

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

Chamber Ref: FTS/HPC/RP/18/2531

Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG (“the Property”)

The Parties:

MR ALI LOUAHEM M’SABEH (otherwise known as Lohavem M’Saben Ali) residing at Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG (“the Tenant”)

AQA PROPERTY LIMITED, 585 Cathcart Road, Glasgow, G42 8AB trading as Aaron Properties, 584 Cathcart Road, Glasgow, G42 8AB represented by Mr Bukhari (“the Landlord’s representative”)

JARNIAL TUMANI, 1 Lammeremuir Place, Kirkcaldy, KY2 5RD (“the Landlord”)

Tribunal Members:

MR E K MILLER, Chairman and Legal Member and MR N ALLAN, Ordinary Member

DECISION

The Tribunal determined:-

1. That the Landlord had failed to comply with the RSEO dated 4 January 2019.
2. To serve a Notice of Failure on the part of the Landlord on the Local Authority.
3. To Report the failure by the Landlord to comply with the RSEO to the Police for consideration for prosecution.
4. To make a Rent Relief Order under Section 27 of the Act, reducing the rent payable under the tenancy by 90%.

BACKGROUND

1. On 4 January 2019, the Tribunal issued a Decision determining that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

2. The Tribunal issued a Repairing Standard Enforcement (“RSEO”) against the Property also dated 4 January 2019. In terms of the RSEO the Landlord was required to carry out the following works:-
 - i. To instruct a suitably qualified independent pest control contractor to eradicate the rodent issue within the Property and to rodent proof the House and thereafter to produce to the Tribunal a copy of the Report and receipted invoices for any works carried out at conclusion of any action taken;
 - ii. To subsequently repair any damage caused by rodents to the skirtings and walls in the Property;
 - iii. To instruct a suitably qualified joiner to repair the floor boards in the kitchen to make them even and securely fitted and eliminate any holes; thereafter to replace the damaged linoleum with a suitable new kitchen floor covering and properly fitted and secured to the floor edges;
 - iv. To instruct a suitably qualified independent contractor to repair or replace the washing machine and thereafter to produce to the Tribunal a copy of the Report and receipted invoice for any works carried out at conclusion of any action taken or the receipt for a new washing machine;
 - v. To exhibit an Electrical Installation Condition Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the Property is satisfactory in all respects.
 - vi. To carry out infilling to the affected walls, ceilings and floors in the living room to complete the remedial works following on the flood damage to ensure they are properly sealed, wind and watertight;
 - vii. On completion of all the above works, to instruct contractors to professionally deep clean the Property and restore all affected finishes and to carry out re-decoration to the Property to a reasonable finish; And to produce to the Tribunal receipted invoices specifying the work carried out.

The RSEO gave the Landlord 6 weeks from the date of service of the RSEO to carry out the works.

3. On 15 April 2019 Mr Allan, a qualified surveyor and the Ordinary Member of the Tribunal carried out a reinspection of the Property. The reinspection report noted that no suitably qualified independent pest control contractor had provided any report or invoices for works carried out to the Property, despite the terms of the RSEO.
4. It was observed that the Landlord had replaced some sections of damaged or missing skirtings in the kitchen but there were still areas where there were no skirting boards and evidence of two new holes in the wall. This supported the Ordinary Member’s view that the rodent problem continued to persist.

5. The Landlord had dealt with the repair to the floorboards in that a section of boarding had been laid over the affected area of floor adjacent to the doorway and radiator. A visual inspection was not possible as new linoleum had been laid throughout. However the new floor surface did appear to consolidate the previously loose floorboards. There were still missing sections of skirting and in these locations the linoleum had been secured to the wall with a bead of white sealant.
6. In relation to the washing machine at the Property the Tenant had stated that a friend had examined the machine and it did now function correctly.
7. No electrical installation or portable appliance testing report had been provided to the Tribunal notwithstanding the terms of the RSEO.
8. The RSEO had required the Landlord to carry out infilling works to the affected walls, ceilings and floors in the living room to complete the remedial works following on previous flood damage. It was observed during the reinspection of 15 April 2019 that some poor quality redecoration work had been undertaken to the ceiling and walls within the living room, but no work had been done to the floor. Gaps in the exposed floorboards to the left of the adjacent fireplace remained a possible access point for rodents.
9. The RSEO also required, on completion of all of the above works, for contractors to professionally deep clean the house and carry out redecoration. The reinspection report confirmed that this had not been carried out.
10. Following the reinspection of 15 April 2019, the original Legal Member of the Tribunal was indisposed through ill health. Accordingly Mr E K Miller was appointed as Legal Member in her place.
11. A further reinspection and Hearing were arranged for 24 July 2019. Both the Legal Member and the Ordinary Member attended at the reinspection in order that both members were fully aware of the current situation with the Property. The Tenant was present and gave access. Neither the Landlord or his representatives were present or represented at the reinspection.
12. Subsequent to the reinspection a Hearing took place at the Glasgow Tribunal Centre, York Street, Glasgow. The Tenant was neither present nor represented. The Landlord's representative Mr Bukhari of Aaron Properties was present.
13. The Landlord's representative presented to the Committee a number of invoices for work carried out to the Property. They were, to a degree, of benefit. Some works had been carried out. However, having reinspected the Property, the Tribunal was concerned to note that the Landlord and his representative failed to grasp the importance of complying with the RSEO. It appeared to the Tribunal that the Landlord's representative had not read properly the original Decision, the RSEO or the reinspection report of 15 April 2019.

14. The Tribunal addressed each of the issues in the RSEO and discussed them with the Landlord's representatives. The Tribunal highlighted that the RSEO required a suitably qualified independent pest controller to eradicate the rodent issue within the house and to rodent proof the house and thereafter to produce to the Tribunal a copy of a report of the works done and receipted invoices for any works carried out.
15. Whilst the Tribunal accepted that some works had been carried out by workmen, these had been approached in a piecemeal and haphazard fashion. The RSEO specifically required a suitably qualified contractor to issue a report and to carry out works. This had not occurred.
16. At the inspection of 24 July 2019 there were clearly a number of points at the walls, fireplace and skirtings within the Property where rodents could gain entry. There were a number of rodent droppings within the Property and it appeared that the problem was still active. The Landlord and his representative had, in the opinion of the Tribunal, not carried out the works properly or with sufficient diligence. The Landlord and his representative required to revisit the Property to identify the appropriate works that were required, and have suitable contractors ensure that the Property is properly rodent proofed and that all missing skirting boards are reinstated. The contractors were required to produce a report confirming the steps that had been taken.
17. The Tribunal did note that the damaged floorboards in the kitchen appeared to have been consolidated by the addition of the new flooring and was satisfied in this regard.
18. In relation to the washing machine the Tenant had indicated at the inspection that a friend had looked at this and had managed to get it working. It was, however, now broken again. The Tribunal considered this. Given that the Tenant had reported that it was working, and this appeared to be the first indication that it was now no longer working, the Tribunal was conscious that the Landlord and his representative had not had any proper notification of the current position. The Landlord would require to contact the Tenant in this regard to ascertain the problem, if any, with the washing machine and to carry out any works of repair or replacement that were required. This was, however, effectively a new matter that required to be addressed between the parties direct.
19. The Tribunal noted that no new Electrical Installation Condition Report ("EICR") (including PAT) had been provided. At the hearing, the Landlord's representative produced an old EICR dated 30 October 2018 as evidence that the Property complied with the relevant electrical regulations. The Tribunal noted that this was the same EICR that had been produced at the original hearing in December 2018. The Tribunal had noted at that point that the EICR was unsigned and that the electrical contractor named did not appear to be registered with a suitable qualifying body. There were a number of inconsistencies within the EICR that indicated to the Tribunal at the time that it

was not a valid certificate compliant with the relevant legislation. The Tribunal had highlighted this at the original hearing to the Landlord's representative. The decision issued by the Tribunal made it clear that a new EICR was required. The RSEO made it clear that a new EICR was required. The reinspection report issued on 5 April 2019 also made it clear that a new EICR was required. The Tribunal were therefore concerned that the Landlord's representative had turned up at the latest hearing with the same EICR trying to justify that it proved the position was satisfactory. That was clearly not the case. The Landlord's representative appeared to have paid little heed to the verbal and written instructions of the Tribunal and to the documentation that had been given to him by the Tribunal.

20. For the avoidance of any further doubt the Tribunal would wish to make it clear that the Landlord and his representative require to produce a new EICR from a suitably qualified and authorised electrician with no items showing as C1 or C2 on the report.
21. The Tribunal was provided at the hearing of 24 July 2019 with a current gas safety certificate that was valid. This appeared to have been issued by an appropriate individual and the Tribunal was therefore satisfied in this regard.
22. The Tribunal noted that at the inspection that no further redecoration work had been done. As was noted in the first reinspection report poor quality redecoration work had been undertaken to the ceiling and walls within the living room with no work being done to the floor. On the ceiling of the living room it appeared that a hole in the plasterboard had simply been wallpapered over with no attempt to actually fix or repair the hole. Again there was ample evidence of shoddy workmanship and a poor approach to the works required by the RSEO.
23. As noted in the first reinspection report the Landlord's representative, on completion of the works, was to have the Property professionally deep cleaned and redecoration carried out. The Property was still in a poor condition decoratively and a deep clean was required. There was still evidence of rodent infestation and droppings and this was wholly unsatisfactory.
24. The Tribunal then considered what steps to take. In terms of Section 26(1) of the Act it was for the Tribunal to decide whether the Landlord had complied with the RSEO made by the Tribunal. In terms of sub-section 2, when the Tribunal decides that a Landlord has failed to comply with an RSEO, the Tribunal must (a) serve notice of the failure on the Local Authority and (b) decide whether to make a Rent Relief Order.
25. The Tribunal, after discussion, was of the view that the Landlord had failed to comply with the RSEO. Whilst some minor works had been done, these were generally of poor quality and carried out in a haphazard fashion. The Property was in a very poor condition and was still suffering from rodent infestation. It was unacceptable that the Tenant required to live in such conditions.

26. The Tribunal were satisfied that they were obliged to serve notice of the failure on the Local Authority and resolved to do so.
27. The Tribunal then decided whether or not to make a Rent Relief Order. In assessing whether to impose an Rent Relief Order the Tribunal considered the condition of the Property and the actions of the Landlord and his representative. The Tribunal was concerned that there were a number of health and safety issues here. The Tribunal had required a suitably qualified pest contractor to carry out works. Some works appeared to have been carried out by a contractor but there was no evidence that he had an appropriate qualification or experience. In any event the works had been done in a haphazard fashion and there was plenty of evidence of rodent infestation within the Property. Rodent infestation could clearly be detrimental to the health of the Tenant and this caused the Tribunal some concern.
28. The Tribunal was also concerned about the position in relation to the EICR. There appeared to be a complete lack of understanding on the part of the Landlord and his representative that they were required to comply with the instructions of the Tribunal. Despite several pieces of documentation issued by the Tribunal specifying that a new EICR was required to be produced, the Landlord's representative had turned up at the latest hearing still trying to utilise the old EICR. The Tribunal had clearly stated previously that this was inadequate and that a new certificate was to be produced. The Tribunal still had concerns regarding the condition of the electrical installation and the Landlord's and his representative's lack of attention to detail was most concerning.
29. The Landlord's poor repairs to the ceiling and to the living room were also of concern as they appeared to again show a lack of understanding of the seriousness of the situation and proper willingness to tackle the issues.
30. Given the health and safety issues were significant and that the Landlord and his representative were approaching the issues in a haphazard manner the Tribunal was satisfied that it would be appropriate to grant a Rent Relief Order at the highest level possible of 90%.
31. The Tribunal also considered the terms of Section 28 of the Act. Sub-Section (1) specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord's representative gave assurances to the Tribunal at the Hearing that they would take matters on board and attend to the works. However, whilst the Tribunal hoped that this would indeed be the case, the Tribunal was satisfied that no reasonable excuse as to the failure to comply with the RSEO had been given by the Landlord's representative. The documentation issued previously had been clear in its terms and no valid excuses or reasons had been given to justify the lack of compliance with the RSEO. Accordingly the Tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

The Tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The Tribunal determined to serve a notice of failure to comply with the RSEO on the relevant Local Authority within which the Property was situated and to report the matter to the Police for consideration for prosecution. The Tribunal also resolved to grant a Rent Relief Order at the maximum amount permissible of 90%.

The decision of the Tribunal was unanimous.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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

E Miller

Signed

.... Chairperson

Date

..... 17/9/19

*This is the first re-inspection report dated
15/6/19 issued to in the previous claim*

E Miller

**Housing and Property Chamber
First-tier Tribunal for Scotland**



Re-inspection Report

Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG

Case Reference: FTS/HPC/RP/18/2531

Date of inspection: 15/04/2019

Time of re-inspection: 13.30 am

Weather conditions: Clear and dry

In attendance: Nick Allan - Ordinary Member
Ali Louahem M'sabeh -Tenant



Photo 1 – Front elevation

The RSEO requires the Landlord to:-

- I. To instruct a suitably qualified independent pest control contractor to eradicate the rodent issue within the House and to rodent proof the House and thereafter to produce to the Tribunal a copy of the Report and receipted invoices for any works carried out at conclusion of any action taken;

Re-inspection findings – 15/04/2019

No report, or receipted invoices, have been received by the Tribunal. The tenant's confirmation that no such contractor had sought to obtain access from him is also supported by evidence of further rodent droppings within the property.

- II. To subsequently repair any damage caused by rodents to the skirtings and walls in the House;

Re-inspection findings – 15/04/2019

It was observed that the Landlord has replaced some sections of damaged, or missing skirtings in the kitchen, but there are areas where there are no skirting boards, and evidence of two new holes in the wall. Once again, this supports the view that the rodent problem continues to persist.

- III. To instruct a suitably qualified joiner to repair the floor boards in the kitchen to make them even and securely fitted and eliminate any holes; thereafter to replace the damaged linoleum with a suitable new kitchen floor covering and properly fitted and secured to the floor edges;

Re-inspection findings – 15/04/2019

The tenant confirmed that section of boarding, possibly plywood, had been laid over the affected area of floor adjacent to the doorway and radiator. It was not possible to visually check this as new linoleum had been laid throughout. However the new floor surface appears to consolidate the previously loose floorboards. As noted in (II) above, there are missing sections of skirting, and at these locations the linoleum has been secured to the wall with a bead of white sealant.

- IV. To instruct a suitably qualified independent contractor to repair or replace the washing machine and thereafter to produce to the Tribunal a copy of the Report and receipted invoice for any works carried out at conclusion of any action taken or the receipt for a new washing machine;

Re-inspection findings – 15/04/2019

The tenant confirmed that no such contractor had sought to obtain access to repair or replace the washing machine, and the Tribunal has not received copies of any Reports or receipted invoices. The tenant did state that a friend had examined the machine, and that it did now function correctly.

- V. To exhibit an Electrical Installation Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the House is satisfactory in all respects;

Re-inspection findings – 15/04/2019

No such reports have been received by the Tribunal.

- VI. To carry out infilling to the affected walls, ceilings and floors in the living room to complete the remedial works following on the flood damage to ensure they are properly sealed, wind and watertight;

Re-inspection findings – 15/04/2019

It was observed that some poor quality redecoration work had been undertaken to the ceiling and walls within the living room, but no work had been done to floor. Gaps in the exposed floor boards to the left of the adjacent fireplace remain a possible access point for rodents.

- VII. On completion of all the above works, to instruct contractors to professionally deep clean the House and restore all affected finishes and to carry out re-decoration to the House to a reasonable finish; to produce to the Tribunal receipted invoices specifying the work carried out.

Re-inspection findings – 15/04/2019

This has not been carried out.



Photo 2 – Worktop rodent droppings



Photo 3 – New skirting in kitchen



Photo 4 – Wall section 19/12/2018



Photo 5 – Wall section 15/04/2019



Photo 6 – Rodent hole/missing skirt.



Photo 7 - Rodent hole



Photo 8 – Damaged lino 19/12/2018



Photo 9 – Linoleum 15/04/2019



Photo 10 – L/R ceiling 19/12/2018



Photo 11 – L/R ceiling 15/04/2018

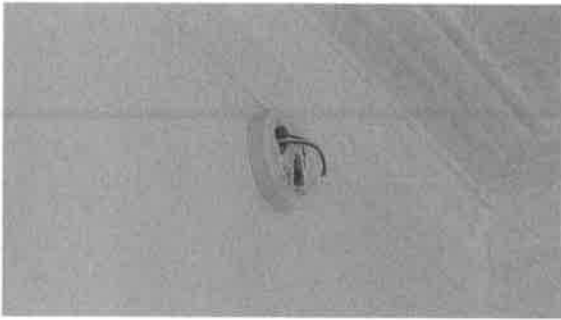


Photo 12 – Smoke detector in L/Room



Photo 13 - Dangerous socket

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal (Housing and Property Chamber)
15th April 2019

*This is the 2nd re-inspection report dated for 26/7/19
referred to in the previous decision*

E Miller

**Housing and Property Chamber
First-tier Tribunal for Scotland**



2nd Re-inspection Report

Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG

Case Reference: FTS/HPC/RP/18/2531

Date of inspection: 24/07/2019

Time of re-inspection: 10.00 am

Weather conditions: Clear and dry

In attendance: Mr Ewan Miller – Legal Member
Mr Nick Allan - Ordinary Member
Mr Ali Louahem M'sabeh - Tenant



Photo 1 – Front elevation

The RSEO requires the Landlord to:-

- I. ***To instruct a suitably qualified independent pest control contractor to eradicate the rodent issue within the House and to rodent proof the House and thereafter to produce to the Tribunal a copy of the Report and receipted invoices for any works carried out at conclusion of any action taken;***

Re-inspection findings – 15/04/2019

No report, or receipted invoices, have been received by the Tribunal. The tenant's confirmation that no such contractor had sought to obtain access from him is also supported by evidence of further rodent droppings within the property.

2nd re-inspection findings – 24/07/2019

As per 15/04/2019 above.

- II. ***To subsequently repair any damage caused by rodents to the skirtings and walls in the House;***

Re-inspection findings – 15/04/2019

It was observed that the Landlord has replaced some sections of damaged, or missing skirtings in the kitchen, but there are areas where there are no skirting boards, and evidence of two new holes in the wall. Once again, this supports the view that the rodent problem continues to persist.

2nd re-inspection findings – 24/07/2019

No change from previous inspection.

- III. ***To instruct a suitably qualified joiner to repair the floor boards in the kitchen to make them even and securely fitted and eliminate any holes; thereafter to replace the damaged linoleum with a suitable new kitchen floor covering and properly fitted and secured to the floor edges;***

Re-inspection findings – 15/04/2019

The tenant confirmed that section of boarding, possibly plywood, had been laid over the affected area of floor adjacent to the doorway and radiator. It was not possible to visually check this as new linoleum had been laid throughout. However the new floor surface appears to consolidate the previously loose floorboards. As noted in (II) above, there are missing sections of skirting, and at these locations the linoleum has been secured to the wall with a bead of white sealant.

2nd re-inspection findings – 24/07/2019

As per (II) above. Missing skirtings and rodent holes remain.

- IV. To instruct a suitably qualified independent contractor to repair or replace the washing machine and thereafter to produce to the Tribunal a copy of the Report and receipted invoice for any works carried out at conclusion of any action taken or the receipt for a new washing machine;**

Re-inspection findings – 15/04/2019

The tenant confirmed that no such contractor had sought to obtain access to repair or replace the washing machine, and the Tribunal has not received copies of any Reports or receipted invoices. The tenant did state that a friend had examined the machine, and that it did now function correctly.

2nd re-inspection findings – 24/07/2019

XXXXXXX

- V. To exhibit an Electrical Installation Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the House is satisfactory in all respects;**

Re-inspection findings – 15/04/2019

No such reports have been received by the Tribunal.

2nd re-inspection findings – 24/07/2019

Neither the tenant or the Tribunal have received any such up-to-date reports.

- VI. To carry out infilling to the affected walls, ceilings and floors in the living room to complete the remedial works following on the flood damage to ensure they are properly sealed, wind and watertight;**

Re-inspection findings – 15/04/2019

It was observed that some poor quality redecoration work had been undertaken to the ceiling and walls within the living room, but no work had been done to floor. Gaps in the exposed floor boards to the left of the adjacent fireplace remain a possible access point for rodents.

2nd re-inspection findings – 24/07/2019

No further decoration work has been carried out and gaps in the floor remain.

- VII. On completion of all the above works, to instruct contractors to professionally deep clean the House and restore all affected finishes and to carry out re-decoration to the House to a reasonable finish; to produce to the Tribunal receipted invoices specifying the work carried out;**

Re-inspection findings – 15/04/2019

This has not been carried out.

2nd re-inspection findings – 24/07/2019

This has not been carried out.



Photo 2 – Rodent hole + missing skirting



Photo 3 – Rodent hole + missing skirting



Photo 4 – Damaged socket in bedroom



Photo 5 – Portable appliance in kitchen



Photo 6 – Kitchen + washing machine



Photo 7 - Rodent access in living room



Photo 8 – Papered-over hole in L/R ceiling



Photo 9 – Example of poor decorating



Photo 10 – Defunct smoke alarm in hall



Photo 11 – Defunct smoke alarm in L/R

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal (Housing and Property Chamber)
1st August 2019