

Housing and Property Chamber

First-tier Tribunal for Scotland



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

REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act 2006, Section 24(2)

Chamber Ref: FTS/HPC/RP/18/1897

25 Cuiken Avenue, Penicuik, EH26 0DR, more particularly described as 0.013 hectare with house 25 Cuiken Avenue, Penicuik, thereon, referred to in Feu Disposition by Midlothian District Council to Charles Caron Gray and Elizabeth Sinclair Gray dated 12 May 1983 and recorded in the General Register of Sasines on 14 October 1983 (from II Series SS 172647 Vol. 973 Folio.184) ("The House")

The Parties:-

**Shirley Pettit, 25 Cuiken Avenue, Penicuik, EH26 0DR
("the Tenant")**

**Ms Rushna Begum, 41 Roseburn Drive, Edinburgh, EH12 5NR
("the Landlord")**

represented by

**Mr Ally Rashid, APM Lettings, 198 Morrison Street, Edinburgh, EH3 8EB
("the Landlord's Representative")**

NOTICE TO MS RUSHNA BEGUM (the LANDLORD)

WHEREAS in terms of its decision dated 16 February 2019 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 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in the following respects:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(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,

(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water and in a reasonable state of repair and in proper working order.

(d) any fixtures, fitting and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

(e) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes 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.

In particular, the tribunal requires the Landlord:

1. To make the skylight and/or the roof of the extension of the House wind and watertight; and to produce documentary evidence to the tribunal regarding the work which has been carried out.
2. To provide a new fridge freezer which is in a reasonable state of repair and in proper working order.
3. To uplift the fridge freezer which is not in a reasonable state of repair and in proper working order from the back garden of the House.
4. To repair or replace the boundary wall in the front garden, including the pillar and coping; and to repair or replace the dwarf wall at the side of the front path, including the coping.
5. To replace the carpet to the front bedroom, including fitting grippers to secure the carpet to the floor; and to re-instate the door bar to the threshold between the front bedroom and the upstairs hall carpets.
6. To repair or replace the carpet on the hall stairs to ensure there are no tacks protruding from the carpet and no means by which tacks can work their way out of the carpet as a result of normal daily use.
7. To replace the bathroom tiled flooring with similar tiled flooring; and to grout the tiles; to ensure that the bathroom floor is in a reasonable state of repair.

8. To obtain a written report from a competent plumber in relation to the bath drainage system to consider the provision of a suitable outflow from the bath, whether it is being used as a bath or shower; to provide a copy of the report to the tribunal; and to undertake any recommendations made in the report to ensure that the installation is in a reasonable state of repair and in proper working order.
9. To repair or replace the installation for extraction from the kitchen in order to ensure that it is compliant with the regulations for such installations and the building warrant for the House, has a sufficient extraction rate per second and is properly ducted externally; and to produce written confirmation to the tribunal of the works that have been carried out and any tests to confirm the extraction rate.
10. To repair or replace any missing or damaged skirtings downstairs in the House; and to make good any decoration.
11. To repair or replace the loose handle on the en-suite shower room door, ensuring that the lock remains in proper working order.
12. To complete items 1-9 in the document headed "Appendix" which was produced at the hearing; and produce a written report from Gordon Strachan or another architect which certifies that the building works have been satisfactorily completed and / or produce a Completion Certificate from Midlothian Council, if available.
13. To produce a fresh EICR and PAT certificate from a competent electrician, registered with NICEIC, SELECT or NAPITT, which includes: all appliances provided by the Landlord under the tenancy, including the new fridge/freezer referred to in order number 2, above; all electrical circuits; all sockets (including the socket in the lounge which was faulty, as referred to in the Decision); and the kitchen extraction system, once repaired or replaced, as referred to in order number 9, above.

The tribunal orders that the works specified in this Order must be carried out and completed within 30 days 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 an 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 three preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, Legal Member and chairperson of the tribunal at Edinburgh

S Tanner

Chairperson

signed on 16 February 2019

(date) at Edinburgh

before this witness:-

Y MCDougall

Witness

YVONNE McDOUGALL

name in full

6 Riallray Way
Edinburgh EH10 5TU

Address

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

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

Chamber Ref: FTS/HPC/RP/18/1897

25 Cuiken Avenue, Penicuik, EH26 0DR, more particularly described as 0.013 hectare with house 25 Cuiken Avenue, Penicuik, thereon, referred to in Feu Disposition by Midlothian District Council to Charles Caron Gray and Elizabeth Sinclair Gray dated 12 May 1983 and recorded in the General Register of Sasines on 14 October 1983 (from II Series SS 172647 Vol. 973 Folio.184) (“The House”)

The Parties:-

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**Ms Rushna Begum, 41 Roseburn Drive, Edinburgh, EH12 5NR
 (“the Landlord”)**

represented by

**Mr Ally Rashid, APM Lettings, 198 Morrison Street, Edinburgh, EH3 8EB
 (“the Landlord’s Representative”)**

Tribunal members

Susanne L. M. Tanner Q.C., Legal Member and Chair

Mike Links, Ordinary Member

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as are 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 (hereinafter "the 2006 Act") in relation to the House, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

The House

4. The House is an end terraced two storey house with a rear extension. (See external and internal views in attached **Schedule of photographs taken on 21.1.19**) with rooms as follows:
 - 4.1. Downstairs: hall, W.C., lounge, kitchen/dining, rear hall and bedroom in rear extension with skylight and French doors to garden, with en-suite shower room;
 - 4.2. Upstairs: upper landing, three bedrooms and a bathroom;
 - 4.3. External: front and rear garden ground.

Parties and parties' representatives

5. The Tenant making the application is as designed above. She lives in the House with her children.
6. The Landlord is as designed above. She is named as the sole registered owner on the deed transferring ownership of the House to her.
7. The Landlord is not named on the tenancy agreement. Her husband is named on the tenancy agreement as the Landlord.
8. The Landlord and her husband have engaged the Landlord's Representative to manage the tenancy of the House.

Procedural Background

9. On 30 July 2018 the Tenant made an Application to the tribunal in terms of Section 22(1) of the 2006 Act for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
10. At the time of making the Application the Tenant named the Landlord's Representative but did not provide details of the Landlord.
11. 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 indicated the elements of the Repairing Standard she thinks the Landlord has not complied with (paragraphs (a) to (f) of Section 13(1) of the Act:
- (a) the House is wind and watertight and in all other respects reasonably fit for human habitation
 - (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.
 - (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.
 - (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
 - (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed
 - (f) The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- 11.1. In Section 8, the Tenant listed details of how she considers the Landlord has failed to meet the repairing standard:
- (1) *"The skylight in the extension currently has a tarpaulin over it which is held down with bricks and roof slates."*
 - (2) *"The fridge freezer wasn't in complete working order but I was told to use it anyway and now it's broken and I'm being held accountable". "The fridge freezer was also mentioned as inadequate in the check in inventory."*
 - (3) *"The wall tops in the front garden are broken and falling off."*
 - (4) *"There isn't enough fire and heat alarms in the house, this was also mentioned in the check in inventory."*
 - (5) *"The carpets upstairs are threadbare, stained with big black stains, there's no carpet grippers in the doorways"*
 - (6) *"There's exposed nails on the stairs which we have to regularly hammer back in".*
 - (7) *"The floor tiles in the upstairs bathroom are all dirty and cracked. I have tried on numerous occasions to clean them but with no joy, they also need to be grouted and re-sealed".*
 - (8) *"The bath doesn't drain correctly because the plumbing is inadequate, they have been told this but still ignore it."*

- (9) *"There is no adequate extraction system in the kitchen"*
- (10) *"The over hob hood has no charcoal filters and I'm being expected to purchase and fit these."*
- (11) *"There is skirting boards missing in the kitchen".*
- (12) *"The door into the extension has dropped and is stiff, they are aware but are refusing to fix this,*
- (13) *"The door handle into the en-suite is too small and cannot be locked"*
- (14) *"The actual extension itself hasn't got a building warrant and hasn't had one since 2015. There are also a lot of outstanding issues with the extension that building control have been chasing the landlord to fix since 2012."*
- (15) *"I also believe there is issues with the electrics, as of yet I have been unable to get this verified".*

12. The tenant further stated that she was asking the tribunal to award her and her family compensation for the inconvenience of having to live in a house in a state of disrepair as well as asking the tribunal to permanently reduce the rent from £1200 per calendar month which is excessive for the area and the state of the property.

13. On 31 July 2018 the tribunal asked the Tenant to provide further information, namely:

- 13.1. a copy of the Tenancy Agreement or as much information about the tenancy as possible;
- 13.2. evidence that the Tenant has informed the Landlord of the work required to be done. The tribunal's administration provided a template letter to the Tenant for this purpose; and
- 13.3. any other correspondence from the Landlord or letting agent regarding the repairs.

14. On 31 July 2018 the Tenant responded asking which pages of the tenancy agreement were required and asking whether she required to send hundreds of emails asking for repairs to be carried out.

15. On 1 August 2018 the tribunal emailed the Tenant stating that the tribunal requires the full tenancy agreement and advising the Tenant that it was a matter for her what she sent in but stating that the tribunal was interested in emails which notify the Landlord of the repairs in the Application and any response from the Landlord. The Tenant was advised that the tribunal requires proof that the landlord has been made aware of all of the repairs mentioned in the Application form.

16. On 10 August the Tenant provided:

- 16.1. Pages 5 and 6 of a Private Residential Tenancy agreement for the House;

- 16.2. A copy of a Notice to Leave from the Landlord's Representative to the Tenant dated 27 June 2018, stating the ground as rent arrears over three consecutive months;
- 16.3. Two emails to the Landlord's Representative dated 10 August 2018, notifying them about outstanding repairs: *"Fridge freezer; bath not draining; Skylight in the extension; bathroom handle in the extension; door into the extension" and "wall decals in the front garden; step coming up to the front door; step at the side door; missing fire and heat alarms"*.
- 16.4. Email from the Landlord's Representative to the Tenant dated 10 August 2018 stating: *"Hi Shirley, we would like to do those this coming week, we have stated about your fridge freezer we will not be replacing it as you broke it, thanks, apm."*; with cover email from the Tenant to the tribunal admin dated 11 August 2018 stating *"This is the response I got, but I've been getting the same response for months, they come and visit, say the repairs will get done and that's always as far as it goes."*
17. On 21 August 2018 the tribunal asked the Tenant to provide further information, namely:
- 17.1. a full copy of the Tenancy agreement (only pages 5 and 6 had been supplied);
- 17.2. written evidence that the Tenant had notified the Landlord of all complaints in the Application, including: *upstairs carpets are threadbare, stained and there are no carpet grippers in the doorways; exposed nails on the stairs; floor tiles in the upstairs bathroom are dirty and cracked; no adequate extraction system in the kitchen; skirting boards missing in the kitchen; extension has no building warrant/other outstanding issues with the extension; issues with the electrics.*
- 17.3. request for confirmation as to whether the Tenant wished to add three items to the Application which were in a letter of notification but not in the Application (*steps coming up to the front door; step at the side door; bathroom handle in the extension*); and
- 17.4. notification to the Tenant that the tribunal cannot consider the matters of compensation and rent reduction in a repairing standard application, with a reference to the details for such applications.
18. On 22 August 2018 the tribunal stated that the tribunal's email of 21 August 2018 listed the further requirements of the legal convener to enable the case to proceed with all the repairs issues being considered and asking for the information by 4 September 2018.
19. On 23 August 2018 the Tenant attached an email chain with the Landlord's Representative on 22 and 23 August regarding outstanding repairs at that time: *"the upstairs bathroom light needs to be properly looked at, it is getting worse, it takes at least 2-3 minutes to come on, this is wholly unacceptable; The door handle*

needs to be fixed properly, we can't close it, because we end up locked in, again wholly unacceptable, I have a nine year old son remember; The skylight needs to be properly looked at, we're coming up to Autumn and this being Scotland we will have more rain than not; The carpets upstairs will also have to look at being replaced, they are absolutely disgusting and threadbare in places, the small room carpet isn't even attached to the floor; The ceiling in the upstairs bathroom still hasn't been sorted; There are nails sticking out of the stairs, I actually sliced my toe open on 1 a few days ago, I have a child that runs up and downstairs bare foot; Front garden wall decals still haven't been fixed and are causing a danger; The fridge freezer still hasn't been sorted, this is not my problem, it wasn't fit for purpose and you were made aware of this on 19 December 2017; The door into the extension sticks to the point you have to put all your body weight on it to open it; The handle on the extension bathroom door still has not been looked at; Charcoal filters need to be fitted to extraction hood in the kitchen, there were none when I moved in, therefore not my responsibility to purchase and fit.”; a reply from the Landlord's Representative dated 23 August 2018 and a further email from the Tenant to the Landlord's Representative dated 23 August 2018.

20. On 11 September 2018 the tribunal again requested a copy of the tenancy agreement.
21. On 4 October 2018 the tribunal referred to its letters of 27 August and 11 September, requesting a copy of the tenancy agreement.
22. On 15 October 2018 the Tenant sent an email to the tribunal's administration, providing further information in relation to her Application and asking if the tribunal wished her to send emails with the Landlord's Representative in a zip file.
23. On 30 October 2018 the tribunal sent an email to the Tenant requesting:
 - 23.1. Additional information in relation to the tenancy;
 - 23.2. A copy of the Tenant's notification email dated 22 August 2018 with subject headings and addresses;
 - 23.3. Evidence of notification of the following issues:
 - 23.3.1. *Floor tiles in the bathroom are dirty and cracked*
 - 23.3.2. *No adequate extraction system in the kitchen*
 - 23.3.3. *Skirting boards missing in the kitchen*
 - 23.3.4. *Extension has no building warrant/other outstanding issues with the extension.*
 - 23.3.5. *Issues with the electrics.*
 - 23.4. Request for confirmation that the Tenant wishes the following items which were not mentioned in the Application Form, but were notified, considered by the tribunal:
 - 23.4.1. *Steps coming up to the front door*
 - 23.4.2. *Step at the side door*

- 23.4.3. *Bathroom handle in the extension.*
- 23.5. Request for confirmation that the Tenant wishes the following items which were not mentioned in the Application Form, but were notified, considered by the tribunal:
 - 23.5.1. *Upstairs bathroom light*
 - 23.5.2. *Ceiling in upstairs bathroom*
 - 23.5.3. *Charcoal filter.*
- 24. On 30 October 2018 the Tenant sent an email to the tribunal stating that the notification email of 22 August 2018 was a “collaborative” email which was sent instead of sending all of the emails individually; the tiles in the bathroom were mentioned in the inventory (with a picture of the relevant page of the inventory); the kitchen extraction system has always been spoken about in person or on the phone, never via email; and further information about the tenancy agreement.
- 25. On 8 November 2018 the tribunal requested:
 - 25.1. The tenancy agreement pages which include the names of the Landlord and tenant.
 - 25.2. The original email of 22 August to the letting agents which shows subject headings and address to which it was sent.
 - 25.3. Evidence of notification of the kitchen extraction system issue to the landlord or landlord’s agent.
 - 25.4. Request for confirmation that the tenant wishes the tribunal to consider
 - 23.4.1. *Steps coming up to the front door*
 - 23.4.2. *Step at the side door*
 - 23.4.3. *Bathroom handle in the extension.*
 - 25.5. Request for confirmation that the tenant wished the tribunal to consider
 - 23.5.1. *Upstairs bathroom light*
 - 23.5.2. *Ceiling in upstairs bathroom*
 - 23.5.3. *Charcoal filter.*
- 26. On 8 November the Tenant provided:
 - 26.1. a copy of additional pages of the Private Residential Tenancy Agreement for the House dated 13 December 2017, naming “Mr S Hussain, care of APM Lettings, 198 Morrison Street, Edinburgh, EH3 8EB” as the Landlord; and the Tenant as the tenant;
 - 26.2. A notification to the Landlord’s Representative dated 5 June 2018 in relation to the extension being illegal, requesting a rent deduction / refund until the matter is dealt with;
 - 26.3. A copy of the notification email sent to the Landlord on 22 August 2018 as part of an email chain.

27. Referral of Application

- 27.1. On 14 December 2018 the Application, comprising documents received between 30 July and 8 November 2018 was referred to the tribunal for determination.
- 27.2. An inspection of the House and a hearing were fixed for 14 January 2019.
- 27.3. On 28 November 2018 the parties were advised of the referral of the Application and the date time and place of the inspection and hearing. Parties were advised that any written representations or a request to make oral representations must be made and returned to the tribunal's offices by 19 December 2018.
- 27.4. On 10 December 2018 the tribunal contacted the Landlord's Representative to request contact details for the landlord's address, telephone number and address to ensure that she is kept informed of what is happening in the case and provided with copies of all correspondence.
- 27.5. On 10 December 2018 the Landlord's Representative replied to the tribunal, providing details of the Landlord's husband, Mr Sharowar Hussain, stating that all details and correspondence could go to him as his wife speaks very little English.

28. Parties' wishes to attend Hearing; Written Representations and Documents

- 28.1. On 11 December 2018 the Landlord's Representative submitted written representations on behalf of the Landlord in relation to:
- 28.1.1. *Fridge Freezer*
 - 28.1.2. *Fire and heat Alarms*
 - 28.1.3. *Carpets*
 - 28.1.4. *Nails*
 - 28.1.5. *Oven extractor*
 - 28.1.6. *Skirting board missing*
 - 28.1.7. *Door to extension*
 - 28.1.8. *Door to en-suite*
 - 28.1.9. *Extension*
 - 28.1.10. *Electrics*
 - 28.1.11. *Skylight*
 - 28.1.12. *Ceiling bathroom*
 - 28.1.13. *Decal outside;*
 - 28.1.14. together with the following documents:
 - 28.1.15. a copy of the Inventory and Schedule of Condition dated 15 December 2017 (75 pages); and

- 28.1.16. and an EICR Report dated 13 December 2017 (9 pages).
- 28.2. On 12 December 2018 the Landlord returned a form to the tribunal confirming that she wished to attend a hearing but did not wish to submit written representations.
- 28.3. On 12 December 2018 the Landlord's Representative submitted a form confirming that he wished to attend a hearing and send written representations.
- 28.4. On 13 December 2018 the Landlord's Representative submitted further written representations together with an invoice from City Commercial Property dated 12 October 2018 in respect of work around the skylight in the House.
- 28.5. On 13 December 2018 the Landlord's Representative submitted an email from the Tenant to him notifying him about the re-siting of the fire alarms or getting an adequate extraction system in the kitchen.
- 28.6. On 13 December 2018 the Landlord's Representative submitted an email regarding painting of the bathroom ceiling.
- 28.7. On 19 December 2018 the Landlord's Representative submitted written representations in relation to entry for gas safety check.
- 28.8. On 20 December 2018 the Tenant submitted written representations together with five photographs of the hood extractor / carbon filters and three photographs of the fridge freezer.

29. Postponement of inspection and hearing

- 29.1. The inspection and hearing were postponed to 21 January 2019 at 10.00 and 11.30am.
- 29.2. On 3 January 2019 the tribunal's administration advised parties that the date for written representations had passed, as well as confirming with parties the new date of the inspection and hearing.
- 29.3. The Tenant liaised with the tribunal's administration about the practical arrangements for travel to and attendance at the hearing with a named Support Worker.

30. Summary of the Issue to be determined by the tribunal

30.1. The issue to be determined is whether the House meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

30.2. The tribunal took the view on the basis of the Application documentation, written representations by the Landlord's Representative and documentation lodged by parties including the check-in Inventory that all repairs listed in the Application form by the Tenant had been notified to the Landlord via the Inventory or by the Tenant to the Landlord's Representative.

30.3. The tribunal took the view that other repairs matters which had been notified by the Tenant to the Landlord and/or included in the Check-in Inventory, but not included in the Application Form, did not form part of the Application to be determined by the tribunal.

31. Inspection of the House – 21 January 2019 at 10.00h

31.1. The tribunal members inspected the House on 21 January 2019.

31.2. The Tenant was present at the inspection together with her daughter.

31.3. The Landlord and her husband Mr Sharowar Hussain were present outside the House but did not enter the House for the inspection, stating that the Landlord's Representative would represent them and that they would attend the hearing.

31.4. The Landlord's Representative was present at the inspection.

31.5. The tribunal confined its inspection on 21 January 2019 to the repairs issues detailed within the Application, for the reasons outlined above.

31.6. Photographs were taken at the inspection, and a **Schedule of Photographs** is appended to and forms part of this Decision.

31.7. The weather at the time of the inspection was dry.

31.8. Schedule of Photographs no. 1 shows an external front view of the House and Photograph no. 2 shows an external rear view of the House.

31.9. The inspection revealed the following with reference to each of the Tenant's complaints in the Application:

- 31.10. (1) *"The skylight in the extension currently has a tarpaulin over it which is held down with bricks and roof slates."*
- 31.11. The Tenant advised that the room is being used as her daughter's bedroom. The tarpaulin which was mentioned in the complaint has now been taken off. A roofer came in October 2018 and did some repair works. She said that despite the repair work the window/ceiling still leaks every time it rains. She pointed to an area of staining on the ceiling. She said that the ceiling had been black and she had tried to paint it.
- 31.12. Mr Rashid said that he had instructed the roofer in October 2018 following complaints of a leak. The roofer reported back to him that he was satisfied that the required work had been done to prevent further leaks. White mastic was applied.
- 31.13. The tribunal members observed the skylight internally and externally from the garden and the master bedroom upstairs and photographs were taken.
- 31.14. The ordinary member used a damp meter. It did not show any damp readings in the area around the Velux window at the time of the inspection. The weather was dry at the time of the inspection.
- 31.15. (2) *"The fridge freezer wasn't in complete working order but I was told to use it anyway and now it's broken and I'm being held accountable". "The fridge freezer was also mentioned as inadequate in the check in inventory."*
- 31.16. The Tenant stated that the fridge freezer was not operational. She stated that it was the freezer that was broken. It was supplied with no drawers (and one salad crisper). The ice built up because she had to put food on the evaporator shelves. She sent email to the agents on 19 December 2017 advising of the problem and was told to use it anyway. It got damaged when she was trying to defrost it. She said she had removed it from the House and taken it into the back garden after asking Mr Rashid to remove it and Mr Rashid refusing to do so. She said that she now has a fridge freezer but it belongs to her.
- 31.17. The tribunal members viewed the fridge freezer lying on its side in the garden. There were no drawers in the freezer at the time of the inspection. Photographs were taken.
- 31.18. Mr Rashid confirmed that this was the fridge freezer supplied with the House and included on the Check-in Inventory.

- 31.19. (3) *"The wall tops in the front garden are broken and falling off."*
- 31.20. The tribunal members observed that a pillar at the corner of the front wall had fallen off and the coping (wall tops) are missing on the front wall and on the wall next to the path leading to the front door. Photographs were taken.
- 31.21. The Tenant stated that the pillar had been broken since before the tenancy began and that some of the coping had also been missing along the front wall since that time. She said that during the tenancy other pieces of coping had fallen off. In relation to the wall next to the path, she said that her son had climbed on the wall and that additional coping had fallen down.
- 31.22. Mr Rashid said that he thought the pre-existing damage to the wall and photographs of it were on the Check in inventory.
- 31.23. (4) *"There isn't enough fire and heat alarms in the house, this was also mentioned in the check in inventory."*
- 31.24. The Tenant stated that three additional alarms had been fitted in November 2018. She is unhappy with the location of the new interlinked heat detector which is near the oven and hob. It frequently goes off which sets off the interlinked alarms. She thought this may be worse due to lack of extraction in the kitchen.
- 31.25. The tribunal observed the location of all the smoke and heat alarms in the house and tested to confirm that they were interlinked. Photographs were taken.
- 31.26. The tribunal observed that there was one CO detector in the back hall, which was in a different room from the boiler. The boiler is in the kitchen / dining area.
- 31.27. (5) *"The carpets upstairs are threadbare, stained with big black stains, there's no carpet grippers in the doorways".*
- 31.28. The Tenant showed the tribunal the issues she was complaining about in relation to the upstairs carpets, which she said had existed since the start of the tenancy.
- 31.29. The tribunal observed that there is no door gripper at the threshold between the small front bedroom room and the hall. The carpet is frayed at the edge next to the wall and does not appear to be attached to the floor with any gripper. There are also stains in this room. There are also stains on the

carpet in the master bedroom at the rear of the House. Photographs were taken.

31.30. Mr Rashid said that the carpets had been photographed as part of the inventory and accepted that they were dirty on entry.

31.31. The Tenant pointed out one stain on the master bedroom carpet which she said was children's slime which had been dropped by her son during the tenancy. She accepted that she was responsible for that.

31.32. (6) *"There's exposed nails on the stairs which we have to regularly hammer back in".*

31.33. The Tenant said that there are tacks coming out on the stairs. She said that she has cut her foot on tacks and so has her son. She said that Mr Rashid came to the House and hammered them in but they keep coming back out again. There is one sticking out at the moment on the first stair tread.

31.34. Mr Rashid said that he had taken advice from a carpet fitter who said it was done to standard.

31.35. At the time of the inspection the tribunal observed that there was one tack sticking out on the first stair tread.

31.36. (7) *"The floor tiles in the upstairs bathroom are all dirty and cracked. I have tried on numerous occasions to clean them but with no joy, they also need to be grouted and re-sealed".*

31.37. The Tenant said that the tiles had been cracked since she moved in. When they stand on the floor it moves. She said that it is mentioned in the inventory. She thought that there may be spare tiles in the loft.

31.38. On inspection by the tribunal there were cracked and broken tiles with some movement when pressure was applied. There were one or two sharp edges and poor grouting.

31.39. (8) *"The bath doesn't drain correctly because the plumbing is inadequate, they have been told this but still ignore it."*

31.40. The Tenant said that she had booked a plumber to come out. The landlord pays for Homeserve. The plumber advised her that there was a plumbing problem because instead of a downpipe the plumbing drains back towards the wall. It does not drain correctly when the shower is running.

- 31.41. The tribunal members asked for a plug so that a test could be done during the inspection. The Tenant said that there is no plug. Mr Rashid said that the bath was supplied with a plug. An inspection was carried out with the shower running. The water appeared to be going down the plug quite freely.
- 31.42. The tenant advised that when a person stands in the bath and puts weight on it, it takes longer.
- 31.43. Mr Rashid said that the pipe is running. It is a slow running bath to the waste pipe. As far as he is aware it is the set-up, that is to say the physical run. As far as he is aware it cannot be altered.
- 31.44. (9) *"There is no adequate extraction system in the kitchen"*
- 31.45. On inspection, there was a fitted extractor fan on the kitchen ceiling within the extension part of the room, which switches on and apparently operates. However, it is not clear where it vents to.
- 31.46. The Tenant said that as far as she is aware the extractor is not venting outside.
- 31.47. The tribunal members looked at the rear of the property, including the extension and were unable to see any external vent with which the extractor might be associated, except a mushroom cap which appeared to be situated on the neighbours' property.
- 31.48. Mr Rashid stated that he should be able to obtain the plans for the extension which might assist in relation to the extraction system and ducting.
- 31.49. (10) *"The over hob hood has no charcoal filters and I'm being expected to purchase and fit these."*
- 31.50. Mr Rashid stated that he had purchased and fitted the charcoal filters in about October 2018. He was satisfied that the job was done.
- 31.51. The Tenant had been told by a friend who fits hoods that there were still parts missing.
- 31.52. On inspection the tribunal found that it was a recirculating Lamona hood. The charcoal filters were lying loose above the metal grill. The motor could be seen. There was nothing which could be seen on inspection to suggest that any parts were missing.
- 31.53. (11) *"There is skirting boards missing in the kitchen".*

- 31.54. The Tenant pointed out the skirting boards which were missing in the kitchen, at the two corners into the lounge, the long one between the lounge door and hall and in the Back hall. The tribunal observed the areas of missing skirting and took photographs.
- 31.55. (12) *"The door into the extension has dropped and is stiff, they are aware but are refusing to fix this"*
- 31.56. The Tenant advised that this has been repaired and is fine. It is not stiff now.
- 31.57. Mr Rashid advised that there had been 15 coats hanging on it. He repaired the hinges. It is a hollow door.
- 31.58. On inspection the door appeared to be properly attached to the hinges, opened and closed without any restriction and there was no stiffness.
- 31.59. (13) *"The door handle into the en-suite is too small and cannot be locked"*
- 31.60. On inspection, the lock was seen to be close to the handle although it does lock. The handle is loose on the inside and outside but it still works.
- 31.61. (14) *"The actual extension itself hasn't got a building warrant and hasn't had one since 2015. There are also a lot of outstanding issues with the extension that building control have been chasing the landlord to fix since 2012."*
- 31.62. The Tenant said that there is a list of outstanding works which required to be carried out by the Landlord.
- 31.63. Mr Rashid said that he was intending to bring a copy of the building warrant to the hearing.
- 31.64. There was nothing obvious to be seen at the inspection without further specification of the outstanding works.
- 31.65. (15) *"I also believe there is issues with the electrics, as of yet I have been unable to get this verified"*.
- 31.66. The Tenant stated that Dougie from the Council said that there were issues with the electrics. She said in terms of issues she was personally aware of, that there was a plug sparking behind the couch which has now been repaired. She does not think that there is anything outstanding but does not know any electrical issues are included on the list of outstanding works for the building warrant.

31.67. Mr Rashid advised that he has an ECIR but said that it was carried out before the sparking plug was fixed and the new smoke and heat alarms were fitted.

31.68. The tribunal observed the location of the plug in the lounge which was said to have been repaired. There was nothing else to inspect in the absence of further specification. The tribunal stated that they would consider the EICR at the hearing.

31.69. Other observations at inspection

31.70. The tribunal also observed during the inspection that the Gas safety certificate dated December 2018 is out of date. Mr Rashid stated that there were access issues and that he had re-instructed a Gas Safe Engineer to attend. The Tenant stated that she would arrange access.

31.71. As noted above, the tribunal observed that the Carbon Monoxide detector is situated in a different room from the gas boiler and Mr Rashid has been made aware of the issue.

31.72. The inspection finished around 11.10h and the tribunal members, tribunal clerk and parties who were in attendance made arrangements to travel to the hearing venue to start the hearing as soon as possible after 11.30h once everybody was present, allowing for the distance and travel time.

32. The Hearing – 21 January 2019 at 12.30h and 4 February 2019 at 1000h

32.1. The hearing took place at George House, 126 George Street, Edinburgh, EH2 4HH on the same day as the inspection although due to the travel arrangements of the tribunal members, clerk and parties it was unable to commence until 1230h.

32.2. After sitting for the remainder of the day on 21 January 2019 the hearing was not concluded so the tribunal adjourned the hearing to 4 February 2019 at 1000h.

32.3. The Tenant attended the Hearing on both days with a Supporter, Ms Vass.

32.4. The Landlord attended the Hearing on both days with her husband, Mr Sharowar Hussain as a Supporter and informal interpreter for any English which she was unable to understand.

32.5. The Landlord's Representative attended the Hearing on both days.

33. Documents lodged at hearing day 1 (21.1.19)

33.1. A number of documents were lodged with the permission of the tribunal and/or in response to the Directions of the tribunal on both days of the hearing, as follows:

33.1.1. Tenant Doc 1 – email from Tenant to Landlord's Representative dated 12 October 2018

33.1.2. Tenant Doc 2 – email from Tenant to Landlord's Representative dated 18 December 2017

33.1.3. Tenant Doc 3 – email from Landlord's Representative to Tenant dated 19 December 2017.

33.1.4. Landlord Rep Doc 1 – invoice from City Commercial Property dated 12 October 2018

33.1.5. Landlord Rep Doc 2 – Appendix (undated) with list of 9 items

33.1.6. Landlord Rep Doc 3 – Extension of Period of Validity of Building Warrant to 21 September 2019, dated 21 December 2018

33.1.7. Landlord Rep Doc 4 – Email from "Chris" at roofing company to Landlord's Representative (undated).

34. Directions of the tribunal

34.1. On 22 January 2019 (between the two days of the hearing) the tribunal issued Directions to the Landlord and Landlord's Representative to produce the documents specified in the Directions by the morning of the second day of the hearing, 10.00h on 4 February 2019.

35. Additional Documents lodged on or before 4.2.19

35.1. On 1 February the Landlord's Representative lodged:

35.2. Landlord Rep Doc 4 - an email from Chris Duff at Bolton roofing dated 30.1.19 and

35.3. Landlord Rep Doc 5 - a copy of a compliments slip from Bolton Roofing, with handwriting underneath dated 9 October 2018

35.4. On 4 February 2019 (at the hearing) the Landlord's Representative lodged:

35.4.1. Landlord Rep Doc 6 – a letter from Gordon Strachan, Building Design to the Landlord's Representative dated 1 February 2019

- 35.4.2. Landlord Rep Doc 7 – Appendix (undated, with handwriting added)
- 35.4.3. Landlord Rep Doc 8 – Copy of Building Warrant Drawings dated August 2011 – 682/02B
- 35.4.4. Landlord Rep Doc 9 – Copy of Building warrant Drawings dated September 2011 – 682/03
- 35.4.5. Landlord Rep Doc 10 – Copy of Building Amendment Warrant drawings dated August 2012 – 2 pages 682/04A and 682/05A

36. Parties' oral submissions

- 36.1. The parties' oral submissions in relation to each of the repairs issues listed in the Application are summarised as follows:

36.2. (1) "The skylight in the extension currently has a tarpaulin over it which is held down with bricks and roof slates."

- 36.2.1. The Tenant referred to what she had said during the inspection. She stated that prior to her moving into the House the roof was leaking. She said that there were buckets to catch the water. She spoke to Mr Hussain about repairs being carried out before she agreed to move in (she said that she had only dealt with him and had never dealt with his wife). She said that there was no tarpaulin at that time and that an agreement was reached with Mr Hussain that the roof would be fixed prior to her moving in. She said that she had had quite a few discussions with Mr Hussain (whom she referred to as the Landlord). He had put a number in the window to say that the house would be rented. The Tenant's mother saw the number there. The lettings agent became involved when the tenancy needed to be signed. There was pre-tenancy correspondence about painting. The Landlord agreed to fix the leaking roof in the extension before she moved in. She moved in just before Christmas 2017. She went to the House and the tarpaulin had been placed on the top of the skylight. She did not put the tarpaulin up there. It was clear plastic and it was stuck down with parcel tape. There were bricks and slates holding it around the edges and the bag of harling was in the middle of the skylight. It was quite a rough winter. The tarpaulin kept flapping. The Tenant had to keep trying to keep it down. At some point the Tenant's daughter, Hannah, moved in to the room in the extension, in around April / May 2018. The Tenant switched to a blue tarpaulin for light reasons. The complaint to the Council came from a neighbour that the harling was to be removed and the tarpaulin. It was all taken down after the initial complaint. Then it started to leak. The Tenant knows that the builder has been at least once. The Tenant accepts that he has put the mastic on. It took 10 days to return to

do the work. The Tenant stated that there is still a problem. When it really rains it still does drip. The Tenant stated that contrary to what Mr Rashid had said about no complaints after the work had been carried out, she has made him aware since the work has been carried out that it is still leaking, by phone and email. The tenant showed the tribunal an email sent on 12 October 2018 (Tenant Doc 1) which makes reference to it leaking again. Since that notification that the roof and or window is still leaking, it has been acknowledged but she has not seen the roofer again or had any correspondence to say that he has been back out.

36.2.2. Mr Rashid stated that some time last year he had been contacted by Craig from Midlothian Council after the Council received a complaint about the roof from someone else that there was a bag of stones on the roof. Mr Rashid was asked to remove it. It was a bag of harling. He has no idea who put that up there. Mr Rashid stated that this was nothing to do with water coming in and that it was not holding down the tarpaulin.

36.2.3. Mr Rashid said that in relation to the leak through the skylight / roof, he was notified of the complaint by the Tenant "*some time probably last year*", that there was water coming in "*on or off*". He stated that he went into the House three or four times and he was told by the Tenant that there was an issue with water coming in. He saw old staining on the roof. An Inventory had been done by "nolettinggo". The start date of the lease was 14 December 2017. The inventory is dated 15 December 2017 but Mr Rashid stated that it was available on the date that the Tenant and her family moved in. Mr Rashid stated that he did not know whether the water staining pre-dated the moving in date. He said that the Tenant complained about 4 or 5 months after moving in, by email. Mr Rashid said that he went out to the House. He said that he told the Tenant that the only way to confirm if the skylight was leaking was to remove the tarpaulin. He stated that she asked what would happen if she removed the tarpaulin and it started leaking. Mr Rashid said that he told the Tenant that if that happened, they would send a roofer out.

36.2.4. Mr Rashid said that he did send a roofer out in October 2018. The purpose of that was to deal with a roof leak. The roofer went out twice. He re-sealed around the glass. Mr Rashid said that he understood that the roofer had attended to "*flashing or something*" and had used white mastic. Mr Rashid said that the roofer told him that he was satisfied that it was watertight.

36.2.5. Mr Rashid said that since October 2018 there have been no complaints by the Tenant. The Notice of Referral was the first indication that he has had that the roof work had not repaired the issue. Mr Rashid

said that as far as he is concerned the work has been done and said that he has not had any further complaints about water coming in since the roof work was done. Mr Rashid said that the roofer went back out again but he was unable to advise the tribunal of the date. Mr Rashid referred to Inventory photograph on page 58 which says, "*Bedroom 1, Windows and sills, outer glaze tape, sack on top of glaze.*" He referred to **LL Rep Doc 1**, an invoice from City Commercial dated 12 October 2018. Mr Rashid said that he could ask the builder to confirm which dates he attended at the House. Mr Rashid said that the work is under warranty and there is a year's guarantee so if it is still leaking the builder could be asked to come back. Mr Rashid said that from his point of view, if the roof is leaking, there are no quarrels about getting it repaired.

36.2.6. After the first hearing day, the tribunal issued Directions requiring the Landlord and/or her Representative to produce certain information, as noted above.

36.2.7. On 1 February 2019 the tribunal received an email from the Landlord's Representative attaching **LL Rep Docs 4 and 5**, an email from Chris Duff at Property Square Limited dated 30 January 2019 relative to roof works at the House and a job sheet from Bolton Roofing dated 9 October 2018.

36.2.8. At the adjourned hearing on 4 February 2019, Mr Rashid advised with reference to the documents which had been produced that "*Property Square Limited*" is the new name for "*City Commercial Property*" (whose invoice was lodged as **LL Rep Doc 1**). Property Square (then City Commercial) sub-contracted the work out to Bolton roofing. He has been advised that they attended on 8th, 16th and 17th October 2018.

36.2.9. The ordinary member asked about the reference to "tiles" as there were no tiles visible at the time of the tribunal's inspection and that the reference to a repair to tiles may mean that the builder is referring to a different job. Mr Rashid accepted that no tiles can be seen on the roof of the extension but said that he understands that there are tiles under the felt. Mr Rashid said that he has asked the builder if he could strip back this area and prove it.

36.2.10. Mr Hussain, the Landlord's supporter said that there are no tiles under the felt.

36.2.11. The Tenant advised that when a man named "Alan" attended at the House after the first hearing day, he told her that there was a hole on the roof which was so big he could put his hand in it.

36.2.12. The ordinary member said that further clarification is needed. if the felt was doing its job the felt would be watertight.

36.2.13. The Tenant stated that the roof was still leaking on Friday 1 February, in an area towards the back door of the room. She said that the two corners of the Velux are leaking nearest the door are leaking and the water is dripping onto the floor. The Tenant assumes that it was melting snow on the roof which caused the leak as the water pooled above the window and was leaking from the corners near the bottom side of the window. She said that Chris from Property Square has been in touch with her since the first hearing day to ask to arrange an appointment and this has yet to take place.

36.2.14. Mr Rashid asked for an adjournment in order that he could contact the roofer to obtain further information.

36.2.15. Following the adjournment, Mr Rashid clarified that Bolton Roofing has been instructed to attend the House on Wednesday 6 February. They have asked the Tenant to take photographs of the leak.

36.2.16. The Tenant stated that if it leaks during rain, she will take a photo of the area where the water is coming in. Whether or not she is able to obtain a photo which shows the leak, she said that she can point it out to them when they attend.

36.2.17. Mr Rashid stated that the roofers told him that the tiles are on the gable end. Mr Rashid did not get any other information.

36.3. (2) "The fridge freezer wasn't in complete working order but I was told to use it anyway and now it's broken and I'm being held accountable". "The fridge freezer was also mentioned as inadequate in the check in inventory."

36.3.1. The Tenant referred to the record of the fridge freezer on page 56 of the Check in Inventory. She said that it is shown as having only one drawer. She said that the actual drawer she was provided with was a salad crisper and was not compatible with the appliance. On 19 December 2017, after complaining, she was told just to use it, in an email from APM's office. The emails from 18 and 19 December 2017 are now lodged as **Tenant docs 2 and 3**. With reference to the emails, the Tenant said that she asked if it could be removed. She did not want to use it because it was not in working order. She was told by the agent that the Landlord did not want to

remove it. She referred to the photographs which she had submitted prior to the hearing and her written submissions in relation to the fridge/freezer.

36.3.2. Mr Rashid's response was that the fridge/freezer was supplied at the start of the Tenancy with one drawer. He said that he had responded to the Tenant's complaint as instructed by the Landlord's husband, stating that there were no plans to replace the fridge freezer with one that works. Mr Rashid accepted that the Landlord knew it was broken. He said that the Tenant made them aware she was going to remove it because it was broken. Mr Rashid said that he had not been round to remove it because the Landlord had stated that it was to stay in the House. Mr Rashid undertook to remove the appliance from the garden of the House now that he knows it is there and broken, following the inspection.

36.4. (3) "The wall tops in the front garden are broken and falling off."

36.4.1. The Tenant said that the pillar from the front corner of the wall had fallen off and was lying in the front garden when she moved in. She referred to the photos on the Check in Inventory dated 15 December 2017. The pillar can be seen to be off on 15 December 2017. As well as the pillar having fallen down into the garden, part of the coping adjacent to it had gone. The Tenant stated that there were a certain number of repairs agreed by Mr Hussain before she moved in, repairs to the wall being one of them and the leaking skylight in the extension being another. She said that they had an oral agreement before she signed anything.

36.4.2. Mr Rashid stated that he could only go by the Check in Inventory, page 9. He stated that no work has been done to repair the pillar or coping at any time. He said that further to the Tenant moving in we had no prior notice or understanding of any agreement by the Landlord to do repairs to the House, stating that everyone was in a hurry to start the tenancy.

36.4.3. Mr Hussain, spoke on behalf of the Landlord at this point, stating that the Tenant was very desperate to get the house. He confirmed that they have not done any repairs on the wall at any point during the tenancy. There are no repairs scheduled in. He said that there was no agreement before the tenancy was entered into, or at any time, that the Landlord would repair the front wall and the skylight. Mr Hussain accepted that the pillar and part of the coping were broken when the Tenant moved in. He also confirmed that he had seen during the inspection outside the House earlier that day today that there are other sections of wall and coping broken and lying on the ground.

36.5. (4) “There isn’t enough fire and heat alarms in the house, this was also mentioned in the check in inventory.”

36.5.1. The Tenant said that originally there were only alarms in the vestibule at the back and the top hall ceiling. The Check in Inventory page 4 noted that outstanding maintenance included fitting a smoke alarm in the entrance hallway and lounge and a wired heat alarm in the kitchen. In November 2018 three new alarms were added, one alarm in the living room and one in the downstairs hallway as well as the heat alarm in the kitchen. The Tenant referred to the discussion at the inspection during which she said that the kitchen alarm was fitted in a position near the cooker that means it goes off a lot. Because they are interlinked it sets off all of the alarms. The situation is made worse by the lack of effective extraction in the kitchen, as mentioned in two of her other complaints.

36.5.2. Mr Rashid said that Mr Hussain had stated that he would put in additional alarms as he dealt with his own electrician at the time but that had not been done. Mr Rashid instructed a company to do the work. Electroforce did the EICR. The alarms are all interconnecting. Mr Rashid noted what had been seen during the inspection that morning in relation to the location of the carbon monoxide alarm and said that he would make arrangements to fit one in accordance with the existing guidance.

36.6. (5) “The carpets upstairs are threadbare, stained with big black stains, there’s no carpet grippers in the doorways”.

36.6.1. The Tenant stated that there is no door threshold between the upstairs hall and the front bedroom and sections of the carpet are coming up. She said that the threshold bar has never been there. The carpet was like that when she moved in. The Hoover pulls the carpet up more. Regarding cleanliness, the Tenant said that the letting agent had told her that it was her job to clean the carpets.

36.6.2. Mr Rashid said that he has not done anything about replacing the door bar. There is a photo on page 32 of the Check-in Inventory and he thought that a note on Page 35 “transition missing” may be a missing threshold plate. Mr Rashid said that he had never gone through the inventory with his clients to see if there are items requiring repair. Mr Hussain, on behalf of the Landlord, said that he had never looked through the inventory to see if there were items requiring repair. The general description of the carpets in the inventory is “Fair condition not clean”, page 35. Mr Rashid said that his company does inspections every 3 or 4 months.

36.6.3. In response, the Tenant said the last inspection was in June 2018. On 22 August 2018, the Tenant notified the agent that the carpets upstairs would also have to look at being replaced as they were dirty and the small room carpet was not even attached to the floor. I then got an email from the info@APM address, stating *"please refer back to the inventory. If you are not cleaning the carpets you are responsible for replacing them"*. (There was also discussion about the fridge freezer.) There is no name on the email.

36.6.4. Mr Rashid said that the slow draining bath was identified in the most recent inspection. He did not notice the carpet threshold, the front wall, or the fridge freezer. He said that he had taken his own independent advice in relation to what to do about the fridge freezer. He accepted that the Landlord did supply the fridge freezer as part of the tenancy and he accepts that it is broken, as referred to earlier in the hearing.

36.6.5. Mr Rashid said that he has not seen any emails in which the Tenant was told that she had to clean the carpets. He is the property manager for the House. He said that there is no denying the fact that the carpets were grubby at the beginning of the tenancy. He said that the content of the email does not sound like him and it could have been sent by someone else in the office. Mr Rashid added during the tribunal inspection at the House, he had seen slime on the master bedroom carpet. Mr Rashid confirmed that at no point during the tenancy has there been any cleaning at the expense of the landlord. Mr Rashid questioned whether dirty carpets breached the repairing standard but did not wish to make any further submissions about it.

36.7. (6) "There's exposed nails on the stairs which we have to regularly hammer back in".

36.7.1. The Tenant referred to what had been seen and discussed during the inspection that morning and the fact that there was one tack sticking out today. Tacks frequently come out and she has to hammer them back in herself.

36.7.2. Mr Rashid said that he had gone to the House to hammer in the tacks, in October or November 2018. He accepted the finding at the inspection that the one on the bottom tread is still sticking out. He said that he had phoned the carpet company and described the issue with the wooden stair with carpeting and tacks. The advice he received was to use grippers. He did not get any other solution otherwise he would have done it. He accepted that the one seen at the inspection was typical of the problem of the tacks working themselves loose.

36.8. (7) "The floor tiles in the upstairs bathroom are all dirty and cracked. I have tried on numerous occasions to clean them but with no joy, they also need to be grouted and re-sealed".

36.8.1. The Tenant said that she did not wish to add anything to what had been seen at the inspection.

36.8.2. Mr Rashid acknowledged the problem. He said that he would get the flooring repaired as fast as he could. He said that he would need to discuss it with the Landlord. After a short discussion during the hearing, the Landlord said that the bathroom floor would be replaced, to be instructed by Mr Rashid. Mr Rashid raised the issue of previous access difficulties with the tenant.

36.8.3. The Tenant said that she would do her best to facilitate access. She said that the only problem previously has been gas safety certificate access. She said she could not do the two dates given by Homeserve. She said that she was not being obstructive and accepted it was in her interests. She said that they were asking for days when I was at college and she told them that she could do another date. She is not at college any more.

36.8.4. Mr Rashid said that he has instructed the gas safety certificate again and that the Tenant can contact and choose from a range of dates.

36.9. (8) "The bath doesn't drain correctly because the plumbing is inadequate, they have been told this but still ignore it."

36.9.1. The Tenant stated that the bath in the bathroom is not draining. In relation to what was seen at the inspection, she accepted that it runs well until the last 10 or 15 seconds and then it is slower. It is worse when she is in the bath taking a shower, suggesting that maybe because of her weight it fills up. She referred to an email from Homeserve on 2 May 2018. The report suggests that one pipe is not facing in the right direction. *"Plunged clear blocked bath waste, all tested ok. Bath waste does not have a slope towards the drain and runs back towards trap. Advised customer of this and that it is always going to make the water go away slower."*

36.9.2. Mr Rashid said he did not get a copy of the email. He offered to bring a qualified plumber with him who has been to the House before. He said that he has been advised by the plumber following a previous visit that it is slow running because the drain is on one side of the building and the

run is not at a great angle. He said that it is not backing up and it does drain. He stated that he is aware that there is a problem as he has seen the slow draining himself and that whatever the tribunal decides he is planning to go with a plumber and look at it.

- 36.9.3. Mr Hussain added on behalf of the Landlord that he has a copy of the contract with Homeserve but does not know if he gets job cards following visits. It was not clear if he was trying to suggest that he was not aware that there was a problem.

36.10. (9) "There is no adequate extraction system in the kitchen"

- 36.10.1. The Tenant stated that she has spoken to Craig, a building officer from building control who carried out an inspection at the House and he advised her that in order for the building warrant to be signed off an adequate extraction system in the kitchen was required, as well as works in relation to the toilet under the stairs going out the front door and a number of other outstanding issues. The building warrant ran out in 2015 and the Landlord asked for it to be extended in December 2018.

- 36.10.2. Mr Rashid said that his only involvement was in relation to being told to move the bag of stones because he is the letting agent. Mr Rashid told the officer that he had heard through the Tenant that there are a couple of issues regarding the extension. Mr Rashid said that he was told that he is just the agent. Mr Rashid said that he had discussed it with Mr Hussain when he called him back to say the bag of stones had been removed.

- 36.10.3. Mr Hussain said on behalf of the Landlord that they had a smaller extension before. It was the same size as the neighbours' extension. He applied to make the extension bigger in 2006 or 2007.

- 36.10.4. The Tribunal members stated that on inspection at the back, the mushroom vent is on the neighbour's extension and asked Mr Hussain for his comments. The tribunal members also asked about the fact that the Landlord has applied for an extension to carry out the required works and asked for clarification of what needs to be done.

- 36.10.5. Mr Hussain stated that works were finished and the architect applied for completion certificate. Craig from Midlothian Council came and looked at the work and said there was outstanding work left to be done. Mr Hussain said that "*there is still a little bit of work left*" and that the architect has not applied for the completion certificate. Mr Hussain said that the architect had applied for an extension to the building warrant on 17

December 2018. The architect told Mr Hussain that he cannot apply for a completion certificate if there is not a building warrant. The outstanding work includes kitchen extraction system. As things stand Mr Hussain is not sure if there are works outstanding in relation to the kitchen extraction. He said that he did not have the plans with him today. He does not know if the mushroom outside which appears to be on the neighbours' property is anything to do with extension on the House. He said that no part of the neighbours' extension is built on his wife's property. He said that the architect has the paperwork, Gordon Strachan who is based in Calder Road, Edinburgh.

36.10.6. Mr Rashid asked whether the tribunal would allow a seven-day grace period in order for the Landlord to clarify what needs to be done. The tribunal agreed that as the hearing would require to be adjourned due to the time in any event, the tribunal would issue Directions specifying what information would be required by the date of the next hearing. Directions were issued by the tribunal as noted above.

36.10.7. At the adjourned hearing on 4 February 2019 the Landlord's Representative sought to lodge with the permission of the tribunal, **LL Rep Doc 6**, a letter from Gordon Strachan Building Design dated 1 February 2019, **LL Rep Doc 7**, "Appendix" (undated), with handwriting thereon; and **Landlord Rep Docs 8 and 9**, building warrant drawings dated August and September 2011 and **10/1 and 10/2**, building warrant amendment drawings dated August 2012.

36.10.8. Mr Rashid stated that he had only received the documents from Gordon Strachan Building Design late on the afternoon of 1 February 2019. Mr Rashid contacted Mr Strachan after the Directions were received and Mr Strachan told him that he could not recall the plans he had prepared for the House. Mr Rashid instructed Mr Strachan to attend at the House. Following the visit on 24 January 2019, Mr Strachan advised Mr Rashid that he does not know where the kitchen extractor fan is ducting to. As stated in Mr Strachan's letter, it should have an extraction rating of at least 60l/second to comply with the Regulations and he has recommended that a registered electrician check the ceiling mounted fan has the correct rating and if not, replace with an appropriately rated fan and check that a suitable duct is in place. Mr Rashid has not yet instructed any such checks/works.

36.10.9. The Tenant confirmed that that Gordon Strachan and another builder called William (not the original builder) attended at the House on 24 January 2019 and that the builder advised her that he wants to come back with a plumber and an electrician. She assumes that it is to look at

the plumbing under the bath. William told her that he could not see where the existing extractor fan is vented to.

36.10.10. The tribunal noted that the letter from Gordon Strachan Building design stated 1 February 2019 stated: that the Approved drawings (LL Doc 8) specified *"provide new canopy and extraction fan at kitchen cooker to give 30 litres/sec (intermittent) rate of extraction ducted to the external air."*; the amendment drawings made *"no alterations to the approved kitchen extraction system"*; and that on a visit to the Property on 24 January 2019 at 2.30pm he *"noted that the canopy with filters and extraction fan above the cooker was working but there was no extraction duct to vent the cooking smells etc. to the outside air"*. He noted *"that there was a second extraction fan also working mounted at high level above existing wall mounted units, this fan not being above the cooker should have an extraction rate of at least 60 litres/sec to comply with the Regulations"*. He *"recommended that a registered electrician should check the second fan has the correct rating and if not replace with an appropriately rated fan and check that a suitable duct is in place"*.

36.11. (10) "The over hob hood has no charcoal filters and I'm being expected to purchase and fit these.

36.11.1. The Tenant stated that she thought that there might be something missing from within the motor because a friend who fits them for a living told her that there should be charcoal filters. Despite the addition of the loose charcoal filters by Mr Rashid, after she made the complaint, her friend has said that that is still not right. Lamona is the make of the hood.

36.11.2. Mr Rashid said that he purchased the charcoal filters and laid them on to the grill. He said that there might be paper filters to go in as well. He said that there does not seem to be anything to which to attach the filters. Mr Rashid said that he had looked inside his own extractor hood for comparison and said that in his view the hood in the House is as it should be and there is nothing missing now that the charcoal filters he provided have been laid on the metal grill.

36.12. (11) "There is skirting boards missing in the kitchen".

36.12.1. The Tenant stated that the skirting boards are missing in various areas around the kitchen/dining and into the rear hall. When she moved in a joiner was meant to do the floor. She said that it has been like that since she moved in.

36.12.2. Mr Rashid said that he can arrange to get the boards which have fallen off pinned back on by a joiner and get the missing ones replaced, subject to access.

36.13. (12) "The door into the extension has dropped and is stiff, they are aware but are refusing to fix this"

36.13.1. As discussed at the inspection, the door to the extension has been repaired and was observed to be opening and closing freely.

36.13.2. The Tenant withdrew this complaint from the Application.

36.14. (13) "The door handle into the en-suite is too small and cannot be locked"

36.14.1. The Tenant had nothing to add to the findings on inspection.

36.14.2. Mr Rashid said that the joiner could attend to the loose handle when he goes to deal with the skirtings.

36.15. (14) "The actual extension itself hasn't got a building warrant and hasn't had one since 2015. There are also a lot of outstanding issues with the extension that building control have been chasing the landlord to fix since 2012."

36.15.1. Mr Rashid requested time to speak to architect about what stage things are at in respect of the outstanding works required in terms of the building warrant.

36.15.2. The tribunal members indicated that the hearing would be adjourned in any event due to lack of time and a Direction would be issued specifying the information it required the Landlord or Mr Rashid to provide by the date of the adjourned hearing.

36.15.3. As noted above, the **Landlord's Representative lodged LL Rep Doc 6-10/2** at the adjourned hearing.

36.15.4. Mr Rashid had been unable to ascertain from Mr Strachan what works are still outstanding.

36.15.5. Mr Rashid stated that as far as he is aware the diagrams **LL Rep Doc 8 and 9** from August/September 2011 are how the plans were

submitted; and **LL Rep docs 10/1 and 10/2** dated August 2012 are the amended drawings.

36.15.6. Mr Hussain, on behalf of the Landlord, stated that the original builder was named Steven McFarlane, who had been recommended by the architect, that it had been done a long time ago and that he has no paperwork at all relating to the builder or the construction work which was carried out. He further stated that the builder sub-contracted an electrician and a plumber. He said that the builder has "disappeared". He said that the architect attended on 24 January with a different builder and that architect has provided everything he had retained regarding his design/amended design.

36.15.7. In relation to which works remain outstanding, Mr Hussain said that he had been advised by the architect that the only works outstanding are the items on the "original" sheet headed "*Appendix*" (undated), lodged as **LL Rep Doc 2** and as **LL Rep Doc 7** (with handwriting annotations). Mr Hussain said he has not checked with local authority building control what works are outstanding. He understood that the document headed "*Appendix*" was sent by the Council to the architect years ago. The tribunal asked what it was attached to, given that it was headed "*Appendix*" and Mr Hussain said that he had never seen what it was attached to. He spoke to the architect on 31 January and was told that he would call Midlothian Council. The architect has always liaised with the Council on the owner's behalf.

36.15.8. Mr Rashid referred to **LL Rep Doc 7** and said that the Architect has instructed a new builder to do the works on the list 2-9, plus an electrical certificate. Mr Rashid said that the handwriting had been added by him. He ticked item 1 (*"An Amendment of Warrant application is required for the changes to the approved drawings"*). Mr Rashid said that he understood a letter had been submitted Mr Hussain on 17 December 2018 and that more time had been allowed until 21 September 2019 to complete the nine listed works. He did not know if any revised drawings had been submitted with the Application. Mr Rashid also said, with reference to the 10th item now listed, that he has added an electrical certificate to the list of works to be carried out.

36.15.9. The Tenant said that the man called William who recently attended at the House had told her that the builder would return to the House with an electrician and a plumber. She had been expecting them to return at the beginning of the week prior to the adjourned hearing.

36.15.10. Mr Rashid said that the architect is coming back with the builder and he has this list. After the works have been completed the architect will make an application for a completion certificate. Mr Rashid said that he would contact the Tenant to make arrangements for the various trades people to attend to the items on the list, as well as including a joiner to deal with the skirtings; and a contractor to replace the bathroom floor.

36.15.11. The Tenant said that she had been advised that the items on the "Appendix" have been outstanding since 2012 and that the original building warrant ran out in 2015. She understands that that is why building control turned up at the House. Had they not done so, she is of the view that none of these matters would have come to light.

36.15.12. The tribunal adjourned to in order that the tribunal Clerk could make copies of the A2 plans which has been lodged as **LL Rep Docs 8-10/2**.

36.16. (15) "I also believe there is issues with the electrics, as of yet I have been unable to get this verified".

36.16.1. The Tenant said that the only thing she was aware of was the sparking plug in the lounge, which had been fixed by Mr Rashid. The tenant said that the plug seems to be fine but she does not know if it has been tested by an electrician. She said that Craig from Building Control had mentioned that there were issues with the electrics but she does not have any further information about that.

36.16.2. Mr Rashid stated that there had been a loose screw and he had fixed that. He said he had never witnessed the plug sparking. It was a loose facing. He said that if the tribunal orders another EICR (the last one was 13 December 2017) it will be done. It already includes the electrics in the extension. Mr Rashid said that he did not have a copy of the PAT but was sure it has been done. Mr Rashid confirmed that no further EICR has been obtained since the sparking plug was fixed by him and the smoke alarms were fitted.

37. Discussion at conclusion of hearing

37.1. The tribunal chair explained to parties the further likely procedure in relation to the Application.

37.2. The tribunal chair asked Mr Hussain to ensure that his wife understood that if the tribunal makes a repairing standard enforcement order ("RSEO") that it will name her as the owner and Landlord of the House and will be registered against the House by the Keeper of the Registers. The tribunal Chair also indicated that the RSEO may specify a much shorter time frame for works than the amended date for compliance with the terms of the building warrant and the Landlord would be required to comply with the RSEO in the time period stipulated, or to apply for an extension of time by variation of the RSEO, which application would be considered by the tribunal. Mr Hussain and the Landlord confirmed that they understood this, as did Mr Rashid.

37.3. Mr Rashid asked what would happen if the work is carried out before the expiry of any period specified in an RSEO. The tribunal members explained that parties can advise the tribunal if they believe that all work has been carried out and produce documents in relation to the work, as well as the fact that a re-inspection of the House may be arranged.

37.4. The tribunal chair asked all parties whether they had anything else which they wished to say. Mrs Begum said, via translation by Mr Hussain, that she wishes to evict the Tenant from the House so that her son can move into the House. The tribunal chair advised that any issues relating to an eviction application she has made are not connected to the repairs Application and will be dealt with at a separate private rented sector case management discussion which has been fixed by the tribunal and notified to parties.

37.5. The hearing concluded and the tribunal members proceeded to deliberate.

38. The tribunal made the following findings-in-fact:

- a. The Landlord is the owner of the House.
- b. A private residential tenancy exists between the Landlord's husband Mr Sharowar Hussain and the Tenant dated 13 December 2017 with a date of entry on 14 December 2017.
- c. The Landlord's Representative manages the tenancy on behalf of the Landlord and her husband.
- d. The Tenant took possession of the House on or about 14 December 2017.

- e. A Check-in Inventory was prepared for the Landlord's Representative by 'Nolettinggo' dated 15 December 2017.
- f. The Landlord has been notified of all the repairs issues that are listed by the Tenant the Application.
- g. The skylight and/or the roof on the extension on the House is not wind and watertight.
- h. The skylight and/or the roof on the extension on the House fails to meet the repairing standard, paragraphs 1(a) and (b).
- i. The fridge freezer is not in a reasonable state of repair and proper working order.
- j. The fridge freezer is in the garden of the House.
- k. The fridge freezer fails to meet the repairing standard, paragraph 1(d).
- l. The brick pillar at the corner of the external boundary wall in the front garden is broken.
- m. The coping stones to the external boundary walls in the front garden, and on the internal dwarf wall are broken and/or missing.
- n. The external boundary walls and the internal dwarf wall in the front garden fail to meet the repairing standard, paragraph 1(b).
- o. Two additional smoke alarms and a heat alarm have been installed and interlinked with the existing hard-wired smoke alarm system since the Application was made.
- p. The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and meets the repairing standard paragraph 1(f).
- q. The carpets in the upstairs hall, front bedroom and master bedroom are extensively stained and have been in that condition since the start of the tenancy (other than one stain on the master bedroom carpet, which was caused by the Tenant's son during the tenancy).
- r. The dirt/staining on the carpets which has been present since the start of the tenancy is not a failure, in itself, to meet the repairing standard paragraphs (1)(d) or (e).

- s. The upstairs carpet in the front bedroom is threadbare, with frayed edges next to the wall and no carpet gripper to attach it to the floor.
- t. The door bar at the threshold of the upstairs front bedroom carpet with the hall carpet has been missing since the start of the tenancy.
- u. The carpet fitting in the front upstairs bedroom, including its threadbare and frayed condition, the missing gripper to secure it to the floor and the missing door bar, is not in a reasonable state of repair or a furnishing capable of being used safely for the purpose for which it is designed; and there has been a failure to meet the repairing standard, paragraphs (1)(d) and (e).
- v. There is an exposed nail on the stairs which is protruding from the stair carpet.
- w. Because of the way in which the stair carpet has been fitted, the nails on the stairs regularly become loose, protrude from the carpet and require to be hammered back in.
- x. The stair carpet fitting, in particular the nails which protrude from the carpet, is not in a reasonable state of repair or a furnishing capable of being used safely for the purpose for which it is designed and there has been a failure to meet the repairing standard, paragraphs (1)(d) and (e).
- y. The floor tiling in the upstairs bathroom is cracked, there are loose tiles and there is missing grouting.
- z. The bathroom floor is not in a reasonable state of repair and does not meet the repairing standard, paragraphs 1(b) and (d).
- aa. The bath is slow draining because the way in which the pipework has been fitted beneath the bath is unusual.
- bb. The bath drains even more slowly when someone is standing in it to shower.
- cc. As a result of the problems with the drainage from the bath, the House is not in all respects reasonably fit for human habitation and the installations in the house for sanitation are not in a reasonable state of repair and proper working order, so there has been a failure to ensure that the House meets the repairing standard, paragraphs (1)(a) and (c).
- dd. The kitchen extraction system is not ducted externally.

- ee. The kitchen extraction system does not have the appropriate flow rate for its location.
- ff. The kitchen extraction system failed to pass a building warrant inspection and has been listed as an item requiring to be repaired or replaced before a completion certificate can be applied for.
- gg. The kitchen extraction system is not in a reasonable state of repair or in proper working order and fails to meet the repairing standard, paragraphs (1)(a) and (d).
- hh. The over hob hood is a recirculating unit which is not designed to vent externally.
- ii. There are charcoal filters sitting above the metal grill in the over hob hood which were inserted by the Landlord's Representative.
- jj. There are no missing parts in the over hob hood and the appliance is in a reasonable state of repair, in proper working order and meets the repairing standard, paragraph (1)(d).
- kk. There are a number of skirtings in the kitchen/dining and rear downstairs hall which are damaged or are missing.
- ll. The damaged / missing skirting boards do not meet the repairing standard, paragraph (1)(b).
- mm. The en-suite shower room door handle is loose.
- nn. The loose handle in the en-suite shower room is not in a reasonable state of repair and fails to comply with the repairing standard, paragraph (1)(d).
- oo. The lock on the en-suite shower room door is operational, although it is awkward to access because of the size and location of the handle and lock.
- pp. The lock on the en-suite shower room door is in proper working order and complies with the repairing standard paragraph (1)(d).
- qq. There are nine items of work outstanding in terms of the building warrant which was granted for the extension at the House, which have been outstanding since prior to the start of the tenancy.
- rr. In December 2018, the Landlord's husband applied to the local authority building control department for an extension of the time required to complete the specified works and has been granted an extension until September 2019 to complete the specified works and apply for a completion certificate.

- ss. The extension is not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the House are not in a reasonable state of repair and proper working order; and the house fails to comply with the repairing standard, paragraphs (1)(a) and (1)(b).
- tt. There was a sparking plug in the lounge, to which a repair was carried out by Mr Shahid.
- uu. The most recent EICR is dated December 2017, which pre-dates the said sparking plug being fixed and the additional three alarms being added to the smoke and heat detection system.
- vv. There is no PAT certificate in respect of the appliances provided in the House.

39. Discussion regarding the items in the Application and the repairing standard, paragraphs (1)(a) to (f)

39.1. (1) "The skylight in the extension currently has a tarpaulin over it which is held down with bricks and roof slates."

39.2. The Tenant's complaint, as developed in the Application documentation and at the hearing is that the skylight and or roof of the extension leaks when it is raining. Despite the fact that there was no damp reading on the ordinary member's meter at the time of the tribunal's inspection, the tribunal is satisfied on the evidence of the Tenant that on the balance of probabilities the skylight and/or roof of the extension continue(s) to leak when it rains, despite some repairs works being carried out on the instructions of the Landlord's Representative in October 2018. The tribunal members viewed markings on the ceiling which were consistent with water having run down the area. The Landlord's Representative appeared to accept that the tarpaulin which had previously been on the roof, which he had been instructed by the local authority to remove, had performed the role of preventing water ingress and that once it was removed, water penetrated the rear extension. The tribunal was of the view that nothing could be taken inferred from the photograph on page 58 of the Inventory, which had been referred to by the Landlord's Representative. The tribunal accepted that the works carried out in October 2018 have not resolved the problem (noting that the reference to tiles appeared to refer to a different roof construction from that at the House). It appears that all has been done is the application of mastic around the perimeter of the widow. No evidence has been produced on behalf of the Landlord that the contractors have replaced the flashing. The work does not look professional. (The tribunal refers to the photograph taken during the inspection from the master bedroom window). The Landlord's Representative appears to accept that there are

continuing issues with water ingress as he has recently instructed roofers to attend and inspect; and instructions have been given for them to re-attend to carry out additional remedial works to attempt to resolve the problem. The tribunal is satisfied on the balance of probabilities that there is still a problem with water penetrating the skylight and / or roof of the extension on occasions, which may be due to prevailing weather conditions at that time.

39.3. The skylight and / or the roof on the extension of the house fail to meet the repairing standard paragraphs (a) and (b).

39.4. (2) "The fridge freezer wasn't in complete working order but I was told to use it anyway and now it's broken and I'm being held accountable". "The fridge freezer was also mentioned as inadequate in the check in inventory."

39.4.1. The tribunal accepted the Tenant's evidence, as supported by the check-in Inventory prepared by a third party, that the fridge freezer was not in a reasonable state of repair and proper working order at the start of the tenancy in December 2017. The drawers were missing (other than one incompatible salad crisper which had been inserted in place of a missing drawer). The tribunal accepted, on the basis of emails lodged by the Tenant, that she had been advised on behalf of the Landlord that it would not be replaced and she should use it anyway. That involved being expected to place food directly on evaporator plates which lead to a build up of ice and eventually to the appliance breaking when she tried to defrost it. The tribunal accepted on the basis of the Tenant's evidence and emails which she had lodged that she had asked for it to be uplifted and the Landlord had refused to do so. The tribunal considered that the Tenant could not, in the circumstances, be faulted for putting the broken appliance in the garden in order that she could put a replacement in its place (paid for by the Tenant) in order that she had the facility to refrigerate and freeze food. The Landlord's Representative provided an undertaking at the hearing that the broken appliance would be uplifted from the garden.

39.4.2. The Landlord having provided a fridge freezer under the tenancy which is not in a reasonable state of repair or in proper working order, has failed to meet the repairing standard, paragraph (1)(d).

39.5. (3) "The wall tops in the front garden are broken and falling off."

39.6. The tribunal observed the state of the external walls during the inspection and accepted the Tenant's evidence, as supported by the Check-in

Inventory that they had been in a poor condition at the date of entry; the condition had deteriorated since then. The landlord accepted that at no point during the tenancy had any repairs been carried out to the walls, despite the Inventory and the Tenant's complaints.

39.7. The tribunal decided that the external boundary walls (including the pillar) and the dwarf walls in the front garden fail to meet the repairing standard paragraph (1)(b).

39.8. (4) "There isn't enough fire and heat alarms in the house, this was also mentioned in the check in inventory."

39.9. The tribunal formed the view that despite there being insufficient alarms at the time that the Application was made, the additional three alarms (two smoke alarms and one heat detector) which have recently been installed and interlinked to the previous system are sufficient when taken together with the previous provision to comply with the duty imposed by the repairing standard, paragraph (1)(f).

39.10. The tribunal accepted the Tenant's evidence that the heat alarm in the kitchen regularly goes off when she is cooking but the tribunal decided that this was not a failure to meet the repairing standard. The problems she is experiencing with that alarm may be assisted by the orders the tribunal has imposed, below, in relation to the extraction system.

39.11. The tribunal decided that the Landlord has ensured that the House has satisfactory provision for detecting fires and for giving warning in the event of fire and suspected fire and does not fail to meet the repairing standard, paragraph (1)(f).

39.12. The tribunal observed during the inspection, as noted above, that there is no CO alarm in the same room as the boiler. Although that is not included as a complaint in this Application in relation to paragraph (1)(g) of the repairing standard, the Landlord and her Representative are now aware of that issue and the Landlord's Representative undertook at the hearing to make appropriate provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in accordance with current regulations relative to such alarms.

39.13. (5) "The carpets upstairs are threadbare, stained with big black stains, there's no carpet grippers in the doorways"

- 39.14. The tribunal observed the state of the carpets at inspection, including the upstairs front bedroom carpet, which was threadbare, frayed at the edges next to the wall with loose fibres sticking up, had no carpet gripper to attach it to the floor and had no door bar at the threshold with the hall carpet, which left an unsafe join, which the occupants might trip over; and that fact that all of the upstairs carpets were dirty with extensive areas of staining.
- 39.15. The tribunal accepted that Tenant's evidence, as supported by the Inventory that the door bar at the threshold between the front bedroom and the upstairs hall had been missing since the start of the tenancy. The tribunal also accepted the Tenant's evidence that the front bedroom carpet had been threadbare and frayed at the edges next to the wall since the start of the tenancy.
- 39.16. The tribunal accepted the Tenant's evidence, as supported by the Inventory that the front bedroom carpets were dirty and extensively stained at the start of the tenancy (other than one stain which the Tenant stated during the inspection had been caused by her young son playing with slime) and it was accepted by the Landlord's Representative that they had not been cleaned by the Landlord during the tenancy, with the Tenant being told that she would have to arrange and pay for that herself.
- 39.17. The tribunal decided that the extent of the dirt/staining, on its own, is not a failure to comply with the repairing standard, paragraphs (d) and (e) as the carpets could still be said to be in a reasonable state of repair and were capable of being used safely for the purpose for which they were designed, despite being dirty/stained.**
- 39.18. However, the tribunal decided that there was a failure to meet the repairing standard, paragraphs 1(d) and (e) in relation to the condition of the carpet in the front upstairs bedroom, including the fact that it was threadbare, frayed with loose fibres sticking out, had no carpet gripper to attach it to the floor and had no door bar at the threshold with the hall, leaving an unsafe edge which an occupant could trip over.**
- 39.19. (6) "There's exposed nails on the stairs which we have to regularly hammer back in".**
- 39.20. One nail was observed by the tribunal to be protruding at the time of the inspection. The tribunal accepted the Tenant's evidence and that of the Landlord's Representative that tacks regularly become loose and protrude from the carpet on the staircase. They then required to be hammered back in (which is not a permanent solution as the problem recurs). The Landlord's

Representative had performed the hammering on at least one occasion during the tenancy. He had also taken advice from a carpet fitter and had been told that it was occurring because of the way that the carpet was fitted on the stairs.

39.21. The protruding tacks are dangerous and have caused injury to the Tenant and her family more than once.

39.22. The tribunal decided that there was a failure to meet the repairing standard, paragraphs 1(d) and (e) in relation to the tacks which worked their way out of the carpet (with one protruding at the time of inspection), causing the potential for injury to the occupants.

39.23. (7) "The floor tiles in the upstairs bathroom are all dirty and cracked. I have tried on numerous occasions to clean them but with no joy, they also need to be grouted and re-sealed".

39.24. The bathroom floor was observed at inspection to be a relatively small area. The tiling is extensively cracked, there are loose tiles and the grouting is insufficient.

39.25. Having first said during the hearing, via Mr Hussain, that she was not prepared to replace the bathroom floor, the Landlord then indicated that she would do so.

39.26. The tribunal decided that the bathroom floor is not in a reasonable state of repair and does not meet the repairing standard, paragraphs 1(b) and (d).

39.27. (8) "The bath doesn't drain correctly because the plumbing is inadequate, they have been told this but still ignore it."

39.27.1. Although the tribunal were unable to see the pipework during the inspection, the tribunal accepted the evidence of the Tenant (with reference to the Homeserve plumber's inspection) and the Landlord's Representative that the way in which the pipework has been fitted beneath the bath is unusual. The tribunal also accepted the evidence of the Landlord's Representative that the bath is "slow draining" and the Tenant's evidence that it drains even more slowly when someone is standing in it to shower.

39.27.2. The tribunal decided that the problems with the bath drainage system meant that the House was not in all respects

reasonably fit for human habitation and the installations in the house for sanitation were not in proper working order, and fail to meet the repairing standard, paragraphs (1)(a) and (1)(d).

39.28. (9) “There is no adequate extraction system in the kitchen”

39.29. The Landlord was unable to produce any evidence that the extraction system was ducted externally, or that it had the appropriate flow rate for its location. The evidence produced by letter following the inspection by Gordon Strachan on 24 January 2019 allowed the tribunal to conclude on the balance of probabilities that it was not externally ducted, did not have the flow rate specified in the building warrant drawings and had failed to pass the building warrant inspection, as listed in the document headed “Appendix”.

39.30. The tribunal was satisfied on the evidence of the Tenant and the documents lodged by the Landlord’s Representative from Gordon Strachan Building Control and the local authority that the installed extraction system in the kitchen is not in a reasonable state of repair and proper working order, the House is not in all respects reasonably fit for human habitation and fails to comply with the repairing standard, paragraph (1)(a) and (d).

39.31. (10) “The over hob hood has no charcoal filters and I’m being expected to purchase and fit these.

39.32. The tribunal found on inspection that the over hob hood is a recirculating unit which is not designed to vent externally. At the time of the Application there were no charcoal filters fitted on the metal grill. These were inserted at a later date by the Landlord’s Representative and although not attached to the metal grill, were sitting above it within the unit.

39.33. Despite the Tenant’s suggestion that there are still missing parts (on the basis of what she was advised by a friend) there was no evidence to enable the tribunal to form that conclusion on the balance of probabilities.

39.34. The tribunal decided that the appliance is in a reasonable state of repair and proper working order and meets the repairing standard, paragraph (1)(d).

39.35. (11) “There is skirting boards missing in the kitchen”.

39.36. There were a number of skirtings in the kitchen/dining room and rear downstairs hall which were seen at inspection to have fallen off or be missing.

39.37. The Landlord's Representative indicated at the hearing that he intended to instruct a joiner to repair / replace these.

39.38. The tribunal decided that the damaged / missing skirting boards are not in a reasonable state of repair and do not meet the repairing standard, paragraph (1)(b).

39.39. (12) Extension door - Withdrawn

39.39.1. Complaint number (12) was withdrawn by the Tenant during the hearing.

39.40. (13) "The door handle into the en-suite is too small and cannot be locked"

39.41. The tribunal found on inspection that the en-suite shower room door handle is loose and the lock is operational, although it a little awkward to access because of the size and location of the handle and lock.

39.42. The tribunal decided that the loose handle is not in a reasonable state of repair and fails to comply with the repairing standard, paragraph (1)(d); and that the lock is in proper working order and complies with the repairing standard paragraph (1)(d).

39.43. (14) "The actual extension itself hasn't got a building warrant and hasn't had one since 2015. There are also a lot of outstanding issues with the extension that building control have been chasing the landlord to fix since 2012."

39.44. The tribunal was satisfied on the evidence, including the letter following the inspection by Gordon Strachan on 24 January 2019, that there are outstanding required works in terms of the building warrant for the extension, listed as items 1-9 on the document headed "Appendix", as referred to above.

39.45. The Landlord's husband, via Mr Strachan, has applied for an extension of the time to complete the works and has been granted an extension to September 2019.

39.46. The tribunal decided that the extension in the House is not wind and watertight and in all other respects reasonably fit for human habitation, the structure and exterior of the House is not in a reasonable state of repair and in proper working order; and the House fails to comply with the repairing standard, paragraphs 1(a) and 1(b).

39.47. (15) "I also believe there is issues with the electrics, as of yet I have been unable to get this verified".

39.48. The tribunal accepted the Tenant's and Landlord's Representative's evidence that there had been a sparking plug in the lounge, which had been repaired by Mr Shahid.

39.49. The EICR which has been produced on behalf of the Landlord is dated December 2017, which pre-dates the said plug being fixed and the additional three alarms being added to the smoke detection system, as noted above.

39.50. The tribunal has not been provided with a copy of a PAT certificate in respect of the appliances provided in the House.

39.51. The fridge freezer is not in working order and a new fridge freezer is also required to be supplied in terms of the attached RSEO, which will require to be PAT tested.

39.52. There was no evidence lead of other specific electrical issues beyond those referred to above, simply that the Tenant had been advised by the inspector that there were other electrical issues.

39.53. The "Appendix" lists an issue with the bathroom fan, as well as the flow rate from the kitchen extraction system.

39.54. Mr Shahid advised that he was intending to instruct another EICR to be carried out.

39.55. The tribunal decided that the installations in the House for the supply of electricity were not in a reasonable state of repair and proper working order and there has been a failure to comply with the repairing standard, paragraph (1)(c).

40. Repairing Standard Enforcement Order (RSEO)

40.1. Because the tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the repairing standard and has therefore made a Repairing Standard Enforcement Order ("RSEO") in terms of Section 24(2) of the 2006 Act.

40.2. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 30 days having regard to the length of time for which the majority of these works have been outstanding, since the first day of the tenancy on 14 December 2017.

40.3. As noted above, the tribunal members had advised the parties at the hearing that if any RSEO were made it would specify a time for compliance and that this date may be earlier than the extended period for compliance with any works required in terms of the building warrant.

41. Right of Appeal

41.1. 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.

42. Effect of section 63

42.1. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S Tanner

SignedSusanne L M Tanner, Queen's Counsel
Chairperson of the tribunal

Date 16 February 2019

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



This is the schedule of photographs referred
to in the Foregoing Decision of the Tribunal
in relation to Application reference FTS/HPC/EP/18/1897
dated 16 February 2019

S Tanner

Signed

SUSANNE L M TANNER DC

Name

16 February 2019

Date

SCHEDULE OF PHOTOGRAPHS

ADDRESS: 25 CUIKEN AVENUE, PENICUIK EH26 0DR

DATE: 21ST JANUARY 2019

REFERENCE: FTS/HPC/RP/18/1897

PHOTOGRAPHS: ALL TAKEN ON DAY OF INSPECTION.



1. FRONT ELEVATION



2. REAR ELEVATION



3. FRONT BOUNDARY WALL



4. DWARF WALL IN FRONT GARDEN



5. EXTENSION BED-ROOFLIGHT



6. "DRY" READING AT ROOFLIGHT



7. FRIDGE/FREEZER—IN REAR GDN



8. FREEZER SECTION



9. HEAT DETECTOR IN KITCHEN



10. SMOKE & CO DETECTOR IN EXT PASS.



11. GAS BOILER IN DINING AREA



12. SMOKE DETECTOR IN HALL



13. SMOKE DETECTOR IN LIVING RM



14. SMOKE DETECTOR IN UPPER LANDING



15. LOCATION OF SHARP PIN



16. FRONT SMALL BED—NO BEADING



17. REAR BEDROOM – CARPET STAINS



**18. EXTENSION ROOFLIGHT
BED**



**19. DEFECTIVE CARPET-FRONT SMALL
BED**



20. BATHRM – CRACKED TILE



21. BATHRM – DEFECTIVE GROUT



22. BATH



23. KIT CEIL – EXTRACTOR FAN



24. COOKER HOOD



25. COOKER HOOD FILTERS



26. MOTOR WITHIN HOOD



27. KITCHEN SKIRTING



28 and 29. LOOSE SKIRTINGS IN KITCHEN



30. LOOSE SKIRTING IN KITCHEN



31. BED DOOR TO EXT PASSAGE



32. EN SUITE DOOR HANDLE



33. EXT ROOF AND ADJOINING VENT



34. REAR WALLS OF EXT AND ADJ EXTENSION

MIKE LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE 22nd JANUARY 2019

