

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(1) ('the Act')

Chamber Ref: FTS/HPC/RP/17/0435

Property at G/00, 12 Bank Street, Glasgow G12 8JQ

Land Register Title Number GLA 96888

('the Property')

THE PARTIES:

**Messrs Elliott Burke, Calum Gordon and Jason Mill, residing at G/00, 12 Bank Street,
Glasgow G12 8JQ**

('the Tenants')

**Mr Jonathan Weir of Resinvest Limited, a company incorporated under the Companies Acts
(registered company number SC456258) and having their Registered Office at 163 Bath Street,
Glasgow G2 4SQ**

('the Landlord')

**Represented by Mr Ross Armstrong and Mr Craig Armstrong of Absolute Residential Ltd, Suite 173,
103 Byres Road, Glasgow G11 5HW**

('the Landlord's Representatives')

NOTICE TO LANDLORD

Whereas in terms of their Decision dated 10th April 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('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 ('the Act') and in particular the Landlord has failed to ensure that the property meets the Repairing Standard with reference to the following provisions of Section 13 of the Act, as amended:-

'(a) The property is wind and watertight and in all other aspects reasonably fit for human habitation; and

(d) The fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order'.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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:

(i) To instruct and obtain a specialist Report from a suitably qualified damp specialist surveyor (in addition to the previously submitted Wise Report) to confirm the nature and extent of the dampness and the condensation affecting the Property including specifically the external wall in Bedroom 1L, the Living Room in the area of high level staining, and within the Kitchen. To thereafter carry out all necessary repairs and / or renewals identified in terms of such Report in order that the property is watertight and reasonably fit for human habitation, and to redecorate all as appropriate;

(ii) To repair or replace the damaged plaster and skirting within the Living Room Store to eradicate this means of access for mice infestation, whilst appointing as necessary a Pest Specialist to eradicate all active mice infestation ; and

(iii) To repair or replace the fridge.

The Tribunal order that the works specified in this Order must be carried out and completed **within the period of SIXTY DAYS** 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 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. 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 Property at any time during which a RSEO has effect in relation to said Property.

This is all in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the two preceding pages are executed by Joseph Christopher Hughes, Solicitor Advocate, Legal Member and Chairperson of the Tribunal at Glasgow on 10th April 2018 in the presence of the undernoted witness :-

I McClelland

J Hughes

.... Witness

Chairperson

'Ian Mark McClelland',

Solicitor

J C Hughes Solicitors

1028 Tollcross Road

Glasgow

G32 8UW

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) ('the Act')

Chamber Ref: FTS/HPC/RP/17/0435

Property at G/00, 12 Bank Street, Glasgow G12 8JQ

Land Register Title Number GLA 96888

('the Property')

THE PARTIES:

Messrs Elliott Burke, Calum Gordon and Jason Mill, Tenants of G/00, 12 Bank Street, Glasgow

G12 8JQ

('the Tenants')

Mr Jonathan Weir of Resinvest Limited, a company incorporated under the Companies Acts (registered company number SC456258) and having their Registered Office at 163 Bath Street, Glasgow G2 4SQ

('the Landlord')

Represented by Mr Ross Armstrong and Mr Craig Armstrong of Absolute Residential Ltd, Suite 173, 103 Byres Road, Glasgow G11 5HW

('the Landlord's Representatives')

THE TRIBUNAL MEMBERS:

Mr Joseph C Hughes [Legal Member]

Mr Greig Adams [Ordinary Member/ Surveyor]

DECISION:

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14(1) (b) in relation to the Property, and taking into account the written documentation submitted by the parties and the parties' oral representations, determined the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act;
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order ('RSEO') as required by Section 24(2) of the Act; and
3. The Decision of the Tribunal was unanimous.

BACKGROUND:

4. By Application received on 20th November 2017 ('the Application'), the Tenants applied to the Tribunal in terms of Section 22(1) of the Act for a Determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

5. The Property has been let to the Tenants for a 12 month term. A copy of the signed Short Assured Tenancy Agreement for the Property was lodged with the Tribunal. The tenancy commenced on 30th June 2017 and the expiry date is stated as 29th June 2018. The rent is £1200 per calendar month.

6. The original Application by the Tenants stated that they considered that the Landlord had failed to comply with their duty to ensure that the Property meets the Repairing Standard. The Tenants thereafter intimated additional issues in subsequent emails/correspondence to the Tribunal. On the basis that intimation of all issues had previously been made to the Landlord, the Tribunal accepted and considered all issues.

7. The Tenants considered that the Landlord is in breach of their duty under the Housing (Scotland) Act 2006 in relation to the Repairing Standard and in particular the Landlord has failed to ensure compliance with the following paragraphs of Section 13(1) of the Act:

'(a) the house is wind and watertight and in all other respects reasonably 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;

(d) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and

(e) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed'.

8. The Application was effectively amended by additional emails/correspondence from the Tenants listing additional issues which the Tenants considered to be outstanding. By reference to the *amended* Application, the following issues were noted to be (in summary):

- (i) Failure to properly treat dampness and mould in multiple rooms;
- (ii) Failure to repair damaged wallpaper, plaster and walls (including cracking in ceilings);
- (iii) Heat loss through windows;
- (iv) Failure to fix or replace hob and fridge;
- (v) Failure to clean or replace furnishings or fixtures (e.g. floor carpeting/chair in living room/blinds);
- (vi) Failure to ensure flat is adequately thermally insulated, in particular due to severe heat loss via windows;
- (vii) Problems with mice infestation;
- (viii) Loose kitchen kick-plate;
- (ix) Electrical issues;
- (x) Extractor Fan in the kitchen providing inadequate ventilation within kitchen; and
- (xi) Cold water tap not working.

9. By Minute dated 29th January 2018 the Convener of the Tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act and Section 21(8A) of the Act, made a Decision to Refer the Application to a Tribunal in terms of Section 23(1) of the Housing (Scotland) Act 2006.

10. On 7th February 2018 the President of the Tribunal intimated a decision to refer the Application to a Tribunal for determination under Section 23(1) of the Act. The Tribunal served a Notice of Referral, Inspection and Hearing in terms of Paragraph 1 of Schedule 2 to the Act upon the Tenants and Landlord. The Property Inspection was fixed for 15th March 2018 at 10am with a Hearing at 11.30am within the Teachers Building, Glasgow.

11. On 6th March 2018 the Landlord indicated they wished to attend the Hearing. Written Representations were lodged which appeared to indicate that some of work had been carried out but some issues were disputed. The Tenants also lodged additional written Representations. The Tribunal had careful regard to all written Representations in their deliberations.

12. Within the Landlords' Representations the Tribunal noted the following:

- (a) Electrical Installation Condition Report,
- (b) Landlord Gas Safety Certificate,
- (c) Invoice from Calmac Joinery Services Ltd (relating to external repairs),
- (d) An extract from a Wise preservation/dampness Report,
- (e) Correspondence from Glasgow City Council regarding a recent application to operate a House in Multiple Occupancy (HMO), and

(f) Energy Performance Certificate.

13. The Tribunal proceeded to inspect the Property on 15th March 2018 at 10am with a Hearing at 11.30am.

THE INSPECTION AND SCHEDULE OF PHOTOGRAPHS: (15th March 2018)

14. The Tribunal attended at the Property for the purposes of inspection as planned. The Tenants, the Landlord and the Landlord's Representatives were all present. Access was granted. The Tenants and the Landlord cooperated throughout the Inspection. An internal and external inspection of the Property took place. We thank everyone for their cooperation throughout the Inspection.

A Schedule of Photographs taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

15. The Tribunal's findings at the Inspection are noted below:-

(A) The property forms part of the Ground Floor of a larger tenement building, complete with rear extension. On the ground level access is from the common stair which leads to a central hallway. To the rear there is a living room from which the kitchen is accessed. The central hallway provides access to three separate bedrooms and a bathroom;

(B) For ease of reference the Tribunal inspected the repair issues in the Property in the same order as were listed within the *amended* Application:

(i) Failure to treat dampness and mould in multiple rooms:

An inspection utilising a thermal imaging moisture meter was undertaken and elevated readings were obtained within Bedroom 1L (Tenant Burke) affecting the external wall and also within the Living Room to a localised area of wall below ceiling level affected by water staining. In addition, areas of heavy mould growth were noted in particular within the Kitchen inside kitchen units affecting back panels.

(ii) Failure to repair damaged wallpaper, plaster and walls (including cracking in ceilings):

It was evident that various remedial works had already been completed to the wallpaper, plaster and walls such as within the central hallway and Bedroom 1L as part of the dampness remediation works. However, loose paper was evident within Bedroom 1L affecting the external wall and inspections of the substrata revealed peeling and defective paint below the paper; all in addition to elevated moisture readings.

Hairline to minor cracking was evidenced to a number of lath and plaster ceilings. Such cracking is typical of a traditional lath and plaster ceiling and appears not to be structural in nature. The ceilings were found to be in a reasonable state of repair.

(iii) Heat Loss through windows, and (vi) Failure to ensure flat is adequately thermally insulated, in particular due to severe heat loss via windows:

The property benefits from traditional vertical sliding sash and casement window units in the main, complete with single glazing. In order for sash and casement window units to operate they require to maintain a minimum gap of 3mm around the sash in order that such parts can "slide". An element of heat loss would be reasonably expected in such windows and is a typical consequence of such windows, whilst air infiltration through windows aids in the ventilation of the property. The heat loss experienced through the windows was considered to be typical for the type of window installed. We observe that the Energy Performance Certificate issued by Allied Surveyors Scotland plc states that the Property exceeds the average for properties in Scotland for energy and thermal efficiency.

(iv) Failure to fix/replace hob and fridge:

An Electrical Installation Condition Report was issued by the Landlord and showed that the hob was considered to be satisfactory and meet the required safety standards. However, the fridge door was noted to be missing its fixed shelving restraint thus preventing storage within the fridge door and thereby reducing operational capacity for the Tenants.

(v) Failure to clean or replace furnishings or fixtures (e.g. floor carpeting/chair in living room/blinds):

The Tribunal were led to inspect carpet floor coverings within the Bedrooms and Tenant's rugs were temporarily moved to show marks affecting the floor coverings. The carpet floor coverings form part of the Landlord's fixtures and fittings and these were not found to fall below the Repairing Standard, remaining in a reasonable state of repair. The chair in the living room is not currently functioning as a chair as it requires some upholstery. The Tribunal is unable to conclude that the chair is unsafe.

We observe in the Application the Tenants raised the issue of dirty blinds in living room and kitchen. We note the Landlord fitted a new blind in Bedroom 1L. The Tribunal did not consider this issue to fall below the Repairing Standard.

(vii) Problems with Mice Infestation:

The Tenants led the Tribunal to the Living Room Store and outlined that there had been various instances where a mouse was found within this area. Mouse droppings were present within the store, no skirting was present and damaged plaster was noted at low level at the junction with the floor. There was evidence that there was an active mouse infestation and a means allowing access to the area.

(viii) Loose kitchen kick-plate:

It was agreed between the parties that this particular issue had already been resolved.

(ix) Electrical issues:

It would appear that this particular issue related to socket outlets located to the damp bedroom wall prior to the Wise remedial works. An Electrical Installation Condition Report has been provided showing the electrical installation to be in satisfactory order, whilst no specific concerns were noted by the Tribunal.

(x) Extractor fan providing inadequate ventilation within Kitchen:

The cooker hood extraction fan is a re-circulating unit whereby it does not discharge to external air and instead filters the air from cooking smells etc. A consequence of this is that steam and such like will not be removed from the Kitchen and there will be a reliance on manual operation of the window to affect discharge.

(xi) Cold water-tap not working:

It was agreed between the parties that this particular issue had already been resolved.

The Tribunal did not consider any other issue raised by the Tenants, either during the Inspection or within the amended Application, fell below the Landlord's duty to meet the Repairing Standard.

THE HEARING:

16. The Hearing took place at Teachers Building, Glasgow. The Tenants attended the Hearing (together with the mother of Jason Mills as an Observer). The Landlord and the Landlords' Representative attended. The Tribunal had before it the Application and all other documentation including the Land Certificate GLA 96888 relative to the property which is registered in the name of the Landlord, Resinvest Limited.

Following the Hearing the Tribunal directed the Landlord to lodge the full Wise Dampness Report for completeness. The Landlord complied with this Direction.

17. The Tenants and the Landlord made oral submissions to support their written submissions. There was no contrary information established of new at the Hearing. The Tenants stated they were unhappy about the delay by the Landlord in addressing their concerns. The Landlord confirmed certain work had been carried out on the Property and defended their attempts to resolve matters.

18. The issue to be determined is whether the Property meets the Repairing Standard as laid down in Section 13 of the Act and whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

FINDINGS IN FACT:

19. The Tribunal finds the following facts to be established:

- (a) The Landlord is the registered owner of the Property;
- (b) A tenancy exists between the Tenants and the Landlord;
- (c) The Tenants took possession of the Property on 30th June 2017 with a rental of £1200 per calendar month;
- (d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy;

- (e) Elevated moisture meter readings were noted within the Property (including the external wall in Bedroom 1L, the Living Room and the Kitchen);
- (f) There is an active mouse infestation affecting the Property;
- (g) The woodchip paper within Bedroom 1L provide to the external rear wall is loose and detached whilst underlying pain below the paper is peeling and defective; and
- (h) The missing fridge door shelf restraint affects the operational capacity of the fridge.

DECISION:

20. The Tribunal was satisfied that in respect of a range of issues raised within the amended Application the Property did not meet the Repairing Standard specified within Section 13 of the Act. As undernoted:

A. The house is not wind and watertight and in all other respects reasonably fit for human habitation, all in terms of Section 13(1) (a). In particular:

- (i) Elevated moisture meter readings were recorded within the Living Room, Bedroom 1L and Kitchen;
- (ii) Active mouse infestation was present;
- (iii) Loose paper to walls was noted within Bedroom 1L to the wall affected by elevated moisture meter readings; and

B. The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working, all in terms of Section 13(1) (d). In particular:

- (i) The fridge door is missing a lower shelf which is an essential component part. This has a detrimental impact on the useable storage capacity within the fridge for the Tenants.

21. As the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act, in respect of the issues listed, it must require the Landlord to carry out the works necessary for meeting the Repairing Standard and have therefore issued a Repairing Standard Enforcement Order all in terms of Section 24(2) of the Act.

22. The decision of the Tribunal is unanimous.

23. The Tribunal proceeded to make a Repairing Standard Enforcement Order ('RSEO') as required by Section 24(1) of the Act. 12. The works specified within the RSEO must be carried out and completed within the period of SIXTY DAYS from the date of service of Notice of the RSEO.

REASONS FOR DECISION:

24. The Tribunal considers that the Landlord has had sufficient time to address their duty in respect of ensuring the Property meets the Repairing Standard.

25. The Tribunal considers that the Landlord has failed in their duty under Section 14(1) (b) of the Act and has not complied with the Repairing Standard in terms of Section 13 (1) (c) of that Act.

RIGHT OF APPEAL:

26. A Landlord, Tenant or Third Party application 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:

27. Where such an Appeal is made, the effect of the Decision and the Order is suspended until the Appeal is abandoned or finally determined.

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.

J Hughes

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'Joseph Christopher Hughes'

Legal Member and Chairperson

Housing and Property Chamber

Dated 10th April 2018



**G/00 12 BANK STREET,
GLASGOW, G12 8JQ (“THE
PROPERTY”)**

Chamber Ref: FTS/HPC/RP/17/0435

SCHEDULE OF PHOTOGRAPHS



1 Rear wall of Bedroom 1L.



2 Rear Elevation



3 Rear Elevation.



4 Rear Elevation.



5 Hallway high level staining.



6 Hallway plaster repairs.



7 Bathroom.



8 Panelling within bathroom.



9 Kitchen.



10 Condensation to Kitchen window.



11 Base unit staining to back panel.



12 Base unit staining to back panel.



13 Fridge door shelf missing.



14 Condensation to window.



15 Extractor hood.



16 View over extractor hood.



17 Rear entrance door.



18 Living Room Store – mouse infestation.



19 Cracking to ceiling.



20 Cracking to ceiling.



21 Carpet floor covering.



22 Carpet floor covering.



23 Carpet floor covering.



24 Carpet floor covering.