

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



**Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 24 (2)**

**Reference number: FTS/HPC/RP/19/0110**

**Re: Property at Flat 10/1, 1 Templeton Court, Glasgow, G40 1EF ("the House")**

**The Parties:**

**Mr Alan Cloughley ("the Tenant")**

**Mr Russell Skingsley and Ms Emma Skingsley, c/o Countrywide Residential Lettings, 71 Candleriggs, Glasgow, G1 1NP. ("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member); Donald Wooley (Ordinary Member)

**NOTICE TO: Russell Skingsley and Emma Skingsley ("the Landlord")**

Whereas in terms of its decision dated 29 March 2019, the Tribunal determined that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that the House is wind and watertight and in all other respects reasonably fit for human habitation and 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 Tribunal now requires the Landlord to carry out such work as is necessary for the purpose of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular the Tribunal requires the Landlord to :

1. Complete all repairs necessary to eradicate the noise, wind penetration, structural defects and consequential internal damage arising from the defective construction within the building of which the House forms part as specifically outlined in the report prepared by MAMG Consultancy dated March 2019, together with any additional relevant works deemed necessary by the consultants following exposure of concealed areas of the fabric. The repairs should be completed to a specification agreed with MAMG

Consultancy or other suitably qualified company and a final report should be provided by the supervising consultants confirming satisfactory completion.

2. Undertake any necessary re-decoration required to the House on completion of all necessary repairs

The Tribunal orders that the works specified in this order must be carried out and completed within the period of 16 weeks from the date of service of this notice.

### **Right of Appeal**

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

J Devine

Joan Devine, Legal Member

In witness whereof these presents type written on this and the preceding page are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 29 March 2019 before this witness:- L Smith

witness : .....

name in full : ... LAURA SMITH ...

Address : Cornerstone, 107 West Regent Street, Glasgow G2 2BA



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

**Reference number: FTS/HPC/RP/19/0110**

**Re: Property at Flat 10/1, 1 Templeton Court, Glasgow, G40 1EF ("the House")**

**The Parties:**

**Mr Alan Cloughley ("the Tenant")**

**Mr Russell Skingelsy and Ms Emma Skingsley, c/o Countrywide Residential Lettings, 71 Candleriggs, Glasgow, G1 1NP. ("the Landlord")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member); Donald Wooley (Ordinary Member)**

**DECISION**

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 all the available evidence determines that the Landlord has failed to comply with the duty imposed on them by Section 14(1)(b) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

**Background**

1. By application dated 7 January 2019, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a) and (b) of the Act. His application stated 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; and
3. The Tenant made the following complaints in his application and in his notification communications to the Landlord :
- unreasonable noise coming from the ceiling space when there is medium to strong wind. During high wind the noise is constant and intolerable
4. On 22 January 2019, the Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued a Minute of Decision stating that he considered that in terms of Section 23(3) of the Act, there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that he had considered the application paperwork submitted by the Tenant comprising documents received on 14 January 2019; and intimating his decision to refer the application to the Tribunal for determination.
5. The Clerk to the Tribunal wrote to the Tenant and to the Landlord c/o their agent, Countrywide Residential Letting, on 4 February 2019 notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a Tribunal and that an inspection and a hearing would take place on 19 March 2019.

#### The Inspection

6. The Tribunal inspected the House on the morning of 19 March 2019. The weather conditions at the time of the inspection were overcast and dry. The Tenant was present at the House during the inspection. The Landlord was represented at the inspection by Paula Neeson and Scott Johnston of Countrywide Estates and Letting. Photographs were taken during the inspection and are attached as a Schedule to this decision.

#### The House

7. The House is a top floor self-contained 2 bedroomed flat within an 11/12 storey building overlooking Glasgow Green and situated to the east of the city centre. The upper 10 floors comprise individual flats with shared common stair and lift access. Both the ground and lower ground floors provide car-parking. The main structure is constructed around a steel frame and incorporates a predominantly flat metal profile roof.

### The Hearing

8. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Tenant attended the hearing. The Landlord was represented by Paula Neeson and Scott Johnston of Countrywide Estates and Letting.

### The Evidence

9. The evidence before the Tribunal consisted of:
  - 9.1 the application form completed by the Tenant;
  - 9.2 Land Register report relating to the House;
  - 9.3 emails of notification from the Tenant to the Landlord's agent notifying them of the issue complained about in his application;
  - 9.4 written representations received from the Landlord in an email dated 5 March 2019;
  - 9.5 emails from the Tenant dated 6 and 7 March 2019;
  - 9.6 written representations received from the Landlord's representative dated 6 March 2019;
  - 9.7 the Tribunal's inspection of the House;
  - 9.8 the oral representations of the Tenant and on behalf of the Landlord; and
  - 9.9 a report produced to the Tribunal by the Landlord's Representative from MAMG Consultancy Limited dated March 2019.

### Summary of the Issues

10. The issue to be determined was whether the House meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

### Findings in Fact

11. Tribunal made the following findings in fact:
  - 11.1 the Tenant had lived in the House since 28 March 2018. He entered into a Tenancy Agreement at that time with the Landlord. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply;

- 11.2 the tenancy of the House is managed by the Landlord's agent, Countrywide Estates and Letting;
- 11.3 the Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the House the Tribunal observed the following:
- 11.3.1 There is within the flat and in particular the open plan living area significant evidence of cracking specifically affecting both the ceiling and wall linings. These areas are lined with plasterboard.
  - 11.3.2 Hairline cracking is evident at the ceiling plaster suggesting historic movement / flexing at or between the plasterboard panels. A significant crack has opened above and to the right of the main window opening as viewed from within the flat (photographs 4 & 5). This corresponds with visible movement at the plasterboard casing surrounding what is assumed to be the main support beam above the window opening.
  - 11.3.3 Adjacent to the projecting buttress between the dining and living room areas is a vertical crack following the joint between the plasterboard panels (photographs 10 & 11) indicating differential movement between the front and projecting areas.
  - 11.3.4 There is, immediately above the ceiling, a void below the profile metal roof cladding. Secured directly to the underside of the profile metal roof decking are vertical metal suspension ties supporting the suspended plasterboard ceiling (photographs 6, 7 and 8). Limited insulation, partially dislodged, was visible at the external wall projection as viewed from within the roof void (photograph 9).
  - 11.3.5 Slight movement is evident in the metal frame immediately above the ceiling adjacent to the small access hatch leading to the roof void from the hall. When moved it resulted in a relatively loud noise clearly audible from within the flat.
  - 11.3.6 Externally, at the "soffit" area immediately below the bull nose projection above the balcony area, there is clear evidence of a defective and poorly assembled joint resulting in a significant gap in the fitting. This is adjacent to and below the roof void (photograph 3).

## Reasons for Decision

12. Following its inspection and the hearing, the Tribunal determined that :
  - the House is not wind and watertight and in all other respects reasonably fit for human habitation; and
  - the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order
13. The complaints before the Tribunal as set out in the Tenant's application related to excessive noise coming from the ceiling space in windy weather. The Tribunal inspected both the interior and exterior of the House. The Tribunal's determination in relation to the complaint is set out below.
14. Prior to the inspection the Tribunal had sight of an NHBC "Resolution report" which had been submitted by the Tenant as a supporting document. This report raised a number of issues relating to the construction of the ceiling, its method of support, deficiencies in the weather proof envelope of the building and highlighted a design fault which is liable to cause lifting of the roof membrane. This has an impact on the ceiling which is suspended directly from the profile membrane.
15. This report had been prepared as a result of a very similar noise related complaint to that raised in the application to the Tribunal. It was raised by an adjoining proprietor at flat 10/2, 1 Templeton Court, around 2012 / 2013. Many similar issues noted in the NHBC report on the adjoining flat were also identified by the Tribunal during the inspection of the property.
16. Prior to the inspection and hearing a report was commissioned on behalf of the Landlord from MAMG Consultancy, chartered surveyors dated March 2019. The Tenant was aware that the report had been commissioned although had not had sight of the contents. It was presented both to the Tenant and the Tribunal at the hearing. The "executive summary" of its findings is very similar to those identified in the earlier NHBC report on the neighbouring flat. Significant remedial action and further investigation is recommended. The recommendations within the main body of the report also include a number of items not specifically relevant to the application to the Tribunal which was lodged by the Tenant.
17. During the hearing the Tenant played an audio recording of a loud "knocking and creaking" noise clearly audible within the flat during periods of strong wind. This was accepted as accurate by the Landlord's Representative who had also heard similar noise within the flat during stormy weather.
18. At the hearing, Paula Neeson said that the matter had been raised with the Factor for the building, James Gibb. Their position was that the roof is a common part and the noise is caused by the lightening conductor on the roof of the building. The lightening conductor was replaced to try to deal with the issue. Scott Johnston said that he was aware of the Factor inspecting the roof but he

was not aware of them inspecting the space between the ceiling and the roof. Paula Neeson said that the Landlord accepts that the issue needs to be addressed. She said that the Landlord intends to take down the ceilings in the House to investigate further. A quote had been received from MAMG Consultancy for initial work.

19. The Tenant said that he had been complaining about the noise in the roof space since not long after he took entry to the House in March 2018.
20. Section 15 of the Act states:

*"(i) where a house forms part only of any premises, the reference in Section 13(1)(b) [i.e. the requirement to ensure that the structure and exterior of a house is in a reasonable state of repair and in proper working order] includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burdens or otherwise;*

*(ii) nothing in sub-section (i) requires the landlord to carry out any work unless any part of the premises or anything in the premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order."*

21. The effect of Section 15 of the Act is that a landlord is required to ensure that the structure and exterior of the premises, which include a flat which it owns, is in a reasonable state of repair and in proper working order where it has a responsibility to maintain the common parts of those premises. This applies where any part of those premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.
22. The Landlord has a legal obligation to maintain the roof and the roof space. The disrepair or failure to keep those common parts in a reasonable state of repair and in proper working order has resulted in part of the property which the Tenant is entitled to use being adversely affected.
23. The Landlord has a duty to comply with the repairing obligation regardless of the fact that others share the responsibility to carry out and pay for common repairs. Whether or not the roof and the roof space is a common part does not affect the Landlord's legal responsibility to ensure that the House meets the repairing standard.

#### Summary of Decision

24. The Tribunal determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that the House is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the House (including drains, gutters



and external pipes) are not in a reasonable state of repair and in proper working order.

25. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

26. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

J Devine

Signed

Joan Devine, Legal Member

In witness whereof these presents type written on this and the six preceding pages are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 29 March 2019 before this witness:-

L Smith

witness .....

name in full : LAURA SMITH

Address : Cornerstone, 107 West Regent Street, Glasgow G2 2BA

*This is the schedule of  
Photographs referred to  
in the  
foregoing  
determination*

**1 Templeton Court Glasgow G40 1EF**

**Schedule of Photographs taken at the inspection on 19<sup>th</sup> March 2019**

J Devine

*Legal Member*



**1. Front elevation of building.**



**2. Front elevation of flat.**



**3. Defective "soffit" joint (eaves)**



**4 & 5. Cracking above right hand corner of front facing window**



**6, 7 & 8:- Void above ceiling immediately below profile steel roof decking**



**9. Insulation at external wall in void over ceiling**



10



11

**10 & 11:- Cracking between front wall panel & projection.**