

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Property: 109 Westray Street, Glasgow G22 7AX (“the Property”/ “the house”)**

**Title No: GLA80517**

**Chamber Reference: FTS/HPC/RP/18/2500**

**Ms Michelle Meikle Traynor, 109 Westray Street, Glasgow G22 7AX (“the Tenant”)**

**Mrs Carolyn Kemley, t/a CK Properties, 115 Westray Street, Glasgow G22 7AX (“the Landlord”)**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Lori Charles (Ordinary Member/Surveyor)**

Whereas in terms of their decision dated 27 March 2019, 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 carry out such repairs to the windows throughout the Property as are necessary to ensure they are wind and watertight, in a good state of repair and in proper working order, including ensuring that all hoppers open and close properly and that the window on the upper landing can safely be used as an emergency exit from the Property;
- (2) to instruct a suitably qualified electrician to carry out such works as are necessary to ensure the electrical power points and light fittings in the Property are in safe and proper working order and, thereafter, to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, dated after the date of completion of the work, containing no C1 or C2 items of disrepair, the Report to be issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT;
- (3) to repair the hole in the bathroom floor;
- (4) to reinstate the fascias on the inside of the front entrance door of the Property;

(5) to carry out such works as are required to ensure that the provision of smoke detectors and heat detectors within the Property complies with the Fire Protection in Rented Properties Guidance published by the Scottish Government on 7 February 2019, effective 1 March 2019 and available on the Scottish Government website and

(7) to install a carbon monoxide monitor at an appropriate height in the kitchen of the Property.

The Tribunal order that the works required by this Order must be carried out within the period of two months 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 28 March 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

.... Legal Member/Chair .....

Witness

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **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: 109 Westray Street, Glasgow G22 7AX (“the Property”/ “the house”)**

**Chamber Reference: FTS/HPC/RP/18/2500**

**Ms Michelle Meikle Traynor, 109 Westray Street, Glasgow G22 7AX (“the Tenant”)**

**Mrs Carolyn Kemley, t/a CK Properties, 115 Westray Street, Glasgow G22 7AX (“the Landlord”)**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Lori Charles (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 by the Tribunal on 27 September 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 house is wind and watertight and in all other respects reasonably fit for human habitation,
  - 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, fittings 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 the application and its supporting documentation, the Tenant stated that she had been complaining for more than 3 years that the house was not wind and watertight. There was not a window that opened and there was dampness all over windows and window ledges. The windows leaked water and were not sealed, so were draughty. All the light fittings were broken, and sockets kept "tripping". There were holes in floorboards. There was no letter box. The bath and shower were so bad that she flooded the flat downstairs every time it was in use, because of the large hole in the floor.
4. On 1 November 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.
5. In her written representations, received by the Tribunal on 22 November 2018, the Landlord stated that a new front door of the Property had been fitted six years ago. The plaster was now cracked all around the door due to the police having raided the house. The gutters had been cleared in February 2018, along with the repair of two cracked roof tiles and all the pipes and gutters had been checked. A new boiler had been supplied and fitted two years ago. An electrician had replaced any sockets or fittings with quality fittings and sockets when the Tenant had moved in, but the Tenant had then, without the Landlord's permission, had sockets changed to ones of her own liking. Smoke alarms had been fitted in the living room and the hall, and had been refitted by the Fire & Rescue Service after a previous tenant had taken one of them down. A carbon monoxide detector had been supplied with the new boiler. The bathroom had been fully fitted and sealed by a qualified tradesperson, but the Tenant had then lifted the floor tiles, which had revealed a space between the floorboards, which was sealed and covered. The bath panel was no longer there. The Tenant had done all of this without permission from the Landlord. The Tenant had

refused an offer to uncover window vents or have vents fitted. The Landlord had then supplied a dehumidifier to combat any condensation and had been told that it had failed to collect any water. The Landlord had tried several times to gain entry to do some repairs that had just recently been requested.

6. The Tribunal inspected the Property on the morning of 27 March 2019. The Tenant was not present at the inspection but had arranged for the Tribunal Members to be admitted to the Property by Ms Karen Higgins. The Landlord was not permitted by the Tenant, via Ms Higgins, to attend the inspection.
7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Lori Charles (Ordinary Member/surveyor).
8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

9. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Landlord was present and was accompanied by her husband, Mr Ian Kemley. The Tenant was not present or represented at the Hearing.
10. The Landlord told the Tribunal that the Tenant had been provided with keys for all the window hoppers. The Landlord had changed the lock on the window on the upper landing shortly after the commencement of the current tenancy in April 2018. This was the only opening window and was, therefore, the means of escape from the Property. The bathroom floor had been completely covered with ceramic tiles when the Tenant moved in. It was the Tenant who had exposed the hole by lifting those tiles. The Landlord had tried on a number of occasions to gain entry to carry out repairs, but the Tenant had consistently put off such visits. The Landlord provided the Tribunal with copies of a number of text messages between the Parties from April 2018, advising the Tenant that the power supply to the block was going to be renewed, but access was required to the Property first.
11. The Landlord 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**

12. The Tribunal makes the following findings of fact:
  - The Property is an upper flat in a block of four former local authority houses in Glasgow.
  - The Tenant is tenant of the Property.

- Approximately 50% of the window hoppers in the Property cannot be opened or closed, in many cases because they appear to be locked.
- All the windows are fixed pane, apart from the window in the upper landing. This window appears to be broken and is blocked by cardboard and shoe boxes. The Tribunal was not prepared to attempt to open and close that window, in case it fell out.
- One electrical power point in the kitchen, to the left of the sink, shows signs of scorching, suggesting that it has at some point been overloaded. The power point to the right of the kitchen sink is loose and does not appear to be working.
- The Tribunal was unable to test whether light fittings were in proper working order, due to the absence of bulbs in some fittings.
- The bathroom floor is covered with vinyl, apart from the area beneath the bath itself, which is covered by ceramic tiles. When the vinyl at the doorway was lifted, the Tribunal noted that there was a rotted joist and the flooring was partially missing.
- There is no letter box in the front entrance door to the Property but there is a private post box attached to the external wall.
- The front entrance door appears to be effectively sealed, but the internal fascias have been removed. There did not, however, appear to be any draughts coming through the gap between the door frame and the door itself.
- There was no evidence of damp in the Property. Moisture meter readings were taken throughout but all readings were within the normal range.
- There is a smoke detector in one of the bedrooms. It was tested at the inspection and found to be working, but it is not mains-wired. There is evidence that there was at one time a smoke detector in the hall, but it is no longer there. There is no smoke detector in the living room and there is no heat detector in the kitchen.
- There is no carbon monoxide monitor in the kitchen, where the central heating boiler is located.

### **Reasons for the decision**

13. The Tribunal noted the comments of the Landlord which suggested that a number of items noted at inspection had resulted from the Tenant carrying out work without permission, such as lifting the ceramic floor tiles in the bathroom, and that the Landlord had been trying unsuccessfully to gain access to carry out repairs. The Tribunal also noted that the Landlord had not been allowed to enter the Property at the time of the inspection. Nevertheless, and this was accepted by the Landlord at the Hearing, the function of the Tribunal is to ensure that houses meet the repairing standard and it was clear that the Property did not meet it at present.
14. Repairs will have to be carried out to the windows throughout to ensure the hoppers open and close properly and that the window at the upper

landing can safely be opened and closed, as, apart from the entrance door at the foot of the stairs it forms the only exit from the Property in the event of an emergency.

15. Repairs are required to a number of power points and possibly also to light fittings. The Tribunal will require to see an Electrical Installation Condition Report once any necessary electrical works have been carried out.
16. A repair is necessary to the hole in the bathroom floor.
17. The missing fascias to the front entrance door require to be replaced.
18. Work requires to be done to ensure the Property complies with latest Scottish Government Guidance in relation to the provision of smoke and heat detectors.
19. A carbon monoxide monitor requires to be installed at an appropriate level in the kitchen.
20. 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..... Legal Member/Chairperson

Date: 27 March 2019

*This is the Schedule of Photographs  
referred to in the finding of Statement  
of Decision of 27/3/19  
G Clark*

*Lizal Finkler/Char*

# Housing and Property Chamber First-tier Tribunal for Scotland



## Schedule of Photographs



109 Westray Street, Glasgow G22 7AX

FTS/HPC/RP/18/2500

Inspection date – 27 March 2019 at 10:00am

Weather – Dry

Surveyor - Lori Charles



### **Lounge - Front Facing**



Lounge window - Top left hopper and window unit taped closed, a cable appears to be running from outside and the handle is broken. Window sill and surrounding areas tested for dampness all readings within normal range

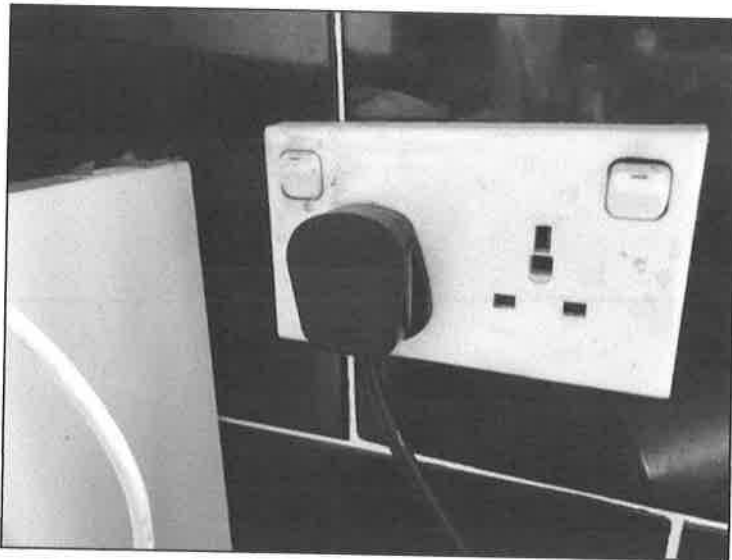
Only one hopper opens and no key available to lock.

### **Kitchen**



Top left hopper unable to open - possibly locked - No key to check. No evidence of dampness

### Kitchen - Cont



Electrical socket - No power, evidence of scorch marks visible.  
Other double socket is loose from wall, no evidence of power.

### Bathroom



Rotted floor timbers at bathroom door - vinyl floor covering lifted

Bathroom window tested - Hopper opens and closes, handle loose, no key to lock

**Bedroom 1 - Rear facing**



Windows tested only one hopper opens, no key to lock. No evidence of dampness  
Condensation noted within window panel - Appears seal has failed

**Bedroom 2 - Front Facing**



Both hoppers open and close  
Battery operated smoke detector noted and tested

### Bedroom 3 - Front Facing



Both hoppers open, no evidence of dampness

### Hall



No working lights within hall.

## Hall - cont

### Hall window



The only escape window within the property appears to be propped up/wedged with cardboard, Unable to open as window unit may fall out.

### Half landing window



Fixed pane. Mould visible due to condensation

### Front Door



Upvc facings are missing internally and door is not wind and water tight



No letterbox the Upvc front door however, there is an external post-box fitted.

### Observations made during inspection

A battery operated smoke detector was noted in bedroom 2 - Tested and working

No hard wired interlinked fire detection was noted within the flat. No CO detector noted at boiler.