

Housing and Property Chamber

First-tier Tribunal for Scotland



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

(Hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/20/0886

Re: 12 Lesmuir Drive, Scotstoun, Glasgow, G14 0EQ (“ the house”)

Land Register Title No: GLA203934

The Parties:

Miss Karen Grant, residing at the house (“The tenant”)

Mrs Nirmal Kaur Sumal and Mr Joghinder Singh Sumal, 15 Wyvis Avenue, Bearsden G61 4RD (“The landlords”)

Tribunal Members – Sarah O'Neill (Legal Member) and Andrew McFarlane (Ordinary (Surveyor) Member)

Decision

The tribunal determined that the landlords have failed to comply with the Repairing Standard Enforcement Order.

The tribunal’s decision was unanimous.

Background

1. On 30 August 2021, the tribunal issued a determination that the landlords had failed to comply with their duties under Section 14(1) (b) of the Act. On the same date, the tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the house.
2. The RSEO required the landlords to:

1. Adjust, repair and replace as necessary the pipework below the kitchen sink to ensure that water from the overflow discharges into pipework connected to the drainage system and on completion all is free from leakage.
2. Adjust, repair and replace as necessary the pipework connecting the WC to the drainage pipework passing through the outer wall to ensure it discharges correctly and is free from leakage. Ensure that the WC is firmly fixed to the floor to prevent strain on pipe joints during normal usage. Once the timber floor boards have dried out, check to ensure that their structural integrity is not compromised. If the structural integrity is compromised, repair or replace any affected sections of timber boards as necessary.
3. Adjust, repair or replace the taps to the bathroom sink as necessary to ensure that these are secured in position and are in proper working order and operate as intended.
4. Remove existing damaged inner windowsill on the stairway in the hall and replace this in a form and style similar to that which existed before the damage occurred.
5. Adjust, repair and replace as necessary roof coverings, gutter linings and rainwater pipework in the area behind the parapet wall at the front of the house such that rainwater is collected and discharged to the rainwater drainage system, and ingress to the interior of the property is prevented, to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.
6. Remove all water damaged areas of wall and ceiling linings in the upstairs front bedroom and the living room. Uplift floor coverings to expose floorboards, and if required floor structures, in areas adjacent to damaged walls and ceilings. Dry out the underlying structure. Reinstall floorboards if necessary. Reinstall wall and ceiling linings to match what previously existed.
7. Replace the floor covering in the front bedroom to ensure that it is in a reasonable state of repair and in proper working order.
8. Infill the hole in the ceiling of the rear bedroom to ensure that the ceiling is wind and watertight.
9. Clean, ease and adjust the operating mechanism to the opening sashes in the back (upstairs) bedroom window as required, to enable them to operate without the need for undue force to be applied, ensuring that the window is in a reasonable state of repair and in proper working order.

10. Adjust, repair or replace either elements of the front door or the entire front door to ensure there is an intact, secure letter plate mechanism, a complete, operational and secure locking system and the door leaf does not foul the frame.
11. Adjust the skirting (plinth) below the main row of base units (below oven/hob and adjacent units) in the kitchen as required, and provide fixings to secure this in place.
12. Replace the doors to the two upstairs bedrooms with fully operational doors complete with necessary ironmongery. If glazing is to be incorporated, this should be of toughened glass.
13. Replace missing sections of uPVC trim above window frame in downstairs rear bedroom. Ensure that these are properly fixed and sealed to the surrounding walls and window frame.
14. Adjust or replace the vinyl floor covering in the bathroom to ensure any unevenness is eliminated.
15. Provide sections of laminate flooring in the kitchen to infill the gaps currently existing. Such laminate should match in size and thickness the existing flooring and leave a level and even surface.
16. Uplift, remove and replace water damaged sections of laminate flooring in the upstairs front bedroom. Such replacement laminate should match in size and thickness the existing flooring and leave a level and even surface.
17. Obtain a report from a suitably qualified engineer on the heating and hot water systems within the house. Provide a copy of the report to the tribunal for its approval. Once approved by the tribunal, implement any recommendations made in the report in order to ensure that the heating and hot water systems are in a reasonable state of repair and proper working order.
18. Engage a suitably qualified electrical contractor to carry out the works identified in the C2 and F1 observations in the EICR dated 17 May 2021 in respect of the house, including those relating to the ceiling light fittings. Provide written confirmation from a registered electrical contractor on completion of these works that the entire electrical installation is in a satisfactory condition.
19. Supply and fit a replacement clip to retain the inner pane of glass in the oven door to ensure that is safe and in a reasonable state of repair and in proper working order.

20. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal ordered that all of the works specified in the RSEO must be carried out and completed within the period of 12 weeks from the date of service of the RSEO.

3. The tribunal carried out a re-inspection of the house on 16 December 2021. A copy of the tribunal's re-inspection report of that date is attached to this decision. The findings of the tribunal in relation to each item of the RSEO are set out below.

Findings in fact

4. As a result of the re-inspection, the tribunal made the following findings in fact. Reference is made within each finding to the appropriate photograph in the reinspection report:

1. The pipework below the kitchen sink had been adjusted so that the overflow is connected to the drainage system. No signs of leakage were noted. [**Photo 1**]
2. The pipework connecting the WC to the pipework passing through the outer wall was noted to be leaking. [**Photo 2**]
3. The right hand tap (cold) to the bathroom sink was secure, whilst the left hand one (hot) was loose. [**Photo 3**]
4. The damaged inner windowsill on the stairway in the hall had been replaced and paint applied in a narrow band around. [**Photo 4**]
5. It was not possible to examine the roof coverings, gutter linings and rainwater pipework in the area behind the parapet wall at the front of the house. There was, however, no evidence of further water ingress. [**Photo 5**]
6. Water damaged areas of wall and ceiling linings in the upstairs front bedroom and the living room had been removed and reinstated. No evidence of the lifting of floor coverings was noted. The underlying floorboards and structure were not visible. [**Photos 6,7,8**]
7. The floor covering in the front bedroom had not been replaced. [**Photo 9**]
8. The hole in the ceiling of the rear bedroom had not been infilled. [**Photo 10**]
9. The operating mechanism of the opening sashes to the window in the rear bedroom had not been cleaned, eased and adjusted. [**Photo 11**]

10. No works had been carried out to the front door. [**Photos 12,13**]
11. The skirting (plinth) below the main row of base units (below oven/hob and adjacent units) in the kitchen had been adjusted. [**Photo 14**]
12. The doors to the two upstairs bedrooms had not been replaced.
13. The missing sections of uPVC trim above the window frame in the downstairs rear bedroom had been refixed but not sealed to the window frame. [**Photo 15**].
14. The vinyl floor covering in the bathroom had not been replaced or adjusted to eliminate unevenness. [**Photo 16**]
15. Sections of laminate flooring had been provided to infill gaps in the laminate flooring in the kitchen. [**Photo 17**]
16. Water damaged sections of laminate flooring in the upstairs front bedroom have not been replaced.
17. A copy of a report from a suitably qualified engineer on the heating and hot water systems within the house has not been provided to the tribunal for its approval.
18. Written confirmation from a registered electrical contractor, on completion of the works identified in the C2 and F1 observations in the EICR dated 17 May 2021, in respect of the house, including those relating to the ceiling light fittings, that the entire electrical installation is in a satisfactory condition had not been provided.
19. A replacement clip to retain the inner pane of glass in the oven had not been fitted. [**Photo 18**]
20. Decoration works appeared to have been carried out as follows:
 - a. Living room: Ceiling and three walls (not wall to rear bedroom).
 - b. Hall: Narrow band around new inner sill
 - c. Front Bedroom (upstairs): Part of ceiling and part of front wall from window to corner at mutual wall with adjacent property and small part of mutual wall. [**Photos 6,7,8,9**]
5. A copy of the re-inspection report was sent to the parties on 21 December 2021, together with a letter inviting them to send any written representations in response to the tribunal by 4 January 2022. A written representations form was enclosed with the letter. The letter also informed the parties that they may

request an oral hearing before the tribunal to provide evidence in support of their written response to the report in writing within 7 working days. The letter stated that if no written request for a hearing was received from any party, it would be assumed that they wished the tribunal to make a decision on the basis of any written representations received.

6. An email was received from the landlord's agent, Regent Property, on 23 December 2021. Attached to the email were an EICR and gas safety certificate relating to the house, both dated 15 November 2021. A partially completed and unsigned written representations form was also enclosed. No response was provided in relation to the question: *'Do you agree with the findings of the reinspection report?'* In relation to whether there was a reason for works required being incomplete, the form stated: *"As explained previously, access was very limited for the contractors and rooms had not been cleared prior to proposed works, making it very difficult to carry out work"*.
7. No written representations were received from the tenant. No request for an oral hearing was received from either party. The tribunal therefore proceeded to make a decision on whether the landlord had complied with the RSEO on the basis of all of the evidence before it, including the written representations received.

Reasons for decision

8. In light of the findings from its re-inspection, as set out at paragraph 4 above, the tribunal determines that the landlords have complied with items 1, 4, 5, 11 and 15 of the RSEO. Following receipt of the EICR dated 15 November 2021 from the landlord's agent on 23 December 2021, the tribunal also determines that the landlords have complied with item 18 of the RSEO. The EICR was produced by a NAPIT registered electrical contractor, contains no outstanding C1 or C2 observations, and states that the electrical installation is satisfactory.
9. The tribunal determines, however, that the landlords have failed to comply with items 2, 3, 6, 7, 8, 9, 10, 12, 13, 14, 16, 17 and 20 of the RSEO. These items remained outstanding as at the date of the re-inspection. While items 3, 6, 13 and 20 have been partially completed as detailed at paragraph 4 above, they have not been fully addressed as required by the RSEO. In relation to item 20, this is partly dependent on the other outstanding works being carried out first.
10. The tribunal notes that as at the date of the tribunal's re-inspection, the landlords had approximately 15 weeks to carry out the repairs. It notes, however, that the landlord's agent does not appear to have begun to carry out repairs until November 2021. Regent Property advised the tribunal in an email of 30 November 2021 that the majority of the repairs had been carried out,

which was clearly not the case. Regent Property then asked the tribunal in an email of 15 December 2021, the day before the re-inspection, whether it could provide a list of the works which remained outstanding. The tribunal observes that it is the responsibility of the landlords to be aware of which works still require to be addressed.

11. The tribunal noted the written representations received from the landlord's agent stating that the contractors were unable to complete the works because they found it difficult to obtain access to carry out the repairs. It also notes that Regent Property stated in emails dated 30 November and 15 December 2021 that the contractors had encountered issues with getting into the property due to the tenant's limited availability and that it had not been possible to access some of the rooms which had not been cleared prior to works being carried out.
12. The tenant disputed this, however, in an email dated 13 December 2021. She stated that Regent Property had not contacted her about the repairs until 1 November 2021. She accepted that there had been some dates when it was not possible to provide access, but said that she had always suggested alternative dates, which had not suited the contractors. She said that she had waited in the house on three separate dates in November 2021 for contractors to carry out repairs and they had not appeared. She stated that on another occasion the contractor had attended briefly and had gone out to get materials and had not returned. She said that the contractor had also failed to tell her in advance which rooms needed to be emptied to carry out the works.
13. The tribunal also notes that a number of the required repairs (for example, repairs to the front door, the leaking toilet, and the oven door clip) should not have required rooms to be cleared in advance. However, these had not been carried out at the time of the re-inspection.
14. In terms of section 26 (3) (b) of the Act, the tribunal may not decide that a landlord has failed to comply with an RSEO if the tribunal is satisfied, on the submission of the landlord or otherwise-
 - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights, or
 - (ii) that the work required by the order is likely to endanger any person.
15. Having considered all of the evidence before it, the tribunal is not satisfied on the balance of probabilities that the landlords have demonstrated that their failure to comply with the repairing standard duty occurred because they lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, in terms of section 26 (3) (b) (i) of the Act. In particular, the tribunal is not aware of an application having

been made by the landlords or their agents to the tribunal to exercise their right of access to carry out repairs. This is despite the landlord's representative (Mr Paman Singh) confirming that he was aware of such a process at an earlier hearing on 11 August 2021, as recorded at paragraph 34 of the tribunal's original decision of 30 August 2021.

Decision

16. The tribunal, having made such enquiries as are necessary for the purposes of determining whether the landlords have complied with the RSEO, therefore determines that the landlords have failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

Rent relief order

17. The tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It determined that given the extent of the landlord's failure to comply with the RSEO within the time allowed, such an order should be made.

18. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The tribunal acknowledged that the most serious issue, the water ingress from the roof, had now been addressed. The damage caused by this to the living room and front bedroom had also largely been addressed. However, the vast majority of the issues in the RSEO had either not been dealt with at all or had been only partially addressed, despite more than four months having passed since the tribunal's original inspection. While individually, many of the outstanding issues are relatively minor in nature, taken together they continue to have a negative impact on the lives of the tenant and her family, and on their enjoyment of the property on a daily basis.

19. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **30%** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

20. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal,

the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

21. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

Shah O'Neil

Signed..... **Date**...24 January 2022.....
Chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



Rent Relief Order

by the First-tier Tribunal for Scotland (Housing and Property Chamber)
(hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

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Land Register Title No: GLA203934

The Parties:

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Bearsden G61 4RD (“The landlords”)

Tribunal Members – Sarah O'Neill (Legal Member) and Andrew McFarlane
(Ordinary (Surveyor) Member)

NOTICE TO Mrs Nirmal Kaur Sumal and Mr Joghinder Singh Sumal (“the landlords”)

Whereas in terms of its decision dated 24 January 2022, tribunal determined in terms of section 26(1) of the Housing (Scotland) Act 2006 (‘the Act’) that the landlord has failed to comply with the Repairing Standard Enforcement Order dated 30 August 2021 in relation to the house.

The tribunal determined to make a Rent Relief Order in terms of section 27 of the Act, reducing the rent payable in respect of the property by **30%**. The rent reduction will take effect 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

1. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a

point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

2. 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 Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

Signed..... *Shah O'Neir*

Date...24 January 2022.....

Chairperson