

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**

Chamber Ref: FTS/HPC/RP/18/01183

Title no: REN 35991

4 Lomond Drive, Newton Mearns, Glasgow, G77 6LR ("The Property")

The Parties: -

Naeem Akhtar, formerly of 4 Lomond Drive, Newton Mearns, Glasgow ("the former Tenant")

Rana Mohammad Yasin c/o AQA Ltd, 584 Cathcart Road, Glasgow, G42 8AB ("the Landlord")

Whereas in terms of their decision dated 6 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") and in particular that the Landlord has failed to ensure that :-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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, and
- (d) 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 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 instruct a suitably qualified roof contractor to inspect and report on the condition of the roof and gutters and investigate the cause of water ingress at the property. Thereafter to carry out all recommended repairs to remedy the water ingress, damaged roof and gutters, and any resultant decoration made good,
2. To instruct a suitably qualified window contractor to repair or replace all defective and damaged windows and doors at the property, including the garage windows and door,
3. To instruct a suitably qualified SELECT or NICEIC registered electrician to move the electrical socket from the skirting board in the ground floor bedroom to an appropriate location and carry out a certified electrical condition check on the entire electrical installation of the property, and exhibit a copy of the EICR to the Tribunal,
4. To replace the defective shower hose and damaged cistern in the bathroom.
5. To fix the loose tiles in the bathroom to the wall and re-grout same
6. To repair the extractor in the kitchen so that it is no longer clogged with grease and replace all missing cupboard door handles, and
7. To instruct a Gas Safe registered engineer to repair the gas fire in the property and thereafter carry out an inspection of the gas installation and appliances at the property and issue a gas safety certificate, or to replace the fire.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 12 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 two preceding pages are executed by Josephine Bonnar, Solicitor, legal member of the Tribunal, at Motherwell on 6 October 2018 in the presence of the undernoted witness:-

G Bonnar

J Bonnar

_____ witness

Legal Member

Gerard Bonnar
1 Carlton Place
Glasgow

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 24(1)

Chamber Ref: FTS/HPC/RP/18/01183

Title no: REN 35991

4 Lomond Drive, Newton Mearns, Glasgow, G77 6LR ("The Property")

The Parties: -

**Naeem Akhtar, formerly of 4 Lomond Drive, Newton Mearns, Glasgow
("the former Tenant")**

**Rana Mohammad Yasin c/o AQA Ltd, 584 Cathcart Road, Glasgow, G42
8AB ("the Landlord")**

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") in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Ms Lori Charles, Ordinary Member

Background

1. By application received on 22 May 2018 the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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 states that the Tenant considers that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant states that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, and (v) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vii) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complains of water leaks from ceilings, roof in disrepair, damaged gutters, dangerous gas fire, no gas safety certificate provided, damaged plumbing and sanitary fittings, loose bathroom tiles and insect infestation in shower, smoke detectors not working, lack of CO detector, kitchen extractor blocked, floor broken by the stairs on the first floor, kitchen cupboards broken, no light in several rooms, broken curtains, water leakage from stairs window and repainting required . In addition, the Tenant complains that he had carried out a repair to electrical sockets at his own expense and that broken furniture and personal effects have been left in the house and garage.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 6 July 2018. The parties were notified that an inspection and hearing would take place on 17 August 2018.
4. Following service of the Notice of Referral the Tribunal sought clarification of the Landlord's details. The Tribunal noted that the

Landlord is designed in the application and in the tenancy agreement lodged with the application, as Ghulam Mustafa, whose name does not appear on the title deeds to the property. The letting agent confirmed that Ghulam Mustafa had been acting on behalf of the Landlord, who resides in Pakistan, and that they are instructed by the Landlord to deal with the application before the Tribunal. The Tribunal noted that the notice of referral, inspection and hearing had been issued to the Landlord as well as the said Ghulam Mustafa. The Landlord's agent notified the Tribunal on date that the Tenant had vacated the property on 16 July 2018. The Tribunal attempted to confirm the position with the Tenant but received no response. By Minute of Continuation dated 14 August 2018 the Tribunal decided that it would continue to determine the application in terms of Schedule 2 Paragraph 7(3) of the Act. Thereafter the Tribunal granted the Landlord's request to postpone the inspection and hearing. The Inspection and hearing were re-scheduled to 19 September 2018.

5. The Tribunal inspected the property on the morning of 19 September 2018. The letting agents, Mo Bukari and Omar Hayat attended on behalf of the Landlord
6. Following the inspection of the property the Tribunal held a hearing at the Glasgow Tribunals Centre, 20 York Street, Glasgow. The letting agents Mo Bukhari and Mo Arshad ("the agents") attended on behalf of the Landlord.

The Inspection

7. At the time of the inspection the weather was wet and windy. The Tribunal inspected the property which is a four bedroom detached dwellinghouse. The property appears to be unoccupied and partially furnished. The Tribunal noted the following; - (a) Entrance porch – the double glazed seal in fixed panel has failed, high moisture readings, (b) Lounge – gas fire has been capped and has sticker to warn against usage, (c) Ground floor front bedroom - historic water ingress evident on ceiling, (d) Ground floor rear bedroom – high moisture readings and damage to ceiling, power point on skirting board, (e) Bathroom – tiles loose and grout missing, shower hose damaged and toilet cistern has been broken and glued together, (f) Kitchen – Extractor hood is functioning but blocked by grease and door handles missing from several units, (g) Dining room – ceiling damaged by water ingress and high moisture readings, (h) First floor front bedroom - high moisture readings in roof space and double glazing seal has failed in centre panel, (i) First floor rear

bedroom – water ingress on wall with high moisture readings, double glazed window is cracked and silicone seal is coming away from the window frame, (j) Ensuite toilet – Light switch is sited within the toilet and unprotected fluorescent light strip on ceiling, (k) First floor stair landing - no evidence of water ingress at window, uneven floor at top of the stairs, (l) Garage and garden – Garden overgrown and full of rubbish, garage windows are broken and missing, garage door could not be opened, gutters at rear are blocked, rain water pipe is disconnected from gutter. The Tribunal also noted that there are no smoke or heat detectors in the property. A CO detector has been installed in the kitchen and appears to be in working order. All rooms appear to have functioning lights. Other than the ceilings affected by water ingress no issues with the décor/painting were noted or defective curtains. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

8. At the hearing the Tribunal heard evidence from both agents. As a preliminary matter, the Legal Member of the Tribunal advised the agents that 2 emails had been lodged with the application as evidence of prior notification by the Tenant to the Landlord of the repairing standard issues. These emails are dated 27 April and 2 May 2018. The Tribunal had noted however that not all the repair issues detailed in the application are referred to in the emails. No further representations were received from the Tenant prior to the tenancy coming to an end. The Legal Member indicated that the Tribunal would only consider the repairs issues which had been notified to, or which were established to have been within the knowledge of the Landlord, when determining whether a breach of the repairing standard has been established.
9. **Water ingress.** The agents advised the Tribunal that the Landlord accepts that there is water ingress at the property, the source of which has not yet been identified. A contractor has been identified to investigate and carry out repairs. However, this has been delayed. The reason for the delay is that Landlord does not yet have a landlord registration number, having only recently registered with the local authority. The agents are waiting for this number to be issued before instructing repair works to the property, including the roof repairs.
10. **Gas Fire and gas safety certificate.** The agents confirmed that the gas fire in the property is not working and that the gas has been capped in relation to same. A sticker is attached indicating that it

should not be used. The agents advised the Tribunal that, as it has been made safe, they do not think anything else is required. A gas safety certificate was produced and exhibited to the Tribunal. It is dated 5 April 2018 and indicates that the gas fire needs a full service and should not be used. The agents advised that it would be for the Landlord to decide if he wants to remove the fire.

11. **Electrical socket on skirting.** The agents advised that they think that the socket has been in that location for a long time and acknowledged that it should be moved. An electrician was instructed at one point to attend to this, but the former Tenant did not allow access. No EICR has been obtained for the property for the same reason. An application had been made to the Tribunal by the Landlord for an order for access because of this but was withdrawn when the tenant vacated the property on 17 July 2018.
12. **Bathroom fittings, tiles and infestation.** The agents confirmed that the toilet cistern is cracked and damaged. They advised that the Landlord has not replaced this because it is not possible to purchase a replacement cistern lid, and the cost of a replacement toilet is prohibitive. However, some glue has been applied to the cracks. They confirmed that the shower hose requires to be replaced and that the loose tiles need re-grouting. Both are scheduled to be carried out before the property is re-let. The agents stated that they have seen no evidence of an insect infestation at the property and this is therefore disputed. They do however intend to have the property checked, particularly since the garden is very overgrown.
13. **CO, smoke and heat detectors.** The agents confirmed to the Tribunal that there are no heat or smoke detectors in the property. Hard wired regulation compliant smoke and heat detectors are scheduled to be installed prior to re-letting the property. They confirmed that there is a CO detector in the kitchen and it is in working order.
14. **Kitchen units and extractor fan.** The agents advised the Tribunal that it is accepted that the extractor fan requires to be cleaned, although it is in working order. They stated that, aside from a couple of handles, the kitchen units are undamaged. They are of the view that the handles might have been damaged through the tenant's usage of same, but in any event would be replaced.
15. **Windows and doors.** The agents acknowledged that defects in some of the windows and doors in the property and the garage require to be addressed.

16. The agents concluded their evidence by advising the Tribunal that, there would be no question of re-letting the property until the repairs had been carried out. They also indicated that they expected the repairs, particularly in relation to the water ingress, to take some time to compete.

Findings in Fact

17. The property is a four bedroom detached dwellinghouse in Newton Mearns. The tenancy ended on 17 July 2018 when the former Tenant vacated the property.
18. The property is affected by water ingress from the roof.
19. Windows and doors at the property are defective.
20. The gas fire in the property is capped and cannot be used.
21. The shower hose and toilet cistern in the bathroom are damaged
There are loose tiles on the wall.
22. The extractor hood in the kitchen is blocked with grease and cupboard handles are missing.
23. Floorboards at the top of the stairs are uneven
24. The garage windows and doors are damaged.

Reason for decision

25. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
26. The Tribunal notes that a failure on the part of the former tenant to allow access to the property has been provided as an explanation for some of the outstanding repairs – particularly the lack of an EICR and failure to move the socket in the downstairs bedroom to a more appropriate location. The Tribunal notes however that the tenancy commenced in March 2018 and lasted only four months. The gas safety certificate produced at the hearing is dated 5 April 2018, after the start of the tenancy. This suggests that access was provided by the tenant for this check to be carried out. It appears that the gas fire was capped at that time. The agents did not provide a previous

EICR for the property. The Tribunal therefore concluded that no such check was carried out at the property prior to the former tenant taking entry. It was not claimed at the hearing that the more significant repairs issues – the windows and the water ingress - were not dealt with due to lack of access. The Tribunal also notes that the property has been vacant since the middle of July. No access issues can have prevented repairs being carried out since that date. The Tribunal are also not persuaded by the explanation put forward by the agents, namely that they are awaiting a landlord registration number from the local authority, before repairing the property.

27. The Tribunal is satisfied that the former Tenant notified the Landlord of the water ingress, damage to the roof and gutters, damaged cistern, shower hose and tiles, defective windows and doors, damaged kitchen units and extractor, damaged floor at the top of the stairs. The Tribunal also notes that (although not referred to in the letters notifying the Landlord of the repairs issues) the Landlord was aware of the problem with the gas fire, the electric socket in the bedroom and the need to obtain an EICR. The Tribunal accordingly concludes that the water ingress requires to be investigated and repairs carried out to the roof and guttering to rectify same. The windows and doors at the property and garage require to be repaired. The gas fire is defective, and possibly dangerous, and requires to be repaired or replaced. Although a gas safety certificate has now been exhibited, a further gas safety check should be carried out following the repair to or replacement of the fire. The electrical socket in the bedroom require to be moved to a more appropriate location and an EICR obtained in relation to the property. The damaged cistern and shower hose require to be repaired or replaced. The loose tiles secured to the wall and re-grouted. The uneven floorboards at the top of the stairs should be investigated and rectified.

28. The Tribunal found no evidence of insect infestation, defective lighting or damaged curtains at the property. Furthermore, no evidence of water ingress at the stair landing window was noted. These complaints were therefore not established. With regard to the complaint about broken furniture and personal possessions left at the property, the Tribunal noted that the garage appears to be full of such items and that there is rubbish in the house and garden, which is also overgrown. However, the Tribunal did not find this to be a breach of the repairing standard. The Tribunal did not consider the complaint regarding the re-painting of the property to have been established although some redecoration will be required to areas affected by water ingress.

29. The Tribunal noted that there are no smoke or heat detectors in the property. However, although mentioned in the application, no evidence was presented to the Tribunal that the Landlord had prior notification of this complaint. The Tribunal does not therefore find the Landlord to be in breach of the requirements of the legislation in this regard. However, the Tribunal hopes that the Landlord will ensure that the property is fitted with regulation compliant smoke and heat detectors, as this is required for the property to meet the repairing standard. Lastly, the Tribunal noted at the inspection that the ensuite toilet on the first floor of the property has a light switch inside and an unprotected fluorescent light strip installed. These are not included in the application before the Tribunal and therefore no order is made in relation to same. However, the Tribunal recommends that the landlord arrange for these to be checked by an electrician to ensure that they comply with regulations or remove same if they do not.

30. The Tribunal concludes that the property does not meet the repairing standard in relation to sections 13(1) (a), (b), (c), and (d) of the Act. As there is a CO detector in the property, and as no defects or damage to furnishings have been established, the Tribunal does not find there to have been a failure to meet the repairing standard in relation to sections 13(1) (g) and (e).

Decision

31. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

32. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

33. The decision of the Tribunal is unanimous

Right of Appeal.

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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J Bonnar

Signed...  6 October 2018

Josephine Bonnar, Legal Member

Motherwell 6 October 2018

This is the Schedule of Photographs
referred to in the decision of the same date

J Bonnar

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



4 Lomond Drive, Newton Mearns, G77 6LR

FTS/HPC/RP/18/1183

Inspection date – 19th September 2018

Weather – Wet

Entrance Porch

Picture 1



Picture 2



Picture 1 Double glazing seal in fixed panel has failed

Picture 2 High moisture reading noted

Lounge

Picture 3



Gas fire has been capped and remains in situ

Front bedroom Ground floor

Picture 4



Picture 5



Historic water ingress noted

Rear bedroom ground floor

Picture 6



Picture 7



High moisture readings noted

Rear bedroom ground floor

Picture 8



Power points on skirting unable to use

Bathroom

Picture 9



Picture 10



Tiles loose from wall and grout missing

Picture 11



Shower hose damage

Picture 12



Toilet cistern has been broken and glued together

Kitchen

Picture 13



Extract hood is working but blocked by grease

Picture 14



Several door handles missing from cupboards

Dining Room

Picture 15



Picture 16



Ceiling damaged by water ingress high moisture readings noted

Front facing bedroom 1st floor

Picture 17



Picture 18



Roof space inspected high water reading throughout – Roof requires inspection by a qualified roofing contractor and repaired/replaced accordingly

Front facing bedroom 1st floor cont

Picture 19



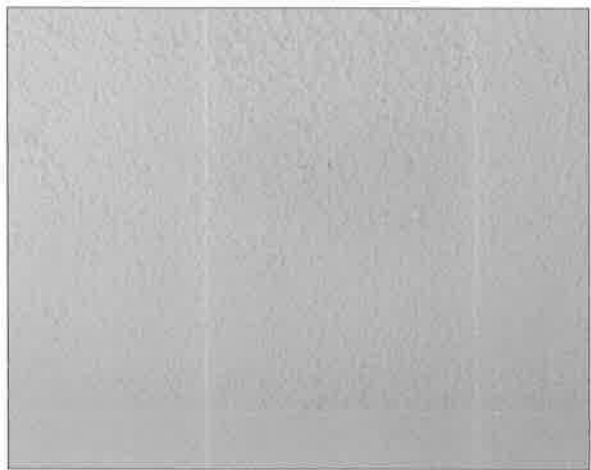
Double glazing seal has failed in centre panel

Rear facing bedroom 1st floor

Picture 20



Picture 21



Water ingress noted

Rear facing bedroom 1st floor cont:

Picture 22



High moisture readings noted

Picture 23



Double glazed window broken and silicone seal coming away from window frame

En-suite toilet

Picture 24



Light switch sited within en-suite toilet

Picture 25



Unprotected fluorescent light strip within en-suite

Requires inspection by a SELECT/NICEIC qualified electrician

1st floor stair landing

Picture 26



No evidence of water ingress at stair landing window

Picture 27



Difference in levels at the top of stairs – Potential trip hazard

Garage and garden area

Picture 28



Garage windows broken/missing

Picture 29



Garage door unable to open

Picture 30



Gutters at rear are blocked

Picture 31



**Rain water pipe is disconnected from gutter
at conservatory**

Garage and garden area cont

Picture 32



Garden over grown

Picture 33



Rubbish at side of house

It was noted during the inspection that there was no heat detector in the kitchen and no smoke detectors in principal living room, hall landing or first floor landing.

A Gas safety certificate was provided by the landlord's representative.

No up to-date Electrical Installation Condition Report has been received