

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/18/2455**

**Title no: GLA21674**

**Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE, Title Number GLA21674**  
**("The property")**

**The Parties:-**

**Emma Elliott-Walker, Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE**  
**("the Tenant")**

**Nazim Bashir, c/o RiteHome Property Management, 350 Glasgow Harbour  
Terraces, Glasgow G11 6EG**  
**("the Landlord")**

Whereas in terms of its decision dated 24 January 2019, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the respondents 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 respondents 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));
- 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 (section 13(1)(b));
- 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 (section 13(1)(c));
- 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 (section 13(1)(d)).
- e) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f)).;

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 flats at 28 Dixon Avenue Glasgow, or with any property factor instructed by the owners:
  - i. to instruct a reputable contractor, specialising in roofing, roof repairs and the repair and maintenance of guttering, to carry out an inspection to ascertain the cause of water ingress and damage to the ceiling and walls above the bay window within the living room, and water ingress at the window within the adjacent bedroom;
  - ii. to instruct said contractor to prepare a report identifying the cause of the said water ingress, and the nature and type of works necessary to make the property wind and water tight, and to put the roof, drains, pointing and gutters in a reasonable state of repair and proper working order;
  - iii. to submit a copy of said report to the Tribunal;
  - iv. to instruct said contractor to carry out the works identified in the report;
  - v. to instruct said contractor to provide confirmation in writing that that said works have been carried out;
  - vi. and to submit a copy of said written confirmation to the Tribunal.
2. The Landlord to make good any part of the ceiling, walls, windows, window sills and window frames of the living room and adjacent bedroom, which have been subject to water damage.
3. The Landlord to instruct a suitably qualified electrical contractor to install a heat alarm in the kitchen.

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

**Further**, the Tribunal requires the Landlord to produce to the office of the Tribunal an Electrical Installation Condition Report ("EICR") completed by a suitably competent person, in accordance with paragraphs 10 to 20 of the Scottish Government Statutory Guidance On Electrical Installations And Appliances In Private Rented Property ("the Guidance"). In the event that the EICR identifies any items specifically categorised as C1 or C2 under "section K" in the report where any part of the electrical installation in the property is not in a reasonable state of repair and in proper working order, the Tribunal further requires the Landlord to carry out such

work as is necessary to put that electrical installation in a satisfactory state of repair and in proper working order, within the period of **eight 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 24 January 2019, before this witness:-

J Morrison

witness

JANE MORRISON

name in full

WESTWATER ADVOCATES, Address

FACULTY OF ADVOCATES,

PARLIAMENT HOUSE,  
EDINBURGH EH1 1RF

A Stalker

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

Chamber Ref: FTS/HPC/RP/18/2455

**Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE, Title Number GLA21674**  
("The property")

The Parties:-

**Emma Elliott-Walker, Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE**  
("the Tenant")

**Nazim Bashir, c/o RiteHome Property Management, 350 Glasgow Harbour Terraces, Glasgow G11 6EG**  
("the Landlord")

**Tribunal Members:**

Adrian Stalker (Chairman) and Debbie Scott (Ordinary 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 has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, 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 26 September 2018, the Tenant sought a determination as to 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 Tenant, Emma Elliott-Walker, is one of four joint tenants at the property. The others are: Miss Rebecca Livesey-Wright; Miss Josee

Meredith-Keevil and Miss Anna O'Neill. The tenancy agreement was executed by the parties on 26 and 27 July, and 24 August 2018. It is a private residential tenancy, under the Private Housing (Tenancies) (Scotland) Act 2016.

3. The application contended that the Landlord had failed to comply with his duty to ensure that the property 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:-
  - the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
  - 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 (section 13(1)(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 (section 13(1)(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 (section 13(1)(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)).
4. On 3 October 2018, 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. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both parties by letters dated 18 October 2018.
5. Following service of the notice of referral, written representations were made by the Tenant, but not by the Landlord.
6. The Tribunal inspected the property on the morning of 7 December 2018. Present at the inspection were:
  - One of the other tenants, Ms Rebecca Livesey-Wright;
  - Roberto Rigano, of the Landlord's agents, Ritehome Property Management ("Ritehome").

7. Later that morning, the Tribunal held a hearing at Room 109 of the Glasgow Tribunals Centre, 20 York Street, Glasgow. Only Mr Rigano was present at the hearing.

### **Summary of the issues**

8. In the application, the Tenant described outstanding repair issues at the property, as follows:
  - (a) The windows were not wind and watertight.
  - (b) There were no heaters in most of the rooms.
  - (c) The washing machine did not work.
  - (d) The electrical appliances in the property had not been PAT tested.
  - (e) One of the cupboards at the property had been affected by black mould when the tenants moved in.
  - (f) A drainage pipe was missing from the kitchen.
9. In question 9 of the application form ("Nature of the work which needs to be done"), the Tenant had entered: "New windows in two rooms, work to prevent water ingress at the front of the building, stairwell atrium window repaired (significant rot and potential structural damage), replace plumbing from kitchenette to kitchen, check on alarm system. Heaters installed and provided".

### **Inspection**

10. It was accepted, in the Tenant's written submissions, that certain of the matters raised in the application had been addressed by the Landlord and his agents. At the inspection, it was apparent, and was confirmed by Ms Livesey-Wright that items: (b), (c), (e) and (f) listed in paragraph 8 had all been addressed by the necessary repair or replacement.
11. As regards item (a), it was apparent at inspection that there was a fairly serious problem with water ingress above the bay window, in the large living room at the front of the property. The wall above the window was saturated. Damp staining was evident, at the ceiling above the window. This was confirmed by high damp meter readings, in both the ceiling and the wall above the window. Ms Livesey-Wright reported that water often runs down the inside of the window. This was confirmed by visible water staining.
12. Ms Livesey-Wright also reported that water ingress was occurring around her bedroom window. The bedroom used by her is adjacent to the living room. Both rooms share the external wall at the front of the building. On

inspection, it was noted that there was damp staining on the timber panelling at that wall, indicating water ingress.

13. The property is a duplex flat situated on the third floor and attic level of a four storey and basement mid terraced tenement building. The roof has wallhead guttering. It is likely that the water ingress is due to some problem with the wallhead guttering, causing it to overflow or leak into the adjacent wall and ceiling at the point where it is saturated. This is also likely to be the source of water ingress in the window of Ms Livesey-Wright's bedroom. The cause of the problem will require further investigation. On looking out of the bay window in the leaving room, and up towards the guttering, vegetation can be seen, growing out of the stonework. This indicates that the guttering has not been maintained for some time.
14. As regards item (d) in paragraph 7, no EICR or PAT testing certificate was produced on behalf of the Landlord at the inspection, or the subsequent hearing.
15. The Tribunal also noted that whilst there were smoke alarms at various points in the property, including the kitchen, there was no heat alarm (or combined smoke and heat alarm) in the kitchen.
16. On viewing the building from the back, the Tribunal also noted that a PVC waterproof panel needs to be fitted externally, under the kitchen window.

### **Hearing**

17. At the hearing, Mr Rigano accepted that there was a significant issue with water ingress in the wall and ceiling above the bay window, in the living room, and that there was also now water ingress at the window of the adjacent bedroom. He also accepted that this was due to some problem with the wallhead guttering, causing it to overflow or leak.
18. He explained that, having received intimation of the application, Ritehome had endeavoured to deal with all of the outstanding complaints as soon as possible. However, they were hampered in their efforts to address the water ingress problem, because this entailed a repair to the common parts of the building, which would have to be managed by the factors, James Gibb Property Management ("the Factors").
19. Mr Rigano stated that Ritehome had been advised by the Factors that the valley gutters and front and rear gutters were cleaned and treated in mid-

September. However, he could not say how the gutters were “treated”, or whether this included the wallhead gutters.

20. Mr Rigano recognised that, given the nature and extent of the problem with water ingress, that a Repairing Standard Enforcement Order might be made by the Tribunal. He asked how Ritehome could progress this matter, on behalf of the Landlord, given that repairs would have to be arranged by the Factors, and may be subject to delay, if there was a lack of co-operation from other owners. The Tribunal indicated that it would be for the Landlord and Ritehome, his agents, to take the necessary steps to ensure the work was carried out. Where that involved the Factors or other owners, the Landlord and Ritehome may wish to seek legal advice as regards the Landlord's rights to have work carried out, with particular reference to the Property Factors (Scotland) Act 2011, and the Tenements (Scotland) Act 2004.

### **Findings in fact**

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

- i. The property is a duplex flat situated on the third floor and attic level of a four storey and basement mid terraced tenement building.
- ii. The building has wallhead guttering.
- iii. There has been significant water ingress in the ceiling and wall above the bay window, in the large living room at the front of the property. The wall above the bay window is saturated.
- iv. Water ingress is also evident at the window of the adjacent bedroom.
- v. This water ingress is due to a problem with the wallhead guttering, causing it to overflow or leak into the adjacent wall and ceiling.
- vi. There was no heat detector in the kitchen, Thus, the property fails to comply with the standards set by the revised Scottish Government Guidance.
- vii. No EICR or PAT testing certificate was produced on behalf of the Landlord.
- viii. The outstanding repairs described at paragraph 8.(b), (c), (e) and (f) above had all been addressed by the date of the inspection and hearing.

22. These findings are derived from the Tribunal members' observations during the course of the inspection, or were based on their discussions with Mr Rigano at the inspection and hearing.



23. As regards point vi, the Tribunal refers to the standards set by the Scottish Government's Guidance on Satisfactory Provision For Detecting and Warning of Fires in Private Rented Properties (Revised November 2016). In particular, the requirement regarding smoke and heat detectors as outlined in the Guidance now states there should be at least one heat alarm in every kitchen.

24. A schedule of photographs is attached to this decision.

### **Reasons for the decision**

25. For the reasons stated, the Tribunal was satisfied that some of the issues detailed in the application had been addressed by repair or replacement. See paragraphs 10 and 21 (viii) above.

26. However, it follows from paragraphs 11 to 15, and findings in fact iii to vii at paragraph 21 above that the property falls below the repairing standard, and that it is necessary to make a repairing standard enforcement order, under section 24(2) of the Act.

### **Decision**

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

28. In particular, the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(a), (b), and (f), and given the lack of an EICR and PAT testing certificate it could not be satisfied that the property met the repairing standard in respect of section 13(1)(c) and (d).

29. 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.

30. The Tribunal did not make a finding or order in respect of the issue identified at paragraph 16 above (lack of external PVC waterproof panel), as it was not part of the complaint, and the lack of a panel does not have the effect that the property is not wind and watertight. However, it is suggested that the landlord should consider replacing the panel.

31. Finally, the Tribunal wishes to mention an issue raised by the Tenant in her written submissions. The Tenant explained that Ritehome arranged for a contractor to visit the property in connection with one of the repairs. She complains that when he was at the property he "acted in an inappropriate

and unprofessional manner...making one of the tenants, who was at home alone with her 8 month old baby, feel very uncomfortable.” The Tenant was here referring to Ms Livesey-Wright, who was present during the Tribunal’s inspection. This complaint had been addressed to Ritehome, but both the Tenant and Ms Livesey-Wright were dissatisfied with their response.

32. The Tribunal explained to Ms Livesey-Wright that this was not a complaint that could be considered by the Tribunal in the context of an application under the 2006 Act, which is concerned with the repairing standard. However, the Tribunal informed Ms Livesey-Wright that Ritehome are subject to the Letting Agent Code of Practice, and that it was a matter for her to consider whether she wished to make a complaint to Ritehome, and to the Tribunal under that Code. The content of that discussion was then notified to Mr Rigano.

33. The decision of the Tribunal was unanimous.

**34. 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.**

35. 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 .....

Chairperson