inspection and were not represented at the inspection.
7. Following the inspection of the Property the tribunal held a hearing at Wellington House, Wellington Street, Glasgow, G2 2XL. The Tenant attended at the hearing and gave evidence. The Tenant was accompanied at the hearing by her mother, Mrs Elizabeth Flavell and her sister, Miss Suzanne Graham. The Tenant gave evidence to the tribunal at the hearing. The Landlords did not attend at the hearing and were not represented at the hearing.
8. Photographs were taken during the inspection of the Property by the tribunal. Copies of the photographs taken by the tribunal are attached as a schedule to this report.

Findings of fact

9. The tribunal finds the following facts to be established:-

- (a) The Tenant of the Property is Ms Jacqueline Canning in terms of an Assured Tenancy Agreement between the parties dated 27 September 2015;

- (b) The joint owners of the Property are Mr Rohit Sajwan and Mrs Seema Sajwan. Mr & Mrs Sajwan. They are the Landlords of the Property in terms of the tenancy between the parties;
- (c) The tenancy between the parties was continuing as at the date of the hearing in relation to the Tenant's application;
- (d) In addition to the Tenancy Agreement between the parties, the parties had also signed a separate "mutual Agreement" in relation to the conditions of the Tenant's occupancy of the Property. The mutual Agreement between the parties was dated 27 September 2015;
- (e) In terms of emails dated 28 July 2016, 16 August 2016, and 13 October 2016, the Tenant's Representative, on behalf of the Tenant, intimated to the Landlords that work required to be carried out to the Property for the purposes of ensuring that the Landlords complied with the duties imposed by Section 14(1)(b) of the Act. The emails sent to the Landlords in this respect included lists of issues which required repair at the Property. Those issues which are identified further at paragraphs (f) to (p) (below) have all been intimated to the Landlords;
- (f) Within the bathroom of the Property, the tiling on the wall above the bath has been removed. The taps to the bath have two shower attachments, each of which leak water from the pipe serving the shower attachment when used. When the shower is used, water is able to run down the back of the bath at the wall;
- (g) Within the cupboard in the hall of the Property, there is a small window which is cracked. In addition, there is a small hole in the cement work in the inner door frame within the cupboard;
- (h) Within the kitchen of the Property, there is a gas hob which is not connected to a gas supply and is not capable of operation. Two of the spotlights in the kitchen are not operational. The ceiling light within the kitchen is not operational. There are no kick panels on the bottom of the kitchen

units. There is a gas boiler situated in the kitchen. There is a label on the boiler which states that it was installed on the 16 April 2014. There is a carbon monoxide detector situated within the Kitchen. The carbon monoxide detector is operational;

- (i) Within the larger of two bedrooms within the Property, there is a hole in one of the panes of glass within the sealed double glazed window unit;
- (j) Within the second smaller bedroom of the Property, certain of the doors of the fitted wardrobes are difficult to operate and one of the wardrobes has no hanging rails;
- (k) Within the hallway of the Property, there is no temperature valve on the heating radiator;
- (l) Within the lounge of the Property, the rubber seal around the glass window pane is in a poor condition. The windows are not wind tight and the Property is affected by draughts entering the Property where the seals around the window have failed;
- (m) There is a battery operated smoke detector on the ceiling of the lounge in the Property. This smoke detector has no battery;
- (n) There is a battery smoke detector in the smaller bedroom within the Property. This detector had a battery, but was not operational;
- (o) Certain electrical sockets throughout the Property were loose and one part of a dual socket within the lounge was not operational;
- (p) The Tenant has not been supplied with a gas safety certificate or an Electrical Installation Condition Report in relation to the Property, either at the time that she took entry to the Property or during the period of the tenancy.

Reasons for the decision

10. (a) The Tenant has complained that the entire wall next to the bath is without tiles, that the bath is not sealed around the edge and that water may be running down the wall to cause dampness. The Tenant further complains that the main shower attachment has a significant leak in the hose supplying that shower and that second hand held shower head also has a leak in the mixer section of the tap. The tribunal noted that tiling had been removed from the wall of the bathroom. The Tenant explained that the tiles had been removed during the term of the tenancy. The Tenant gave evidence to the tribunal that the tiling had partially been removed by a Mr Paul Wright, who was acting on the instructions of the Landlords. The tribunal noted that in an email dated 15 August 2016, the Landlords had acknowledged that "except of gas hob and bathroom tiles the Property was handed over to her in very good shape". By email to the Tenant's Representative, dated 16 August 2016, the Landlords had stated that "only bath tiles and gas hob was pending". The Landlords have made reference to the bath tiles in a number of emails with the Tenant and the Tenant's Representative. The Landlords have accepted that they have responsibility for ensuring that the tiling above the bath is repaired. The tribunal noted from their own inspection that the mixer tap and shower attachments are not in a reasonable state of repair and in proper working order, and that water is likely to leak as a result of no seal between the bath and the bathroom wall.

In all the circumstances, the tribunal determined that the installations for the supply of water and sanitation within the bathroom were not in a reasonable state of repair and in proper working order. The tribunal further determined that the bathroom wall, being part of the structure and exterior of the Property was not in a reasonable state of repair as it required to be properly retiled. The tribunal accordingly determined that there was a failure of the repairing standard in this respect.

- (b) The tribunal noted that there was a crack in the small window in the hall cupboard of the Property. The tribunal did not consider that the crack in the window was significant, having regard to its very small size. The window was capable of being used and there was no failure of the repairing standard in this respect. The tribunal further noted there was a small hole in the cement work within the door frame within the cupboard in the hall. The tribunal did not consider this matter was significant and there was no failure of the repairing standard in this respect.
- (c) The tribunal noted that the gas hob within the kitchen was not functioning as it was not connected to a gas supply. The Tenant explained in her evidence, at the hearing, that, following her entry to the Property, a new electric cooker had been installed by Mr Paul Wright, on behalf of the Landlords. Mr Wright also installed the gas hob, but it had not been connected to the gas supply as Mr Wright explained to the Tenant he was not qualified to carry out a gas installation. In emails from the Landlords to the Tenant's Representative, the Landlords have accepted that they have responsibility for providing the Tenant with an operational gas hob. The gas hob is an installation in the Property for the supply of gas and is not in a reasonable state of repair and in proper working order.
- (d) The tribunal noted that the boiler in the Property appeared to have been installed on the 16 April 2014. The Tenant explained in her evidence, at the hearing, that she has never been given a gas safety certificate in relation to the Property as required under current legislation. The tribunal accordingly determined that, without a gas safety certificate, there was no clear evidence the installations within the Property for the supply of gas were in a reasonable state of repair and in proper working order.

- (e) The tribunal noted that two of the spotlights within the kitchen were not operational. The ceiling light within the kitchen was not operation. The Tenant gave evidence to the tribunal that she had changed the bulbs in these electrical fittings, but she could not get them to operate. As fittings supplied by the Landlords under the tenancy, the tribunal determined that these light fittings were not in a reasonable state of repair and in proper working order.
- (f) The tribunal noted that the Tenant had complained that there was no operational carbon monoxide detector within the Property. The tribunal had noted from their own inspection that there was a carbon monoxide alarm which was appropriately located in the kitchen where the gas boiler and the gas hob were situated. The carbon monoxide alarm was tested by the tribunal and appeared to be operational. The tribunal found that there was no failure of the repairing standard in relation to this matter.
- (g) Within the large bedroom of the Property, there is a hole in the external pane of a sealed double glazing unit within the main window in the bedroom. The window is also cracked. The window within the Property, being part of the structure of the exterior of the Property is not in a reasonable state of repair and in proper working order.
- (h) Within the smaller bedroom of the Property, the tribunal noted that doors of the fitted wardrobes were difficult to operate and there were no hanging rails within one of the wardrobes. The tribunal did not, however, consider that these matters were significant and found that the fittings and fixtures of the wardrobe were generally in a reasonable state of repair and in proper working order.
- (i) The tribunal noted that there was no temperature valve on the radiator within the hall. This prevented the temperature of radiator from being controlled. The radiator was part of an installation in the Property for the supply of space heating and is not in a reasonable state of repair and in proper working order.

- (j) The tribunal had noted that the seals around the windows within the living room of the Property were in poor condition and in some areas had failed. As a consequence, the living room suffered from draughts through the windows. The tribunal found that, as a consequence, the Property was not wind tight and did not meet the repairing standard in this respect.
- (k) The tribunal noted that insulations around the wires leading to the central pendant light fitting within the Property were exposed. They further noted that certain of the electrical sockets within the Property appear to be loose and at least one was not functioning correctly within the lounge of the Property. The tribunal further noted from the evidence of the Tenant that no Electrical Installation Condition Report had been made available to her during the period of the tenancy and as required by section 19A(3) of the Act. The tribunal were not satisfied that installations for the supply of electricity were in a reasonable state of repair and in proper working order and that they currently fail the repairing standard.
- (l) The tribunal had noted at the inspection that there was one battery operated smoke detector within the lounge of the Property and one battery operated smoke detector within the smaller bedroom of the Property. Neither of these detectors appear to be functioning and one detector (in the lounge) had no battery. The tribunal were not satisfied that there was a sufficiency of evidence to establish that the installations in the Property for the provision for detecting fires and for giving warning in the event of fire or suspected fire were in a reasonable state of repair and in proper working order.

11. The Landlords made written representations to the tribunal by email dated 25 January 2017. The Landlords supplied copies of photographs taken at the time the Tenant took entry to the Property. The Landlords indicated in their email of 25 January 2017, that they recognised that “work needs to be done”. The Landlords indicated that they had been unable to address certain of the repairs as they were not able to finance the necessary works. The role of the tribunal is to determine whether the Property meets the repairing standard. The tribunal must require the Landlords to carry out works to ensure that the Property is brought up to that standard. The tribunal are not able to take into account the Landlords’ financial situation. The Landlords further suggested that the Tenant owed some rent and that in terms of a separate Agreement, executed at the time the Tenant took up the tenancy of the Property, the Tenant agreed to carry out certain works within the Property. The tribunal determined that the Landlords is not entitled to contract out of their responsibilities to maintain the Property at the repairing standard and that the Landlords’ submissions in this respect were irrelevant. In general, the tribunal determined that the Landlords’ written submissions to the tribunal were irrelevant to the question of whether the Property met the repairing standard.

Decision

12. The tribunal accordingly determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

13. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

14. The decision of the tribunal was unanimous.

Right of Appeal

15. 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

16. 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.

Signed .
Andrew Cowan, Chairperson

Date 10 February 2017

Witness
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

Photograph Schedule

Inspection of

10 Harefield Drive, Glasgow, G14 9AW

Case Ref: FTS/HPC/RP/16/1014 2nd Feb 2017

WEATHER CONDITIONS – Damp and overcast.

PHOTOGRAPHS – All photographs were taken at the time of the inspection.

DESCRIPTION OF SUBJECTS – The subjects comprise a ground floor flat in a 4-in-a-block detached property constructed circa 1935. The internal accommodation extends to 3 apartments, kitchen and bathroom (2 bedrooms).



(Ph1) F/Elevation – Lower left flat



(Ph2) R/Elevation – Lower right flat



(Ph3) S/Elevation – Entrance door



(Ph4) Bathroom (B/R)



(Ph5) B/R – Missing tiles/bath seal



(Ph6) B/R – Missing tiles



(Ph7) B/R – Attempt to secure tile



(Ph8) B/R - Cascading water from S/H



(Ph9) B/R – Exposed C/L fitting



(Ph10) B/R – C/L not suitable for room



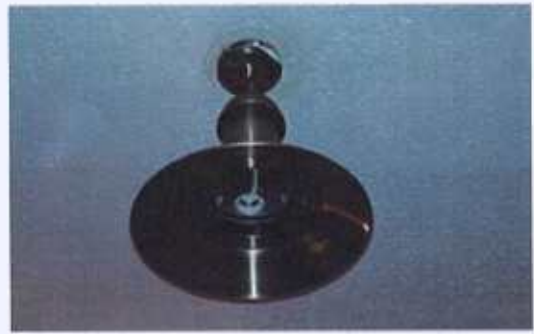
(Ph11) H/C – Cracked glazing



(Ph12) Kitchen – Non-functioning hob



(Ph13) Kitchen – 1 of 2 N/F down-lighters



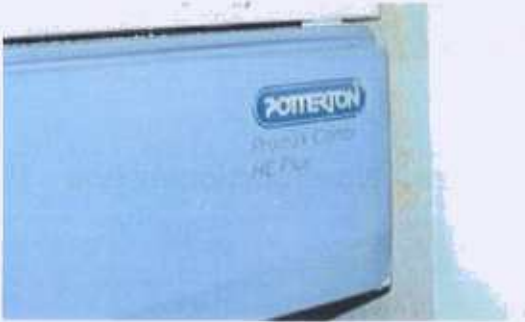
(Ph14) Kitchen – N/F Ceiling light



(Ph15) Kitchen – Patch behind sink



(Ph16) Kitchen – Boiler + pipework



(Ph17) Kitchen – Boiler



(Ph18) Bed 1 – Broken outer glass pane



(Ph19) Bed 1 – Window sill



(Ph20) Bed 1 – Operational ceiling light



(Ph21) Bed 2 – Fitted wardrobe door (Ph22) Hallway – missing radiator valve

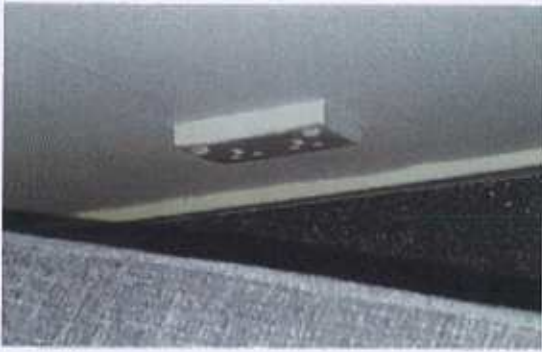


(Ph23) Hall – Socket and telephone point (Ph24) Lounge – Window seal



(Ph25) Lounge – Window seal

(Ph26) Lounge – Ceiling light wiring



(Ph27) Lounge – Part working socket (Ph28) Lounge – Smoke alarm on ceiling



(Ph29) Bed 2 – Smoke alarm on ceiling

(Ph30) Kitchen – CO detector

B/R - Bathroom C/L – Ceiling light S/H - Showerhead N/F – Non-functioning
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Nick Allan

Surveyor member

2nd February 2017

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber) Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24)

Chamber Ref: FTS/HPC/RP/16/1014

Property: the ground floor flat situated at and known as 10 Harefield Drive, Glasgow, G14 9AW, being the subjects registered in the Land Register of Scotland under Title Number: GLA20538 ("The Property")

The Parties:-

Ms Jacqueline Canning, residing at 10 Harefield Drive, Glasgow, G14 9AW ("the Tenant")

and

Mr Rohit Sajwan and Mrs Seema Sajwan, both formerly residing at Flat 2/2, 1030 Argyle Street, Glasgow, G3 8LX, and now residing at 857 Sector 22, Faridabad Haryana India, 121005, India ("the Landlords")

NOTICE TO

Mr Rohit Sajwan and Mrs Seema Sajwan, both formerly residing at Flat 2/2, 1030 Argyle Street, Glasgow, G3 8LX, and now residing at 857 Sector 22, Faridabad Haryana India, 121005, India ("**the Landlords**")

Whereas in terms of their decision dated 10 February, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the Landlords have failed to ensure that:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property 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;
- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (d) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;

- (e) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and

The tribunal now requires the Landlords to carry out such works as are necessary for the purposes of ensuring that the Property 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 to:-

- (a) carry out such works as are necessary to the wall adjacent to the bath in the Property so that it is in a reasonable state of repair and appropriately tiled, so that a watertight seal is provided between the bath and the wall of the Property;
- (b) carry out such works as are necessary to repair or renew the mixer tap and shower system attached to the bath in the Property so that they are in a reasonable state of repair and in proper working order;
- (c) carry out such works as are necessary to repair and/or replace the gas hob in the kitchen in the Property so that it is in a reasonable state of repair and in proper working order;
- (d) carry out such works as are necessary to the spotlights in the kitchen and the central ceiling light within the kitchen so that they are in a reasonable state of repair and in proper working order;
- (e) carry out such works as are necessary to repair and/or renew the window in the large bedroom of the Property so that it is in a reasonable state of repair and in proper working order;
- (f) carry out such repairs as are necessary to the radiator in the hallway in the Property so that the temperature valve of the radiator is functioning, the radiator temperature can be controlled, and the radiator is in a reasonable state of repair and in proper working order;
- (g) carry out such works as are necessary to the windows within the lounge of the Property so that they are wind tight and in a reasonable state of repair and in proper working order;
- (h)(i) commission a certified Electrical Installation Condition Report (EICR) AND Portable Appliance Test (PAT) on the entire electrical installations of the Property and all electrical appliances and equipment supplied by the Landlords, which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor; and

- (ii) carry out such works as are necessary to rectify any identified issue in the Electrical Installation Condition Report and provide the tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (i) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government guidance for the satisfactory provision for the detection and warning of fires and current building regulations; and
- (j) carry out such works as are necessary to obtain a gas safety record in respect of the Property by a gas safe registered plumbing and heating engineer which shows that the boiler, all associated pipework, radiators and other gas appliances (including the gas hob) have been checked, repaired as necessary and are in a safe and proper working order.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice.

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 a Repairing Standard Enforcement Order (“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 present type written on this and the preceding two pages only are executed by Andrew Cowan, chairperson of the tribunal at Glasgow on 10 February 2017 before this witness:-

A Cowan

Signed
Andrew Cowan, chairperson

Witness

Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

