

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/18/1195

Title no: GLA95688

Flat 3/2, 35 Aberfeldy Street, Glasgow G31 3NR ("The House")

The Parties:-

- Miss Aleksandra Gaj, 3/2, 35 Aberfeldy Street, Glasgow G31 3NR ("the Tenant")
- AMI Development and Lettings, 211 Dumbarton Road, Glasgow G11 6AA ('the Landlord')

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mrs Sara Hesp - Ordinary Member

Whereas in terms of their decision dated 10th September 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: -

- (a) that the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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 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:-

- (a) To repair or replace and make good the handle on the bathroom window so as that the window can be opened and closed.

- (b) To provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.
- (c) To provide a completion certificate for all work done to the exterior walls, guttering and downpipes; and
- (d) To provide a completion certificate for all work done to the roof.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months 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 pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Dundee on 10th September 2018 in the presence of the undernoted witness -
G Miller

ACTION L. HEAP witness

A Heap name in full

_____ :chairperson

Caledonian House Address

Onearns Street
Dundee

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/18/1195

Title no: GLA95688

Flat 3/2, 35 Aberfeldy Street, Glasgow G31 3NR (“The House”)

The Parties:-

- **Miss Aleksandra Gaj, 3/2, 35 Aberfeldy Street, Glasgow G31 3NR (“the Tenant”)**
- **AMI Development and Lettings, 211 Dumbarton Road, Glasgow G11 6AA (‘the Landlord’)**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mrs Sara Hesp - Ordinary Member

Decision

1. 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 House and taking account of the evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application received 23rd May 2018, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by Tenant stated that she considered that the Landlord had failed to comply with the duty to ensure that the House met the

repairing standard in that House is not wind and watertight and in all other respects reasonably fit for human habitation and the structure of the exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. In particular, the complaints consisted of:-

- a) There is damage to the bathroom after a repair including missing tiles around the sink and floor;
 - b) There is no Electrical Installation Condition Report ("EICR");
 - c) There are missing floor boards and coverings in the kitchen;
 - d) Repairs need to be made to the internal walls and floors;
 - e) Repairs need to be made to the external walls;
 - f) Repairs need to be made to the gutters and downpipes;
 - g) The main door to the tenement needs to be repaired or replaced;
 - h) The stairwell needs to be redecorated
 - i) The windows are defective.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant dated 2nd July 2018.
 5. Between 26th January 2018 and 21st May 2018 the Landlord and Tenant had been corresponding by text message and email. Copies of this correspondence had been provided to the Property and Housing Chamber. The correspondence related to the issues that the Tenant had with the House.
 6. The Tenant left the House on 21st May 2018. The Tenancy has ended on 26th May 2018. The Property has since been relet.

The Inspection

7. The Tribunal attended the House on the morning of 17th August 2018. Only the Landlord's agent was present. The Landlord's agent let the Tribunal into the House. The Tenant did not attend.
8. Entry to the House was through a main door leading to communal hallway. Scaffolding was erected on the front and back exterior walls of the whole block of flats and several other adjoining ones in the street. A main door had been installed with new intercom. The main door had an under coat of paint on it with a wet paint sign. There was also scaffolding erected in the internal common stairwell of the House.
9. The House comprises a one bedroom third floor flat property in a tenement building. The House is located at the top of the building. The roof, guttering and downpipes of the House were not fully visible, in part due to the scaffolding. The House was furnished and there were floor coverings in place.
10. The bathroom was inspected first. There were no issues arising from the sink. It was attached to the wall and there was linoleum on the floor

covering the whole of the bathroom floor. There was no sign of any missing tiles. The window was noted to be a UPVC window. The window itself was wind and watertight but the handle was loose and the window could not be opened because of the state of the handle.

11. The kitchen and living room were inspected next. The room consists of an open plan space with a small kitchen located to the rear of the room. It was observed that there was not a heat detector in this room. The kitchen taps appeared to be in working order and secured to the sink. The sink was inspected but there were no issues arising. The laminate flooring was worn but not to such an extent to cause a health and safety concern. It did not appear to have any holes in it and was not a trip hazard. The windows were able to be opened and closed. The sill was dirty and aged but had no mould.
12. The bedroom was inspected next. The boiler was located in a cupboard in the bedroom. There were two carbon monoxide detectors by the cupboard. The alarm sited above the boiler was tested and worked. The windows were in working order. There was an old smoke detector in the room. The laminate flooring was worn but not to such an extent to cause a health and safety concern. It did not appear to have any holes in it and was not a trip hazard.
13. The hall was inspected next. The application did not raise any issues regarding the hall. It was noted that there was a smoke detector there.
14. The back courtyard was inspected next. It looked untidy but did not appear to raise any issues regarding the repairing standard.
15. The Landlord's agent indicated at the inspection that he would not be attending the hearing. He also informed the Tribunal that the internal scaffolding was due to be taken down within the next week and that there had been a new tenant in the property from 28th May 2018.
16. During the inspection the Tribunal took photographs and a schedule of photographs is attached to this decision.
17. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

18. The hearing took place at the Glasgow Tribunal Centre, 20 York Street, Glasgow. The neither Tenant nor the Landlord were present.
19. The list of complaints was discussed one by one.
20. The Tribunal noted that their concerns that there was no evidence of an EICR.

21. The bathroom was discussed. The Tribunal was concerned that the window could not be opened. The Tribunal did not find any other concerns within the bathroom.
22. The kitchen and living area were discussed next. The Tribunal did not find that any of the issues that were raised were such that they were within the remit of the Tribunal.
23. The bedroom was discussed next. The Tribunal did not find that any of the issues that were raised were such that they were within the remit of the Tribunal.
24. The courtyard was discussed next. The Tribunal did not find that any of the issues that were raised were such that they were within the remit of the Tribunal. The Tribunal observed that the paving was uneven but not to such an extent to fall within the repairing standard.
25. The exterior walls, guttering, downpipes and roof were discussed next. The Tribunal was concerned that neither could be seen from a visual inspection partly due to the scaffolding. The Tribunal was concerned about the condition of the exterior walls, guttering, downpipes and roof. It was noted that the main front door was new and had recently had a coat of undercoat paint on it. A new entry system had also been fitted.
26. The fire alarm and smoke detectors were discussed next. The Tribunal noted that there was no heat detector in the kitchen.

Summary of the issues

27. The issues to be determined are: -
 - a) Whether there was damage to the bathroom after a repair including missing tiles around the sink and floor
 - b) Whether there is no Electrical Installation Condition Report ("EICR");
 - c) Whether there are missing floor boards in the kitchen;
 - d) Whether the windows could be operated safely or whether they are defective;
 - e) Whether repairs need to be made to the external walls and roof;
 - f) Whether repairs need to be made to the gutters and downpipes; and
 - g) Whether the main door to the tenement needs to be repaired or replaced.

Findings of fact

28. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is a Private Residential Tenancy between the Landlord and the Tenant. The tenancy commenced on 8th December 2017. The tenancy ended on 26th May 2018. The Tenant left the property on 21st May 2018.
- b) The bathroom window could not be opened due to the loose handle.
- c) There was no evidence of a current EICR.
- d) The exterior walls, guttering, downpipes and roof were not able to be inspected in part due to scaffolding work that was being carried out on the tenement building that the Property is located in and to other tenements located adjacent to the Property.

Reasons for the decision

29. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing and the findings of their inspection.
30. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
31. The Tribunal was in no doubt, from its inspection, that the House did not meet the Repairing Standard.
32. There was clear evidence there were the window in the bathroom had a loose handle and could not be opened. The Tribunal were satisfied that this could not be operated safely.
33. There was no clear evidence that there was an up to date EICR. The Tribunal was concerned that this was not present and that it could indicate further potential safety issues with in the Property.
34. The Tribunal was not satisfied that sufficient evidence had been present to demonstrate that the roof, guttering, downpipes and exterior walls met the Repairing Standard.
35. The Tribunal was satisfied that there were no other issues that were raised in the application that were such as not to meet the Repairing Standard.
36. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord and was in breach of the duty to comply with the Repairing Standard.
37. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
38. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

39. The Tribunal observed that there was uneven paving in the rear courtyard that should be repaired or replaced.
40. The Tribunal would wish to point out there was no heat detector in the kitchen. A heat detector should be installed to comply with regulations.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chair

10th September 2018