

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 60 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0233

Title no/Sasines Description: LAN 95710

20 Citadel Place, Motherwell, ML1 3NT ("the House")

The Parties:-

**Miss Claire Bunch, residing at the House
("the Tenant")**

Mr Anthony Baguley, 50 Upper Brighton Road, Worthing, West Sussex, BN14 9HT ("the Landlord")

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (RSEO) relative to the house dated 7 September 2017 determined that the Landlord has complied with the Order and that a Certificate of Completion to that effect should be issued.

The Tribunal comprised:-

Nicola Weir, Legal Member

Carol Jones, Ordinary Member

Background

1. By Application received on 21 June 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:- 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; any fixtures, fittings and appliances provided by the landlord under

the tenancy are in a reasonable state of repair and in proper working order; the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complained that the back bedroom window does not open fully; there are no adequate heat or smoke alarms; that the bathroom floor was removed to repair a water leak but has not been replaced; that the cold water tap on the bath does not work (no water); that there is no carbon monoxide alarm; that the living room windows do not open fully; that there is no EICR available for electrical safety; and that there is no Gas Safe certificate. Apart from the application form, the Tenant also submitted as part of her Application some tenancy documentation, namely a copy AT5 Form and Notice to Quit, both dated 10 January 2014 prepared by the Landlord's agent, EMPS Property, on his behalf; and an email dated 21 April 2017 from the Tenant to the Landlord as proof that she had intimated repairs issues to him, together with the Landlord's response email dated 27 April 2017. The email dated 21 April 2017 mentioned some of the repairs issues subsequently contained in the Tenant's Application, namely problems arising from the leak in the bathroom, that there is no heat alarm and that the smoke alarm does not meet the legal standard as there was only one alarm in the hall that does not work and that the back bedroom window does not open fully and is their fire escape in the event of fire. The email also requested that the Landlord service the boiler at least once a year.

2. On 23 June 2017, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 11 July 2017.
3. Following service of the Notice of Referral, written representations were submitted by the Landlord who indicated that he would not be attending the Hearing. The Tenant indicated that she would be attending the Hearing and did not wish to submit written representations.
4. On 3 August 2017, the Tribunal issued a Notice of Direction to the Parties in terms of Schedule 2, Paragraphs 2(1) and 3(1)(b) of the Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Regulations"). The Direction required the Tenant to submit to the Tribunal evidence that prior notification of all required works detailed in the Tenant's Application to the Tribunal had been made to the Landlord as it appeared to the Tribunal that only some of the said works had been notified to the Landlord. The Direction also required the Landlord to submit to the Tribunal a copy of the Tenancy Agreement/Lease between the parties; a current gas safety record from a Gas Safe registered engineer; and, in the event that any smoke or heat alarms in the House were hard-wired, a current Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) in

respect of any portable electrical appliances from a suitably qualified and registered SELECT or NICEIC electrical contractor. Both parties required to submit the documentation detailed in the Direction by 12 noon on 11 August 2017, subsequently extended to 18 August 2017. In response to the Direction, the Landlord submitted a Gas Safety Record dated 3 August 2017, EICR dated 7 August 2017 and copy terms of business between him and his agent, EMPS Property. He did not submit a copy of the Tenancy Agreement/Lease. The Tenant emailed the Tribunal with an update regarding the bathroom leak and the electrical safety check. She submitted some copy text messages from 19 June 2017 which appeared to be between herself, the Landlord and the Landlord's contractor referring to the bathroom issues and problems with the boiler and from 2 August 2017 which appeared to be between herself and the Landlord referring to the electrical work, smoke alarms and a complaint from the Tenant's downstairs neighbour alleging he was getting further water through his ceiling. The Tenant also submitted some photographs showing the condition under the bath before the repairs were carried out. All documentation submitted by the Landlord and Tenant in response to the Direction was submitted before the extended time limit of 18 August 2017.

5. The Tribunal inspected the house on the morning of 21 August 2017. The Tenant, her partner and her child were present during the inspection.
6. Following the inspection of the house, the Tribunal held a Hearing at Brandon Gate, Ground Floor Block C, Leechlea Road, Hamilton, ML3 6AU. The Tenant was present and gave evidence.
7. Following the Hearing, the Tenant submitted further paperwork to the Tribunal by email on the afternoon of 21 August 2017 and on 23 August 2017. This was copied to the Landlord and the Tribunal but was not taken into account by the Tribunal as the Hearing had finished, the Tribunal had already made its decision in the case and it would not have been just to do so.
8. Following the hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) in relation to the house dated 7 September 2017. In terms of the RSEO, the Landlord was required (1) to repair, or, as necessary replace, the back bedroom window of the House to ensure that it can open and close properly and is fully operational such that the House is wind and watertight and in all other respects reasonably fit for human habitation; (2) to submit to the Tribunal a report from a Gas Safe registered engineer confirming that the gas boiler has been serviced, when the service took place and that any defects identified have been rectified, to ensure that the gas boiler is in a reasonable state of repair and in proper working order; (3) to make good the bathroom floor by installing a proper floor covering of a type suitable for use in a bathroom over the exposed plywood to ensure that the flooring is in a reasonable state of repair and in proper working order; (4) to install a hard-wired smoke detector in the ground floor entrance hallway

interlinked to the existing alarms to ensure that there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Housing (Scotland) Act 2006: Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires and current building regulations and (5) to submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke detectors and heat alarm, and a Portable appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT or NICEIC contractor, together with a report or other written evidence from such a contractor confirming that any remedial action or further investigation identified as necessary in the EICR and PAT has been carried out, to ensure that the installations in the House for the supply of electricity are in a reasonable state of repair and in proper working order. The Landlord was required to complete the work within a period of 6 weeks from the date of service of the RSEO.

9. On 9 November 2017, the Landlord re-submitted to the Tribunal a copy of the Gas Safety Record dated 3 August 2017 which he had submitted prior to the original Inspection and Hearing in response to the Tribunal's Notice of Direction, all as referred to above.
10. On 10 November 2017, the Ordinary Member of the Tribunal carried out a Re-inspection of the House. A copy of her Re-inspection Report dated 13 November 2017 is attached to this Decision. In terms of the RSEO (retaining the numbering in the RSEO as specified above), it was noted that the following works had been undertaken:- (1) The back bedroom window has been repaired and now opens and closes properly; (3) A new vinyl floor covering has been laid in the bathroom; and (4) A hard-wired and interlinked smoke alarm has been fitted to the ceiling of the ground floor entrance hall. Works specified in the RSEO noted as outstanding were as follows:- (2) It appears from this inspection that some work has been done to the heating system since the initial Tribunal inspection including the installation of a booster pump. The Tenant confirmed the heating is working and she has hot water but the landlord has not provided a report from a Gas Safe registered engineer to confirm the boiler has been serviced; (3) The new vinyl in the bathroom is not properly secured by a threshold bar where it meets the hall carpet, it has a rough edge and could easily cause a trip hazard; and (5) The Tenant confirmed some works have been carried out to rectify various electrical issues since the initial Tribunal inspection including the replacement of 2 socket covers in the living room and hall and the installation of a new light fitting in the ground floor entrance hall but the landlord has not provided an Electrical Installation Condition Report or a Portable Appliance Test. It was also noted at this inspection that the extractor fan in the bathroom is still not working. The Re-inspection Report was circulated to parties for their comments.

11. On 14 November 2017, the Landlord submitted to the Tribunal an EICR dated 10 November 2017. There was no PAT attached and it is assumed that there are no portable appliances supplied under the lease by the Landlord which would require testing
12. Responses were received from both parties. The Landlord's response dated 23 November 2017 stated that he did not agree with the terms of the Re-inspection Report in that he had submitted a Gas Safety Record and electrical report; the electrician had confirmed to him that when he carried out the recent electrical inspection, the extractor fan in the bathroom had been working but that he had now asked the electrician to attend at the House again regarding this matter; that he was aware that a threshold bar had not been fitted in the bathroom and had now instructed the supplier to return to the House to fit it. The Landlord stated that he did not think that a Rent Relief Order should be made as he felt he had complied with all the requests made of him and the Tenant was not paying the full amount of the rent to him anyway. He did not wish to attend a Hearing. The Tenant's response dated 29 November 2017 was that she did agree with the terms of the Re-inspection Report; she alleged further problems with the windows and complained that the fixtures generally in the House were old; she alleged that the Landlord was over-charging her for the rent and stated that a Rent Relief Order should be made of 40-50%. She did wish to attend a further Hearing.
13. In view of the Landlord's response that he was arranging for further works to be carried out, the Tribunal subsequently sought clarification from the parties on the outstanding issues in terms of the RSEO. As regards the threshold bar in the bathroom, the Tenant confirmed that this had been fitted. The Landlord confirmed the same and also exhibited a receipt dated 27 November 2017 which he stated was the purchase price of the bar. The Tenant stated that the extractor fan in the bathroom was still not working. The Landlord stated that his electrician had reported back to him that it was working fine. The Tenant still did not think that the boiler had been serviced but did confirm that she had not had any further problems with the boiler. The Landlord advised that he could not find a service report pre-dating the Gas Safety Record but stated that he has had all reported faults and defects with the boiler rectified and understands it to be working fine. The Tenant also intimated that the living room window is still not closing properly and that there is black mould near the back bedroom window in respect of which she submitted photographs.
14. The Tribunal considered the terms of the Re-inspection Report and all the written representations and other documentation submitted by the parties following the issue of the RSEO. In terms of Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, as amended, the Tribunal, having regard to the facts not disputed by the parties was of the view that it was able to make sufficient findings to determine the case without having a further Hearing. The Tribunal considered that to do so would not be contrary to

the interests of the parties. The Tribunal accordingly proceeded to make their decision.

Reasons for decision

15. At Re-inspection it had been noted that the requirements of paragraph (1) of the RSEO in respect of the back bedroom window had been satisfied.
16. At Re-inspection it had been noted that further repairs had been carried out to the boiler and that the Tenant had confirmed at that time that the boiler was working. According to the Tenant's more recent written representations, this was still the position. In view of this and the fact that the Tribunal had previously seen a satisfactory Gas Safety Record dated 3 August 2017, the Tribunal was of the view that it no longer required sight of a servicing report in respect of the boiler in order to be satisfied that the Repairing Standard was now met in respect of the boiler. Accordingly, the Tribunal considered that the requirements of paragraph (2) of the RSEO had been satisfied.
17. At Re-inspection, it had been noted that the requirements of paragraph (3) of the RSEO in respect of the bathroom floor had been satisfied, other than the fitting of a threshold bar. The parties have both confirmed since that the threshold bar has been fitted and accordingly, the Tribunal is satisfied that paragraph (3) of the RSEO has now been fully complied with.
18. At Re-inspection it had been noted that the requirements of paragraph (4) of the RSEO in respect of the smoke detectors had been satisfied.
19. At Re-inspection it had been noted that most of the electrical defects which had been raised by the Tenant during the original Inspection appeared to have been rectified, with the exception of the extractor fan in the bathroom. Although there remains a dispute between the parties as to whether or not the extractor fan is working, the Tribunal notes that the extractor fan did not form part of the RSEO as it had not been notified to the Landlord as part of the Tenant's original application to the Tribunal. The Tribunal further noted that the EICR dated 10 November 2017 submitted to the Tribunal by the Landlord was from a suitably qualified and registered NICEIC electrical contractor and was up to date, complete and satisfactory in its terms, such that the Tribunal was satisfied that the requirements of paragraph (5) of the RSEO had been met.
20. Additional matters raised by the Tenant in her representations, including issues concerning the windows and black mould are outwith the scope of the RSEO and would have to form part of a fresh application to the Tribunal in order to be considered. Likewise, the dispute between the parties concerning rent referred to by both parties in their representations is outwith the remit of this Tribunal.

21. The Tribunal was therefore satisfied that all works required in terms of the RSEO had been completed and the RSEO accordingly complied with by the Landlord. Accordingly, the Tribunal was of the view that a Certificate of Completion to that effect should be issued.

Decision

The Tribunal determined that the Landlord had complied with the RSEO and that a Certificate of Completion to that effect should be issued.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third-party applicant aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

In terms of Section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Nicola Weir

Signed..... Date: 28 March 2018
Nicola Weir, Legal Member of the Tribunal

Glasgow, 28th March 2018
This is the Re-inspection Report referred to in the
Statement of Decision of earlier date herewith.
Nicola Weir, Legal Member of the Tribunal

Housing and Property Chamber First-tier Tribunal for Scotland



Re-inspection report



Date of inspection: Friday 10 November 2017

Reference Number: FTS/HPC/RP/17/0233

Property: 20 Citadel Place, Motherwell ML1 3NT

Surveyor: Carol L Jones MA MRICS

Previous Inspection: The subject property was inspected by the First-tier Tribunal for Scotland on 21 August 2017 and as a result a Repairing Standard Enforcement Order dated 7 September 2017 was served.

Access: The tenant, Miss Claire Bunch provided access.

Weather: Sunny spells, cold and dry.

In attendance: Miss Claire Bunch attended the inspection.

Repairing Standard Enforcement Order (RSEO)

The following works are required by the RSEO dated 7 September 2017:

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord:-

- (1) To repair, or, as necessary replace, the rear bedroom window of the House to ensure that it can open and close properly and is fully operational such that the House is wind and watertight and in all other respects reasonably fit for human habitation.
- (2) To submit to the Tribunal a report from a Gas Safe registered engineer confirming that the gas boiler has been serviced, when the service took place and that any defects identified have been rectified, to ensure that the gas boiler is in a reasonable state of repair and in proper working order.
- (3) To make good the bathroom floor by installing a proper floor covering of a type suitable for use in a bathroom over the exposed plywood to ensure that the flooring is in a reasonable state of repair and in proper working order.
- (4) To install a hard-wired smoke detector in the ground floor entrance hallway interlinked to the existing alarms to ensure that there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Housing (Scotland) Act 2006: Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires (attached) and current building regulations.
- (5) To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke detectors and heat alarm, and a Portable appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT or NICEIC contractor, together with a report or other written evidence from such a contractor confirming that any remedial action or further investigation identified as necessary in the EICR and PAT has been carried out, to ensure that the installations in the House for the supply of electricity are in a reasonable state of repair and in proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice.

Works in the RSEO undertaken - see attached photographs:

- (1) The back bedroom window has been repaired and now opens and closes properly.
- (3) A new vinyl floor covering has been laid in the bathroom - see also below.
- (4) A hard-wired and interlinked smoke alarm has been fitted to the ceiling of the ground floor entrance hall.

Works in the RSEO outstanding - see attached photographs:

- (2) It appears from this inspection that some work has been done to the heating system since the initial tribunal inspection including the installation of a booster pump. The tenant confirmed the heating is working and she has hot water but the landlord has not provided a report from a Gas Safe registered engineer to confirm the boiler has been serviced.
- (3) The new vinyl in the bathroom is not properly secured by a threshold bar where it meets the hall carpet, it has a rough edge and could easily cause a trip hazard.
- 5) The tenant confirmed some works have been carried out to rectify various electrical issues since the initial tribunal inspection including the replacement of 2 socket covers in the living room and hall and the installation of a new light fitting in the ground floor entrance hall but the landlord has not provided an Electrical Installation Condition Report or a Portable Appliance Test. It was also noted at this inspection that the extractor fan in the bathroom is still not working.

All photographs were taken at the re-inspection on 10 November 2017 (see schedule below).

Comments: This report will be submitted to the First-tier Tribunal for Scotland (Housing and Property Chamber) for their decision.

**Carol L Jones MA MRICS
Ordinary Member (Surveyor)
First-tier Tribunal for Scotland (Housing and Property Chamber)**

13 November 2017

**Schedule of photographs taken during the re- inspection of 20 Citadel Place, Motherwell
ML1 3NT by the ordinary member (surveyor) of the First-tier Tribunal for Scotland
(Housing and Property Chamber) on the 10 November 2017.**

Reference Number : FTS/HPC/RP/17/0233



Rear Bedroom Window



Boiler in Kitchen cupboard



Bathroom Floor - new vinyl



Bathroom Floor - loose fitting vinyl/no threshold bar.



New Smoke Alarm - Ground Floor entrance hall



New light fitting - Ground Floor entrance hall



New socket cover - Hall



Extractor fan - not operational - Bathroom