

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**

Reference number: FTS/HPC/RP/18/3206

Title no/Sasines Description: GLA13494

**Re: Flat A,41A New City Road, Glasgow, G4 9DE
("the House")**

The Parties:

**Miss Victoria Nakamatte, Flat A,41A New City Road, Glasgow, G4 9DE
("the Tenant")**

**Mr Siu Chung Cho,59 Dorchester Avenue, Kelvindale, Glasgow G12 0EH
("the Landlord")**

**Mellicks, Solicitors & Notaries, 160 Hope Street, Glasgow G2 2TL
("the Landlord's Representative")**

Whereas in terms of their decision dated 8 March 2019, 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:-

- I. The House is wind and watertight and in all other respects reasonably fit for human habitation;
- II. 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;
- III. Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

under sections 13 (1) (a), (c), and (d) of the Act;

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 to: -

- a) Replace the top catch on the kitchen window in the House;
- b) Remove the paint from, repair or replace the trickle vent on the kitchen window in the House to ensure that the trickle vent is fully operational;
- a) Repair or replace the fridge/freezer in the kitchen of the House to ensure it is temperature adjustable and is in all respects in proper working order;
- b) Repair or replace the showerhead bracket/riser in the bathroom of the House to ensure it allows the showerhead to sit securely in place and is height adjustable and is in all respects in proper working order;
- c) Secure in proper position the wall panel edge beading adjacent to the bathroom door; repair or replace the lock handle on the bathroom door, to ensure free and unrestricted opening and closing of the bathroom door on use;
- d) Repair or replace the wall mounted panel heater in the hall and the free-standing panel heater in Bedroom 1 to ensure they are both in proper working order;
- e) Replace the broken glass shade on the freestanding lamp unit in the Living Room of the House. Should this prove impossible, provide a new similar alternative freestanding lamp;
- f) Engage a NICEIC or SELECT approved and qualified electrician to check and report on all fixed installations in the House, specifically the cooker in the kitchen and bathroom panel heater and the wall light in the hall; thereafter to carry out all work to implement the recommendations of that report, by repairing or replacing any or all of these items so that they are in proper working order. On completion of works test all circuits and appliances and produce to the Tribunal an updated and unqualified Electrical Installation Condition Report for the complete installation;
- g) On completion of all the above works, to restore all affected finishes and decoration.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 8 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 type written on this and the preceding two pages are executed by Susan Christie, legal member of the Tribunal, at Glasgow on 8 March 2019 in the presence of the undernoted witness: -

G Christie

_____ witness

S Christie

_____ Legal Member

George Harvey Christie name in full

5 Albert Drive,

Glasgow G733RT Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006, section 22(1A)

Reference number: FTS/HPC/RP/18/3206

Title no/Sasines Description: GLA13494

**Re: Flat A,41A New City Road, Glasgow, G4 9DE
("the House")**

The Parties:

**Miss Victoria Nakamatte, Flat A,41A New City Road, Glasgow, G4 9DE
("the Tenant")**

**Mr Siu Chung Cho, 59 Dorchester Avenue, Kelvindale, Glasgow G12 0EH
("the Landlord")**

**Mellicks, Solicitors & Notaries, 160 Hope Street, Glasgow G2 2TL
("the Landlord's Representative")**

Tribunal Members:

Susan Christie (Chairing /Legal Member);

Andrew Taylor (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purpose 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 all of the available evidence, determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Act. The Tribunal's decision is unanimous.

Background

1. An Application was made under Section 22(1) of the Housing (Scotland) Act 2006 ("the Act") on 27 November 2018 regarding the House.

2. The Applicant considered that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and that the House failed to meet the repairing standard as set out in Sections 13(1) (a), (c)-(g) of the Act.
3. The detail of the complaints contained within the Application form being: exterminator- including suspected vermin issue, kitchen window-including does not close properly/handles missing, fridge-including does not regulate, shower-including constant problems with, switch on Bedroom 1 wall- including insecure, heating, electricity-including missing fuse in fuse box and Electrical/PAT safety certificates, electricity bill-should have been included in rental payment, fire alarm, carbon monoxide alarm-including no hard wired smoke detectors or CO alarm and two other bedroom doors locked, removal of extra bin and kitchen utensils that were already in the flat.
4. Additional paperwork produced with the Application evidenced that there had been written communication between the Landlord and Tenant in relation to issues raised and further intimation had been made through a technical officer with Glasgow City Council, Development and regeneration Services in respect of the repairing standard.
5. The Tenant complained that the Landlord had no intention to carry out repairs or at least had delayed doing so.
6. By Minute of Decision to Refer the Application to a Tribunal made under Section 23(1) of the Act, on 21 December 2018 a Convenor with delegated powers under Section 23A decided to refer the Application to a Tribunal.
7. An Inspection was assigned for 27 February 2019 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunal Centre, Room 109, 20 York Street, Glasgow.
8. Written Representations were required by 6 February 2019.
9. Parties were advised of the date assigned in writing dated 16 January 2019.
10. Written Representations were submitted by the Landlord's representative along with a List of Evidence. The tenor of the Response was that the Landlord asserted that all the repairs had now been carried out and that there had been failures on the part of the Tenant to timeously respond to requests for information or to facilitate access.
11. A Direction was issued dated 23 October 2018 requiring the Landlord to provide
 - a. A full copy of the signed Lease between the Landlord and Tenant including any AT5;
 - b. The current Electrical Installation Condition Report and Certificate for the House;
 - c. The current Gas Safety Certificate for the House prepared by a Gas Safe registered plumbing and heating engineer;
 - d. Copies of any quotations, invoices or receipts for any work carried out on the House since 23 November 2018, which detail the works proposed or carried out on the House and that are relevant to the matters complained of in the Tenant's Application.

All be lodged by 18 February 2019.
12. In response, the Landlord's representative lodged the copy lease and AT5 a Second List of Evidence which included an EICR dated 13 February 2019 and copies of quotations, invoices and receipts for work carried out on the House since 23 November 2018. This included a receipt from a locksmith to repair 4 windows and a receipt to replace a new window handle lock and replace a

fuse.

13. Further e mails were submitted by the Tenant which include text message exchange screen prints.

The Inspection

14. On the morning of 27 February 2019, the Tribunal attended at the House. The Tribunal inspected the House in the presence of the Tenant, the Landlord and the Landlord's Representative. The weather conditions at the time of the Inspection were sunny and dry. Photographs were taken during the Inspection and these are attached as a Schedule to this Decision.
15. The House is a flatted dwellinghouse on the first floor within a four-storey facing brick built flatted development with a flat roof. The development was constructed in the early 1980s.
16. The layout of the House at the date of Inspection was; three separate bedrooms, one of which is identified in the lease between the Parties as Flat A. The Tribunal refers to this bedroom for the purposes of this Decision as Bedroom 1. The Landlord referred the other two rooms as Rooms 2 and 3. All three bedrooms had door locks and the Applicant Tenant only had a key to her bedroom. There is small entrance hallway, a shared bathroom/shower room with no window, a small living room area with no window and a small kitchen with a window.
17. The Tribunal carefully inspected the House following generally the list of the issues raised. The two locked bedrooms were unlocked to facilitate the Inspection. Preliminary observations were noted for the purposes of the Hearing.

The Hearing

18. Following upon the Inspection of the House, the Hearing took place.
19. The Applicant was in attendance and the Landlord was represented by Miss Minto.
20. The Tribunal's preliminary findings of the Inspection as detailed below were relayed to those present, it being acknowledged that the Landlord's Representative may require to telephone the Landlord for instructions as he had chosen not to attend.
21. The Tribunal sought clarification of the layout and occupants of the House, to consider whether the fire safety provision now installed was adequate. The House is not registered as a House in Multiple Occupancy. Currently the Tenant states she is the only occupant and has been since August or September 2018. She stated that she had initially been sharing with two other students Lee Che and Shunyi Yong. They each had their own room. They did not leave at the same time. She had not seen them since. She was unhappy that the rooms remained locked. She thought she heard noises and was concerned about vermin. She considered it a health and safety issue. There had been a kitchen fire when they were all there and the Fire Service had been in attendance and fitted temporary smoke alarms. The Landlord's

responses provided after his Representative took instructions was that there were two others at the start - Sui lu Chong and Lee Chen. The third tenant had moved out after a matter of weeks and was now permanently away. The tenant Sui lu was known as Zoe and whilst she had stopped permanently residing there in October 2018 her lease had been automatically renewed and she still had a lease and came back from time to time, he believed. (Her return was disputed by the tenant.) She was described as a friend of his mother. Room 2 continued to be her bedroom and she still had a set of keys. A concession was given that Room 3 could be left unlocked, for health and safety reasons as a possible escape route, albeit the Tenant had no permission to use it.

22. The question of the electricity bill was explored with those present. It became clear that there was no dispute that the original advertisement for the House to rent stated that bills were included. It was noted that this issue was being discussed outwith the Tribunal and a resolution might be found. The Tribunal did not require to consider this element under the repairing standard. There was also a dispute about whether the Council Tax was included or not. This was not a matter for the Tribunal.
23. A panel heater in the Tenant's bedroom was said to be no longer working although it had been provided at the outset of the tenancy.

The findings of the Inspection

24. Vermin-there was no evidence on Inspection that there was an infestation issue.
25. The kitchen window-it had been repaired but a top catch was missing, and the trickle vent was stuck in the closed position possibly due to it being painted over.
26. The fridge compartment of the fridge /freezer had a solid covering of ice on the rear wall which was indicative of the temperature dial being ineffective. It had been PAT tested on 25 June 2018.
27. The additional items complained of in the kitchen, extra bin and kitchen utensils, were still there but did not form part of the matters to be considered by the Tribunal under the repairing standard. The landlord could remove them.
28. There was a heat detector in the kitchen. There was a smoke alarm in the living room and in the hall.
29. There was no CO monitor. The House did not have a gas supply, so a Gas Safety Certificate was not needed nor was a CO monitor.
30. The Shower was operated and appeared to have an adequate flow of water and temperature. It was noted though that the showerhead bracket/riser was not supporting the shower head in the operating position and needed an adjustment or repair.
31. Whilst inspecting the bathroom shower the Tribunal noted that the Tenant stated that the door was sticking when being closed. The Tribunal noted there was an issue and loose beading on the wall may be causing the issue or the lock handle itself. The tenant had stated she had been locked in on occasion and since there was no window or other means of escape in the event of a fire the Tribunal noted this issue as needing attending to.

32. In the hall the wall light fitting was noted to have been disconnected and there was a wire protruding from the wall.
33. The switch in Bedroom 1 was securely in place and had been re-fixed prior to inspection.
34. The electric panel heater mounted on the wall in the hallway was not working. This was the only source of heating in the House along with a panel heater in the Tenant's Bedroom 1.
35. The freestanding lamp in the Livingroom used to provide lighting was noted to have a broken glass shade with sharp edges that could cause an injury. There was no suggestion that this Tenant had caused the damage.
36. The cooker was complained of as having a connection with the fuse box and causing the fuse to trip. The cooker was operating normally on inspection but if there is an intermittent fault tripping the fuse then this should be reported to the Landlord.
37. The fuse box fuses were all present and there were no tripped switches.
38. A space heater in the living room was referred to by the tenant as having broken but this item was not present at Inspection and had not been specifically raised as an issue.

The Evidence

39. The evidence before the Tribunal consisted of written evidence in the form of the Application form with the supporting documentation and all communication exchanges along with the oral evidence at the Hearing.
40. The findings of the Inspection of the House that informed the Tribunal. The findings were generally accepted by the Parties present.
41. Although an EICR has been provided for the electrical circuitry, the fixed appliances (cooker and bathroom heater) do not appear to have been tested and are inoperative or defective.
42. Additionally, although EICR Section 7 covers Luminaires, the wall light in the hall does not work and has visible wiring problems.

Summary of the issues

43. The issue to be determined was whether the House meets the repairing standard at the date of the Inspection as set out in section 13 (1) (a) (c)-(g) of the Act, and whether the Landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner and registered Landlord of the House.
- II. The tenancy between the Landlord and the Tenant is a tenancy to which the repairing standard applies.

- III. The Tribunal carefully inspected the House on 27 February 2019 and found that the House does not meet the repairing standard required under section 13 (1) (a), (c) and (d) of the Act.

Reasons for Decision

44. The kitchen window-it had been repaired but a top catch was missing, and the trickle vent was stuck in the closed position possibly due to it being painted over. Accordingly, the repairing standard has not been met (section 13 (1) (a) of the Act.)
45. The fridge compartment of the fridge freezer had a solid covering of ice on the rear wall which was indicative of the temperature dial being ineffective. (section 13 (1) (d) of the Act).
46. The showerhead bracket/riser was not supporting the shower head in the operating position and needed an adjustment or repair. (section 13 (1) (d) of the Act.)
47. Whilst inspecting the bathroom shower the Tribunal noted that the Tenant stated that the door was sticking when being closed. The Tribunal noted there was an issue and loose beading on the wall may be causing the issue or the lock handle itself. The tenant had stated she had been locked in on occasion and since there was no window or other means of escape in the event of a fire the Tribunal noted this issue as needing attending to. (section 13 (1) (a) of the Act.)
48. Although an EICR has been provided for the electrical circuitry, the fixed appliances (cooker and bathroom heater) do not appear to have been tested and are inoperative or defective. Additionally, although EICR Section 7 covers Luminaires, the wall light in the hall does not work and has visible wiring problems. (section 13 (1) (c) and (d) of the Act.)
49. The electric panel heater mounted on the wall in the hallway was not working. This was the only source of heating in the House along with a panel heater in the Tenant's bedroom. The panel heater in the bedroom was said to be no longer working. (section 13 (1) (c) and (d) of the Act.)
50. The freestanding lamp in the Livingroom used to provide lighting was noted to have a broken glass shade with sharp edges that could cause an injury. There was no suggestion that this Tenant had caused the damage. (section 13 (1) (d) of the Act.)
51. It is recognised that the remaining issues raised in the Application had been resolved either by the work carried out by the Landlord prior to the Inspection or that they were not evidenced on Inspection.

Summary of Decision

The Landlord has therefore failed to comply with the duty imposed by section 14 (1) (b) of the Act and has not ensured that the House meets the repairing standard under sections 13(1) (a) (c) and (d)) of the Act. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act. The decision of the Tribunal is unanimous.

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.

Executed by Susan Christie, Legal Member and Chair of the Tribunal at Glasgow on 8 March 2019: -

S Christie

Legal Member and Chair

Glasgow, 8 March 2019

This is the Schedule of Photographs referred to in the Decision
of even date herewith under reference FTS/HPC/RT/18/3206

S Christie

Legal Member

Housing and Property Chamber
First-tier Tribunal for Scotland



Flat 41A New City Road, Glasgow, G4 9DE

FTS/HPC/RP/18/3206

Schedule of Photographs - Inspection Date – 27th February 2019

Weather – Dry, sunny



1. The property



2. Bedroom 2



3. Bedroom 3



4. Wardrobe floor in Bedroom 3



5. Taping at skirting in wardrobe Bedroom 3



6. Cupboard under sink



7. Kitchen window – bottom catch and stay



8. Kitchen window – missing top catch



9. Defective fridge showing build up of ice



10. Bathroom shower showing loose bracket on riser



11. Smoke detector in hall



12. Smoke detector in living room



13. Heat detector in kitchen



14. Bathroom showing panel heater and trim at wall
boarding interfering with door catch



15. Electric cooker



16. Non functioning wall light in hall



17. Distribution board – main switch



18. Distribution board MCBs



19. Broken glass shade on living room lamp