

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/17/0105

Flat 3/3, 1097 Tollcross Road, Glasgow, G32 8UH
("the Property")

The Parties:-

Rona Campbell-Doughty, Flat 3/3, 1097 Tollcross Road, Glasgow, G32 8UH
("the Tenant")

**First Lets, 704 Cathcart Road, Glasgow G42 8ES, ("the Landlord's agents") as
agents for Justin Girasoli, 38 Whiteacres Road, Glasgow, G53 7LJ ("the
Landlord")**

Whereas in terms of their decision dated 8 June 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord had 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 had failed to ensure at all times during the tenancy, that:-

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a)); and
- b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)).

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:

1. The Landlord, either himself or with other owners of the properties at 1097 Tollcross Road, Glasgow to:
 - a) repair or replace the door entry intercom panel at the rear entrance to 1097 Tollcross Road, and to effect any other repair or replacement necessary to put the door entry intercom system at that door into proper working order;

- b) to supply the Tenant with keys to the existing locks at the front and rear doors to 1097 Tollcross Road, failing which, to replace those locks, and supply the Tenant with keys for the replacement locks.

2. The Landlord to:

- a) securely attach to the walls in which they are situated: the double electrical socket in the living room, to the left of the window, and the internal light switch, to the left of the front door;
- b) replace the missing doors of the kitchen cupboards in which the fridge and the washing machine are situated, with doors that, in appearance, colour and finish, are as near as may be to the other kitchen cupboard doors.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **four weeks** from the date of service of this Notice.

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 type written on this and the preceding page(s) are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, Edinburgh, chairperson of the Tribunal at Edinburgh on 8 June 2017, before this witness:-

A Stalker

CHRISTINA ORLANDINI witness
Westwater Advocates name in full
Advocates Library Address
EDINBURGH
EH1 1RF.

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/17/0105

Flat 3/3, 1097 Tollcross Road, Glasgow, G32 8UH
("the Property")

The Parties:-

Rona Campbell-Doughty, Flat 3/3, 1097 Tollcross Road, Glasgow, G32 8UH ("the Tenant")

First Lets, 704 Cathcart Road, Glasgow G42 8ES, ("the Landlord's agents")
as agents for Justin Girasoli, 38 Whiteacres Road, Glasgow, G53 7LJ
("the Landlord")

Tribunal Members:

Adrian Stalker (Chairman) and Mike Links (Surveyor Member)

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 have complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 in relation to the house concerned, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By an application to the Housing and Property Chamber received on 16 March 2017, the Tenant sought a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application contended that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard under section 13 of the 2006 Act, and in particular, that the Landlord had failed to ensure, at all times during the tenancy, that:-

- a) 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 (section 13(1)(c));
 - b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)).
 - c) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13(1)(e));
 - d) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f));
 - e) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (section 13(1)(g)).
3. On 6 April 2017, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier Tribunal.
 4. The Tribunal served Notice of Referral under and in terms of schedule 2, paragraph 1 of the Act upon the Landlord, the Landlord's agents and the Tenant by letter dated 13 April 2017.
 5. Given the nature of certain complaints made in the application, the Tribunal issued a direction, on 28 April 2017, requiring the Landlord to produce: (a) an Electrical Installation Condition Report ("EICR"); (b) a Report of Portable Appliance Testing ("PAT Report"); and (c) a Gas Safety Certificate. Copies of those documents were produced to the Tribunal by the Landlord's agents, attached to a letter of 15 May 2017.
 6. Following service of the Notice of Referral the Tenant and the Landlord's agents made written representations to the Tribunal. The Tribunal did not see a copy of the lease of the subjects. It was provided with a copy of an AT5 in respect of the tenancy, which named the tenants as Rona Claire Campbell-Doughty and Gregg Philip Anderson. However, in the application to the Tribunal Ms Campbell-Doughty is indicated as the sole Tenant.
 7. The Tribunal inspected the Property on the morning of 24 May 2017. The Tenant and Mr Anderson were present during the inspection. Mr Nadeem Iqbal of the Landlord's agents, also attended. Later that morning the Tribunal held a hearing at Wellington House, Glasgow. Again, the Tenant, Mr Anderson, and Mr Iqbal were present.

Summary of the issues

8. At part 8 of the application, the section which invites the applicant to "list details of how you consider the landlord has failed to meet the Repairing Standard" was completed by the Tenant as follows:
- a) Gas Meter broken for 23 days
 - b) Carbon monoxide detector broken
 - c) No heat detector
 - d) Earth Bonding missing from boiler
 - e) Faulty electrical sockets
 - f) Crack in living room wall
 - g) Smashed kitchen tiles
 - h) Inspection hatches missing from boiler
 - i) Paintwork throughout
 - j) Running toilets
 - k) Exposed electricity meter
 - l) Front/Back Buzzer broken/missing
 - m) Lock missing from front door
 - n) No lock on building front door
 - o) No post box access
 - p) Missing kitchen cupboards

It should be noted that point m) relates to the front door of Flat 3/3, whereas point n) relates to the front door of 1097 Tollcross Road.

9. At the inspection and hearing, it was apparent that certain of these issues, in particular, items: (a), (b), (c), (g), (h), and (o), had been addressed by the Landlord and his agents. Accordingly, there was no requirement for the Tribunal to make any finding in respect of those complaints.

Findings in fact

10. The Tribunal finds the following facts to be established:-

- i. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988.
- ii. The date of commencement of the current tenancy was 31 January 2017 ("the beginning of the tenancy").
- iii. The Property forms a flat on part of the top floor of a three-storey block of flats, built about 15 to 20 years ago, and located directly onto the footpath. The outer walls are finished in facing brick with rendered sections at the oriel windows and exposed gable wall. The roof is pitched and tiled. The accommodation comprises hall, living room, kitchen, two bedrooms, toilet and en-suite bathroom.
- iv. The Tenant and Mr Anderson live together there.
- v. There is earth bonding at the boiler. There are no outstanding issues in relation to earth bonding.
- vi. In the living room, to the left of the window, there is a double electrical socket. It is loosely fixed to the wall, and can be moved by

- hand. There is also a light switch, to the left of the front door. Again, it is loose, and not properly fixed to the wall.
- vii. On one of the walls of the living room, there is hairline crack, which runs more or less vertically from the ceiling to the floor. The wall was in this condition, at the beginning of the tenancy.
 - viii. Some of the internal walls of the Property are marked by numerous holes made rawl plugs, screws, picture hooks, etc. This is particularly evident in one wall of the living room, where it appears that shelves had previously been fitted. The walls were in this condition, at the beginning of the tenancy.
 - ix. There was no problem with the functioning of the toilets, on the morning of the inspection.
 - x. The electricity meter is situated internally, above the front door to the flat. It is not covered by any box, panel, or similar structure. That was also the case, at the beginning of the tenancy.
 - xi. Originally, at the front door to 1097 Tollcross Road there was a door entry system, including a panel, to the left of the door, with separate intercom buttons for each flat. This panel has been removed, and replaced by a flat wooden panel. That was done before the beginning of the tenancy. The Tenant was not informed by the Landlord, or the Landlord's agents, that another intercom panel would be fitted, before the beginning of tenancy.
 - xii. At the back door to 1097 Tollcross Road there is a door entry system, including a panel, to the right of the door, with separate intercom buttons for each flat. Since the beginning of the tenancy, that has been vandalised. It is has become partly detached from its housing. It is no longer operable.
 - xiii. Both the front and back doors to 1097 Tollcross Road have working locks. However, neither the Tenant nor Mr Anderson has ever been supplied with a key to these doors. As a result, they are unable to access the close from outside, if the doors are locked. Some of the residents of other flats at 1097 Tollcross Road are also without keys. As a result, residents usually leave both doors unlocked. Consequently, the close is not secured. On occasion, unknown persons, who are not residents, have entered the close and locked both doors, with the result that residents, including the Tenant and Mr Anderson, cannot get into the building.
 - xiv. The Tenant had replaced the lock on the front door of Flat 3/3 herself, as she was not satisfied that it was secure.
 - xv. Before the beginning of the tenancy, the Tenant inspected the Property with a member of staff of the Landlord's agents. At that time, there was neither a washing machine nor a fridge installed. The Tenant was advised that they would be installed in two cupboards in the kitchen. At that time both of those cupboards had doors, which matched the other cupboard doors in the fitted kitchen. The washing machine and the fridge were duly installed, but at the same time the cupboard doors were removed, and not replaced.

Most of the above points were apparent to the Tribunal during the course of the inspection, and from evidence given by the Tenant and Mr Anderson

during the inspection and hearing. Photographs taken at the inspection are attached to this decision.

Reasons for the decision

11. Of the points (a) to (h) listed at paragraph 8 above, being the complaints made in the application, the Tribunal was satisfied that points: (a), (b), (c), (g), (h), and (o) had been addressed.
12. During the course of inspection, the Tenant reported that she had been advised, by a contractor, that there was a problem with earth bonding to pipes which were partly visible in one of the bedroom cupboards. That problem was not evident to the Tribunal. There is no mention of such a problem in the EICR. In any event, the complaint made in the Tenant's application relates to earth bonding at the boiler, which the Tribunal found to be in place.
13. Whilst copies of the EICR, PAT Report and Gas Safety Certificate were produced to the Tribunal by the Landlord's agents in advance of the inspection, they were not provided to the Tenant. The Gas Safety Certificate was obtained by the Landlord's agents on or about 1 February. The Tenant asked the Landlord's agents for a copy of the Gas Safety Certificate, in an email dated 11 February. The Tribunal considers it unfortunate that a copy was not provided to her in advance of the hearing.
14. The Tenant questioned the methodology of the contractor who carried out the inspection for the purposes of preparing the EICR and PAT Report. She was concerned that his checking of sockets was not sufficiently comprehensive. The Tribunal observed that it could not detect any irregularity in the EICR and PAT Reports, which appear to have been issued by an approved contractor. The Tribunal could not look beyond the terms of the reports.
15. The Tenant also questioned whether the Gas Safety Certificate was sufficiently up to date. Since 1 February, the boiler had been found unfit for use, in an inspection by the gas suppliers. However, it had then been repaired, and was in proper working order at the date of the inspection. The Tribunal observed that, under regulation 36 of the Gas Safety (Installation and Use) Regulations 1998, the Landlord is obliged to arrange a check of "each appliance and flue" at intervals of 12 months. He is not obliged to arrange a check, after any occasion in which an appliance or flue is repaired or maintained.
16. As regards finding in fact vi: these are minor repairs, but one which ought to be carried out, under section 13(1)(d) of the Act.
17. The Tribunal has not found any failure to comply with the repairing standard, in respect of findings in fact vii, viii and x. These are complaints relating to the décor of the property. The Tenant maintained that during the course of her pre-tenancy inspection (see finding in fact xv), she was

assured by the Landlord's agent that these matters would be addressed by repainting, redecoration, and by boxing of the electricity meter. This raises an issue as to whether that work was part of the contractual agreement between the parties. However, that is not a matter for determination by this Tribunal, as any failure to carry out this work does not amount to a breach of the repairing standard.

18. As regards finding in fact xi, the Tenant accepted that there was no door entry system at the front door of 1097 Tollcross Road at the beginning of the tenancy. The Tribunal found, therefore, that it was not one of the "fixtures, fittings and appliances provided by the landlord under the tenancy" for the purposes of section 13(1)(d) of the Act.
19. By contrast, with regard to finding in fact xii, there was, at the beginning of the tenancy, a door entry system at the back door. That has since fallen into disrepair, and remained in that state, as at the date of the inspection and hearing.
20. The lack of a key to either of the doors to 1097 Tollcross Road is a serious problem for the Tenant and Mr Anderson. They have, at times, had to knock on the windows of the residents of ground floor flats, to ask to be let into the building. On least one occasion, they have had to call the emergency services to arrange entry. The Tribunal considers that, for the purposes of section 13(1)(d), there is a "fixture, fitting and appliance" (being the lock and key) provided by the Landlord under the tenancy which is not in proper working order. The Tribunal also found that, in these circumstances, the Property is not in all respects reasonably fit for human habitation under section 13(1)(a).
21. As regards finding in fact xiv, the Tribunal accepts that the Tenant is dissatisfied at having to pay for installation of a new lock at the door to flat 3/3. However, the issue of recovery of that cost is not a matter that can be resolved by the Tribunal. The door lock is no longer in a state of disrepair.
22. As regards finding in fact xv, the Tribunal was satisfied that the removal (and non-replacement) of the kitchen cupboard doors amounted to a breach of section 13(1)(d). The Tribunal pointed out to the Tenant that any replacement doors need not be integral, (e.g. the replacement door for the fridge cupboard would open separately from the fridge door); it also observed that it may not be possible to source replacement doors which exactly match the existing cupboard doors. However, the Tenant insisted on this aspect of her complaint.

Decision

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

24. In particular, the Tribunal determined that the Property fails to meet the repairing standard in terms of section 13(1)(a), given finding in fact xiii and paragraph 20 above.
25. The Tribunal also determined that the Property fails to meet the repairing standard in terms of section 13(1)(d), given finding vi, xii, xiii and xv, and paragraphs 16, 19, 20 and 22 above.
26. The Tribunal found that the complaint as regards section 13(1)(e), (f) and (g) was not established.
27. The Tribunal was also satisfied that, as at the date of the inspection, the Landlord had complied with his duties under sections 19A and 19B of the Act, and under regulation 36 of the Gas Safety (Installation and Use) Regulations 1998, given paragraphs 5, 13, 14 and 15 above.
28. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.
29. The decision of the Tribunal was unanimous.
- 30. 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.**
31. 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.

A Stalker

Signed

Date 8/6/17

Chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



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

Photograph Schedule

Flat 3/3, 1097 Tollcross Road, Glasgow G32 8UH

Date: 24th May 2017 Ref: FTS/HPC/RP/17/0105



Front elevation



CO monitor



CO monitor



Heat detector (Kitchen)



Smoke detector (Living Room)



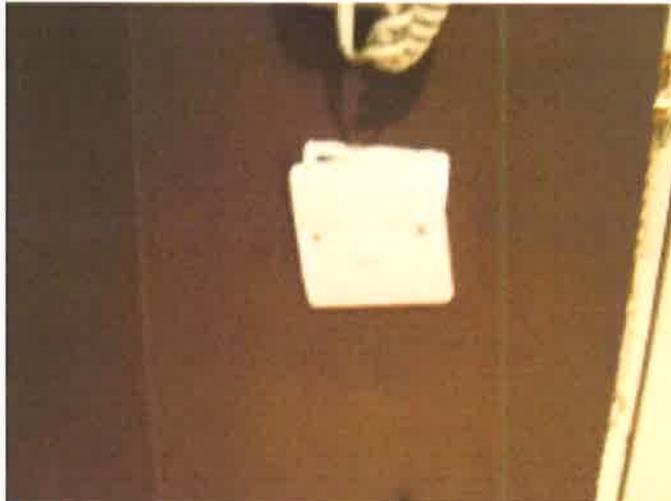
Smoke detector (Hall)



Inspection hatches (Flue chase-Bedroom)



Earth bonding at central heating boiler.



Light switch (Hall)



Electric socket (Living Room)



Rawplug holes and plaster crack (Living Room)



Kitchen floor tiling



Hall decoration



Decoration (Living Room)



Electric consumer unit/meter etc (Hall)



Locks on flat's entrance door



Missing doors at white goods (Kitchen)



Vandalised door entry panel (Rear door)



Removed door entry panel (Front door)



Front door lock