

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/17/0299

Title no/Sasines Description: LAN 62767

53 Douglas Street, Airdrie, ML6 9JS ("the House")

The Parties:-

**Mr Alan Marshall and Mrs Leanne O'Donnell Marshall, residing at the House
("the Tenant")**

**Mr Perwaiz Akhtar, residing at 10 Avonhead Road, Cumbernauld, G67 4RA
and Mr Abdul Haleem, residing at 2 Broomstone Avenue, Newton Mearns,
Glasgow, G77 5LA ("the Landlord")**

Whereas in terms of their decision dated 17 November 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 meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended:-

(a) the house is wind and watertight and in all other respects reasonably fit for human habitation; and

(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.

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 arrange for inspection/investigation, safe removal and thereafter safe disposal by a suitably licensed and qualified contractor of any materials containing asbestos, in particular, asbestos boards placed beneath the floor in the living room of the House and any traces of asbestos fibres or other remains of same from the section of the kitchen wall from where the asbestos

boards were originally removed, to ensure that the House is reasonably fit for human habitation.

- (2) To replace the door seal on the electric oven door to ensure that the oven is in a reasonable state of repair and in proper working order.

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 typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 17 November 2017 in the presence of the undernoted witness:-

F Weir

_____ witness

N Weir

_____ Legal Member

_____ name in full

2 FIFE ROAD

Address

MANSWORTH

HP23 4LN

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0299

Title no/Sasines Description: LAN 62767

53 Douglas Street, Airdrie, ML6 9JS ("the House")

The Parties:-

Mr Alan Marshall and Mrs Leanne O'Donnell Marshall, residing at the House ("the Tenant")

Mr Perwaiz Akhtar, residing at 10 Avonhead Road, Cumbernauld, G67 4RA and Mr Abdul Haleem, residing at 2 Broomstone Avenue, Newton Mearns, Glasgow, G77 5LA ("the Landlord")

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") in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised:-

Nicola Weir, Legal Member

Kingsley Bruce, Ordinary Member

Background

- 1. By Application received on 28 July 2017, Mr Alan Marshall, one of the tenants, applied to the Tribunal 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"). 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 and in particular**

that the Landlord had failed to ensure that:- the house is wind and watertight and in all other respects reasonably fit for human habitation; 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; 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; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Specifically, the Tenant complained as follows:-

- (1) Suspect asbestos sheeting was put under floor boards when fire place removed.
- (2) Fireplace ripped out and not decorated.
- (3) House was not decorated or cleaned before moving in.
- (4) Artex walls have been disturbed.
- (5) New flooring put down but damaged within 24 hours due to poor installation. Also flooring to be put in the bedroom.
- (6) Double glazing not installed and windows are rotting. Poor noise restriction leaving kids unable to sleep.
- (7) Guttering in sun lounge has fallen.
- (8) Milky colour on hot water is constant since we moved in.
- (9) Blinds are not attached to the walls therefore a safety hazard to kids.
- (10) Seal on cooker has been broke since we moved in.
- (11) Fire alarm has been installed in the kitchen but is too close to cooker and therefore goes off any time anything is cooked.(sic)

Apart from the application form, the Tenant also submitted some copy tenancy documentation, namely Short Assured Tenancy, Ground 2 Notice and Form AT5; copy email correspondence between the tenant, Alan Marshall and David Grainge of DRG Properties Services (Scotland) Ltd trading as McGoogan ("the Landlord's agent") dated between 7 April 2017 and 26 July 2017; a copy email dated 22 June 2017 from the tenant, Mr Marshall to North Lanarkshire Council; and photographs dated 26 July 2017. The copy email correspondence submitted with the Application did not mention all the repairs issues listed on the Application. The Tenant was asked to submit evidence that the Landlord had been notified of all works requiring to be done. On 14 August 2017, the tenant, Mr Alan Marshall subsequently submitted an email to the Tribunal, requesting that his wife be added to his Application and further copy email correspondence between the Tenant and the Landlord's agent dated 26 July and 11 August 2017, containing details of the repairs issues. Said email correspondence contained details of some additional repairs issues which were not part of the Application.

2. On 22 August 2017, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal.
3. Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act was served upon the Landlord, the Landlord's agent and the Tenant by letters dated 30 August 2017.
4. Following service of the Notice of Referral, Mr Perwaiz Akhtar, one of the landlords indicated by email dated 12 September 2017 that he and his agent would be attending the inspection and hearing and intended to make representations. The Tenant submitted an email dated 6 September 2017 containing an updated list of repairs issues; an email dated 20 September 2017, intimating details of the Tenant's representative, Mr Jim Melvin, Senior Housing Advice Network Officer of Coatbridge CAB; and an email dated 21 September 2017 enclosing a copy Fibre Identification Certificate from Clyde Environmental Consultants Ltd dated 18 September 2017. Copies of these responses were circulated to the parties.
5. The Tribunal inspected the House on the morning of 9 October 2017. Both tenants, the landlord Mr Perwais Akhtar and the Landlord's agent were present during the inspection.
6. Following the inspection of the House, the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. Both tenants were present, with Mrs Leanne O'Donnell Marshall primarily giving evidence on their behalf, and were represented by the said Mr Jim Melvin ("the Tenant's representative"). The landlord, Mr Perwais Akhtar was present, as was the Landlord's agent and Mr Pawel Bartyska, the Landlord's contractor. Mr Akhtar represented himself and primarily gave evidence on behalf of the Landlord.

The Inspection

7. At the time of the inspection, the weather was cloudy and dry. The Tribunal noted that the House is a ground floor flat in a block of four. The House is accessed from Douglas Street. The accommodation comprises hall, living room, kitchen, two bedrooms, bathroom and sun lounge. The Tribunal noted the following at inspection:-
 - (a) The laminate flooring in the living room was in place and no inspection of sub floor areas was possible.
 - (b) The fireplace in the living room had been removed and finishes re-instated, albeit finishes did not exactly match pre-existing finishes to the remainder of the wall. There was a gap at the bottom of the wall where skirting board had not been affixed.
 - (c) The House was satisfactorily decorated and clean.

- (d) The finishes to the living room walls were in reasonable order and repair.
- (e) Minor gaps were apparent in some of the joints of the laminate boards of the flooring in the living room.
- (f) The bedroom carpet which had been complained about was free from significant defect.
- (g) The blind cords in one of the bedrooms were hanging loose behind the blinds. There was no hook or similar device on either side of the window to which the blind cords could be wound round or otherwise attached.
- (h) The hot water in the kitchen ran clear when a glass of water was filled from the kitchen hot tap.
- (i) The door seal on the oven was incomplete and sections of the seal appeared to have been glued down to hold them in place.
- (j) The heat detector (not smoke alarm as the Tenant had thought) on the kitchen ceiling had been moved from its original location to further away from the cooker.
- (k) The guttering on the exterior of the sun lounge at the rear of the House had been fixed and was in reasonable condition and free from obstruction, so far as could be seen.
- (l) The windows of the House were single-glazed with timber frames and surrounds. When examined from the front and rear exterior of the House, it was observed that paint was flaking off and that the condition of the half-sills of the windows had deteriorated. There were areas of localised rot and areas of slight softening of the timbers but not sufficient as to affect the operation of the windows, which appeared to be wind and watertight.

A Schedule of Photographs taken during the inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

The Hearing

- 8. At the Hearing, the Tribunal had before it the Application documentation and the further representations and documentation submitted in response to the Notice of Referral, all as referred to above. The Tribunal also had before it a copy of Land Certificate LAN 62767 relative to the House which is registered in the name of the Landlord.
- 9. The Tenant advised that a few days after they moved into the House, they asked the Landlord's agent if they could remove three shelves in the kitchen so that they could place their fridge freezer there. This was agreed but when the shelves were taken for recycling, the local authority recycling facility refused to take them, as they were suspected to contain asbestos. The shelves were placed outside the House and this was reported to the Landlord's agent. The Landlord's contractor attended at the House, put the shelves in black binbags and placed them under the floor in the living room. The Tenant advised that they subsequently

arranged for Clyde Environmental Consultants Ltd to attend at the House to take samples from the shelving boards which had been placed under the living room floor and some "artex" material that had been removed from the fireplace area. The company took the samples to their lab and subsequently issued the Fibre Identification Certificate dated 18 September 2017 which the Tenant had lodged with the Tribunal. The Tenant advised that the shelving boards had been found to contain Chrysotile, a type of asbestos. The "artex" material had not been found to contain asbestos. The Tenant was concerned that their family was being exposed to a danger and wants the asbestos safely removed. The Landlord advised that he had not been aware of the potential asbestos. He initially thought from his communications with his agent that the concern was regarding the "artex" material from the fireplace. It was only subsequently that he had been made aware of the potential asbestos from the kitchen area. The Landlord was concerned that the Tenant had disturbed something that was potentially asbestos by removing the shelves, that the Tenant had subsequently stored this material in the garden of the House and that the Tenant had, in fact, assisted the Landlord's contractor in packaging up the shelving boards and placing them under the floor. The Landlord was of the view that he should have been informed about the testing procedure being carried out as this could have been an opportunity for the boards to be safely removed. The Landlord referred to the Tenant's emails to the Landlord's agent and the allegations that his agent was not communicating satisfactorily with the Tenant. He asked why the tenant did not contact him direct as he stated that the Tenant had the Landlord's contact details. When asked by the Tribunal, the Landlord confirmed that he had no reason to doubt the Fibre Identification Certificate lodged by the Tenant and had to accept what it states. The Landlord also conceded that it is of concern to him that his contractor had put this material under the floor of the living room. The Landlord confirmed that he is absolutely agreeable to arranging for the safe removal and disposal of the asbestos material by a suitable contractor. The Tenant was asked by the Tribunal if the shelving boards were painted and confirmed that they were painted beige. The Tenant was asked by the Tribunal if the section of the kitchen wall from where the shelves were removed had been redecorated but the Tenant confirmed it had not. When asked by the Tribunal if he would be prepared to get the contractor also to inspect and remove any asbestos remains from the kitchen wall area, the Landlord confirmed he would. The Tenant indicated she was happy with the Landlord's proposals in this regard.

10. The Tenant advised that the gas fire in the living room had been capped and that they wished the fire and fireplace removed. The Landlord had agreed to this and arranged for this work to be done. MDF was used to board up the fireplace and the job was then just left like this, until after the Tribunal Application was made. The redecoration was then carried out, with textured finish applied to the area where the fireplace had been removed. The Tenant considers the finish unsightly as the finish does not exactly match the rest of the wall and the outline of the fireplace opening can still be seen. The Landlord advised that this work was carried out at

the request of the Tenant and that the Landlord had been under no obligation to remove the fire and fireplace as the fire had been made safe. However, in the interests of good relations, the Landlord agreed to removal of the fire and fireplace and agrees that the area was left boarded up. He conceded there was a delay with the area being re-decorated. The Landlord said he took contention with the Tenant's view that the finish is unsightly. He said that the contractor had tried to blend the finish in with the rest of the wall by applying a textured finish to the fireplace area. Although the finish is not perfect, the Landlord stated that the only way to achieve this would be to skim the whole living room and re-decorate it. He advised that this is not the Landlord's responsibility and that there was no breach of the Repairing Standard here. When asked by the Tribunal if he considered the fireplace area had been made good, the Landlord conceded that beading should be applied to cover the gap at the bottom of the wall where no skirting board had been fitted. He stated that this would be a quick job and that he would be willing to arrange for this to be done, by mutual arrangement with the Tenant. The Tenant's representative submitted that textured finish is more than a conventional decoration and could be regarded as more of a "fixture". He said this was therefore not just a matter of preference for the Tenant. The Landlord responded that the Tenant should not have rented the House if they did not like the textured finish, which he submitted is decoration. The Landlord then stated that they would be prepared to skim and decorate the whole room if the Tenant wanted that but that this would not be at the total cost to the Landlord. He suggested that discussions could be had with the Tenant regarding this. The Tenant's representative indicated that the Tenant would consider carefully this undertaking on the Landlord's part.

11. As regards the laminate flooring in the living room, the Tenant stated that they had said to the contractor that the flooring would burst due to the underlay (white sheeting) which had been laid underneath the laminate. The Tenant also said that they had indicated to the Landlord's agent that they would be prepared to pay for better flooring as they have four children and intend to stay in the House for a long time. The Tenant would have preferred a darker colour of laminate. The Tenant stated that the laminate burst within 24 hours of being laid. When asked by the Tribunal what was meant by the description "burst", the Tenant confirmed that they were referring to the gaps which had appeared at the join between the ends of some of the boards and an area near the kitchen door which had sunk. The Tenant advised that they do not wear shoes indoors and the damage still occurred. The Tenant considers the gaps a trip hazard, as well as unsightly. The Landlord stated that there had, again, been no onus on the Landlord to replace this flooring. They were agreeable to doing it, however, and sought no contribution from the Tenant. Nor did they opt for the cheapest laminate. When it was first fitted, it was with a felt underlay. When the Tenant complained, the whole floor was lifted and re-laid with different underlay, rectifying the issue. The Landlord does not consider there to be any trip hazard. He confirmed that he could, however, get his contractor to rectify the small gaps by

taking off the beading and using a chisel-type tool to move the board edges together. He said that there were no gaps when the job was finished and he wondered whether a physical jolt to a particular plank could have moved the boards slightly. The Tribunal asked the Tenant to comment on whether appropriate underlay had been used. The Tenant stated that when the floor was laid the second time, the contractor just made do with previously laid bits of laminate. The Landlord responded that a certain number of square metres of laminate is ordered plus extra for cuttings and that the laminate is standard tongue and groove which clicks together. The Tenant's representative stated that polyroll underlay had been used but it should have been a fibre board surface which is more secure. The Landlord's response was that either/or was acceptable but that it is easier to lay the underlay by the roll. He stated that movement naturally occurs in the boards, that there is no trip hazard, that the gaps are a cosmetic issue only and that he could get his contractor to rectify this issue as previously stated.

12. The Tenant stated that the bedroom carpet complained about was grubby and maintained that the Landlord's agent had stated at the outset that this would be replaced. The Landlord's agent said that he had never agreed to that as there was no obligation on the Landlord to replace this carpet. The Tribunal asked the Tenant in what way it was felt that the Repairing Standard was not met or that the carpet was defective. The Landlord stated that there was nothing wrong with the carpet and that some of the issues raised by the Tenant in the Application are more of a "wish list" than breaches of the Repairing Standard. The Tenant's representative then stated that this particular issue was not being pursued and could be taken as withdrawn from the Application. He added that the Tenant had thought they had had a verbal agreement regarding replacement of the carpet but that this is clearly disputed. He will further discuss this issue with the Tenant.

13. Regarding the blind cords, the Tribunal asked the Tenant if they had thought of affixing the cords to the wall themselves. The Tenant advised not. The Landlord commented that the blinds and cords were quite high up in the children's bedroom. He stated that his contractor had failed to tell him about the blind cords. In any event, he has obtained the hooks to be fixed to the wall and will see that this is rectified as soon as possible.

14. As regards the hot water in the kitchen, the Tenant advised that the milky appearance is intermittent. The cold water runs clear. If the milky water is left to settle, it clears. The Landlord stated that he does not understand this himself, that it happens with his own water sometimes and that, if there was an issue with the water tank, he would not expect the issue to be intermittent. He said that the water is not foul or contaminated and suggested the milky appearance might be due to excessive bubbles in the water perhaps caused by pressure as the water travels through the pipes, etc. His contractor states that this often happens where there is a combi-boiler. The Landlord stated that he does not dispute that the Tenants have seen this but does not consider that a problem, as such,

has been identified. In answer to a question by the Tribunal, the Tenant confirmed that there is no build up in the kettle. The Tenant's representative asked whether the Landlord would consider having the boiler serviced to see if anything could be identified which may be causing the issue with the water. The Landlord advised that the boiler was checked by a Gas Safe contractor when the Tenant moved in and it passed the checks. The Tenant stated that when the engineer was in, he told the Tenant specifically that he was not servicing the boiler. The Landlord responded that he had just been advised by his contractor, who is also a heating engineer, that, in any event, the water within the boiler is in a sealed chamber which would not be accessed during servicing.

15. The Tenant advised that in response to the complaint about the oven seal, the electrician came out and glued it in place but it has not held. The Tenant stated that she is a keen baker and that the heat in the oven is not as it should be. She is therefore not really using the oven and has been cooking using a slow cooker instead. The Landlord stated that the seal will be replaced but that, if it is not cost effective to do so, the Landlord may simply replace the whole oven. The Tenant indicated that this would be acceptable.

16. The Tenant confirmed that since the heat detector in the kitchen was moved further from the cooker, it has not been going off all the time. The Landlord stated that he would have expected his qualified contractors to install the heat alarm in a suitable place in the first place but that he arranged for it to be moved to satisfy the Tenant. He is a little concerned that it might now be too far from the cooker as his contractor says this is a bit of a grey area. The Tenant confirmed that she had not been provided with copies of the Electrical Safety Certificates including the smoke and heat alarms, etc. The Landlord confirmed that copies would be sent to the Tenant and the Tenant's representative.

17. When asked about the complaints concerning the windows, the Tenant advised that they were not double glazed, let in noise, were rotten and not watertight. She said that the outside of the windows seem to be rotting away. The Landlord stated that they looked at the windows when they bought the House. They do not take issue that the paint is flaking but regard the timber and windows still solid. As the windows are not double glazed, they will improve them in due course but do not consider that there is any requirement in law to do so immediately. The Landlord stated that the Tenant should have been aware that the windows were not double glazed. He referred to the Tenant's email of 22 June 2017 to North Lanarkshire Council which the Tenant had submitted to the Tribunal. He pointed out that this email mentions issues with noise and things happening in the street and that the Landlord cannot control what people outside his properties do. He suggested that the Tenant was motivated in this Application by wishes and desires which are not the Landlord's responsibility. The Tenant's representative stated that their argument is not that the House should be double glazed but that there is excessive water/condensation building up on the windows despite air

circulating. The Tenant added that they heat the House properly and have the windows open every day.

18. In summing up, the Tenant's representative stated that the Tenant had a number of perceived issues with the House but that they were encouraged by the Landlord's proposals put forward today and felt that a great deal of progress had been made. The primary issues remaining as far as the Tenant was concerned were whether there is proper and adequate underlay under the laminate flooring and the current condition of the windows. He indicated that the judgement of the Tribunal on these matters will be accepted.
19. The Landlord summed up by saying that he did not have much more to add. He said that the Tenant had his number and should have felt free to pick up the phone to him and should do so from now on. The Tenant explained that they had thought they should make contact through the Landlord's letting agent. The tenant, Mr Marshall, further stated that he had once called the Landlord direct but that the Landlord was short and dismissive with him. Mention was then made of a previous arrangement to meet at the House, which the Landlord did not then attend and also to the Tenant not being flexible enough previously as to when works would be done.
20. The Tribunal brought the Hearing to a close by referring to the proposals made in respect of various matters by the Landlord during the Hearing, that agreement appeared to have been broadly reached on most matters and that the Tenant was now aware that they could contact the Landlord direct about repairs issues. The Tenant's representative also confirmed that the Landlord could contact him direct with regard to matters.

Findings in Fact

21. The House is a ground floor flat in a block of four situated at 53 Douglas Street, Airdrie, ML6 9JS in the Gartlea area of Airdrie, within a housing estate of similar housing. Reference is made to the Tribunal's findings at the inspection.
22. The Tenant occupies the house on a Short Assured Tenancy which commenced on 4 April 2017. They live there with their four children. The original period of the tenancy was 4 April 2017 to 3 October 2017. The Landlord's agent dealt with the tenancy documentation on behalf of the Landlord. The Tenant moved to Scotland from Ireland and a third party originally viewed the House on behalf of the Tenant.
23. The Tenant has intimated various repair and other issues to the Landlord throughout the tenancy, via the Landlord's agent. Communications have tended to be by email but the Landlord's agent has also been out to the House and met with the Tenant there. Some issues have been rectified

but there have also been delays with some repair issues being dealt with or issues not being dealt with satisfactorily.

- 24.** Some repair issues raised by the Tenant in the Tribunal Application and which had been notified to the Landlord have been resolved but some remain outstanding.

Reason for decision

- 25.** The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection and Hearing.
- 26.** The Landlord does not dispute the Fibre Identification Certificate produced to the Tribunal by the Tenant, confirming that the sample taken from the shelving boards contain Chrysotile, a type of asbestos. The presence of this material, currently stored under the living room floor and potentially also present in the area of the kitchen wall from which the shelves were removed is unsatisfactory. In the Tribunal's view, this material requires to be safely removed and disposed of by a suitably qualified and licensed contractor (as agreed by the Landlord at the Hearing) to ensure that the House meets the Repairing Standard and is reasonably fit for human habitation in terms of Section 13(1)(a) of the Act.
- 27.** The door seal on the oven is not intact and the Tribunal was satisfied by the Tenant's evidence that this affects the operation of the oven. The oven is an appliance provided by the Landlord under the tenancy and it is not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act. The rubber seal on the oven door requires to be replaced to ensure that the House meets the Repairing Standard. The Tribunal noted that the Landlord had agreed to replacing the seal or, if not economically viable, to replacing the oven.
- 28.** The Tribunal was of the view that the other matters complained of in the Application did not amount to breaches of the Repairing Standard. The Tribunal noted that the Tenant had withdrawn the complaint concerning the bedroom carpet at the Hearing. At the inspection, it was noted that the sun lounge gutter had been fixed back in place and was in a satisfactory condition, that the heat detector in the kitchen had been moved to a location where the Tenant confirmed it was not constantly going off and that the House appeared to be satisfactorily decorated and clean. It was also noted at inspection that the area of wall from where the fireplace had been removed had a textured finish applied and that the areas of "artex" which the Tenant complained had been disturbed had been made good. Although finishes did not exactly match the surrounding wall and there was a slight gap at the foot of the wall where no skirting had been affixed, in the Tribunal's view these issues were cosmetic in nature only. The Tribunal was pleased to note, however, that the Landlord had offered to make good the area at the foot of the wall

with beading, etc. The Tribunal did not agree that the small gaps between the edges of the laminate boards constituted a trip hazard, although agreed that the finish of the flooring was slightly unsightly, due to the small gaps here and there and were of the view that if the gaps were not rectified, the edges of the laminate boards could deteriorate more quickly through wear and tear. Accordingly, the Tribunal was pleased to note the Landlord's offer to have his contractor lift the beading and move the boards to eliminate said gaps. The Tribunal did not inspect the underlay but both parties agreed that the polyroll type of underlay had been used which, in the Tribunal's view is generally a suitable type of underlay for laminate flooring. Although the blind cords were not attached to the wall, the blinds appeared to be in satisfactory condition and proper working order. In any event, the Tribunal was pleased to note that the Landlord had already taken steps to obtain the appropriate hooks and would be arranging to have these affixed to the wall as soon as possible. The water from the hot tap ran clear at the inspection. There was no odour from it and the Tenant confirmed that, when the water runs cloudy, it clears when left to settle and there is no residue left from the water. In the circumstances, the Tribunal was unable to conclude that there was any significant issue with the hot water. Although the paint on the exterior of the window frames was flaking in places and there were also areas of localised rot and slight softening of timbers, in the Tribunal's view, these issues were not sufficient to affect the operation of the windows. The condition of the windows and condensation on the inside of the glass might reasonably be anticipated having regard to type and the nature of the use and occupation. It was noted that the Landlord stated that he might consider replacing the windows at some future time. Meantime, the Tribunal observed that routine maintenance of the windows might better preserve them and improve the exterior look of the windows.

Decision

- 29.** The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 30.** The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.
- 31.** 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.

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.

N Weir

Signed.. Date: 17 November 2017
Nicola Weir, Legal Member of the Tribunal

Glasgow, 17 November 2017

This is the Schedule of Photographs referred to in the Statement of Decision
of even date herewith. N Weir, Legal Member

SCHEDULE OF PHOTOGRAPHS:

53 DOUGLAS STREET, GARTLEA, AIRDRIE

DATE: 9 OCTOBER 2017







