

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**

Reference number: FTS/HPC/RT/18/2531

Title no/Sasines Description: GLA54807

Re: Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG (“the House”)

The Parties:

Mr Ali Louahem M'sabeh (otherwise Lohavem M'saben Ali) (“the Tenant”)

Aqa Property Limited, 584 Cathcart Road, Glasgow, G42 8AB; Aqa Property Limited trading as Aaron Properties, 584 Cathcart Road, Glasgow, G42 8AB; (“the Landlord’s Representative”)

Jarnail Tumani, 1 Lammeremuir Place, Kirkaldy KY2 5RD (“the Landlord”)

Whereas in terms of their decision dated 4 January 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”) and in particular that the Landlord has failed to ensure that the House is:-

1. Wind and watertight and in all other respects reasonably fit for human habitation; And
2. Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

under sections 13 (1) (a) and (d) of 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: -

- I. To instruct a suitably qualified independent pest control contractor to eradicate the rodent issue within the House and to rodent proof the House and thereafter to produce to the Tribunal a copy of the Report and receipted invoices for any works carried out at conclusion of any action taken.
- II. To subsequently repair any damage caused by rodents to the skirtings and walls in the House
- III. To instruct a suitably qualified joiner to repair the floor boards in the kitchen to make them even and securely fitted and eliminate any holes; thereafter to replace the damaged linoleum with a suitable new kitchen floor covering and properly fitted and secured to the floor edges;
- IV. To instruct a suitably qualified independent contractor to repair or replace the washing machine and thereafter to produce to the Tribunal a copy of the Report and receipted invoice for any works carried out at conclusion of any action taken or the receipt for a new washing machine;
- V. To exhibit an Electrical Installation Condition Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the House is satisfactory in all respects.
- VI. To carry out infilling to the affected walls, ceilings and floors in the living room to complete the remedial works following on the flood damage to ensure they are properly sealed, wind and watertight;
- VII. On completion of all the above works, to instruct contractors to professionally deep clean the House and restore all affected finishes and to carry out re-decoration to the House to a reasonable finish; And to produce to the Tribunal receipted invoices specifying the work carried out.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 6 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 preceding pages are executed by Susan Christie, legal member of the Tribunal, at Glasgow on 4 January 2019 in the presence of the undernoted witness: -

G Christie

S Christie

witness

Legal Member

George Harvey Christie name in full

5 Albert Drive,
Glasgow G733RT Address

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 22(1)

Reference number: FTS/HPC/RT/18/2531

Title no/Sasines Description: GLA54807

Re: Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG (“the House”)

The Parties:

Mr Ali Louahem M’sabeh (otherwise Lohavem M’saben Ali) (“the Tenant”)

Aqa Property Limited, 584 Cathcart Road, Glasgow, G42 8AB; Aqa Property Limited trading as Aaron Properties, 584 Cathcart Road, Glasgow, G42 8AB; (“the Landlord’s Representative”)

Jarnail Tumani, 1 Lammeremuir Place, Kirkaldy KY2 5RD (“the Landlord”)

Tribunal Members:

Susan Christie (Chairing /Legal Member);

Nick Allan (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purpose 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 of the available evidence, determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act. The Tribunal’s decision is unanimous.

Background

1. An Application was made under Section 22(1) of the Housing (Scotland) Act 2006 (“the Act”) on 28 September 2018 regarding the House.
2. The Tenant considered that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and that the House failed to meet the repairing standard as set out in Sections 13(1) (a, d & f) of the Act.
3. The detail of the complaints contained within the Application form being: that the floor was damaged; painting was required; no smoke detectors

- present; the House had rats and mice; the House had been flooded by the washing machine; the walls were damaged, and the shower was not working.
4. The Application stated the work required to be done to rectify the alleged defects as the Tenant considered it was dangerous to live in.
 5. By Minute of Decision to Refer the Application to a Tribunal made under Section 23(1) of the Act, on 17 October 2018 a Convenor with delegated powers under Section 23A decided to refer the Application to a Tribunal.
 6. An Inspection was assigned for 19 December 2018 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT.
 7. Written Representations were required by 21 November 2018.
 8. Parties were advised of the date assigned in writing by letter dated 31 October 2018.
 9. A Direction was issued dated 26 November 2018 in which
 - a) Aqa Property Limited, 584 Cathcart Road, Glasgow, G42 8AB was required to provide: The company registration number as registered with Companies House including the registered company address; Their Landlord Registration number; Their Letting Representative Registration number; Details of their association/business relationship with the stated Landlord, Aaron Properties, 584 Cathcart Road, Glasgow and the Registered Landlord, Jarnail Tumani, 1 Lammeremuir Place, Kirkaldy KY2 5RD; Any documentation showing or tending to show any repairs instructed or carried out at the House since 28 September 2018.
 - b) J McCluskey, Glasgow City Council, Land and Environmental Services was required to provide: A written summary of the defects, works required, background information and any information regarding works carried out, proposed or contemplated on the House, all with reference to the Abatement Notices dated 21 June 2018 (Reference PH14834) and 26 July 2018 (PH14909); A written summary of any discussions or written exchanges with any person or company in relation to number 1 above including the names.
 - c) All be lodged by 11 December 2018.
 10. On 28 November 2018 the Landlord's Representative provided the company registration number for the company; the Landlord Registration number for both the Landlord and the Landlord's Representative and a copy of the Letting Agency Contract between them for Letting with full management for another property. Four Invoices were produced from Aqa Property Limited in respect of the House dated 18 May 2014-installation and connecting a new washing machine at £62; 3 September 2018-attend water leak from flat above, expose water leak from water tank at top of building (fix ceiling in kitchen, skim and plaster ceiling in kitchen, part-paper living room side wall) at £295; 17 September 2018-washing machine not working, repair from the drum, fix the boiler pressure valve at £90; 6 November 2018-supply and fit hardwired smoke alarm and heat sensor in kitchen, carry out EICR report and PAT at £235.

The Inspection

11. On the morning of 19 December 2018, the Tribunal attended at the House. The Tribunal inspected the House in the presence of the Tenant. The weather conditions at the time of the Inspection were clear and dry. Photographs were taken during the Inspection and these are attached as a Schedule to this Decision.
12. The House is a second storey flatted dwelling house in a sandstone tenement.

The Hearing

13. Following upon the Inspection of the House, the Tribunal held a Hearing at 11.30 am in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT.
14. The Landlord was not present but was represented by Mr Mohammed Arshed, the Landlord's Representative.
15. The Tenant was in attendance.
16. The Tribunal's preliminary findings of the Inspection were relayed to the Landlord's Representative and Tenant, as detailed below.
17. Kitchen: the floor was uneven, insecure at parts and there were holes in it. The floor covering was uneven and in poor condition and had not been properly fitted. Rodent droppings were visible throughout the kitchen. There was clearly an infestation problem. The air vents at pavement level were broken which could allow an access point. The cooker was connected to a gas supply pipe but was not operative. The washing machine did not work. The boiler had no details of when it was last serviced. There was a smoke and heat detector which was hardwired and interlinked. There was a Carbon Monoxide Detector that worked.
18. Hall: there was a smoke detector which was hardwired and interlinked.
19. Lounge: there were exposed wires at the ceiling light fitting; no adverse damp readings were recorded; the fireplace was not securely fixed to the wall; the sockets were being operated on multiple extension leads potentially causing a fire risk and some sockets seemed to be inoperative.
20. Bedroom: the chimney had not been properly draughtproofed and was only covered with loose plyboard; a double socket was loose and hanging off the wall behind the bed; severe burning scorch marks were evident on the ceiling and there was exposed wiring; and the radiator valve was missing.
21. Bathroom: the shower was working with adequate flow and temperature; splashback tiles were missing from around the sink; the left hand tap on the wash hand basin could not be fully closed and water was leaking from it; the waste water outlet pipe was in poor condition; there were no adverse damp mater readings recorded; and the ceiling light unit was not the type appropriate for a bathroom with high moisture levels.
22. The House: the general decoration throughout was poor and the Tenant complained of a hole on the living room ceiling having been papered over without having been filled in first; the floor covering in the hallway was incomplete and uneven and there was also evidence of rodent droppings in a hall cupboard.

23. It was agreed that the Private Residential Tenancy Agreement between the Parties for the House was dated 5 January 2018 and that there was included a washing machine, a cooker and a small fridge. The Tenant had moved to the House from another property let to him by the same Letting Representative.
24. The Tenant stated that when he started to occupy the House, he had issues from the outset. He discovered bed bugs and needed to call out the Council in the first month. His boiler had not worked for four months. He told the Representative about the issues including the floor being unsafe, the shower not working and there being no smoke alarm, but he was always asked to go to the Council. The Shower was only fixed the week before and the smoke alarms were installed then too. He had not used the kitchen for eight months due to the damage to the floor caused by flooding from the washing machine and the vermin problem occurring over say 5 months. The washing machine no longer worked at all. The cooker did not work. The landlord was apparently not prepared to pay for them to be fixed. The Tenant was dissatisfied with the workers who had been sent out to the House and considered them to be unqualified to competently carry out the works they had been sent to do. He understood the previous tenant had suffered some of the same issues. His family life had become difficult because of the poor condition of the House and this had upset him greatly as his son could not stay. He had lost goods due to the flooding. Relations with the Landlord's Representative were strained.
25. The Landlord's Representative indicated that the Tenant took the House in the condition he viewed it, albeit the white goods would be repaired or replaced if found not to be working. A water leak had been fixed and the main issue had been flooding from an upper property which had taken several weeks or months to resolve through the Factor and Environmental Services of the local Council had also been involved. Pipes in the walls had burst and tradesmen had ripped up the floor covering in the kitchen. A dispute over payment was still to be resolved. Pest Control had been out but did not obtain access. Vermin was an issue in the whole area. There had been damage to the walls with water running down them, but some work had been done. The washing machine had been replaced as far as he was aware. A repair had been invoiced dated 17 September 2018. All work that had been carried out was done by his in-house team of workers. They were qualified at different levels and trades. The EICR and PAT testing was contracted out.
26. During the Hearing a copy EICR was produced by the Landlord's Representative and received to be considered by the Tribunal with the Tenant's consent. This was examined. It was unsigned. Enquiries established that the electrical contractor named was not registered with a suitable qualifying body. It was dated 30 October 2018. It was not a Report that would satisfy the Tribunal that the legislative requirements incumbent on a Landlord letting out a property had been complied with. Nor did there appear to be a current Gas Safety Certificate for the House.
27. No issue was taken by the Landlord's Representative over the visual findings of the Inspection as he had never been in the House. It was conceded therefore that work was required. The EICR and Gas Safety Certificates position was not clearly stated, so as to satisfy the Tribunal

that the legal requirements had been complied with. It was pointed out by the Tribunal that there were safety matters that needed attended to even if not included in this Application.

28. The Parties agreed that access would be arranged directly between them to allow for all work needed to be carried out.

The Evidence

29. The evidence before the Tribunal consisted of written evidence in the form of the Application form with the supporting documentation, all communication exchanges and the oral evidence at the Hearing along with the findings of the Inspection of the House.

Summary of the issues

30. The issue to be determined was whether the House meets the repairing standard as set out in section 13 (1) (a, d & f) of the Act, and whether the Landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner and registered Landlord of the House.
- II. The tenancy between the Landlord and the Tenant is a tenancy to which the repairing standard applies.
- III. The Tribunal carefully inspected the House on 17 December 2018 and found that the House does not meet the repairing standard required under section 13 (1) (a, d & f) of the Act in respect of the matters complained of in the Application as at the date of Inspection, namely: The floor in the kitchen was uneven and had holes in it; the floorcovering was not in a reasonable state of repair; the washing machine was not in proper working order; there was a rodent infestation evident in more than one room of the House which had occasioned damage to skirtings and contamination of surfaces; there was no current EICR for the House or PAT testing evidence produced ; and the House was in poor decorative order throughout.

Reasons for Decision

31. The floor in the kitchen was unsafe as it was uneven, insecure had holes in it and it did not have an adequate floor covering. Accordingly, the repairing standard has not been met (section 13 (1) (a) of the Act.)
32. There was evidence of rodent activity throughout the House which had caused damage to skirtings and contamination of surfaces. Investigation and treatment is needed by the landlord to meet the repairing standard (section 13 (1) (a) of the Act).
33. The washing machine is not in a reasonable state of repair and in proper working order. No evidence of electrical safety EICR or PAT testing was

- produced for the House. Accordingly, the repairing standard has not been met (section 13 (1) (d) of the Act.)
34. The decoration throughout the House is poor and requires upgraded particularly in the kitchen to make the house reasonably fit for human habitation. Accordingly, the repairing standard has not been met (section 13 (1) (a) of the Act.)
 35. There was no current EICR for the House produced. An electrical safety certificate (EICR) for the House is required. The Tribunal considered that this was an urgent ongoing safety issue relating to the health and safety of any potential occupants given that there were possible electrical issues. In terms of section 19A of the Act the landlord must before the start of the tenancy provide the tenant with a copy of the record of the most recent electrical safety inspection carried out and to satisfy the repairing standard, section 13(1) (c) of the Act.
 36. There was sufficient functioning interlinked and hardwired smoke detectors within the House at Inspection (section 13 (1) (f) of the Act.)
 37. The Shower was in a reasonable state of repair and in proper working order at Inspection (section 13 (1) d) of the Act)

Summary of Decision

The Landlord has therefore failed to comply with the duty imposed by section 14 (1) (b) of the Act and has not ensured that the House meets the repairing standard under sections 13(1) (a) and (d) of the Act in respect of the matters complained of in the Application. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act. The decision of the Tribunal is unanimous.

Observations

38. The Tribunal made the following additional observations during the Inspection of the House which were out with the terms of this Application, but which relate to consideration of the repairing standard for any tenant:
 - An electrical safety certificate (EICR) for the House is required. The Tribunal considered that this was an urgent ongoing safety issue relating to the health and safety of any potential occupants given that there were possible electrical issues. In terms of section 19A of the Act the landlord must before the start of the tenancy provide the tenant with a copy of the record of the most recent electrical safety inspection carried out and to satisfy the repairing standard, section 13(1) (c) of the Act.
 - The air vents at pavement level were broken which could allow an access point for rodents. This is likely to be a common repair.
 - The cooker was connected to a gas supply pipe but was not operative.
 - The boiler had no details of when it was last serviced. An unqualified Gas Safety Certificate is required immediately, and it must be exhibited to the Tenant.
 - Lounge: there were exposed wires at the ceiling light fitting; the fireplace was not securely fixed to the wall; the sockets were being

operated on multiple extensions potentially causing a fire risk and some sockets seemed to be inoperative.

- Bedroom: the chimney had not been properly draughtproofed and was only covered with loose plyboard; a double socket was loose and hanging off the wall behind the bed; severe burning scorch marks were evident on the ceiling and there was exposed wiring; and the radiator valve was missing.
- Bathroom: splashback tiles were missing from around the sink; the left hand tap on the wash hand basin could not be fully closed and water was leaking from it; the waste water outlet pipe was in poor condition; and the light unit was not the type appropriate for a bathroom with high moisture levels.
- If the bed bug infestation alluded to by the Tenant has not yet been eradicated, further action is needed.
- The Landlord will require to consider and remedy these matters when acting in respect of the other issues. Otherwise, this or any Tenant may make a further Application to the Tribunal.

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.

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.

S Christie

Signed _____

Susan Christie, Legal Member

4 January 2019.



Glasgow, 4th January 2019
This is the Schedule of Photographs
referred to in the Decision
of even date heretofore under
reference FTS/HPC/18/2531

Inspection Report

S Christie

Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG

Legal Member

Case Reference: FTS/HPC/RP/18/2531

Date of inspection: 19/12/2018

Time of re-inspection: 10.00 am

Weather conditions: Clear and dry

In attendance: Susan Christie – Legal Member
Nick Allan - Ordinary Member
Ali Louahem M’sabeh -Tenant



Photo 1 – Front elevation



Photo 2 – Rodent access in kitchen



Photo 3 – Rodent access in kitchen



Photo 3 – Rodent droppings.



Photo 4 – Rodent droppings.



Photo 5 – Damaged kitchen floor



Photo 6 – Damaged kitchen floor



Photo 7 – Damaged kitchen linoleum



Photo 8 Defunct washing machine



Photo 9 – Damaged socket (Kitchen)



Photo 10 - Ext. cable in living room



Photo 11 - Ext. cables in living room



Photo 12- Living room light fitting



Photo 13 - Damaged socket (Bedroom)



Photo 14 - Bedroom ceiling light



Photo 15 – Defunct cooker



Photo 16 Missing tiles/leaking tap



Photo 17 – Rusty waste water pipe



Photo 18 – Bedroom fireplace



Photo 19 – Boiler in kitchen

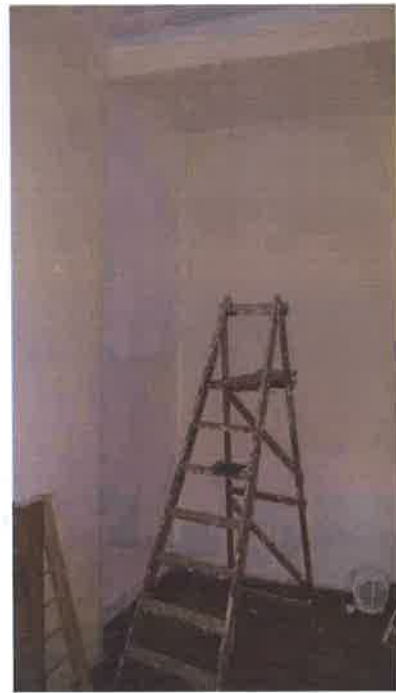


Photo 20 – Living room decoration



Photo 21 – Kitchen decoration



Photo 22 – Living room ceiling



Photo 23 – Gas meter



Photo 24 – Consumer unit in hall

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal (Housing and Property Chamber)
7th January 2019