

# 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/19/2020

**17 Captains Drive, Edinburgh, EH16 6QN**

("the property")

The Parties:-

**Christopher Law**, 17 Captains Drive, Edinburgh, EH16 6QN

("the tenant")

**Afzal Boksh**, c/o APM Lettings, 198 Morrison Street, Edinburgh EH3 8EB

("the landlord")

**Tribunal Members:**

Adrian Stalker (Chairman) and Colin Hepburn (Ordinary Member)

## **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 landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.**

## **Background**

1. By an application to the Housing and Property Chamber received on 2 July 2019, the tenant sought a determination of whether 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 application contended that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard under section 13 of the 2006 Act, and in particular, that the landlord had failed to ensure, at all times during the tenancy, that:-

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
  - b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (section 13(1)(b));
  - c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)).
  - d) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13(1)(e));
  - e) the house meets the tolerable standard (section 13(1)(h))
3. On 18 July 2019, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier Tribunal. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and the tenant by letters dated 7 August 2019.
  4. The Tribunal inspected the property on the morning of 17 September 2019. The tenant was present. Ms Serena Singh, of APM Lettings, the landlord's letting agents, was also present. Later that morning the Tribunal held a hearing at Riverside House, 502 Gorgie Road, Edinburgh. Ms Singh attended the hearing. There was no representation for, or appearance by, the tenant at the hearing.

### **Summary of the issues**

5. In the application, the tenant described outstanding repair issues at the property, as follows:

The reason for the complaint is the window panes are fitted so they can be easily popped out, there is nothing holding them in place except poorly fitted pieces of plastic encasing.

I believe this is on purpose to allow criminal entry into the premises.

I've been here 4.5 years and only just found out. Proper fixtures need to be put in so the panes are securely fitted and people/criminals cannot enter the property.

### **Inspection**

6. At the beginning of inspection, the tenant took the Tribunal members to the lounge, and in particular to the two uPVC double glazed windows which look onto the back garden. He pointed out that the rubber seal around the windows (internally) was almost entirely missing. He removed the remaining sections of rubber seal. Then, using a table knife, he removed the four sections of plastic trimming around the window pane. Once that was done, he was then able to remove the entire window pane.

7. In essence, the tenant's complaint is that, apart from the rubber seal and the plastic trim (which can be removed), there is nothing holding the window in place.
8. The tenant is concerned about the risk of burglary or break in. He believes that the current state of the windows is such that the property is not secure. In particular, he is concerned that a burglar or assailant could pop the windows out, in the same way, from outside the property. He has this concern in relation to all of the double-glazed windows at the property.
9. The windows appeared to be about twenty years old. The Tribunal members noted that the rubber seals in most of the windows were partially missing, or loose, or in need of renewal. In the windows facing onto the back garden on both floors, the door handles were stiff, and difficult to operate.
10. The design of the windows is, however, typical. There is nothing unusual in being able to remove the glass pane of a uPVC window, from the inside, by removing the rubber seal and the plastic trim. Contrary to the tenant's concern, it is not possible to remove the windows in the same way, from the outside, because of the way that the windows are designed. The external frame is smaller than the window pane. In order to gain access through the window from the outside, it would be necessary to remove the entire window unit, or break the window.

### **Hearing**

11. At the hearing, Ms Singh explained to the Tribunal members that the landlord has instructed a glazier to visit the property on 19 September, to carry out any necessary maintenance or renewal work to the windows.
12. A glazier had gone out previously, but had refused to carry out the job, because the tenant insisted on filming him. The tenant has now accepted that filming the glazier is both unnecessary and inappropriate. It is to be hoped that the glazier can carry out the required work on 19 September.

### **Findings in fact**

13. The Tribunal finds the following facts to be established: -
  - i. The property is a mid-terraced two storey villa, comprising a hallway lounge and kitchen on the ground floor, and two bedrooms and bathroom on the first floor.
  - ii. The property is occupied by the tenant, under a short assured tenancy which commenced on 1 April 2017. However, the tenant has resided at the property since 2015.
  - iii. The landlord is the owner of the property.
  - iv. The property has uPVC double glazed windows throughout, which are around 20 years old.
  - v. The windows are of typical design.

- vi. The rubber seals in most of the windows was partially missing, or loose, or in need of renewal. In the rear facing windows, the door handles were stiff, and difficult to operate.
14. The findings follow from the Tribunal members' inspection, and from the papers obtained by the Tribunal in relation to the application, in particular the tenancy agreement.

**Decision, reasons for decision**

15. Given findings in fact, the Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
16. In particular, the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(d), in that the uPVC windows are not, currently, in a reasonable state of repair and in proper working order.
17. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.
18. The decision of the Tribunal was unanimous.
19. **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.**
20. 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.

# A Stalker

Signed .....

Date 19/5/19.....

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/19/2020**

**Title No: MID26938**

**17 Captains Drive, Edinburgh, EH16 6QN**

("the property")

The Parties:-

**Christopher Law**, 17 Captains Drive, Edinburgh, EH16 6QN

("the tenant")

**Afzal Boksh**, c/o APM Lettings, 198 Morrison Street, Edinburgh EH3 8EB

("the landlord")

Whereas in terms of its decision dated 19 September 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the respondent had 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 respondent had failed to ensure at all times during the tenancy, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)), the Tribunal now requires the landlord 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 landlord to instruct a reputable contractor, specialising in glazing, to carry out an inspection of all of double-glazed uPVC windows at the property, and to:

- (1) renew and replace the rubber sealing at each window, where necessary;
- (2) carry out any repair or renewal necessary to the handles at each window;
- (3) to carry out any other work necessary to put the double-glazed uPVC windows in a reasonable state of repair and in proper working order.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **four weeks** from the date of service of this Notice.

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the Tribunal at Edinburgh on 19 September 2019, before this witness:-

**A Stalker**

**S Westwater**

witness

SHEILA WESTWATER name in full

PARLIAMENT HOUSE Address

PARLIAMENT SQUARE

EDINBURGH EH1 1RF