

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

Housing and Property Chamber First-tier Tribunal for Scotland



**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/17/0219

Title no: LA145532

Flat 0/1, 30 Eglinton Court, Laurieston, Glasgow, G5 9NF

The Parties:-

**Miss Michelle Robertson, Flat 0/1, 30 Eglinton Court, Laurieston, Glasgow,
G5 9NF (The Tenant)**

**Mrs Fiona McConnell, C/O 123 Candleriggs, Glasgow, G1 1NP (The Landlord)
represented by their agent Countrywide and SHH Lettings, Second Floor, 26
Springfield Court, Glasgow, G1 3DQ.**

Whereas in terms of their decision dated 9th August 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 the House is:-

- (a) Wind and water tight and in all other respects, reasonably fit for human habitation in terms of Section 13(1)(a) of the Housing (Scotland) Act 2006 as amended;
- (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, all in terms of Section 13(1)(d) of the Housing (Scotland) Act 2006 as amended;

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (a) To replace or repair the microwave within the property which has not worked

- (b) To complete all works identified and recommended in the Specialist Survey Report referred to by the Landlord and obtained from Peter Cox, Damp Specialist;
- (c) To produce said Specialist Report;

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 21 days 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 Miss Lesley Dowdalls, legal member of the Tribunal, at Kilmarnock on 9th August 2017 in the presence of the undernoted witness:-

K Brown
witness

L Dowdalls
nber

Kelly Brown

23 The Foregate

Kilmarnock

KA1 1LE

**First-tier
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Scotland
(Housing
and Property Chamber)**

Housing and Property Chamber

First-tier Tribunal for Scotland



STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/17/0219

The Property: 0/1, 30 Eglinton Court, Laurieston, Glasgow, G5 9NF

The Parties:-

Miss Michelle Robertson, Flat 0/1, 30 Eglinton Court, Laurieston, Glasgow, G5 9NF (The Tenant)

Mrs Fiona McConnell, C/O 123 Candleriggs, Glasgow, G1 1NP (The Landlord) represented by her agent, Countrywide and SHH Lettings, Second Floor, 26 Springfield Court, Glasgow, G1 3DQ)

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) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, and the documents lodged by the Landlord's Representative, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal Comprised

Lesley Dowdalls - Chairing Member

Carol Jones - Ordinary Member (Surveyor)

Background

- 1. By application received on 9th June 2017 the Tenant applied to the Housing and Property Chamber 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that it is-

(a) Wind and water tight and in all other respects, reasonably fit for human habitation in terms of Section 13(1)(a) of the Housing (Scotland) Act 2006 as amended;

(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, all in terms of Section 13(1)(d) of the Housing (Scotland) Act 2006 as amended;

The tenant's application specified a number of complaints - the microwave is not working, secured entry fob is not working and there are vast amounts of dirt behind furnishings and mould and damp behind the wardrobe in the bedroom. She also said the mould was causing health issues.

3. On 12 June 2017 a Convener of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants by letters dated 16 June 2017

5. Following service of the Notice of Referral the Tenant made no further written representations to the Tribunal other than the original application received on 9th June 2017. The Landlord by letter dated 12th July 2017 made written representations to the Tribunal and attached documents numbered 2 and 3.

The Inspection

6. The Tribunal inspected the Property on the morning of 31st July 2017. Both Tenants and the Landlord's representatives were present during the inspection. A Schedule of Photographs taken by the Ordinary Member is attached hereto and referred to for its terms. The Tribunal noted the following at inspection:

- The microwave in the kitchen is not working
- There is only one working fob provided by the landlord to permit entry to the building despite there being two tenants
- There is a buildup of black spot mould along the base of the wall and skirting board adjacent to the wardrobe in the bedroom
- Damp meter readings were taken in the bedroom. A moderate moisture reading was found to the external wall under the window and low moisture readings were found to the wall adjacent to the wardrobe.

The Hearing

7. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Glasgow and heard from both Tenants, Michelle Robertson and Amy Ford and the Landlord's representatives, John Hempstead and Paula Neeson. The Landlord was represented by Countrywide and SHH Lettings.

8. The Tenant submitted as follows: -

- (a) The issue of the faulty fob has been addressed. A new working fob was provided to the Tenant on the morning of the Tribunal after the inspection;
- (b) The microwave has not worked since the commencement of the Lease. The Landlord's representatives had advised the Tenant to purchase a new microwave and thereafter seek reimbursement of the cost from the Landlord through rent deduction. The Tenant was reluctant to do so as the relationship between the Tenant and Landlord's agents had broken down and there was no trust that she would be reimbursed;
- (c) Work had been carried out on 28th July 2017 in respect of the property, all as identified in a Specialist Report, which the Tenant understood had been commissioned by the Landlord. When the Tenant had moved into the property there was mould and damp in the bedroom. The Specialist Report identified that there was inadequate ventilation and the Tenant understood that the Specialist had instructed that vents be installed in the bathroom and kitchen. Two vents had been installed. The one in the kitchen is operable when the light is switched on in the kitchen. The one in the bathroom does not work. Whilst some painting over mould has taken place, the bedroom wall continues to have mould evident and the Tenant considers it to continue to feel damp.

9. The Landlord submitted as follows: -

- (a) That a fob had been provided to the Tenant today and accordingly, that issue was resolved;
- (b) That a microwave would be provided to the Tenant, although she could have received a microwave if she had purchased one and sought reimbursement;
- (c) That the work had been carried out on the property, all concordant with the terms of a Report from Peter Cox, Damp Specialist (not lodged in evidence) and that the faulty ventilation unit installed in the bathroom could be quickly repaired.

Summary of the issues

10. The issues to be determined are whether the property meets the repairing standard and whether the Landlord has complied with her duty to ensure that the microwave is in a reasonable state of repair and in proper working order, there are sufficient working fob keys to allow access to the property for both tenants and the property is wind and watertight and in all other respects reasonably fit for human habitation.

Findings of fact

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

The property comprises a two-apartment ground floor flat situated in a 4 storey, former local authority block in the Laurieston district of Glasgow and located around one mile south of the city centre.

- (a) The tenancy is a Short-Assured Tenancy;
- (b) The microwave provided in the property does not operate and accordingly, is not fit for purpose;
- (c) The new extractor fan installed in the bathroom does not operate and is not fit for purpose;
- (d) Black spot mould has accumulated on the wall and skirting board adjacent to the wardrobe within the bedroom of the property;
- (e) A moderate moisture reading was detected to the base of the external wall below the window in the bedroom of the property;
- (f) A low moisture reading was detected to the base of the wall adjacent to the wardrobe within the bedroom of the property;
- (g) A new extractor fan has been fitted in the kitchen and is fully operable;

Reasons for the decision

12. The Landlord has failed to ensure that the microwave was operating and has not completed work identified as being required by a Damp Specialist. The microwave required to be replaced or repaired immediately. The obligation should not be placed upon the Tenant to purchase another microwave and seek reimbursement. If the microwave is replaced by a second-hand item or the current microwave is repaired, a PAT Certificate will be required in respect of the item. The Survey Report, which was referred to by the Landlord's representatives, was not lodged with the Tribunal. The Tribunal was however informed that it detailed work which was required to ensure adequate ventilation within the property and address the evident dampness/condensation in the bedroom. All work identified in that Report requires to be carried out, and a copy of the Report should be

provided to the Tribunal within 21 days. The Landlord's representatives indicated that the ventilation unit within the bathroom, which is not working, would be repaired immediately and the microwave would be replaced immediately. On that basis, the Tribunal considered that the period of 21 days was sufficient to ensure that the work was carried out to enable the Landlord to meet her obligations in terms of the 2006 Act.

13. The issue of the faulty fob has been remedied. The Tribunal observed however that until the day of the Tribunal the Tenant had not been provided with a second working key fob to operate the door entry system, which she had requested at the commencement of the tenancy. The Landlord's representatives did not appear clear that it is the obligation of the Landlord to ensure that fixtures and fittings operate as they should. The key fob should have been delivered to the Tenant at the earliest opportunity.

Decision

14. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
15. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1).
16. The Tribunal proceeded to serve notice upon Glasgow City Council as required by section 24(6).
17. The decision of the Tribunal was unanimous.

Right of Appeal

18. **A landlord, tenant or third-party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal to the Upper Tribunal for Scotland on a point of law only within 30 days of the date the decision was sent to them. Before such an appeal is made the party must seek permission to appeal within 30 days from the First-Tier Tribunal.**

Effect of section 63

19. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

L Dowdalls

Date

9th August 2017

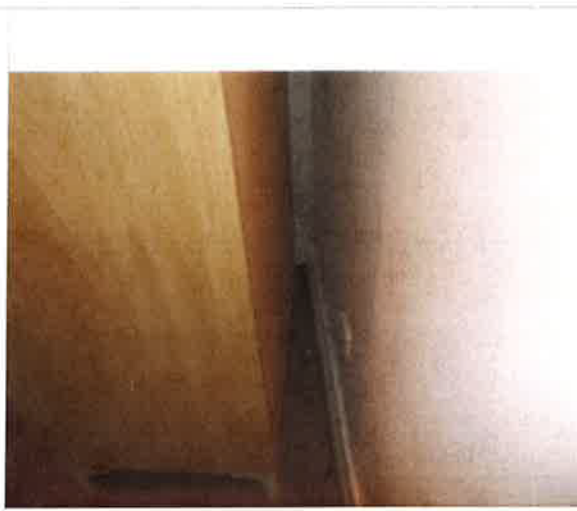
Chairperson

Schedule of photographs taken during the inspection of 0/1, 30 Eglinton Court, Glasgow
G5 9NF by the First-tier Tribunal for Scotland (Housing and Property Chamber)
31 July 2017.

Reference Number : FTS/HPC/RP/17/0219



External view - Front Elevation



Bedroom - wall directly behind wardrobe



Bedroom - black spot mould accumulation on wall
and skirting adjacent to wardrobe



Bedroom - moderate moisture reading to base of
external wall below window



Bedroom - low moisture reading to base of wall adjacent to wardrobe



Kitchen - new extractor fan



Bathroom - new extractor fan



Kitchen - microwave - not functioning