

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: PRHP/RP/16/0288

Title no: GLA 11843

58B Newark Drive, Pollokshields, Glasgow, G41 4PX ("The Property")

The Parties:-

**Miss Moynagh Silverwoods, formerly residing at the Property ("the Tenant"),
represented by Govan Law Centre, 18-20 Orkney Street, Glasgow G51 2BX**

**Mr David Alston and Ms Marie Caughey ("the Landlord"), both residing at 24
The Orchard, Athlumney, Navan, Meath, Ireland, represented by Fineholm
Letting Services, 114 Union Street, Glasgow G1 3QQ**

Whereas in terms of their decision dated 25th January 2017 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; and
- (b) 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
- (c) 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 works as are necessary for the purpose of ensuring that the house concerned meets the Repairing Standard and that any damage caused by the carrying out of any works in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (1) To carry out such works as are required to ensure that all windows in the Property are in a reasonable state of repair and in proper working

order. In particular the Landlord has to repair or replace all broken panes and missing/broken catches/handles and to ensure that all windows in the property are capable of opening and closing properly; in terms of (Section 13(1)(a) and (d) of the said Act); and

- (2) To demonstrate that David Fitch Electrical Limited, who produced the EICR, dated 22nd February 2016, is suitably qualified and registered with either SELECT or NICEIC in terms of (Section 13(1)(c) of the said Act); and
- (3) To instruct a suitably qualified Timber Preservation and Damp Proofing Specialist to investigate the cause of dampness in the small bedroom within the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in terms of (Section 13(1)(a) of the said Act); and
- (4) To make suitable adjustments to allow the electric radiator/towel rail heater in the bathroom to be easily operated and carry out any necessary repairs to ensure that this heater is in a reasonable state of repair and proper working order or to remove it completely, in terms of Section 13(1)(c) of the said Act.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **eight weeks (fifty six days)** from the date of service of this Order upon the Landlord.

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.

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 Gerald McWilliams, Solicitor, Legal Member of the Tribunal, at Glasgow on 30th January 2017, before this witness:-

G Cusick _____ Witness

G McWilliams _____ Legal Member

G. Cusick
CASEWORKER

Housing and Property Chamber

First-tier Tribunal for Scotland



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The Parties:-

Miss Moynagh Silverwoods, formerly residing at the Property ("the Tenant"), represented by Govan Law Centre, 18-20 Orkney Street, Glasgow G51 2BX

Mr David Alston and Ms Marie Caughey ("the Landlord"), both residing at 24 The Orchard, Athlumney, Navan, Meath, Ireland, represented by Fineholm Letting Services, 114 Union Street, Glasgow G1 3QQ

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 or not 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:-

Mr Gerald McWilliams, Legal Member; and

Ms Carol Jones, Ordinary Member

Background

1. By Application received on 7th September 2016 the Tenant applied to the Private Rented Housing Panel, now the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether or not the Landlord has failed to comply with the duties

imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 as amended ("the Act").

2. The Application by the Tenant stated that they considered that the Landlord had failed to comply with their duty to ensure that the Property meets the repairing standard. The Application states that the Tenant believes that the (i) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; that (ii) The fixtures fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order; and (iii) Any furnishings provided by the Landlord under the tenancy are not capable of being used safely for the purpose for which they are designed. The Application specifically stated that there were issues with windows being painted shut, cracks being present in the window panes, dampness being present in the property, in particular in a bedroom, and walls being damp to the touch. It also made reference to an electric heater in the property having been painted with the wrong type of paint, being inoperable and emitting a strong smell. It referred to there being holes in the ceiling of the hallway. It also referred to the fact that an electrical inspection was only carried out after the Tenant had raised concerns about electrical issues, and that new flooring appeared to "bounce" due to moisture contained within it.
3. On 13th January 2017 the Legal Member of the Tribunal, having considered the Application, determined that the Tenancy of the property had been lawfully terminated by virtue of the fact that the Tenant had vacated the property in September 2016 but considered that it was appropriate to continue to determine the matter because of the nature of the complaints in the Application which represent a potential health hazard to an occupant of the property. The Application was continued in terms of Schedule 2, Paragraph 7(2) of the said Act. On the same date the Legal Member referred the Application under Section 22(1) of the Act to a Tribunal.
4. The Tribunal comprised Gerald McWilliams, Legal Member, and Carol Jones, Ordinary Member. The Tribunal 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 December 2016.
5. The Tribunal Members attended at the property on 19th January 2017 for an inspection. The Landlord's representative Ms L. Drummond of Fineholm Letting Services, 114 Union Street, Glasgow, G1 3QQ was present.

6. Following the inspection of the property the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The Landlord's representatives Ms L. Drummond and Ms E. Hamilton, also of Fineholm Letting Services, attended.

Findings on Inspection- see attached Photographs Schedule

- 7.
- (i) There is no catch on the window in the bathroom in the Property. The window is capable of opening, but with difficulty. The left side window in the large bedroom (looking at the window from inside the room) is only capable of being opened some three inches. The window to the right opens but with considerable difficulty. The three windows in the living room are painted shut. There are cracks on the top and bottom window panes in the dining room. There is a large crack on the lower pane in the small bedroom window. The remaining windows in the Property are capable of opening and have no cracks in them. There are broken handles to the window in the small bedroom and the left side window in the living room.
 - (ii) A high moisture reading was taken on the lower part of the wall to the left of the window in the small bedroom. Other moisture readings, with lesser, moderate levels, were recorded in that bedroom and the large bedroom. The ground level outside the small bedroom is built up against the external wall and it is higher than the floor level in this room. There were no visible signs of dampness on the walls in that bedroom or on the walls in the other rooms in the property.
 - (iii) It was not possible to operate the electric heater in the bathroom making it impossible to determine whether or not it is in proper working order and/or whether or not a smell emits from the paint on that heater.
 - (iv) The lights in the property were working properly.
 - (v) There were no holes in the ceiling in the hallway.
 - (vi) The flooring in the hallway and dining room did not "bounce".

The Hearing

8. Evidence was heard at the hearing from Ms L. Drummond and Ms E. Hamilton of Fineholm Letting Services. They produced further papers to the Tribunal, namely a copy Home Report in respect of the Property, dated 28th October 2016, and invoices of D.M. Electrical and Property Maintenance, dated 2nd April 2015 and 17th July 2015, and David Fitch Electrical Limited, dated 23rd February 2016. Ms Drummond and Ms Hamilton stated to the Tribunal that the Tenant had not complained about the windows and that the Landlord did not believe it to be an issue. They stated that during an inspection of the Property, attended by a Timber Preservation

and Damp Proofing Specialist Bromac Limited, Hamilton, on 14th October 2016, a high moisture reading was taken in the small bedroom but this was thought by the Specialist to be a false reading. They stated that the Tenant had complained of dampness in the hallway. They stated that the Specialist took a lot of damp readings on 14th October 2016. They referred to the Report of the Timber Preservation and Damp Proofing Specialist. The said Timber Specialist and Damp Proofing Specialist, had attended at the Property on 4th August 2016, and referred to the Report produced by the Specialist on 5th August 2016. They stated that the Specialist referred to debris in the wall in the large bedroom and confirmed that damp proofing works were subsequently carried out there by the Specialist per the Specialist's invoice, dated 30th September. They stated that D.M. Electrical and Property Maintenance had attended at the Property in April and July 2015, per the said invoices and again in October 2015 when the Tenant had complained further about electrical issues. They stated that at that stage they arranged for another electrical contractor David Fitch Electrical Limited to inspect the Property and carry out any necessary works, and produce an Electrical Installation Condition Report. They referred to the said invoice of David Fitch Electrical Limited and the Electrical Installation Condition Report, dated 22nd February 2016, previously produced to the Tribunal. They confirmed that they held documents which confirmed that the contractor was suitably qualified to provide such a Report and that they could forward this to the Tribunal. They stated that the electric radiator/ towel rail heater in the bathroom had, in their understanding, not been used for some time and that they did not know how to operate this heater. They said that the Tenant and previous Tenant in the Property had used the gas central heating radiator for heating in the bathroom. They stated that issues of lights flickering arose prior to the electrical works carried out by David Fitch Electrical Limited in February 2016. They stated that there had been an under floor leak where the hallway meets the dining room and that the flooring had been lifted, the leak repaired and the floor covering renewed. They did not consider that, thereafter, there was any "bounce" in the floor at that area. They also stated that a strip light had been removed from the hall ceiling leaving holes in the plasterwork which were subsequently filled at the same time as a new pendant light was installed. Ms Drummond and Ms Hamilton stated that the Property was under offer from a prospective purchaser but that the sale transaction was presently "on hold" pending the Tribunal's determination in respect of the Application.

9. A Schedule of internal and external photographs of the Property, taken at the Inspection, is attached to this Decision.

The Repairing Standard

10. The repairing standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A House meets the repairing standard if:-

- (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,
- (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,
- (e) Any furnishings provided by the Landlord under the Tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings in Fact

11. The Property is an elevated basement flat situated in a large sandstone detached two storey and basement Victorian house in the Pollokshields area of Glasgow. This is a very good residential area located around three miles south west of the city centre. The accommodation comprises a hall, living room, two bedrooms, kitchen and bathroom. The Property is presently vacant and under offer from a prospective purchaser.

12. The window in the bathroom in the Property only opens with difficulty. It has no catch on it. The left side window in the large bedroom only opens to the extent of some three inches. The right side window opens with difficulty. The three windows to the front of the living room are painted shut. There are cracks in the top and bottom panes of the window in the dining room. There is a large crack on the lower pane in the window in the small bedroom. There are broken handles to the window in the small bedroom and the left side window in the living room.

13. There are high moisture readings in the small bedroom to the base of the hip and external wall. The ground level outside the small bedroom is built up against the external wall and it is higher than the floor level in this room. Some moisture readings taken in the large bedroom were moderate. The latter room was treated for damp shortly prior to the Application being made and the plasterwork is likely to still be drying out.
14. The Electrical Installation Condition Report of David Fitch Electrical Limited dated 22nd February 2016 states that the electrical installation at the Property is "satisfactory" but does not bear the SELECT or NICEIC Registration Number of that company.
15. It was not possible to establish whether or not the electric radiator/towel rail heater in the bathroom is in working order or whether it emits a smell when it is turned on. The Landlord's representative at the Inspection, Ms Drummond, could not show the Tribunal how to operate this heater and there was no obvious switch.
16. The remaining complaints in the Application are not established.

Reasons for Decision

17. The Tribunal made its findings based on what it found at the Inspection and the representations and the evidence of the Landlord and their representatives. The bathroom window opened with difficulty and had no catch, the left side window in the large bedroom opened several inches, and the right side of the window opened with difficulty, and that the three windows to the front of the living room were painted shut. There were two cracks in the top and bottom panes of the window in the dining room, and there was a large crack on the lower pane in the small bedroom. Difficulties with the opening of the windows and cracks in same were evident at the Inspection. There are broken handles to the window in the small bedroom and left side window in the living room. The Landlord's representatives accepted that these defects were present within the Property. A high moisture reading had been obtained at the lower left wall on the left side of the window in the small bedroom. The Electrical Installation Condition Report did not bear the Registration Number of the electrical contractor. The Landlord's representatives confirmed that they held documents which stated that the contractor was suitably qualified to provide such a Report and that they could forward this to the Tribunal. Neither the Tribunal nor the Landlord's representative could find a way to operate the electric heater in the bathroom.
18. The Tribunal considered whether or not any of the above defects, which it found to be established, brought the Property below the repairing standard in terms of the said Act, as amended. The

Tribunal considered matters and determined that the windows which are incapable of opening, or are opening only a few inches or are difficult to open, or have broken handles, are not in a reasonable state of repair and/or in proper working order. Given that there was no Registration Number in the Electrical Installation Condition Report dated 22nd February 2016, the Tribunal found that it had not been established that the installations in the Property for the supply of gas and electricity are in a reasonable state of repair and in proper working order. The Tribunal also found that there were high moisture readings in the small bedroom, with the ground level outside that bedroom being too high against the external hip end wall, indicating the existence of dampness in that bedroom, and that accordingly the house is not wind and watertight and in all other respects reasonably fit for human habitation. The Tribunal found that the Landlord had carried out works at the Property which had successfully remedied the remaining complaints in the Application. In respect of the findings it made, the Tribunal considered that a Repairing Standard Enforcement Order should be made and proceeded to make such an Order. The Tribunal considered that it is reasonable for the Landlord to be given eight weeks for the works and action referred to below to be completed.

Decision

19. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Act, as stated.
20. The Tribunal proceeded to make a Repairing Standard Enforcement Order, as required by sections 24(1) and 24(2) of the Act, in the following terms:
 - (a) The Landlord is to carry out such works as are required to ensure that all windows in the Property are in a reasonable state of repair and in proper working order. In particular the Landlord has to repair or replace all broken panes and missing/broken catches/handles and to ensure that all windows in the Property are capable of opening and closing properly; in terms of (Section 13(1)(a) and (d) of the said Act); and
 - (b) The Landlord is to demonstrate that David Fitch Electrical Limited, who produced the EICR dated 22nd February 2016, is suitably qualified and registered with either SELECT or NICEIC in terms of (Section 13(1)(c) of the said Act); and
 - (c) The Landlord is to instruct a suitably qualified Timber Preservation and Damp Proofing Specialist to investigate the cause of dampness in the small bedroom within the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the

works have been completed satisfactorily, in terms of (Section 13(1)(a) of the said Act); and

- (d) The Landlord is to make suitable adjustments to allow the electric radiator/ towel rail heater in the bathroom to be easily operated and carry out any necessary repairs to ensure that this heater is in a reasonable state of repair and proper working order or to remove it completely, in terms of Section 13(1)(c) of the said Act.

21. In view of the nature of the failure to meet the Repairing Standard as defined in the said Housing (Scotland) Act 2006, as amended, the Tribunal determined that the Repairing Standard Enforcement Order requires to be complied within **eight weeks (fifty six days)** from the date of service of the Repairing Standard Enforcement Order upon the Landlord.

22. The decision of the Tribunal was 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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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.

G McWilliams

Signed... ..Date 30th January 2017
Gerald McWilliams, Legal Member

Schedule of photographs taken during the inspection of 58b, Newark Drive, Glasgow G41 4PX by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 19 January 2017.

Reference Number : PRHP/RP/16/0288



External view - Front elevation of property



Small bedroom window



Small bedroom window - broken handle



Bathroom window



Large bedroom windows



Living Room windows - do not open



Living Room window - left side - broken handle



Living Room window to side



Dining Room Window - cracked lower pane



Dining Room Window - cracked upper pane



Small bedroom window - cracked pane



Small bedroom



Small bedroom - high moisture readings



Large Bedroom



Large bedroom - moderate moisture readings



Bathroom - electric heater and towel rail



Hall ceiling



Hall/Dining Room floor



Dining Room - radiator and floor



Boiler - pressure gauge



Exterior walls - Living room - front elevation



Exterior walls - Large Bedroom - front elevation



Exterior walls - Large bedroom - front elevation



Exterior walls and built up ground level - Small Bedroom - hip end



Exterior walls and built up ground level - Small Bedroom - hip end