

Witnessed 16 May 2019
G Clark
George Clark
NOTARY PUBLIC 16/5/19

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: 104 Jerviston Road, Glasgow G33 5QL ("the Property"/ "the house")

Title No: GLA89205

Chamber Reference: FTS/HPC/RP/18/2109

Miss Stacey Tominey, 104 Jerviston Road, Glasgow G33 5QL ("the Tenant")

Mr James McRobb Crawford, 18 Tillycairn Street, Glasgow G33 5HB and Mr Gary Paul Drennan, 6 Belhaven Place, Mearnskirk, Glasgow G77 5JF ("the Landlord")

Tribunal Members – George Clark (Legal Member/Chairperson) and Carol Jones (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 16 May 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"), 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 investigate the cause of stagnant water lying under the floor of the kitchen and thereafter to carry out such work as is necessary to remove the water and such repairs as are necessary to ensure the problem is rectified;
- (2) to carry out such work as is necessary to repair the kitchen ceiling and thereafter to redecorate the ceiling and all walls affected by water staining from a past leak from above;
- (3) to provide the Tribunal with a report from a suitably qualified Gas Safe registered engineer, confirming that the central heating boiler is in proper working order; and
- (4) to carry out such work as is necessary to ensure the vinyl flooring in the kitchen is properly fitted and does not represent a tripping hazard.

The Tribunal order that the works required by this Order must be carried out within the period of four months from the date of service of this Order.

Right of Appeal

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.

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, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 16 May 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

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.....Legal Member/ChairWitness

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: 104 Jerviston Road, Glasgow G33 5QL (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RP/18/2109

Miss Stacey Tominey, 104 Jerviston Road, Glasgow G33 5QL (“the Tenant”)

**Mr James McRobb Crawford, 18 Tillycairn Street, Glasgow G33 5HB and
Mr Gary Paul Drennan, 6 Belhaven Place, Mearnskir, Glasgow G77 5JF
 (“the Landlord”)**

**George Clark (Legal Member/Chairperson) and Carol Jones (Ordinary
Member/Surveyor)**

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’), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application, received on 18 August 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard.

- In particular, the Tenant stated that the Landlord had failed to ensure that:-
- any furnishings provided by the landlord under the tenancy are capable of being used for the purpose for which they are designed and
 - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In the application and its supporting documentation, the Tenant stated that the Property had been flooded three years previously and the landlord had not done the necessary remedial work. The Property had dampness and there was a smell due to the flood water which had been lying under the floorboards for three years. There was also black mould in the toilet. The Tenant had also been told not to use the cooker, as it was dangerous.
 4. The application was accompanied by a letter dated 31 August 2018, from Govan Law Centre to the Landlord, expanding on the grounds for the application. In the letter, they stated their understanding that the Property was in need of a new boiler, new carpets, a new cooker, a new ceiling in the kitchen and that, as a result of the poor condition, the Property had had infestations with insects and mice.
 5. On 29 October 2018, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and hearing.
 6. On 19 November 2018, the Landlord sent written representations to the Tribunal, including a Timeline from the date of the flood/leak on 25/26 December 2015. A damp specialist had attended the Property on 24 February 2017 and had deemed no work to be required. He had found localised condensation in the bathroom and old staining in the kitchen/hall ceiling from a past water leak and verbal advice had been given to the Tenant regarding proper care and ventilation of the bathroom. Damp treatment had commenced in November 2018 and was now complete. It consisted of the bathroom being treated 3-4 times with an oil-based dampness treatment and painted with three coats of white emulsion.
 7. Included with the Landlord's written representations was a report from City Drain Clear, confirming that the drains had been jetted and were all clear. The report mentioned that the Tenant had told the inspector that the boiler needed to be topped up constantly and that the smell of stagnant water could be coming from the boiler leakage. The Landlord contended that the Timeline showed that the boiler had been regularly maintained, but, due to the drainage report comments, a boiler serviceman had attended on 10 July 2018 and had confirmed the boiler was in full working order and that he had told the Tenant there was no need for her to top up the boiler with water. The Landlord had reiterated to the Tenant that this should not be

done. The Landlord stated that City Drain had been instructed to attend the Property to investigate the stagnant water claim and the letting agents were currently arranging access with the Tenant.

8. The written representations made reference to the cooker and stated that the oven door had been damaged by the Tenant's son's bike handles. The letter from Govan Law Centre (31 August 2018) was the first the Landlord had heard of infestation at the Property. Pest control specialists (City Pest Solutions) had been instructed to visit the Property and had concluded their visit on 15 November 2018. Their report of their findings was still awaited.
9. The date set for the inspection and hearing was 17 December 2018 but, at the request of the landlord, acceded to by the Tenant, the inspection and hearing were postponed to 24 January 2019.
10. On 22 January 2019, the Tribunal received an e-mail from Legal Services Agency Glasgow, saying that the Tenant's previous solicitors, Govan Law Centre, were no longer acting for her and requesting a postponement of the inspection and hearing. The Landlord objected to the request for postponement, but it was accepted by the Tribunal and a new date set for the inspection and hearing, namely 21 March 2019. On 11 March 2019, the Tribunal received an e-mail on behalf of the Landlord, requesting a further postponement as Mr Drennan was to be in Belgium on business and Mr Crawford had been called to do jury service on 18 March 2019. The Tribunal refused the request for a further postponement.
11. The Tribunal inspected the Property on the morning of 21 March 2019. The Tenant was present at the inspection and was represented by Ms Seonaid Cavanagh of Legal Services Agency, Glasgow. The Landlord was not present at the inspection but was represented by Louise Gordon and Sharon Forrester from the Landlord's letting agents, 1-2 Let Limited, 104 Bellgrove Street, Glasgow G31 1AA.
12. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Tenant and her representative, Ms Cavanagh, attended and the Landlord was represented by Mrs Nicola Drennan.
13. The Tenant confirmed to the Tribunal that the landlord had provided a new cooker but stated that it was on occasion "tripping" the Residual Current Device (RCD), so she was unsure that it was safe to use.
14. The Tenant also told the Tribunal that she had experienced an infestation of mice and insects as a result of the stagnant water beneath the kitchen floor. This had been investigated by a pest control company, who had sprayed the whole house. There had been no evidence of mice since then, but the company were due to return to the Property shortly. The Tenant also stated that the carpets affected by the flood, which had come from an upstairs radiator, had not been dried out, cleaned or replaced. She referred in particular to the carpet outside the kitchen.

15. Mrs Drennan told the Tribunal that it was accepted there was an accumulation of stagnant water beneath the Property. The kitchen floor tiles were due to be lifted on 25 March and would be replaced by vinyl. The vinyl would not be stuck down, however, as it would have to be lifted to enable a joiner to cut access hatches, to allow the issue of the water beneath to be investigated and remedial action taken. Mrs Drennan provided the Tribunal with a report from City Drain Clear dated February 2019. It was a CCTV condition survey and included a comment that stagnant water still remains under the kitchen floor of the Property, "as with previous CCTV from July 2016".
16. The Tenant's representative referred the Tribunal to a Report prepared by Professor Tim Sharpe, Architect, dated 21 September 2018. Neither the Landlord nor the Tribunal had seen this Report and it appeared that the Tenant's previous solicitors had commissioned it, but had not, as Ms Cavanagh had assumed, circulated it to the Landlord or the Tribunal. The Report recommended an aggressive drying regime to remove construction moisture.
17. The Tribunal was of the view that it was unfair to proceed to a Decision without the Landlord having had an opportunity to read and respond to the Report and it also appeared that the only way of investigating the issue of water beneath the floor was to cut inspection hatches as the Landlord now intended to do. It also appeared that a report from the pest control company would shortly be available. Accordingly, the Tribunal decided to continue the Hearing, but advised the Landlord's representative that it would be issuing a Direction, requiring the Landlord to provide, prior to the reconvened Hearing, a satisfactory Gas Safety Record, a satisfactory Electrical Installation Condition Report dated after the date of installation of the new cooker and, if not covered by the EICR, PAT test certificates for all portable appliances provided by the Landlord under the tenancy, together with a report from a suitably qualified engineer that the central heating boiler is in proper working order.
18. The Landlord subsequently provided the Tribunal with an updated timeline, copies of a Landlord Homeowner Gas Safety Record prepared by a Gas Safe registered engineer and dated 29 January 2019, an Electrical Installation Condition Report, dated 10 April 2019, prepared by Lyon Electrical Scotland Limited, Kirkintilloch (SELECT registered 42272), which included the cooker, and PAT tests of the washing machine and fridge freezer, an e-mail from City Pest Solutions to the Landlord's letting agents, dated 9 April 2019, an e-mail from Fuse Maintenance Team to the letting agents, dated 29 April 2019, confirming the locations of the smoke alarms, heat detector and carbon monoxide monitor installed by them on 25 June 2018. The Landlord also provided an e-mail to the Tribunal sent by him to the 1-2 Let repairs team on 23 April 2019, advising that an attempt had been made to check the central heating boiler on 19 April, but the engineer had been unable to carry out the inspection, because the

Tenant or the gas supplier had fitted a meter and there was no credit on the payment card and no emergency credit available.

19. The Tribunal reinspected the Property on the morning of 16 May 2019. The Tenant and Ms Cavanagh were present. The Landlord was not present or represented at the inspection.
20. The Tribunal comprised George Clark (Legal Member/Chairperson) and Carol Jones (Ordinary Member/surveyor).
21. A schedule of photographs taken at the inspection is attached to and forms part of this Statement of Decision.

The Hearing

22. Following the inspection, the Tribunal held a Hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Tenant was not present but was again represented by Ms Seonaid Cavanagh. The Landlord was not present but was again represented by Mrs Nicola Drennan.
23. The Tenant's representative accepted that the Landlord had provided the documentation required by the Direction issued following the Hearing on 21 March 2019, with the exception of a report from a suitably qualified engineer that the central heating boiler is in proper working order. Ms Cavanagh also advised the Tribunal that there had been no evidence of mice since the treatment carried out by City Pest Solutions and accepted that the cooker was covered by the Electrical Installation Condition Report.
24. The kitchen flooring had been replaced by vinyl since the date of the first inspection, but Ms Cavanagh told the Tribunal that there were tripping hazards where it met the internal kitchen door and at the external door to the garden. Mrs Drennan advised that this was the first she had heard of this problem with the new vinyl flooring.
25. Ms Cavanagh repeated the Tenant's view that the carpet on the stairs outside the kitchen, which had been soaked when the radiator leaked, should have been replaced, rather than simply left to dry out. She also referred to dampness in the bathroom and directed the Tribunal to the report from Professor Sharpe, who had recommended the installation of an extractor fan and an aggressive drying-out regime. Mrs Drennan pointed out that the damp specialists who had inspected the Property had concluded that the problem was condensation, caused by the Tenant failing to adequately heat and ventilate the bathroom.
26. Mrs Drennan told the Tribunal that the ceiling in the kitchen would be repaired in due course, along with other works to be carried out in the kitchen.

27. The Tribunal then discussed with the Parties' representatives the issue of the stagnant water beneath the kitchen floor. Ms Cavanagh reminded the Tribunal that the smell had been very evident at the inspection earlier in the morning. Mrs Drennan advised that the matter was ongoing and that there was a dispute between the Landlord and the insurers as to who should meet the cost of cutting openings in the kitchen floor to investigate where the problem was coming from. She stressed, however, that the Landlord was well aware that it had to be dealt with.

28. The Tenant's representative asked the Tribunal to find that the Landlord had failed to comply with the duty to ensure the Property meets the repairing standard in respect of the dampness in the bathroom and the stagnant water beneath the floor of the kitchen.

29. The Parties' representatives then left the Hearing and the Tribunal considered all the evidence, written and oral, together with its findings at the inspection.

Findings of Fact

30. The Tribunal makes the following findings of fact:

- The Property is a mid-terraced, two-storey split level, former local authority house, consisting of a kitchen and bathroom on the lowest floor, with a half level up to an entrance hall and bedroom, a further half level up to the living room and another half level up to two bedrooms.
- The Tenant is tenant of the Property in terms of a Short Assured Tenancy Agreement which commenced on 27 September 2013.
- The cooker has been replaced.
- The Tribunal has seen a satisfactory Electrical Installation Condition Report and Portable Appliance Test Report.
- The Tribunal has seen a satisfactory Landlord Homeowner Gas Safety Record.
- The tiling on the kitchen floor has been lifted and replaced with vinyl, but there has been no work carried out to cut inspection hatches in the floor to enable the investigation into the stagnant water to begin.
- There is a significant area of plaster damage to the ceiling of the kitchen and evidence of past water staining on the kitchen walls.
- There is a carbon monoxide monitor in the kitchen.
- There is evidence of moisture and black mould in the bathroom and small sections of paint have peeled off above the towel rail and on the wall to the side of the toilet.
- The Tribunal has seen a satisfactory report by City Pest Solutions, confirming they have carried out residual insecticide treatment in the Property.
- The Tribunal saw no evidence of mice activity and the Tenant has confirmed that there has been no such activity recently.

Reasons for Decision

30. A distinct smell of stagnant water was evident at the time of the inspection. The Tribunal accepted that there may be a current dispute with the insurers, but is of the view that this is a matter which has been ongoing for so long that it must be urgently addressed, particularly as it may present a health hazard to the Tenant and her family. The Tribunal determined that the requirements of the repairing standard 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 that the house is wind and watertight and in all other respects reasonably fit for human habitation were not met.
31. The kitchen ceiling needs to be repaired and redecorated along with the wall areas affected by water staining. In this respect, the Property does not meet the requirement of the repairing standard that the house is wind and water tight and in all other respects fit for human habitation.
32. The Tribunal accepted that the Landlord had tried to comply with the Direction to exhibit a report from a suitably qualified Gas Safe engineer that the boiler is presently in proper working order, but still requires to see such a Report. In the absence of the report, the Tribunal is unable to confirm that the Property meets the repairing standard requirement that 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.
33. The Tribunal accepts that the vinyl flooring in the kitchen has deliberately not been fixed down, as it will have to be lifted to enable the investigation of the stagnant water issue to be carried out, but the vinyl constitutes a tripping hazard both at the internal kitchen door and at the external door to the garden. The Tribunal determined that the present arrangement does not meet the requirement of the repairing standard that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
34. The Tribunal considered the views of both Professor Sharpe and Peter Cox Limited. The Tribunal accepted that the lack of insulation would make the Property expensive to heat but was of the view that implementing the recommendations in Professor Sharpe's report would involve the Landlord in carrying out improvements rather than repairs to the Property. The Tribunal concluded that the issue of dampness in the bathroom is condensation caused by a lack of adequate heating and ventilation. Consequently, the Tribunal does not propose including any remedial work in a Repairing Standard Enforcement Order, but would recommend that, if adequate heating and ventilation is not sufficient to resolve the issue of condensation, the Landlord should consider installing a mechanical extractor ventilator.

35. The Tribunal is concerned that the number and positioning of the smoke detectors in the Property may not comply with the Scottish Government's "Fire Detection in Rented Properties Guidance" published on 7 February 2019 and effective from 1 March 2019. The Tribunal accepts that the layout of the house, effectively on four different levels, is complex, but recommends that the Landlord takes advice from a suitably qualified electrical engineer and takes any steps necessary to ensure the system complies with the Guidance. The Tribunal noted in particular that there is no smoke detector in the front entrance vestibule or the hallway at that level. In addition while the Tribunal accepts that the gas safe engineer who prepared the Gas Safety Record has tested the CO alarm and declared that it is safe to use, this carbon monoxide monitor in the kitchen is located closer to the ceiling than the recommended distance of 6 inches set out in the Guidance. The Tribunal further recommends that the gas engineer who carries out the inspection of the boiler also checks the position of the CO alarm to ensure it complies with current guidance.

36. The decision of the tribunal was unanimous.

Right of Appeal

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.

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G Clark

Signed Legal Member/Chairperson

Date: 16 May 2019

This is the Schedule of Photographs
referred to in the foregoing Statement of
Deeds: G Clark 16 May 2019
V Liza/Tenno/Clark

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 104 Jerviston Road, Glasgow
G33 5QL by the First-tier Tribunal for Scotland (Housing and Property Chamber) on
Thursday 16 May 2019

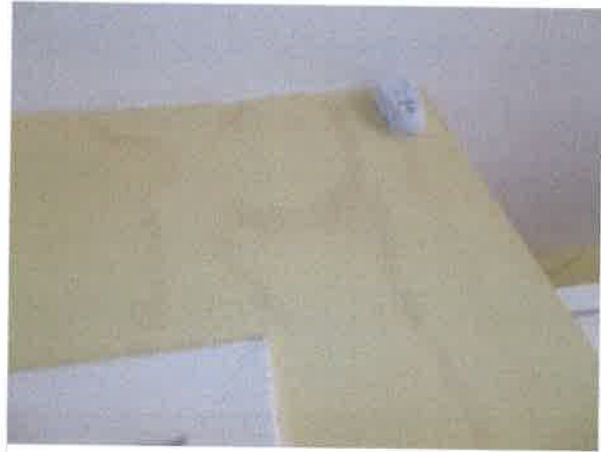
Reference Number : FTS/HPC/RP/18/2109



Front Elevation



Kitchen - water damage to ceiling - incomplete repair



Kitchen - water damage to walls



Kitchen - wall mounted CO alarm



Kitchen - tiles removed/new vinyl floor covering



Kitchen - gap at threshold bar between kitchen and lower ground floor hall - trip hazard



Kitchen - new vinyl floor covering - poor fitting - trip hazard at threshold to back door



Cupboard off kitchen showing gas pipes/hole in floorboard



Stair carpet leading up from lower ground floor hall



Lower ground floor hall showing carpet



Bathroom - black spot mould in corner



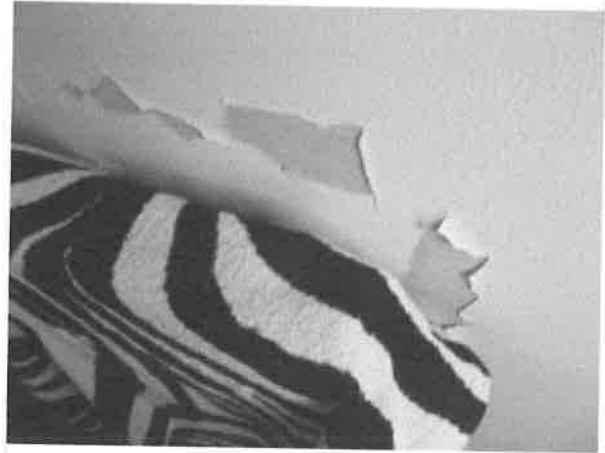
Bathroom - black spot mould around tiling/bath seal



Bathroom - black spot mould around splash back tiles above wash hand basin



Bathroom - black spot mould to rear of cistern and paint peeling to wall



Bathroom - paint peeling to wall above radiator



Defective ceiling mounted light fitting - lower ground floor hall (Observation)