

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**

Reference number: FTS/HPC/RP/19/0394

Title no/Sasines Description: GLA1479

**Re: 51 Capelrig Street, Glasgow G46 8LP
("the House")**

The Parties:

**Mr Stephen Saunders, 51 Capelrig Street, Glasgow G46 8LP
("the Tenant")**

**Mr Malcolm Blair, c/o Flat 0/1, 1 Ashgill Road, Glasgow G22 6QT
("the Tenant's Representative")**

**Mrs Shaila Parveen, 6 Braefield Drive, Glasgow G46 9DN; 6 Briarfield Drive,
Glasgow G46 7DN; 29 Parkholm Drive, Glasgow G53 7WQ
("the Landlord")**

**Allied Homes, 266 Allison Street, Crosshill, Glasgow G42 8RT
("the Landlord's Representative")**

Whereas in terms of their decision dated 17 April 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") and in particular that the Landlord has failed to ensure that the House is:-

- I. 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;

Under section 13 (1) (c) of 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 to: -

- a) Repair or replace the wall mounted gas fired central heating boiler in the House to ensure it is in a reasonable state of repair and in proper working order;
- b) To replace the Thermostat linked with the gas boiler with a new one with readily visible markings showing the temperature settings;
- c) To deposit in the House an up to date operating manual for the gas boiler for the use of the Tenant;
- d) To refit the Carbon Monoxide alarm to be at least 150mm below the ceiling and higher than any door or window in the Hall
- e) To commission an unqualified Gas Safety Report for the House from a suitably qualified Gas Safe registered engineer in which the overall assessment of all gas installations in the House are safe in all respects and to produce the Report to the Tribunal.
- f) On completion of all the above works, to restore all affected finishes and decoration.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 5 weeks from the date of service of this Notice.

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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 type written on this and the preceding two pages are executed by Susan Christie, legal member of the Tribunal, at Glasgow on 17 April 2019 in the presence of the undernoted witness: -

S Dunn

S Christie

_____ witness

_____ Legal Member

Shannon Dunn name in full

20 York Street, Address

Glasgow

G2 8AT

Housing and Property Chamber

First-tier Tribunal for Scotland



Property Address

51 Capelrig Street
Glasgow
G46 8LP

Case Reference

FTS HPC RP 19 0394

Glasgow, 17th April 2019
This is the Schedule of Photographs referred to in the
Decision of even date held in FTS/HPC/RP/19/0394 S Christie

Schedule of Photographs taken during the ^{Legal} inspection by tribunal members on 10 April
2019 _{Mentor.}



1. Boiler located in understair cupboard



2. Boiler control panel



3. Timeclock control for heating and hot water system



4. Wall mounted thermostat in Hall controlling heating system



5. External boiler flue terminal



6. Hall radiator with no thermostatic control valves



7. Carbon monoxide alarm in Hall outside cupboard containing boiler



8. General view of property

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006, section 22(1)

Reference number: FTS/HPC/RP/19/0394

Title no/Sasines Description: GLA1479

**Re: 51 Capelrig Street, Glasgow G46 8LP
("the House")**

The Parties:

**Mr Stephen Saunders, 51 Capelrig Street, Glasgow G46 8LP
("the Tenant")**

**Mr Malcolm Blair, c/o Flat 0/1, 1 Ashgill Road, Glasgow G22 6QT
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Glasgow G46 7DN; 29 Parkholm Drive, Glasgow G53 7WQ
("the Landlord")**

**Allied Homes, 266 Allison Street, Crosshill, Glasgow G42 8RT
("the Landlord's Representative")**

Tribunal Members:

Susan Christie (Chairing /Legal Member);

Andrew McFarlane (Ordinary Member)

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the House, and taking account of all of the available evidence, determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act. The Tribunal's decision is unanimous.

Background

1. An Application was made under Section 22(1) of the Housing (Scotland) Act 2006("the Act") on 6 February 2019 regarding the House.
2. The Applicant considered that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and that the House failed to meet the repairing standard as set out in Sections 13(1) (c) of the Act.
3. The detail of the complaints are contained within the Application form which states; a history of central heating boiler faults repeatedly reported to the Landlord /Landlord's Representative resulting in the occupants having to go elsewhere for a bath; the faults leaving the House with no heating and no hot water or with intermittent loss of hot water fixed only by regular visits from a gas engineer. The Applicant sought the remedy of a permanent repair to the central heating boiler so as to meet the repairing standard to ensure constant heating and hot water in the House for the occupants.
4. Additional paperwork produced with the Application evidenced that there had been written communication between the Landlord and Tenant in relation to issues raised and provided the Tribunal with a copy of the Private Residential Tenancy Agreement between the Parties with a date of entry of 14 March 2018;
5. By Minute of Decision to Refer the Application to a Tribunal made under Section 23(1) of the Act, on 11 February 2019 a Convenor with delegated powers under Section 23A decided to refer the Application to a Tribunal.
6. An Inspection was assigned for 10 April 2019 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunal Centre, Room 110, 20 York Street, Glasgow.
7. Written Representations were required by 20 March 2019.
8. Parties were advised of the date assigned in writing by letter dated 27 February 2019.
9. Written Representations were submitted by the Landlord's Representative around 15 March 2019. The tenor of the Response was that the Landlord asserted that all the repairs had been carried out timeously and that there had been failures on the part of the Tenant as there had been a suspicion that the boiler had been tampered with around August 2018. The list of critical dates for the repairs history being from 10 August 2018 to 12 March 2019. It was also suggested that as a Notice to Leave had been issued on 18 April 2018 the complaint now made was somehow linked to an intention of the Tenant to remain in the House. No formal proceedings had yet been taken to seek recovery of possession. Five invoices were produced addressed to the Landlord from AM Contracts, 266 Allison Street, Glasgow, G42 8RT dated 5 September, 24 October, 27 December (2) all 2018 and 21 February 2019.
10. The Tenant's Representative lodged a letter dated 27 March 2018 providing further documentation and specifically some relating to the communications between him and the Landlord's Representative, Cordia Daily Report extracts which included reference to there being no heating and hot water on specific dates, and a copy of a Gas Safety Record for the House dated 17 August 2017.

The Inspection

11. On the morning of 10 April 2019, the Tribunal attended at the House. The Tribunal inspected the House in the presence of the Tenant's Representative, and the Landlord's Representative who at that point in time was identified as Mr Thorburn of Stevenson and Jones. Paperwork was produced which on the face of it appeared to have been received by the Tribunal office on or around 20 March 2019, recording their interest. It was agreed by all in attendance that the Inspection could proceed on this basis and further enquires would be made before the commencement of the Hearing in respect of the status of Mr Thorburn.
12. The weather conditions at the time of the Inspection were sunny and dry. Photographs were taken during the Inspection and these are attached as a Schedule to this Decision.
13. The House is a ground floor flatted dwelling house within a cottage style 4 in a block. The building was constructed in the 1950s.
14. The Tribunal carefully inspected the House having regard to the issues raised. Preliminary observations were noted for the purposes of the Hearing.

The Hearing

15. Following upon the Inspection of the House, those in attendance proceeded to the Hearing venue.
16. It transpired that a Mandate had not been produced and could not be obtained that day from the Landlord (whose exact whereabouts were unknown today) to allow Mr Thorburn to participate. The Tribunal had sent an e mail requesting this around 22 March 2019 but appears not to have been acted upon by the agent or Landlord.
17. The Hearing took place with Mr Thorburn observing and the Applicant's Representative participating.
18. The Tribunal's preliminary findings of the visual Inspection as detailed below were relayed to those present. The findings were generally accepted.
19. The Tribunal had been advised that one of the occupants of the House is recently deceased. This occupant had been cared for by Cordia Services as per the copy notes produced. Those were compared with the originals and appeared authentic. They had entries which verified the loss of hot water in the house over a period at different noted dates. The Tenant had vulnerabilities and might be considered to be disabled within the meaning of the Equality Act 2010. It was stated that the Landlord's Representative was or should have been aware of this and that is why he had a Representative assisting him in this application.

The findings of the Inspection

20. The House had a wall mounted gas fired central heating boiler in the under stair cupboard. This was connected to a series of radiators located throughout the House. The boiler was installed circa 2008 as per a label affixed to it. Two

other labels showed that it had last been serviced in March 2015 by Power Service Company and that there had been a flue gas analysis on 13 August 2018 by SE Contractors.

21. On inspection today hot water was available and after some adjustments to the timer on/off switch and the thermostat in the hall, heating was available. The thermostat and controls panel were not particularly obvious as to how to adjust or operate and the thermostat was completely devoid of markings. The system was pressurised.
22. There was a wall mounted CO monitor in the hall at eye level which may have been at the wrong height. The regulations were to be checked by the Tribunal.
23. No copy Gas Safety Certificate or operating manual were available at the House.
24. It was observed that there was sufficient provision for smoke detection in the House.
25. It was observed that there was a gas fire in the lounge, but it was said not working. That did not form part of the Application.

The Evidence

26. The evidence before the Tribunal consisted of written evidence in the form of the Application form with the supporting documentation and all communication exchanges along with the oral evidence at the Hearing.
27. The findings of the Inspection of the House that informed the Tribunal. The findings were generally accepted by the Party present.
28. The documents produced by both Parties were referred to and some of them discussed in detail.
29. The Gas Safety Certificate Produced numbered item F was a Gas Safety Certificate for the House over the boiler and the hob. It was dated 17 November 2017 and expired on 17 August 2018. The Certificate had expired and there was no other current certificate produced, nor was the Tenant's Representative aware of one in existence. He was frustrated by being 'fobbed off' by the landlord's Agents over a period of time. He had contacted them, and they had sent someone out 5 or 6 times. He didn't see identification and those attending were only told to say they were there to inspect the boiler. They had been told not to discuss anything with him. He felt this was all suspect in so far as the qualifications of those sent. One he did believe was a plumber and he had said that he had adjusted the temperature and a part could be fitted to prevent the water reaching a scalding temperature. He had sought advice from Govan Law Centre in relation to the timings of the walk ins. He also believed the number of repairs required was excessive and proved the case for the Applicant. When specifically asked to what ongoing problems there were (if any), he advised that it was mainly now down to loss of regular hot water. His sister had been an occupant who died on 2 April 2018 and had to be bathed elsewhere on different dates because of the failure to ensure regular supply. The current occupant and Tenant required assistance from family and they assisted him. The gas fire in the lounge was noted not to be mentioned on the expired Gas Safety Certificate and it was unclear as to whether the Tenant had given any indication of whether it worked but the belief was it did not work. There were no labels on it to say either way. He had hoped Allied would have sent someone to the Hearing as

- he wanted to ask them some unanswered questions. He rejected the allegation about the connection between the complaint and the Notice to Leave saying the faults with the boiler had been raised before that had been sent to the Tenant. He was frustrated in trying to track down the correct address for the Landlord and one of her addresses are said not even to exist.
30. The AM Contract invoices produced: confirmed that circa 5 September 2018 that the boiler had failed the flue test at a gas safety inspection; there was a return visit where some work was done. In October 2018 there was a call out of no heating or hot water and a minor adjustment was done. A further repeat complaint circa December 2018. Three subsequent repairs were done where parts were parts were repaired or replaced.

Summary of the issues

31. The issue to be determined was whether the House meets the repairing standard at the date of the Inspection as set out in section 13 (1) (c) of the Act, and whether the Landlord had complied with the duty imposed on her by section 14(1) (b) of the Act.

Findings in fact

The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner and registered Landlord of the House.
- II. The tenancy between the Landlord and the Tenant is a tenancy to which the repairing standard applies.
- III. The wall mounted gas fired central heating boiler in the under stair cupboard is not in a reasonable state of repair and in proper working order; it has routinely failed to provide heating and hot water and it has no current unqualified Gas Safety Certificate.
- IV. The Tribunal carefully inspected the House on 10 April 2019 and found that the House does not meet the repairing standard required under section 13 (1) (c) of the Act.

Reasons for Decision

It is clear that the gas fired central heating boiler in the under stair cupboard is not in a reasonable state of repair and in proper working order. It has routinely failed to provide heating and hot water and it has no current unqualified Gas Safety Certificate. Whilst there has been some effort to carry out repairs the effort has been misplaced when the boiler looks to be beyond economic repair and has not passed a Gas Safety test.

Observation

The Gas fire in the lounge requires be testing for gas safety, and repairing or replacing as necessary.

Summary of Decision

The Landlord has therefore failed to comply with the duty imposed by section 14 (1) (b) of the Act and has not ensured that the House meets the repairing standard under sections 13(1)(c) of the Act. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act. The decision of the Tribunal is unanimous.

A landlord, tenant or third-party applicant 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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Executed by Susan Christie, Legal Member and Chair of the Tribunal at Glasgow on 17 April 2019: -

S Christie

_____ Legal Member and Chair