

The tribunal now requires the landlords 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 landlords to:

1. Replace the double sash and case window in the bedroom at the front of the house to ensure that it is wind and watertight.
2. Make good the decoration to the vestibule walls and ceiling.
3. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal orders that all of the works specified in this order must be carried out and completed within the period of **three months** from the date of service of this notice.

Rights of Appeal

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 Housing (Scotland) Act 2006, 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 three preceding pages are signed by Sarah Frances O'Neill, solicitor, Chairperson of the First-tier

S O'Neil

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/22/0262

Re: Flat 1/1, 202 Westmuir Street, Glasgow G31 5BS (“the house”)

Land Register Title No: GLA67994

The Parties:-

Glasgow City Council –NRS Private Sector Housing, 231 George Street, Glasgow G1 1RX (“the third-party applicant”)

Mrs Helen Ezoman (“the tenant”)

Mr Mohammad Choudhry, 62 Mansewood Road, Glasgow G43 1TL and Mr Abdul Jabbar, 82 Hamilton Drive, Glasgow G41 1HD as trustees and partners of the firm Mohammad Asif Choudhry and Abdul Jabbar (“the landlords”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Andrew Taylor (Ordinary (Surveyor) Member)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed on them 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 landlords have failed to comply with the said duty. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal’s decision is unanimous.

Background

1. By application received on 31 January 2022, the third-party applicant applied to the tribunal for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.
2. In its application, the third-party applicant stated that it believed the landlords had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13(1) (a) of the Act. The application stated that the landlords had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.
3. The third-party applicant made the following complaints in its application:
 - 1) No heat detector in kitchen and no smoke alarm in living room.
 - 2) No pass door between kitchen and living room.
 - 3) Ceiling/walls in hallway show extensive cracks.
 - 4) Staining/damp evident on the bathroom ceiling.
 - 5) Bath panel severely cracked.
 - 6) The back of the toilet bowl is taped up as it is leaking.
 - 7) Living room window at left hand side as you enter is defective. Water leaking into property through window when raining and no handle on window.
 - 8) The tenant has advised of mice in the property.
 - 9) Flooring in living room is very tired and uneven in places.
 - 10) Double socket on living room wall is working but is exposed around the edges.
 - 11) The back court is in a poor state.
 - 12) The close has severe evidence of water staining with part of the ceiling at ground level down.
 - 13) There are defective windows in the bedroom letting in water.
4. On 24 February 2022, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection was arranged for 20 April 2022 and a hearing was arranged for 27 April 2022.

The inspection

5. The tribunal inspected the house on the morning of 20 April 2022. The weather conditions at the time of the tribunal's inspection were clear and dry. The tenant and her partner, Mr Prince Emmanuel, were present at

the inspection. Mr Mohammad Choudhry, one of the landlords, was also present at the inspection.

6. Photographs were taken during the inspection. A pre-hearing inspection summary and schedule of photographs, a copy of which is attached to this decision, was sent to the parties prior to the hearing.

The house

7. The house is a first floor flat within a three-storey sandstone Victorian tenement block. It comprises two bedrooms, living room, kitchen, bathroom and hallway.

The hearing

8. On 27 April 2022, the tribunal held a hearing by telephone conference call. Mr Choudhry was present on the call and represented himself. His wife, Mrs Sahira Choudhry, was also present in the room with him. She assisted him as a supporter to manage the case papers but did not otherwise participate in the hearing. Neither the third-party applicant nor the tenant was present or represented.
9. The tribunal noted that an email had been received from Ms Maxine Campbell, Project Support Officer, Private Sector Housing, who had made the application on behalf of the third-party applicant, on 29 March 2022 confirming that she was unable to attend the hearing. The tenant had also confirmed to the tribunal at the inspection that she would not attend the hearing.
10. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the third-party applicant and the tenant, in terms of rule 29 of the 2017 rules.

The evidence

11. The evidence before the tribunal consisted of:
 - The application submitted by the third-party applicant, comprising completed application form, list of repairs issues, and numerous emails between the third-party applicant and the landlord, and between the third-party applicant and the tenant, dated between 29 June 2021 and January 2022.
 - Registers Direct copy of Land Register title GLA67994.

- Scottish Landlord Register registration details for the house, showing that Mr Choudhry is the registered landlord for the house, with Mr Jabbar named as a joint owner.
- Private residential tenancy agreement between the landlords and the tenant in respect of the house which commenced on 1 September 2020.
- Copy emails dated 9 July and 16 December 2021 sent by Ms Campbell to the landlords, notifying them of the third-party applicant's complaints.
- Emails with attachments from Ms Campbell to the tribunal administration dated 7, 18 and 25 February and 9 and 29 March 2022.
- Written representations received from Mr Choudhry on 29 March and 19 April 2022.
- The tribunal's inspection of the house.
- The oral representations of Mr Choudhry at the hearing.
- Emails with attachments received from Mr Choudhry following the hearing, on 27 April and 4, 5 and 16 May 2022.

Summary of the issues

12. 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 landlords have complied with the duty imposed by section 14 (1) (b).

Findings of fact

13. The tribunal made the following findings in fact:
 - The house is owned jointly by the landlords as trustees and partners of the firm Mohammad Asif Choudhry and Abdul Jabbar.
 - Mr Mohammad Choudry is the registered landlord for the house. Mr Abdul Jabbar is named as a joint owner of the house on the Scottish landlord register.
 - The landlords entered into a tenancy agreement with the tenant which commenced on 1 September 2020.
 - At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. A heat detector was installed in the kitchen, and interlinked smoke alarms were installed in the living room and the hallway (photograph 1 of the photograph schedule).

- ii. A pass door had been fitted between the living room and the kitchen (photograph 2 of the photograph schedule).
- iii. The ceiling and walls in the hallway had been replastered and repaired (photograph 4). The vestibule ceiling had not been redecorated however, and still showed signs of water staining (photograph 3).
- iv. A new PVC ceiling had recently been fitted in the bathroom. There was no evidence of staining or damp on the ceiling (photograph 5).
- v. The bath panel had been replaced, although there was evidence of some damage to it (photograph 6).
- vi. A new WC suite and cistern had been installed (photograph 7).
- vii. The living room window at the left-hand side had been repaired and fits well. A new handle had also been fitted (photograph 8).
- viii. There was no obvious evidence of mice in the house. The tenant indicated to the tribunal a number of possible entry points in the living room and the kitchen (photograph 9).
- ix. There were damaged sections of laminate flooring in the living room. Some sections of flooring did not fit well and there were cracks and holes in the flooring in some areas (photograph 10).
- x. The double socket in the living room had been repaired and secured to the wall (photograph 11).
- xi. The sash and case window in the bedroom at the front of the house was in a poor state of repair. It did not fit well and did not close properly (photograph 12).
- xii. The shared back court was in a tidy, safe and reasonable condition (photographs 15 and 16).
- xiii. The walls and ceiling in the common close had recently been replastered (photographs 17 and 18).

Reasons for decision

14. Mr Choudhry told the tribunal that there had been difficulties in obtaining access to the house to carry out repairs. He said that the tenant was being obstructive, as she wanted the tribunal to see the flat as it was before any repairs were carried out and wanted to secure council house. Most of the repairs had been carried out some months earlier, when he had been able to get access to the house. When asked by the tribunal whether he was aware that a right of entry application could be made to the tribunal to gain access for repairs, he said that he was not. He said that he had previously had to arrange access through the third-party applicant.

15. He believed that the third-party applicant had been unreasonable in making the application to the tribunal, as most of the repairs had been done some time earlier, and he had agreed to upgrade the windows.
16. The tribunal noted that it appeared from the email which he had sent to Ms Campbell on 25 October 2021 that most of the repairs had been completed by that date. It was therefore unclear why these complaints had been included in the application.
17. The tribunal considered each of the third-party applicant's complaints in turn, as set out below.

1. No heat detector in kitchen and no smoke alarm in living room

18. The tribunal observed during its inspection that a heat detector was installed in the kitchen, and interlinked smoke alarms were installed in the living room and the hallway. The tribunal was satisfied that these were compliant with the current statutory guidance. It therefore determined that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

2. No pass door between kitchen and living room

19. The tribunal observed during its inspection that a pass door had been fitted between the living room and the kitchen. It was satisfied that this was compliant with the repairing standard.

3. Ceiling/walls in hallway show extensive cracks

20. The tribunal observed during its inspection that the ceiling and walls in the hallway had been replastered and repaired. The vestibule ceiling had not been redecorated however, and still showed signs of water staining.
21. Mr Choudry told the tribunal that the repairs had been carried out, but the ceiling had not yet been repainted. This was partly because he had wanted to ensure that there was no further water ingress, and also because it had been difficult to obtain access to the flat to carry out works.
22. The tribunal determined that the ceiling and walls were generally in a good state of repair. Following the plastering work, however, the decoration to the vestibule walls and ceiling required to be made good.

4. Staining/damp evident on the bathroom ceiling

23. The tribunal observed during its inspection that a new PVC ceiling had recently been fitted in the bathroom. There was no evidence of staining or damp on the ceiling.

24. Mr Choudhry said that the work had been done by 25 October 2021. The tribunal determined that the bathroom ceiling was in a reasonable state of repair and in proper working order.

5. Bath panel severely cracked

25. The tribunal observed during its inspection that the bath panel had been replaced, although there was evidence of some damage to it.

26. Mr Choudhry told the tribunal that the bath panel had been replaced after the third-party applicant had notified him that it was cracked. It had been replaced at the same time as the bathroom ceiling, but it had then been damaged again by the tenant.

27. The tribunal determined that, while there was some damage to the bath panel, it was overall in a reasonable state of repair and in proper working order.

6. The back of the toilet bowl is taped up as it is leaking.

28. The tribunal observed during its inspection that a new WC suite and cistern had been installed. Mr Choudhry told the tribunal that the tenant had not notified him of this issue prior to contacting the third-party applicant. Once he had been able to obtain access, the toilet had been fixed. This had also been addressed as at 25 October 2021.

29. The tribunal determined that the new WC was in a reasonable state of repair and in proper working order.

7. Living room window at left hand side is defective. Water leaking into property through window when raining and no handle on window.

30. The tribunal observed at its inspection that the living room window at the left-hand side had been repaired and that it fits well into the frame. A new handle had also been fitted.

31. Mr Choudhry told the tribunal that the window had been repaired by 25 October 2021. He made reference to a survey report from a surveyor, Stephen McQuiston, of S.M. Design, which had been produced in relation to the house following a survey carried out on 18 March 2022. This report was included with his written representations of 29 March 2022. This report stated that, given the size and positioning of the two windows in the living room, there was no requirement under building regulations for both windows to be capable of being opened.
32. Mr Choudhry said that he had made this point to the third-party applicant, which had insisted that the window must be fixed to ensure that it could open.
33. The tribunal chairperson explained that, regardless of whether building regulations stated that only one window required to open, the repairing standard required that all windows in the property were wind and watertight and were in a reasonable state of repair and in proper working order.
34. The tribunal determined on the basis of the evidence before it that the living room window was wind and watertight and was in a reasonable state of repair and in proper working order.

8. The tenant has advised of mice in the property

35. At its inspection, the tribunal did not observe any obvious evidence of mice in the property. The tenant indicated to the tribunal a number of possible entry points in the living room and the kitchen, and an empty mousetrap was observed behind a sofa in the living room.
36. The tribunal noted that it was difficult to determine on the basis of the inspection whether there were mice in the house.
37. Mr Choudhry said that he was keen to address the issue and had therefore engaged a pest control expert, Pestaclear Ltd, to address the situation. They had visited the property twice and he had produced an invoice from the company dated 17 February 2022. He said they had told him following the second visit that they did not consider there were any more mice. They had told him to let them know if there were any other issues and they would come back out again.

38. He said previously the tenant had taken photographs of the mice and sent these to him. Since Pestaclear Ltd had visited the house, she had sent him no further photographs. He said that he was happy to seal up any entry points once he obtained access to do so.
39. When asked by the tribunal at the hearing whether a report had been obtained from Pestaclear Ltd further to their visits, Mr Choudhry undertook to ask for such a report to be provided. On 5 May 2022, an email was received from Mr Choudhry attaching a written report from Pestaclear in respect of the house dated 17 February 2022. This related to their second visit to the house and stated that they had searched and found no dead mice and that they had uplifted the bait stations. It also stated that should there be any further issues, the landlords should contact them.
40. The tribunal determined on the basis of all of the evidence before it that on the balance of probabilities there were no longer any mice in the house. No further action was therefore required by the landlords as at the date of the hearing.

9. Flooring in living room is very tired and uneven in places.

41. The tribunal observed during its inspection that there were damaged sections of laminate flooring in the living room. Some sections of flooring were uneven, and there were cracks and holes in the flooring in some areas. The tribunal considered that this raised possible health and safety issues.
42. Mr Choudhry told the tribunal that he had agreed to put install a new carpet in the living room, but there had been difficulties in gaining access for contractor to measure up and quote. He hoped that the carpet fitter would be able to get access to the property the day after the hearing to fit a new carpet.
43. On 5 May 2022, an email was received from Mr Choudhry, stating that the flooring had been replaced with a carpet on 28 April 2022. Following a request from the tribunal for further evidence of this, a further email was received from Mr Choudhry on 16 May, attaching an invoice from Gallowgate Flooring for the carpet. The invoice was dated 27 April 2022 and stated that the delivery date was 28 April 2022.

44. The tribunal was therefore satisfied that the living room flooring had been replaced by a carpet, and that no further action was necessary in respect of this issue.

10. Double socket on living room wall is working but is exposed around the edges.

45. The tribunal observed during its inspection that the double socket in the living room had been repaired and secured to the wall. Mr Choudhry advised that this had been completed by 25 October 2021.

46. The tribunal determined that the socket was in a reasonable state of repair and in proper working order.

11. The back court is in a poor state.

47. The tribunal observed at its inspection that the shared back court was in a tidy, safe and reasonable condition. The tribunal determined that the back court was in a reasonable state of repair and met the repairing standard.

12. The close has severe evidence of water staining with part of the ceiling at ground level down.

48. The tribunal observed at its inspection that the walls and ceiling in the common close had recently been replastered. Mr Choudhry said that he had arranged for the work to be done as it was difficult to get agreement from all owners for common works to be done.

13. There are defective windows in the bedroom letting in water.

49. The tribunal observed during its inspection that the timber sash and case window in the bedroom at the front of the house was in a poor state of repair. It did not fit well and did not close properly.

50. Mr Choudhry told the tribunal that the window had been repaired. He had produced an invoice from a contractor, JWS Property and Garden Maintenance, for repairs carried out on 30 March 2022. These included the removal of old insulation, fitting of new insulation strips and wood surround. He said that the window was now sealed and was watertight.

51. It was his view that the issues with the window had been caused by condensation as a result of the tenant drying large amounts of clothes

around the house. This had been the finding of the survey report produced by Mr McQuiston, which had also advised that the windows should be replaced by UPVC windows. He said that he intended to replace the window but had experienced issues obtaining access for tradespeople to measure up for these. He had spoken to several companies, which had all said that it would take 8 -10 weeks for the windows to be fitted.

52. The tribunal determined that at the time of the inspection, the window was not wind and watertight.

Summary of decision

53. On the basis of all the evidence before it, the tribunal determined that the landlord had 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.

54. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

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.

S O'Neil

Signed

Date: 19 May 2022
Sarah O'Neill, Chairperson