

Housing and Property Chamber

First-tier Tribunal for Scotland



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

REPAIRING STANDARD ENFORCEMENT ORDER

Ordered by the Tribunal

RE: All and Whole the dwelling house known as 18 Fitzalan Drive, Paisley PA3 4UE registered in the Land Register under title no REN68491 (hereinafter referred to as "the House")

The Parties:

Stephanie Strathearn, 18 Fitzalan Drive, Paisley PA3 4UE (hereinafter referred to as "the Tenant")

Leonard Heslop, 39 Crookston Drive, Glasgow G32 3LZ (hereinafter referred to as "the Landlord")

Chamber Ref: FTS/HPC/RP/18/0223

NOTICE TO LEONARD HESLOP

WHEREAS in terms of their decision dated XXXX 2018 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 that:

"(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

(c) 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.

(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"

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 plaster and decorate the hall.
- 2 To plaster the kitchen to remove so as to remove all holes present and to decorate the affected areas.
- 3 To redecorate the bathroom so as to rectify the damage caused by water leaking into the House from the property above.
- 4 To fit the shower door.
- 5 To ensure that all of the windows are reasonably wind and watertight and capable of being opened and closed.
- 6 To replace the front door so that the new door is secure and capable of being locked and unlocked.
- 7 Either to provide details of the qualifications of the person who provided the EICR dated 18 August 2017 to satisfy the Tribunal that he is suitably qualified or to provide an EICR completed by a suitably qualified person which confirms that the electrical installations at the House are in safe, working order.

The Tribunal orders that the works specified in this Order must be carried out and completed within 60 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 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 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by John Miller McHugh, Chairperson of the Tribunal at Edinburgh on the Sixth day of April Two Thousand and Eighteen in the presence of the undernoted witness:

J McHugh

Chairperson

E Conie

Witness *EVEN CONIE*

Witness Address

*65 HAYMANER TERRACE
EDINBURGH
EH12 5HD*

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Property at 18 Fitzalan Drive, Paisley PA3 4UE (hereinafter referred to as "the House")

Stephanie Strathearn, 18 Fitzalan Drive , Paisley PA3 4UE (hereinafter referred to as "the Tenant")

Leonard Heslop, 39 Crookston Drive, Glasgow G32 3LZ(hereinafter referred to as "the Landlord")

Chamber Ref: FTS/HPC/RP/18/0223

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 31 January 2018 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

"(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,

(c) 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.

(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"

The Tenant complained about: the condition of the walls in the kitchen and the hall; dampness and mould growth in the bathroom; a broken shower door; broken bathroom light socket; faulty electrical switches; low pressure in the boiler; a broken front door lock; panel of the front door being loose; problems with window seals and window vents and that neither gas nor electrical safety inspections had been carried out.

By letter of 15 February 2018, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Greig Adams, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were fixed for 28 March 2018.

The Tribunal inspected the House on 28 March 2018. The Tenant was present. The Landlord was neither present nor represented.

Following the inspection, the Tribunal held a hearing at The Teachers Building, St Enoch Square, Glasgow. The Tenant was not present but was represented by Fiona Brown of Shelter. The Landlord was present and represented by his solicitor, Philip Symon. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

The Landlord's agent narrated the history regarding the hallway. There is a somewhat confused picture in that the Tenant, with the Landlord's consent, wished to redecorate. The Tenant has stripped the existing wallpaper above dado rail level and also the Lincrusta beneath dado level which the Landlord considers was in good

condition and should have remained. The Landlord had recently attempted to have a plasterer repair the walls but the Tenant is said not to have carried out certain agreed preparatory works which were necessary.

Whatever the exact history, the Landlord accepts that the hall now needs to be replastered and is ready to make arrangements for that to happen. The Landlord considers that he should not have to redecorate and that the Tenant should be responsible for that.

The Landlord accepts that there are holes present in the kitchen walls and advised that the plasterer would attend to those when the hall was being addressed.

The Tenant reported water ingress caused by a leak from the flat above. The Landlord considered that no decorative repairs were required.

The Landlord is happy to replace the shower door. The door itself is in the House and the Landlord has the necessary parts to fit it.

The Landlord and Tenant agree that the boiler was recently replaced after damage was caused by a third party and is in good working order. The Landlord produced a Gas Safety Certificate at the hearing.

The Tenant reports that all electrical matters have been dealt with to his satisfaction. The Tenant indicated at the inspection that the Tenant thought the person who carried out the repairs was a friend of the Landlord and that no paperwork regarding the repairs had been provided at the time.

The Landlord indicated a willingness to replace the living room window vents with ones which can be opened and closed.

The Landlord advised that he had replaced some seals in the windows. The repairs were straightforward in that self-adhesive seals could be installed without difficulty.

The Landlord accepts that the front door now requires replacement.

Late documents

The Landlord presented at the hearing certain late documents which it asked us to receive. We indicated that we would consider the documents at the hearing and rule upon their late receipt as part of our substantive decision. The Tenant had no objection. The documents were a current and a historic Landlords Gas Safety Certificate; an EICR; and some photographs of the House. As we would have ordered, by way of a Repairing Standard Enforcement Order ("RSEO"), the production of the EICR and the Gas Safety Certificate, we are content to allow those to be received late. The photographs, it was initially explained by Mr Symon, were only illustrative of the condition of the property and, on that understanding, we are prepared to receive them although late.

Damage by Tenant

The Landlord advised that he considered that the Tenant had deliberately damaged some of the items which are the subject of the Application. The Landlord accepts that he has little actual evidence of that. He points out that the front door was only three years old and should not have failed so quickly. He suspects misuse. The Tenant had accepted responsibility for damage to a panel in the inner door.

Mr Symon sought to rely upon the photographs in the context of a claim that the House had been damaged by the Tenant and in particular a photograph showing damage to a kitchen drawer. The drawer had not been inspected by us and was not part of the Application. The suggestion of deliberate damage had not been put to the Tenant before the hearing and the Tenant's representative was only able to confirm that the Tenant accepted responsibility for the inner front door and was aware of no other deliberately caused damage.

We do not consider that we may reasonably infer from any of the evidence before us that the Tenant is responsible for damage to the items which are now the subject of the Application.

Access

Relations between the parties had broken down recently and the Landlord had been attempting to address matters via the Landlord's representative but had had little success.

The Tenant is reminded that the Tenant should make reasonable arrangements to allow access to the Landlord and his tradesmen to carry out the repairs required by the RSEO.

The Landlord is reminded that if difficulties of access are encountered, he should keep a record of this and that he may be entitled to apply for an extension of the period for completion of the works set out in the RSEO or to apply to the Tribunal for assistance in gaining access.

Summary of the Issues

The issue to be determined is whether the House 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).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a ground floor flat.
- 2 The Tenant has held a tenancy of the House since 7 August 2015.
- 3 Leonard Heslop is the registered owner of the House.
- 4 The Tenant took possession of the House from 7 August 2015 and continues in occupation.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Tenant's representative notified the Landlord of the defects in the House which are now the subject of the Application in correspondence to the Landlord dated 24 November 2017.
- 7 The inspection on 28 March 2018 revealed:
 - a. The hall walls had been stripped of their decorative coverings and the plaster had come away in a number of areas.
 - b. There are holes and cracks in the kitchen walls, particularly in the corner where a new boiler has been fitted and in the corner where two pipes are present.
 - c. The décor in the bathroom has been damaged by a historic leak from above.
 - d. There shower door is not attached.
 - e. There was no electricity available but there was no visible evidence of any problems with the electrical installations.
 - f. The boiler was functioning normally.

- g. Trickle vents which are capable of being opened and closed are present in all of the windows with the exception of the living room where the vents are designed not to be capable of closing.
- h. There was evidence that some seals within the windows had come loose.
- i. The front door was damaged, with the lower section being loose and the door lock not operating properly.

A schedule of photographs taken at the inspection is attached to this Decision.

Reasons for the Decision

The Hall Walls

The hall walls had been stripped of their decorative coverings and the plaster had come away in a number of areas. The walls require to be replastered and redecorated. It appears to the Tribunal that the walls of the hall were in poor condition and that the plaster in the whole hallway was in sufficiently poor condition that damage would be expected when decoration works were attempted. In the circumstances, the Tribunal considers it appropriate that the Landlord should be responsible both for the replastering and the redecoration.

The Kitchen Walls

There are holes and cracks in the kitchen walls, particularly in the corner where a new boiler has been fitted and in the corner where two pipes are present. These areas require to be replastered and redecorated.

Water Ingress in Bathroom

The Tenant has confirmed that there was a historic water leak from the property above which has been resolved. The damage caused to the décor requires to be addressed.

Electrical Items

The Tenant reports that all electrical concerns have now been addressed and the Landlord has provided us with an EICR. However, the EICR does not contain any details of the professional body to which its author belongs or to any registration number under which he operates. The Tribunal is concerned to establish that the person who produced the EICR has suitable qualifications to have done so.

Shower Door

The shower door has been removed and requires to be reinstalled.

Windows

The Tenant complained that seals in the windows would come loose and had to be pressed back into position. We saw evidence of this in the rear facing bedroom.

All vents appear to be operating as intended. The permanently open living room vents, while not a breach of the repairing standard, may result in draughts or discomfort to occupants and the Landlord has indicated a willingness to replace these. The Tribunal noted that a window handle in the rear facing bedroom was broken. Although this does not form part of the Application, the Landlord may wish to attend to the matter.

Front Door

The bottom section of the door is loose. The door cannot be easily locked, possibly because the door is not aligned to the frame. The damage would appear incapable of repair and replacement appears necessary.

Gas Safety

We have been provided with a current Landlord's Gas Safety Certificate.

The Repairing Standard

The Tribunal considers that the condition of the hall and kitchen walls, the décor in the bathroom, the absent shower door, the window seals and the front door together with the concerns regarding electrical items combined with an absence of information regarding the EICR all constitute breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

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.

Effect of Section 63 of the 2006 Act

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.

J McHugh

John M McHugh
Chairperson

Date: 6 April 2018



**18 FITZALAN DRIVE,
PAISLEY, PA3 4UE**

Chamber Ref: FTS/HPC/RP/18/0223

SCHEDULE OF PHOTOGRAPHS



1 Example of trickle ventilation present to windows (except Living Room).



2 Living Room window fixed trickle vent.



3 Living Room fixed trickle vent – expanding foam present in part.



4 Shower door missing within Bathroom.



5 View of water damage within Bathroom.



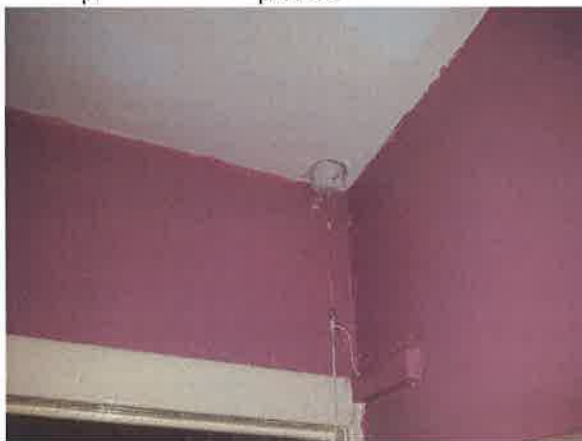
6 Damage to Kitchen walls adjacent to Boiler.



7 Example of loose seal present to window frame.



8 Example of retrofit window casement seals.



9 Pull cord serving Bathroom.



10 Water damage to Bathroom ceiling.



11 Defective seal at shower tray.



12 Damaged plaster within Hall.



13 Further damaged plaster within Hall.



14 Damaged plaster to hall.



15 Infilled wall vent.



16 Defective front door frame.



17 Front Elevation