

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 24 (2)

Chamber Ref: FTS/HPC/RP/18/0037

Property Description: 9 Bull Road, Glasgow G76 8EF being the subjects registered in the Land Register under title number REN97743 ("The House")

The Parties:-

Mr Rupesh Muramalla, residing at the House ("the Tenant")

Ms Kirstien Simons or King, residing at 43 Fenella Crescent, Craigie, Western Australia, 6025 (represented by her agent Your Move, 7 The Toll, Clarkston, Glasgow G76 7BG) ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member); Greig Adams (Ordinary Member)

NOTICE TO: Kirstien King or Simons ("the Landlord")

Whereas in terms of its decision dated 2 May 2018, the Tribunal determined that the Landlord had failed to comply with the duty imposed on her 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 the House is wind and watertight and in all other respects reasonably fit for human habitation and 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 Tribunal now requires the Landlord to carry out such work as is necessary for the purpose 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 before the date specified in this order.

In particular the Tribunal requires the Landlord to :

- 1. repair or replace the render on the exterior of the House as required to leave the render free from cracks and boss areas and ensure that the**

House is left in a wind and watertight condition with the render in a reasonable state of repair;

2. repair or replace all gutters and downpipes serving the House to leave the House wind and watertight and in a reasonable state of repair; and
3. appoint a suitably qualified damp specialist to report on the areas of dampness in the hall, bedroom and kitchen of the House and undertake all remedial works recommended, including all necessary redecoration.

The Tribunal orders that the works specified in this order must be carried out and completed within the period of 10 weeks 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 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.

Joan Devine

Signed
Joan Devine, Chairing Member

2 May 2018
Date

In witness whereof these presents type written on this and the preceding page are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 2 May 2018 before this witness:-

witness :

name in full : Hannah Brown

Address : Cornerstone, 107 West Regent Street, Glasgow G2 2BA

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/18/0037

Property Description: 9 Bull Road, Glasgow G76 8EF being the subjects registered in the Land Register under title number REN97743 ("The House")

The Parties:-

Mr Rupesh Muramalla, residing at the House ("the Tenant")

Ms Kirstien Simons or King, residing at 43 Fenella Crescent, Craigie, Western Australia, 6025 (represented by her agent Your Move, 7 The Toll, Clarkston, Glasgow G76 7BG) ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member); Greig Adams (Ordinary Member)

DECISION – 9 Bull Road, Glasgow G76 8EF

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") in relation to the House and taking account of all the available evidence determines that the Landlord has failed to comply with the duty imposed on her by Section 14(1)(b) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 9 January 2018, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with her duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with her duty to ensure that the property met the repairing standard as set out in Sections 13(1)(b) of the Act. His application 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; and
3. The Tenant made the following complaints in his application and in his notification letter to the Landlord :
- dampness on walls, especially in the bedroom
 - Mould and fungi throughout the House which has spoiled clothing and bedding
 - Gutters need fixed
 - Walls leaking
 - House needs to be redecorated
4. On 13 February 2018, the Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued a Minute of Decision stating that she considered that in terms of Section 23(3) of the Act, there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the Tenant comprising documents received between 9 January 2018 and 6 February; and intimating her decision to refer the application to the Tribunal for determination.
5. The Clerk to the Tribunal wrote to the Tenant and to the Landlord's agent, Your Move, on 8 March 2018 notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a Tribunal and that an inspection and a hearing would take place on 20 April 2018. No written representations were received from the Landlord or the Tenant.

The Inspection

6. The Tribunal inspected the House on the morning of 20 April 2018. The weather conditions at the time of the inspection were sunny and dry. The Tenant was present at the House during the inspection. The Landlord was not present or represented at the inspection. Photographs were taken during the inspection and are attached as a Schedule to this decision.

The House

7. The House is lower floor flat situated within a former local authority "four in a block". The House is located in a predominantly residential area within the Clarkston district of Glasgow and around 7 miles south of the city centre.

The Hearing

8. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Tenant attended the hearing. The Landlord was not present or represented at the hearing.

The Evidence

9. The evidence before the Tribunal consisted of:
- the application form completed by the Tenant;
 - Land Register report relating to the House;
 - emails of notification from the Tenant to the Landlord's agent notifying it of the various issues complained about in his application;
 - the Tribunal's inspection of the House; and
 - the oral representations of the Tenant.

Summary of the Issues

10. The issue to be determined was whether the House meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on her by Section 14(1)(b).

Findings in Fact

11. The Tribunal made the following findings in fact:
- the Tenant had lived in the House since 31 March 2017. He entered into a Tenancy Agreement at that time with the Landlord. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply;
 - the tenancy of the House is managed by the Landlord's agent, Your Move, 7 The toll, Clarkston, Glasgow G76 7BG;
 - the Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the House the Tribunal observed that there was evidence of penetrating damp in the hall, kitchen and bedroom. Outside the House the Tribunal observed that the render was bossed and cracked and that the rainwater goods were defective.

Reasons for Decision

Following its inspection and the hearing, the Tribunal determined that :

- the House is not wind and watertight and in all other respects reasonably fit for human habitation; and
- the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order

12. The complaints before the Tribunal as set out in the Tenant's application related to dampness in the House. The Tribunal inspected both the interior and exterior of the House. The Tribunal's determinations in relation to each of these is set out below.

Interior of the House

13. The Tribunal noted that there were high moisture meter readings on the external wall in the hallway, most noticeably above the main entrance door. The readings were sub-surface and evidenced penetrating damp. Within the hallway, the wallpaper was peeling. The moisture meter readings taken within the internal walls of the hallway indicated condensation rather than dampness. The surface temperature was at or below the dew point. Moisture meter readings within the internal walls of the hallway were within an acceptable range.
14. In the bedroom, the moisture meter readings were high on the external wall and within the wardrobe. Sub-surface readings were taken. These indicated some form of penetrating or rising damp. Mould was apparent on the walls and inside the wardrobe.
15. In the kitchen, high moisture meter readings were evident to the external wall. The readings were sub-surface. The moisture meter readings obtained indicated penetrating dampness.

Exterior of the House

16. The Tribunal noted that the render was in poor condition, both to the front and back of the House. The render was affected by cracking and crazing. Isolated tap testing undertaken revealed bossed sections. The failure of the render at lower levels was particularly noticeable. Repairs had previously been undertaken by over-coating the render.
17. The cracking in the render allowed moisture to ingress into the cavity wall construction. The Tribunal noted an absence of weep holes or cavity trays. Whilst the render detail was poor, it was to ground level which allowed bridging of the damp-proof course.

18. The Tribunal inspected the rain water goods and noted defective cast iron joints. This was particularly so in the area serving the rear roof pitch. The Tribunal noted split sections of downpipe and poor previous patch repairs at the base. There was also failed decoration and corrosion throughout. The Tribunal noted that the connection between the PVC and cast iron gutters serving the property was in poor condition.

Summary of Decision

19. The Tribunal determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that the House is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
20. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act. ,

Right of Appeal

21. **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 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.

Joan Devine

Signed

Joan Devine, Chairing Member

.....
Date

2 May 2018

In witness whereof these presents type written on this and the eight preceding pages are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 2018 before this witness:-

witness :

.....
Hannah Brown

name in full :..

Address : Cornerstone, 107 West Regent Street, Glasgow G2 2BA

Glasgow 2 May 2018
This is the Schedule of
Photographs referred to in
the foregoing decision.

Joan Devine



Legal Member.



**9 Bull Road, Glasgow G76 8EF
being the subjects registered in
the Land Register under title
number REN97743
("The House")**

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SCHEDULE OF PHOTOGRAPHS



7 General view of recess adjacent to chimneybreast within Bedroom affected by dampness.



8 View of front corner – dampness at low level to window wall and extending to recess adjacent to chimneybreast.



9 Low level to window wall within Bedroom – noticeably visual dampness staining.



10 Moisture reading showing 55.8 WME at window wall at low level.



11 Area of defective render at basecourse over front elevation.



12 Close view of failure with overcoat render failing due to failure of bond.



19 Area above kitchen window affected by high moisture readings.



20 View of render at rear elevation below kitchen and bathroom windows.



21 Defective cast iron downpipe at base.



22 View of failed paintwork and heavy corrosion of cast iron downpipe.



23 Further view of low level render to rear elevation.



24 Further view of low level render to rear elevation.



31 Gable Elevation – defective render adjacent to entrance door.



32 Gable Elevation – defective render adjacent to entrance door.



33 Hallway – areas of complaint from Tenant regarding dampness.



34 Hallway – areas of complaint from Tenant regarding dampness.



35 Dampness above main entrance door.



36 Peeling paper within hallway.