

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: 308/3 Portobello High Street, Edinburgh EH15 2DA ("the Property")/ "the house")

Title Number: MID3611

Chamber Reference: FTS/HPC/RP/18/1785

M/s Fleur Scheltdorf, 308/3 Portobello High Street, Edinburgh EWH15 2DA ("the Tenant")

Mrs Tivender Singh, 25 Wakefield Avenue, Edinburgh EH7 6TN ("the Landlord")

Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 8 October 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"), 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:

- (1) to exhibit to the Tribunal a current Electrical Installation Condition Report in respect of the Property, to include confirmation that all the appliances in the kitchen have been tested and can be safely used;
- (2) to replace the floorcovering in the kitchen, after carrying out any repairs to the floor beneath that are necessary to ensure it is in a reasonable state of repair;
- (3) to carry out such investigations to the roof as are required to detect the likely cause of damp penetration to the bedroom and to the living area immediately adjacent to the kitchen of the Property and thereafter carry out such remedial works as are necessary to make the Property wind and water tight;
- (4) to carry out such repairs to the glass-panelled door to the living area of the Property as are required to ensure it is in proper working order and opens and closes properly; and

(5) to ensure that the provision of smoke and heat detectors meets the requirements of the Scottish Government's Building Standard Division Revised Domestic Technical Handbook 2013, so that, as a minimum, an additional smoke detector in the hallway should be installed interlinked with existing smoke and heat detectors.

The Tribunal order that the works required by this Order must be carried out within the period of 6 weeks from the date of service of this Order.

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.

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, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 8 October 2018, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

.Legal Member/Chairperson

V Clark

....Witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: 308/3 Portobello High Street, Edinburgh EH15 2DA ("the Property"/ "the house")

Chamber Reference: FTS/HPC/RP/18/1785

M/s Fleur Scheltdorf, 308/3 Portobello High Street, Edinburgh EWH15 2DA ("the Tenant")

Mrs Tivender Singh, 25 Wakefield Avenue, Edinburgh EH7 6TN ("the Landlord")

Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)

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 ("the Act"), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application received on 18 July 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard.

In particular, the Tenant stated that the Landlord had failed to ensure that:-

- 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,
 - 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,
 - any fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
 - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In her application and its supporting documentation, the Tenant stated that the Landlord had taken an unreasonable amount of time to carry out any repairs to the Property. It had, for example, taken 5 months to put in a smoke detector. The washing machine had been reported faulty on 3 occasions in 2017, as it was giving the Tenant electric shocks. Despite the electrician advising the Landlord that it should be replaced, she had done nothing about it and eventually it had broken down completely and had leaked into the flat beneath. The Tenant had been left for two weeks without a washing machine and the Landlord had suggested that it was the Tenant's fault that it had leaked and wanted her to pay for the replacement washing machine. The Tenant had also received a threatening letter from the downstairs neighbour after the Landlord had told the neighbour that the leak had been the Tenant's fault. It also appeared that the Landlord's insurance policy did not cover the Landlord's contents. The Tenant had written to the Landlord on 18 June 2018 setting out her complaints and the only response from the Landlord had been to ask the Tenant to find alternative accommodation.
 4. The Tenant had also reported that the bathtub might be leaking, but had not heard from the Landlord for several weeks, after the downstairs neighbour complained about a leak. The Landlord had assumed the leak was rainwater and, as at the date of setting out her complaint in the application to the Tribunal, the Tenant could still not use the bathtub, as the leak had not been repaired.
 5. The Tenant complained that, despite being requested to do so, the Landlord had not provided her with an Electrical Safety Certificate.
 6. The Tenant listed repairs and works which she wished carried out, namely an electrical safety check, repairs to the leak in the roof and to leaking pipes, repair to a large crack in the wall of the common stair adjacent to the kitchen and pipes, a replacement bathtub, kitchen appliances to be made electrically safe, the kitchen floor to be repaired, a fire safety check, the installation of a fire door and a total renovation of the Property.

7. On 15 August 2018, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and hearing.
8. The Landlord made written representations to the Tribunal, in which she stated that a new washing machine had been installed a year earlier and there should not have been a problem with it after such a short period, even though it was second-hand. Her repair man had told her that it appeared the Tenant had been misusing the machine and that it was no longer possible to programme it. She had arranged for her plumber to check the pipework as well, but the Tenant had then used the machine again and the flat beneath had flooded. The Landlord had, therefore, asked the Tenant pay for the damage, but when she refused to do so, the Landlord had paid the bill herself.
9. With reference to the repairs and works sought by the Tenant, the Landlord stated that there was an electricity certificate in her files, she had paid her share of the common repairs to the roof, leaking pipes had been attended to by City of Edinburgh Council, the crack in the stair wall was wear and tear and a common repair had been agreed with the other owners on the stair, the bathtub had been replaced and a new shower put in, the kitchen appliances had been checked by the Landlord's electrician and were safe and fire safety was up to date. The Landlord did not know where the Tenant wanted a fire door fitted and the flat was not in need of a full renovation. Prior to the Tenant moving in, the flat had been painted and cracks filled, the flooring had been perfectly fine when the Tenant moved in, the kitchen floor had been damaged as a result of the washing machine problem and the Landlord's joiner had said that the problem must have been going on for a while. The Tenant had not told the Landlord about the floor being wet. She had just mentioned the washing machine.
10. The Landlord concluded by saying that she hoped the issues could be resolved and that all the work the Tenant had mentioned had actually been done since June/July 2018.
11. The Tribunal inspected the Property on the morning of 8 October 2018. The Tenant was present at the inspection and the subsequent hearing and was represented by Ms Sara Macioni. At the request of the Tenant, the Landlord was not present or represented at the inspection, but was present at the hearing, where she was represented by her daughter, Ms. Suckveer Singh.
12. The Tribunal comprised George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/surveyor).

13. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

14. Following the inspection, the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. The Parties and their representatives attended the hearing.
15. The Tenant told the Tribunal that the issue regarding the leak had been raised because water had penetrated the flat below and the Landlord had wanted her to pay for the damage. The Landlord said that she had received a telephone call in the middle of the night to say the washing machine was being used and water was coming into the flat beneath. The Tenant stated that the washing machine had been repaired three times. People came to check it, but it was not properly fixed. She was adamant that she had not been using the washing machine on the night the flood occurred, as it was giving her electric shocks. She was unsure whether the leak came from the washing machine or the associated plumbing.
16. In relation to the electrical safety check, the Tenant stated that no PAT tests had been carried out during the tenancy. Two bulbs had burst and she had received electric shocks from the old washing machine, so electrical testing was clearly necessary.
17. The Landlord told the Tribunal that the owners of the building had had the communal roof checked. The Tribunal advised her that it had found three areas of flaking paint and patches, namely the living room wall at its corner with the bedroom, an area in the bedroom itself (at the front wall of the building) and at the bulkhead near the kitchen, and that there was an unacceptably high level of moisture in the area to the left of the kitchen and bedroom. The Landlord said that there had been two repairs and accepted it might require further attention.
18. The Tenant raised the matter of contents insurance. She had found a letter from 2017, addressed to the Landlord, which indicated there was no contents insurance. The Landlord advised the Tribunal that she had since changed insurers and that she was aware of her repairing responsibilities.
19. The Landlord then stated that the plaster cracks in the wall of the common stair would be fixed by Christmas. It was a common repair. The Tenant was of the view that the situation had deteriorated considerably in the last few months.
20. In relation to the kitchen floor, the Landlord said that she wanted to get this fixed, but her contractors were apprehensive about approaching the Tenant and did not want to be in the flat alone. The Tenant was always saying that she could not be there at appointed times and could not be at the Property until after 6.30pm. The Tenant stated that she had no

objection to suitably qualified persons being in the flat and that the Landlord had a history of cancelling appointments, one being cancelled by her son and the other by an electrician. The problem was that, every time, it took an incredible length of time to get something done. Her view was that the Landlord must use suitably qualified tradesmen for any specific job.

21. The Tenant told the Tribunal that the glass-panelled internal door did not close and that it was not a fire-safe door. The Landlord said that she had not previously been made aware of any issue with the door.
22. In her closing remarks, the Tenant expressed the view that things were coming to the end of their life after many years of wear and tear and that a total renovation of the Property was now necessary. She was particularly concerned that if the repair works were not carried out within a reasonable time, there would be a dispute about the return of her deposit. The Landlord did not accept that the Property was in need of total renovation.
23. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

24. The Tribunal makes the following findings of fact:

- The Property is a top (attic) floor flat in a two-storey terraced house with shops at ground floor level and two flats at each of first and attic floor levels.
- The Tenant is tenant of the Property, in terms of a Tenancy Agreement which commenced on 2 May 2016.
- The Tribunal has not seen an Electrical Installation Condition Report and noted that the kitchen appliances were electrically unsafe. In particular, there are control knobs missing from the cooker.
- The kitchen flooring is water damaged, but is also generally in a poor state of repair. The areas of flooring in front of the cooker and at the threshold represent a clear tripping hazard.
- There is evidence of damp penetration from the roof into the living area immediately adjacent to the kitchen and to the bedroom. There is no evidence that it is coming from downpipes or waste pipes.
- There is no evidence of leaking pipes within the Property and the Tenant confirmed that there had been no complaints from the downstairs neighbour since the washing machine was replaced.
- The cracks in the wall of the common stair outside the Property are consistent with ageing plaster and there is no evidence that they result from a leak of water from the kitchen.
- The bath has been replaced.

- The glass-panelled internal door has become detached from its lower hinge and does not close properly, but there is no legal requirement that this or the entrance door be a fire door.
- There are smoke detectors in the living room and a heat detector in the kitchen. They are mains wired and operate in series. There is no smoke detector in the hallway, but the detector in the living room is extremely close to the hallway.
- There is no supply of gas to the Property.

Reasons for the decision

25. The Tribunal was concerned by the history of the washing machine and the fact that there were knobs missing from the electric cooker. The Tribunal is of the view that the cooker ought to be replaced, but recognises that repair may be possible. The Tribunal decided that it would require the Landlord to produce a current Electrical Installation Condition Report, to include certification that all the appliances in the kitchen have been tested and found to be safe to use. At present, the cooker provided by the Landlord under the tenancy is not in a reasonable state of repair and is not in proper working order, so does not meet the repairing standard.
26. The kitchen flooring represents a tripping hazard and a clear danger to anyone carrying pans or dishes with hot contents. It is beyond repair and should be replaced. As it is not in a reasonable state of repair, it does not meet the repairing standard.,
27. The source of the penetrating damp identified at the inspection should be investigated by inspection of the roof coverings. At present, the Property is not wind and water tight, so does not meet the repairing standard.
28. The glass-panelled living room door is partially detached and does not close properly, so does not meet the repairing standard as it is not in proper working order.
29. There is no gas supply to the Property, so there is no requirement for a carbon monoxide monitor.
30. Although the Tribunal has noted that the smoke detector in the living room is in such close proximity to the hallway, the guidance of the Scottish Government, contained in the Revised Domestic Technical Handbook (2013), is that there should be a smoke detector in all circulation spaces. Without a smoke detector in the hallway, the property does not meet the repairing standard.
31. 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.

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G Clark

Signed

Date: 8 October 2018

..... Legal Member/Chairperson

*This is the Schedule of Photographs
referred to in the Joint
Statement of Decision of 8/10/18*
G Clark

Housing and Property Chamber
First-tier Tribunal for Scotland



FTS/HPC/RP/18/1785

**Schedule of photographs taken during inspection of
308/3 Portobello High Street, Edinburgh EH15 2DA
on 8 October 2018 at 10.00 am**

Photograph 1:



External front elevation

FTS/HPC/RP/18/1785

Photograph 2: External rear elevation



Photograph 3: Kitchen appliances: washing machine



FTS/HPC/RP/18/1785

Photograph 4: Kitchen appliances: fridge



Photograph 5: Kitchen appliances: cooker



FTS/HPC/RP/18/1785

Photograph 6: Kitchen flooring



Photograph 7: Kitchen: heat detector



FTS/HPC/RP/18/1785

Photograph 8: Kitchen: general view



Photograph 9: Living room: smoke detector



FTS/HPC/RP/18/1785

Photograph 10: Hallway: site of smoke detector



Photograph 11: Door between living room and hallway



FTS/HPC/RP/18/1785

Photograph 12: Bedroom: front elevation roof



Photograph 13: Bedroom: damp meter reading - junction of ceiling and wall



FTS/HPC/RP/18/1785

Photograph 14: external wall of common staircase and living room - rear elevation



Photograph 15: Living room - damp meter reading - near kitchen



FTS/HPC/RP/18/1785