

Housing and Property Chamber
First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006, Section 24(1)

Chamber Ref: FTS/HPC/RP/21/1041

96 Croftpark Avenue, Glasgow, G44 5HT (Title number GLA140872) (“The Property”)

The Parties:-

Mr Stuart Campbell and Mrs Catriona Campbell, 96 Croftpark Avenue, Glasgow, G44 5HT (“the Applicants”)

Mr Hugh McElhone, 113 Brunton Street, Glasgow, G44 3NF (“the Respondent”)

Tribunal members

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Ms Robert Buchan, Ordinary Member

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as are fit for the purposes of determining whether the Respondent has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”) in relation to the Property, and taking account of the written documentation

included with the Application and the parties' written and oral representations, determined that the Respondent has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

The House

1. The Title number for the Property is GLA140872.
2. The Property is a first floor one bedroomed flat in a block of four properties (see attached **Schedule of Photographs taken at inspection on 1 October 2021**) with rooms as follows:
 - 2.1. Internal: stairs, hall, lounge, kitchen, three bedrooms, bathroom.
 - 2.2. External: pro indiviso share of common parts and mutual areas in the building, as per the title.

Parties and representatives

3. The Applicants are the current tenants. They are representing themselves. Mrs Campbell, the Second Applicant, attended the Case Management Discussion on 11 August 2021, inspection on 1 October 2021 and Hearing on 8 October 2021, on behalf of herself and her husband.
4. The Respondent is the proprietor and landlord. The Respondent has made written representations during the tribunal process. He also attended the said Case Management Discussion, inspection and Hearing.

Procedural Background

5. On 3 May 2021, the Applicants made an application to the tribunal alleging that the Property does not meet the repairing standard ("the Application").
6. The Applicants allege that the elements of the Repairing Standard with which the Respondent has not complied are:
 - “(a) The house is wind and watertight and in all other respects reasonably fit for human habitation;*

(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;... and

(h) The house does not meet the tolerable standard.”

7. In the Application, the Applicants listed two allegations as to how she considers that the Respondent has failed to meet the repairing standard:
 - “(1) Windows not wind and water tight. They allow water to run in and soak the walls.*
 - (2) The roof leaks and soaks the walls. There is mould. Please see attached document.”*
8. The Applicants lodged the following documents with their Application:
 - 8.1. Paper apart with further information about repairs issues and required works;
 - 8.2. Copy messages with notification on 3 and 15 December 2020, with images; and
 - 8.3. Tenancy agreement between the parties, dated 29 September 2020, commencing on 1 October 2020.
9. The Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) was fixed for 11 August 2021 at 1000h by teleconference. Both parties were notified of the date, time and arrangements for the CMD. Prior to the CMD, the Applicants submitted additional written representations and the Respondent stated that he did not wish to submit any written representations.
10. On 11 August 2021, Mrs Campbell and the Respondent both attended the Case Management Discussion by teleconference. Reference is made to the Notes of the Case Management Discussion which were drafted by the Chair and sent to parties.
11. During the CMD, the Second Applicant advised the tribunal that the problems with the windows and roof and water penetration therefrom had been notified shortly after they moved into the Property in October 2020. Although some remedial works had been carried out to both the windows and the roof the problems persisted.
12. During the CMD, the Respondent accepted that he had been notified of the issues in or about December 2020. He advised the tribunal that after initially attempting repairs to the windows, he had received advice that due to their condition, the windows were beyond repair and should be replaced. He explained that since March 2021 he had had four windows for the front of the Property in storage ready to be fitted, albeit he had been told that the cills he had ordered were the wrong size for the type of openings. In relation to fitting, he reported that there had since been considerable delays caused by Covid-19 restrictions, followed by a contractor letting him down. He has known since the end of April / beginning of May 2021 that

the original fitter is unable to undertake the work. He stated that he has experienced problems trying to find an alternative contractor but had recently done so and had given instructions week commencing 2 August 2021 and that work was expected to take place to replace the front windows within a week of the Case Management Discussion on 11 August 2021. At that time, he stated that it was his intention to replace the windows at the rear of the Property later in the year (although this position was updated prior to the inspection and hearing, as noted below).

13. The CMD was adjourned to an inspection on 1 October 2021 and hearing on 8 October 2021. Both parties were notified of the date, time and arrangements for the inspection and hearing.
14. The Respondent produced documentation relative to the supply and fitting of windows at the rear of the Property.
15. Following the inspection, the Applicant submitted videos and images showing water penetration in different rooms in the Property on various dates. The tribunal's administration facilitated the upload of video evidence by the Applicant but the video which was uploaded could not originally be viewed due to technical issues with the file. The tribunal members were able to view all videos and images before the hearing. However, the Respondent had technical difficulties viewing the videos but was able to view the photographs. At the hearing, the Second Applicant confirmed that she could provide copies of the videos to the Respondent following the hearing, as noted below.

Inspection of the Property – 1 October 2021

16. An inspection of the Property took place on 1 October 2021, as a fact finding exercise.
17. The Applicant was present during the inspection. The Respondent was present during the inspection.
18. The tribunal considered the issues which had been notified by the Applicant to the Respondent and included in the Application.
19. The ordinary member of the tribunal prepared a schedule of photographs during the inspection, which was circulated to both parties afterwards.

Hearing – 8 October 2021, by teleconference

20. A hearing took place on 8 October by teleconference.

21. The Second Applicant and the Respondent both attended the hearing.

Parties' evidence and submissions

22. The Second Applicant advised the tribunal that the videos and images had been taken on different dates from the end of 2020 onwards and showed water penetration into a number of rooms in the Property from windows and the ceiling of those rooms. She stated that some were taken last winter, some were earlier this year and one or two were taken on Monday (4 October 2021). On that date, there was water coming in above the kitchen window. It was raining at the time. She stated that there had previously been water coming in at the same place and that the Respondent had been notified at that time and had carried out remedial works to seal around the window frame. However, she stated that there is still a hole in the silicone and the water is coming in. She stated that the Respondent was notified earlier this week by Mr Campbell but that no remedial works have been carried out yet.

23. As noted above, the Respondent stated that although he had been able to access the images uploaded by the Applicant, he had not been able to view the videos. The Second Applicant confirmed that she would provide these directly to the Respondent after the hearing.

24. The Respondent stated that there was an issue with water penetration in the kitchen at the beginning of 2021 and that he had instructed a roofer who had carried out repairs to those two areas of the roof and informed the Respondent that the problem had been resolved. The Respondent accepted that Mr Campbell had called him on Monday to say that there was water coming through holes in the soffit in the kitchen, which he noted was different from what Mrs Campbell was now saying in relation to the source of the water. The Respondent stated that there was a 12 month guarantee on the previous roof works. On Tuesday, the Respondent instructed the roofer to re-attend and carry out remedial works. The Respondent has not spoken to him since Tuesday morning. The roofer told him that he would come out this week.

25. Mr Buchan, the ordinary member, made an observation to Mr McElhone that looking at the Property, as seen in the photographs, the area in question may be vulnerable to water penetration from rain water fittings and the problem may not be the roof. Given that it was heavy rain at the time and the construction of the Property, Mr Buchan suggested that the Respondent might consider instructing a contractor to check the guttering and downpipes as it would not take much for any blockage in these pipes for the water to go into the building.

26. In response, the Respondent stated that when the roofer did the repairs a few months ago he cleaned all the gutters. He also stated that the rainwater guttering had been replaced about two years ago.
27. The tribunal chair asked the Respondent whether he was disputing the allegations made by the Applicant that the Property does not meet the repairing standard as a result of the issues with the windows and roof and resultant water penetration into the Property. The relevant subsections of the standard, as notified and included in the Application form, were discussed. The Respondent confirmed that he accepts that the windows are not in a reasonable state of repair and that in certain places the Property is not wind and watertight. He referred to the information he had previously provided confirming that he intended to replace the windows in November 2021. He stated that if there is water coming in at the kitchen window it is not wind and watertight but it had been repaired as discussed, although perhaps not satisfactorily. He confirmed that he is not disputing that the windows are not in a reasonable state in repair. However, as far as the roof and guttering are concerned, he thinks that they are in a reasonable state of repair.
28. The Respondent referred to the documentation submitted by him for the replacement of the windows at the rear of the Property. There are drawings of the back windows, kitchen, bathroom and rear bedroom. The company is making new windows but there has been a delay in fabrication. The Respondent also referred to the handwritten confirmation of the price and the deposit paid by him in September 2021. He stated that the same company is also going to fit the windows which are in storage to the lounge bow window and the front bedroom. In summary, all of the windows in the flat are being replaced, hopefully in November 2021 but there has not been a date yet as it requires the windows to be made first. He referred to the written confirmation from the date that the deposit was paid at the beginning of September, at which time there was a ten week wait for toughened glass. He has provided the First Applicant, Mr Campbell's contact number, so that they can liaise with him as opposed to going through the Respondent, for access.
29. The Second Applicant, Mrs Campbell stated that no-one has contacted them with a date. She accepted that if there is a 10 week waiting time, there is a 10 week waiting time but she reiterated that it is almost a year since they moved into the Property and notified the Respondent of the issues. She confirmed that it is acceptable for the window company to contact them directly to schedule a time and stated that no one has been in contact yet.
30. Mr Buchan, the ordinary member, observed to the Respondent that it might be desirable to investigate the cause of the water penetration prior to putting in new windows. He stated that the videos provided by the Applicant show very clearly that there is water penetrating through the ceiling of the lounge bow window. Mr Buchan suggested that the Respondent would require to instruct tradesmen to be

in attendance at the time the existing windows are removed to take a very good look at the ceilings above the windows. He observed that he is sure it is obvious but he thinks it needs to be said that one would not want to spend all that money on new windows and redecoration and find out that rain water still penetrates the Property.

31. The chair recommended to the Respondent that he may wish to provide the videos to any contractor which is instructed to investigate the issue.
32. The Respondent stated that it is his understanding that there is no rain water coming through the ceilings but accepted that he has not yet seen the videos. He stated that he realises that there is water penetration that he needs to resolve and that it will be resolved. He confirmed that he understands the concern about not seeing it through and investigating the areas above the existing windows.
33. Both parties confirmed that they did not wish to lead further evidence or make any further submissions prior to the tribunal determining how it wished to proceed.
34. The tribunal adjourned and determined that it was appropriate for the matter now to proceed to a determination by the tribunal. The tribunal determined that given that it is admitted by the Respondent that the windows are not in a reasonable state of repair and in proper working order and that the Property is not watertight in places, there will be a finding in fact in relation to the same and a resultant failure to comply with the Repairing Standard; and a Repairing Standard Enforcement Order (RSEO) will be made, specifying steps to be taken and the time period for doing so.
35. The hearing re-started and parties were informed of the tribunal's decision, which both parties confirmed that they understood. The chair informed parties that a written decision with reasons and an RSEO would be sent to parties. The parties were also informed of the procedure to request variation of the RSEO if there is a further delay to the window fabrication, to extend the period for compliance.
36. There was a discussion about making good any damage after the window replacement and the Respondent confirmed that the window company have said that they will make good any damage to the internal décor.
37. The Respondent stated that he has not offered any rent reduction to the tenant since the issues arose and were notified last year and that he is not intending to do so. The tribunal chair informed parties that the issue of a rent reduction would only arise in tribunal proceedings if there is failure to comply with the terms of the RSEO but that the Respondent was free to offer any rent reduction to the Applicants in the meantime, if he wished to do so.

38. Parties were advised that the hearing had concluded and that they could leave the call.

Summary of the Issue to be determined by the tribunal

39. The issue to be determined is whether the Property meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

40. The repairs issues in the Application, in relation to the windows and the roof causing water penetration and mould in the Property, and the part of the repairing standard which were said to be breached, were notified to the Respondent by the Applicants and he had a reasonable period within which to effect repairs.

The tribunal made the following findings-in-fact:

41. The Respondent is the registered proprietor of the Property.

42. The Applicants have been the tenants of the Respondent in the Property since in or about October 2020.

43. In or about December 2020, the Respondent was notified by the Applicants of all the repairs issues in the Application.

44. The windows in the Property (front and rear) are not in a reasonable state or repair or proper working order due to gaps, condensation within the double glazing units and defective seals.

45. Remedial works have been carried out to the seals on the windows by the Respondent which have not rectified the issues and they are not wind and watertight.

46. The windows are beyond repair.

47. The Respondent has ordered replacement windows for the front of the Property (lounge and bedroom) and they have been in storage since in or around April 2021, awaiting fitting.

48. The Respondent has known since in or around April 2021 that the contractor previously instructed to fit the windows at the front of the Property was unable to do so.

49. In or about September 2021, the Respondent entered into a contract for supply and fitting of replacement windows at the rear of the Property; and for the fitting of the windows which are in storage to the front of the Property.
50. There was a lead time of around 10 weeks from September 2021 for fabrication of the replacement windows for the rear of the Property.
51. The replacement works cannot commence until the replacement windows for the rear of the Property are fabricated.
52. Water has penetrated the Property in a number of places through ceilings and walls which mean that the Property is not wind and watertight.
53. There are some areas of mould and dampness on walls in the Property as a result of water penetration through ceiling and walls.
54. The Respondent has taken steps since notification of the said repairs issues to remedy the issues caused by roof leaks and has also had the gutters cleared, however the issues of water penetration in some areas persist.

Discussion regarding the issues and the repairing standard, paragraphs (1)(a), (b) and (h)

55. Section 13(1) of the Housing (Scotland) Act 2006 provides:

“(1) A house meets the repairing standard if—

(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(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, ...and

(h) the house meets the tolerable standard.”

56. The definition of a house meeting the tolerable standard, as referred to in Section 13(1)(h) of the 2006 Act, is defined in Section 86 of the Housing (Scotland) Act 2007, as follows:

“(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(ca) has satisfactory thermal insulation;

- (d) has an adequate piped supply of wholesome water available within the house;*
- (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;*
- (f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;*
- (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;*
- (g) has an effective system for the drainage and disposal of foul and surface water;*
- (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances; “the relevant requirements” are that the electrical installation is adequate and safe to use;*
- (h) has satisfactory facilities for the cooking of food within the house;*
- (i) has satisfactory access to all external doors and outbuildings;*

and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.”

57. In the present Application the Tenant complains that the House fails to meet the repairing standard, section 13(1)(a), (b) and (h), in respect of the repairs issues complained of.

(1) Windows

58. As noted above, the Respondent admits that the windows throughout the Property are not in a reasonable state of repair or proper working order. He has instructed replacement of all windows in the Property.

59. The tribunal was satisfied on the evidence that as a result of the defects with the windows, the structure and exterior of the Property are not in a reasonable state of repair or proper working order; the Property is not wind and watertight in all other respects reasonably fit for human habitation; and the Property does not meet the tolerable standard due to penetrating damp.

60. The tribunal was therefore satisfied that there is a failure to meet the repairing standard paragraphs (1)(a), (b) and (h).

(2) Roof

61. The Respondent accepted that there had been some roof leaks which had been notified to him but stated that these had been dealt with in two areas and he referred to the photographs taken at the inspection on 1 October 2021. He did, however, accept that he had been notified on Monday 4 October that there was water penetration above the kitchen window and he has instructed a roofing contractor to carry out remedial works which have not yet been done.
62. The tribunal was satisfied following the Property inspection on 1 October 2021 and having considered the supporting evidence of videos and images provided by the Applicants that there had been water penetration through the walls and ceiling in some areas in the Property and that there were resulting patches of dampness and mould in some parts of the Property. The issues may have been caused by the areas above the window (in particular the bow window in the lounge), the roof and/or by drains, gutters and external pipes.
63. As a result, the tribunal was satisfied that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
64. The tribunal was therefore satisfied that there is a failure to comply with the repairing standard, paragraphs (1)(a) and (b).

Repairing Standard Enforcement Order (RSEO)

65. Because the tribunal determined that the Respondent has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Respondent to carry out the works necessary for meeting the repairing standard and has therefore made a Repairing Standard Enforcement Order ("RSEO") in terms of Section 24(2) of the 2006 Act.
66. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of eight weeks having regard to the likely length of time to instruct and carry out the required works and the fact that should window fabrication take longer, the Respondent could make an application for variation of the order in respect of the period for compliance by producing evidence of any delays.

Right of Appeal

67. 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

68. 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.

S Tanner

Signed

Ms. Susanne L M Tanner, Queen's Counsel
Legal Member / Chair of the tribunal

Date 8 October 2021

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act
2006, Section 24(2)**

Chamber Ref: FTS/HPC/RP/21/1041

**96 Croftpark Avenue, Glasgow, G44 5HT (Title number GLA140872) (“The
Property”)**

The Parties:-

**Mr Stuart Campbell and Mrs Catriona Campbell, 96 Croftpark Avenue, Glasgow,
G44 5HT
 (“the Applicants”)**

**Mr Hugh McElhone, 113 Brunton Street, Glasgow, G44 3NF
 (“the Respondent”)**

Tribunal members

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair
Ms Robert Buchan, Ordinary Member**

**NOTICE TO Mr Mr Hugh McElhone
(the RESPONDENT / LANDLORD)**

**WHEREAS in terms of its decision dated 8 October 2021 the tribunal determined
that the Landlord has failed to comply with the duty imposed by section 14(1)(b)
of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed
to ensure that the House meets the repairing standard in the following respects:**

*“(a) the house is wind and watertight and in all other respects reasonably fit for
human habitation;*

- (b) The installations in the House 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; and*
- (h) the house meets the tolerable standard.*

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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:

1. To repair or replace all windows in the Property so that they are in a reasonable state of repair and proper working order; the house is wind and watertight and in all other respects reasonably fit for human habitation; and meets the tolerable standard.
2. To make good all interior decoration following the repair or replacement of the windows.
3. To instruct a suitably qualified and competent roofing contractor to carry out an inspection of the roof and rainwater fittings at the property and to:
 - a. provide a report to the tribunal on the condition of the roof and rainwater fittings;
 - b. describe and comment on the work recently undertaken to the roof covering;
 - c. comment on why they consider that rainwater continues to penetrate to the interior; and
 - d. advise on what work should be undertaken to prevent continuing or further rainwater penetration.

Once the tribunal have the report and have considered its content, the tribunal will order what further work, if any, requires to be undertaken and vary this RSEO accordingly.

The tribunal orders that the works specified in this Order must be carried out and completed within 8 weeks from the date of service of this Notice.

Right of Appeal

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 an 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 two preceding page(s) are executed by Ms. Susanne L M Tanner, Queen's Counsel, Legal Member and chair of the tribunal

S Tanner

Legal Member / Chair

signed on 8 October 2021 (date) at Edinburgh

before this witness:-

D Tanner

Witness

D Tanner

name in full

PARLIAMENT HOUSE,

Address

PARLIAMENT SQUARE, EDINBURGH