

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/18/0040

Property Description: 3/1 64 Errol Gardens, Glasgow G5 0RS being the subjects registered in the Land Register under title number GLA171082 ("The House")

The Parties:-

**Miss Michelle Elliot, residing at the House
("the Tenant")**

**Miss Lorna Turnbull residing at 15 Ross Avenue, Perth PH1 1GZ (represented by her agent Domino Estates, 12 Minerva Way, Glasgow G3 8AU)
("the Landlord")**

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

NOTICE TO: Lorna Turnbull ("the Landlord")

Whereas in terms of its decision dated 22 March 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 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 remove the existing self-closing fire door at the entrance to the House and the surrounding frame and replace it with a new self-closing fire door to the same fire resistant standard as before inclusive of required ironmongery such as deadlocks and keys.

The Tribunal orders that the works specified in this order must be carried out and completed within the period of 21 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 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.

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Signey
Joan Devine, Chairing Member

22 March 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 2018 before this witness:-

witness :... ..

name in full : *LAURA SMITH*
.....

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

Photograph Schedule – 64 Errol Gardens Glasgow G5 0RS

Case reference: FTS/HPC/RP/18/0040

Date of Inspection: 14 March 2018

*This is the photographic
Schedule referred to
in the Determination
dated 22 March
2018*

J Devine

*Chairing
Member*



1 The damaged front entrance door to flat 3/1 64 Errol Gardens



2 The split frame at the door head above the front entrance door



3 The inside face of the front entrance door



4 The split and patched leading edge of the front entrance door at the lock/handles

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/18/0040

Property Description: 3/1 64 Errol Gardens, Glasgow G5 0RS being the subjects registered in the Land Register under title number GLA171082 ("The House")

The Parties:-

**Miss Michelle Elliot, residing at the House
("the Tenant")**

**Miss Lorna Turnbull residing at 15 Ross Avenue, Perth PH1 1GZ (represented by her agent Domino Estates, 12 Minerva Way, Glasgow G3 8AU)
("the Landlord")**

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

DECISION – 3/1 64 Errol Gardens, Glasgow G5 0RS

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 1 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 she 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. Her application 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; and
3. The Tenant made the following complaints in her application and in her notification letter to the Landlord :
- the front door of the property, including the door frame, requires to be replaced.
4. On 26 January 2018, the Convenor 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 on 10 January 2018; 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, Domino Estates, on 9 February 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 14 March 2018. Written representations were received from the Landlord dated 27 February 2018. No written representations were received from the Tenant.

The Inspection

6. The Tribunal inspected the House on the morning of 14 March 2018. The weather conditions at the time of the inspection were cold and dry. The Tenant was present at the House during the inspection. Her sister, Colette Elliott was in attendance. Rosalind Philips of Domino Letting, the Landlord's agent, was also present at the inspection. Photographs were taken during the inspection and are attached as a Schedule to this decision.

The House

7. The House is a third floor flat within a three storey flatted development estimated to be in the region of 20 years old. The House is located in a predominantly residential area within the Gorbals district of Glasgow and around 2 miles south of the city centre.

The Hearing

8. Following the inspection, the Tribunal held a hearing at Teachers Building, 14 St Enoch Square, Glasgow G1 4DB. The Tenant attended the hearing and was accompanied by her sister Colette Elliott. The Landlord was represented by Rosalind Philips and Martin Callaghan of Domino Estates.

The Evidence

9. The evidence before the Tribunal consisted of:

- the application form completed by the Tenant;
- Land Register report relating to the House;
- letter of notification from the Tenant to the Landlord's agent notifying it of the various issues complained about in her application;
- written representations received from the Landlord's representative dated 27 February 2018;
- the Tribunal's inspection of the House; and
- the oral representations of the Parties.

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 August 2016. She 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, Domino Estates, 12 Minerva Way, Glasgow G3 8AU;
- the Tribunal in its inspection carefully checked the items which were the subject of the application. The Tribunal observed that the entrance door to the House has been damaged and has a temporary repair with a new lock and handle fitted. The door frame was split. The door did not "self close".

Reasons for Decision

12. Following its inspection and the hearing, the Tribunal determined that the structure and exterior of the property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.

13. The Tribunal determined that the failure of the Landlord to comply with the repairing standard did not occur due to the Tenant's failure to use the House in a proper manner or because the Landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.
14. The complaints before the Tribunal as set out in the Tenant's application and the Tribunal's determinations in relation to each of these are set out below.

Condition of the Door

15. A temporary repair had been carried out to the door. This included the fitting of a new lock and door handle. The door frame was split. The door did not comply with Building Regulations.

Circumstances Giving Rise to the Door Repair

16. The Tenant explained that the washing machine in the kitchen had moved forward so much that it had pushed the skirting out of the way. On 15 September 2017 she reported this to Domino Estates by telephone.
17. Both the Tenant and her sister work full time. The Tenant explained that she is used to letting agents taking access when she is not in the House. The Tenant explained that she left a further voicemail for Domino Estates on 26 September 2017. She received an email response from James Callaghen of Domino Estates. He emailed the Tenant saying that he had her message and asking what the difficulty was. The Tenant drew the Tribunal's attention to her email response of 26 September 2017 timed at 13.45 in which she explained that the washing machine had been moving and had pushed out the bottom of the skirting. The email also referred to an issue with water pressure which had caused the shower head to become broken and an issue with the shower screen.
18. The Tenant explained that she was contacted by a contractor by telephone a few days later. She asked the contractor to pick up the keys for the House from the letting agents as she and her sister worked full time. The Tenant explained that when she and her sister returned from work a few days later they knew that a contractor had been in as the showerhead and the seal along the bottom of the shower screen had been replaced. The washing machine however was still sitting out further than it should be and the skirting needed replaced.
19. The Tenant referred to an email received from Domino Estates on 10 October 2017 in which they explained that an inspection was due to be carried out on 12 October by a trusted contractor who would have keys. The Tribunal's attention was drawn to the copy email.
20. Colette Elliott explained that she attended the inspection and again raised the issue regarding the washing machine and skirting needing to be replaced. Colette Elliott said that at that time she was not aware of any leak from the washing machine. Her only concern was that the washing machine was not in

the correct place. The Tenant confirmed that she also was not aware of any leaks at that time.

21. The Tenant said that on 18 October 2017 she had a missed call from Home Appliance Engineers ('HAE'). They had also emailed her on that date saying that they had tried to call her. The Tenant said that she called them back. They asked to come out to the House on 20 October 2017.
22. The Tenant said that on 19 October she had set the washing machine by a timer. When she arrived home from work the fire brigade were present. They had kicked the door in and turned off the water as there had been a leak from the washing machine to the flat below.
23. The Tenant said that she telephoned Domino Estates out of hours service and they sent out a joiner to secure the door. The result of that was that the door could be bolted from the inside but not the outside. Another contractor came to the House the following day to fit a new lock.
24. The Tenant explained that the issue which she raised on 26 September 2017 was firstly that the washing machine was out of place, as was the skirting, and secondly that she thought that there was an issue with water pressure. The Tenant said that the work carried out to the door on 20 October 2017 was what has been in place since then. She said that a new handle was also put on the door.
25. The Tenant explained that she had a call on 2 November 2017 from Domino Estates saying that she had to pay for the cost of fitting a new door. The Tenant said that she does not always know when contractors are sent out. She was not told not to use the washing machine. She was not told there was a risk of a leak.
26. The Tenant said that Domino Estates have said that the Tenant has been negligent as HAE had tried to call the Tenant on a number of occasions since she had reported the difficulties with the washing machine on 26 September. The Tenant said that her only record of a missed call was on 18 October. She also had an email on that date to which she replied. Colette Elliott said that she had not received any calls or emails from HAE.
27. The Tenant said that a separate contractor had fixed the shower during this period. She did not understand why the same contractor could not have fixed the washing machine or why another contractor could not have attended the House with a set of keys from the letting agents.
28. The Tenant explained that when she had received the email from Domino Estates saying that she was required to meet the cost of replacing the door she replied saying that she had not been negligent and noted paragraph 26 of the Tenant Information Pack which sets out a procedure for the Landlord to have access to the House. The Tenant queried why that process could not have been used.

29. Rosalind Phillips then gave evidence on behalf of the landlord. She referred to the productions which had been lodged with the written representation on behalf of the Landlord. Production 1 was a record of a voicemail on 14 September 2017. Production 2 was the work order sent to HAE. This was submitted on line. She explained the production 3 was the second time that the issue had been reported on line.
30. Rosalind Phillips explained that on 26 September she asked HAE to contact the Tenant. On 28 September HAE advised her that they had been unable to contact the Tenant. The Tribunal asked Rosalind Phillips when the contractor took entry to the House to fix the shower. Rosalind Phillips said she did not know when that had taken place.
31. Rosalind Phillips said that between 28 September and the inspection on 12 October she assumed that HAE had been trying to contact the Tenant. She assumed that the work may have been done during that period. The issue regarding the washing machine was raised again at the inspection on 12 October. She again asked HAE to contact the Tenant. Reference was made to production 5 which was an email from HAE dated 18 October and in which they said that they had left voicemails for the Tenant to which they had received no reply.
32. Rosalind Phillips referred to production 6 which was an email from HAE to Domino Estates explaining that they had left a voicemail for the Tenant on 16 October and then again on 18 October. Rosalind Phillips summarised that there had been attempts to contact the Tenant on 15 September, 28 September, 16 October and 18 October and no reply had been received until 18 October. The Tribunal asked Rosalind Phillips about the procedure whereby a contractor could arrange access by picking up keys from the letting agent. Rosalind Phillips said that this had to be done by arrangement with the Tenant. Rosalind Phillips said that she agreed that the door needed to be replaced but the question was who should pay for it.
33. The Tenant then gave further evidence. She said that HAE may have installed the washing machine at the outset of the tenancy. She said that she thought that a lot of what had been said on behalf of the Landlord had been contradictory. For example in their email of 2 November Domino Estates referred to not being able to give access to a contractor without permission and yet the inspection was set up with a contractor having access with keys obtained from the letting agency. Also she thought that HAE had been out before with keys uplifted from the letting agency. The Tenant queried why HAE could not have come out when the other contractor came to fix the shower. The Tenant said that she had no record of HAE trying to contact her on 15 September, 28 September or 16 October. She said that she did not have them in her mobile phone as a contact.
34. The Tribunal asked Rosalind Phillips what it was she thought amounted to the Tenant being negligent. Rosalind Phillips said that it was the Tenant's failure to respond to requests for access. Rosalind Phillips said that if HAE had been able to gain access the leak may not have happened.

35. The Tribunal asked about the comment referred to in the documents that the washing machine had not been correctly installed. Rosalind Phillips said that she had never got to the bottom of that.
36. Mr Callaghan said that it was unfortunate that matters had come to this. He had always sought to find a middle ground between a landlord and a tenant. It was however the Landlord's view that all of this could have been avoided.
37. The Tenant said that the washing machine is an appliance provided by the landlord and it is their obligation to maintain it.

Negligence of the Tenant

38. Rosalind Phillips made reference to negligence on the part of the Tenant. Reference was made to the tenancy agreement which provides at clause 29 that *"the Tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence, that of any person residing with him or that of any guest of his"*. The Tenant had advised the Tribunal that the Landlord was of the view that the Tenant should pay for a replacement door as the Tenant had been negligent.
39. The Tribunal asked Rosalind Phillips to explain what it was she thought amounted to negligence on the part of the Tenant. She said that the Tenant's negligence was her failure to respond to requests for access. Rosalind Phillips said that if HAE had been able to get access to the House then the leak would not have happened.
40. Section 16 of the 2006 Act sets out exceptions to a landlord's repairing duties. Section 16 of the Act states:
- "(1) *The duty imposed by Section 14(i) does not require:*
- (a) *any work to be carried out which the Tenant is required by the terms of the tenancy to carry out;*
- (b) *any work to be carried out for which the Tenant:*
- (i) *is liable by virtue of the Tenant's duty to use the house in a proper manner;*
- (2) *the exception made by sub-section (1)(a) applies only if the tenancy concerned is:*
- (a) *for a period of not less than 3 years; and*
- (b) *not determinable at the option of either party within 3 years of the start of the tenancy.*

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- (4) *A landlord is not to be treated as having failed to comply with the duty imposed by section 14 (1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights."*

41. The Tribunal considered that exception to the Landlord's duty set out in Section 16(1)(a) does not apply as the tenancy is not for a period of not less than 3 years.
42. Section 16 sets out an exception to the Landlord's repairing duty where the works require to be carried out as the Tenant has failed to use the house in a proper manner. The Tribunal determined that there was no evidence before it which would indicate that the Tenant failed to use the House in a proper manner.
43. A further exception set out in Section 16 is that the landlord shall not be treated as having failed to comply with the duty set out in Section 14 where the failure occurred because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights. The Tribunal noted that the tenancy agreement set out a procedure which would allow the Landlord to have access to the House for the purposes of maintenance. The relevant provisions are clauses 17 and 36 of the tenancy agreement. That procedure had not been followed in this case. The Tribunal determined that the Landlord's failure to comply with the repairing standard set out in the 2006 Act was not as a result of the Landlord lacking necessary rights, of access or otherwise.

Summary of Decision

44. 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 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. The Tribunal determines that the exceptions to the Landlord's duty set out in section 16 of the Act do not apply in this case.
45. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

46. **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.

J Devine

Signed
Joan Devine, Chairing Member

22 March 2018
Date

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

name in full : LAURA SMITH

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