

Housing and Property Chamber First-tier Tribunal for Scotland



The First Tier Tribunal for Scotland (Housing and Property Chamber).

Statement of Decision of the First -tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) under section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/RP/19/3193

Title number: REN109320

Property: 5 Sunnyside Place, Barrhead, Glasgow, G78 2RT (“the property”)

The Parties:-

Mr Kehinde Sojoni-Alogi, 5 Sunnyside Place, Barrhead, Glasgow, G78 2RT (“the tenant”)

Mr Rizwan Ahktar, 7 Witchwood Grove, Newton Mearns, Glasgow, G77 6GS (“the landlord”) represented by Infiniti Properties, 1016 Argyle Street, Finnieston, Glasgow, G3 8LX (“the letting agent”)

The Tribunal members:

Simone Sweeney (legal chairing member) and Nick Allan (ordinary surveyor member)

Decision of the Tribunal Chamber

1. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by section 14 (1)b of the Act in relation to the property, determined that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

2. The Tribunal determined that it is necessary to issue a final Repairing Standard Enforcement Order ("RSEO") as amended.
3. The decision of the Tribunal is unanimous.

Background

4. An application dated 3rd October 2019 was brought before the Tribunal by the tenant. The tenant alleged that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard. The tenant sought a determination of whether the landlord has complied with the duty imposed by section 14 (1) (b) of the Act.
5. Specifically, in his application, the tenant alleged that:

"I have been complained (sic) since 2017 of many things that needs to repair from the property but both agents and landlord, will just send an inspector to come and inspect without doing some important thing to repair in the property eg Hot water is not working since 3 mths (sic) 2) All windows are leaks for water during rain 3) All doors are broken 4) Toilet pipe are leaking of water 5) Wall are damp 6) kitchen roof has broken since 2017 until today (03/10/2019) (sic)"

6. In support of his application the tenant had provided; (i) copy tenancy agreement; (ii) series of emails between September 2015 and May 2019; (iii) copy Notices dated 7th July 2016 and 19th June 2017; (iv) letters on behalf of the landlord dated 9th March 2015, 7th July 2016 and 19th June 2017; (iv) copy deposit certificate dated 18th March 2015;(v) receipt for £400 dated 9th September 2019 and (vi) a letter from the tenant dated 25th June 2019 which had been sent to the landlord's agent.
7. Having considered the papers a convenor, with delegated powers of the Chamber President, formally accepted the tenant's application and passed to a Tribunal to determine the application.
8. An inspection of the property and hearing of evidence were assigned to take place on Monday 6th January 2020 at 10am and 11.30am respectively.

9. An inspection took place on 6th January 2020 at 10am. In attendance were the Tribunal members, Tribunal clerk, the tenant and his wife and a Polish interpreter, Ms Anna Malgorzata Wroblewska.
10. The property is a second floor tenement flat within a former local authority building. It is a three apartment flat with a main hallway leading from the main entrance door. The living room is positioned at the end of the hallway and leads into the kitchen. The bedrooms and bathroom are positioned on either side of the hallway.

Findings from inspection

11. In the course of the inspection, the Tribunal identified the following:
12. **Kitchen.** There was no hot water in the kitchen. The control panel for the immersion heater was attached to the kitchen wall. It wasn't clear if the unit was functioning correctly. The door leading into the kitchen did not close properly as the snib was missing and the handle broken. The kitchen window is positioned behind the sink. The surveyor obtained below-surface dampness readings from beneath the tiles around the window opening. High levels of dampness were obtained. A large hole was evident both in the ceiling of the kitchen and within the hot water cylinder cupboard, the result of water damage from a flood from the property above. Photographs from the inspection (attached to this decision) illustrate the extent of the damage.
13. **Living room.** The window is positioned on the front elevation, and was closed. The trickle vents were closed. The surveyor was unable to open the trickle vents. Condensation related pools of water were formed on all window sills. The living room walls were checked for dampness and high dampness readings were obtained from a section of wall between the left hand side of the window and the gable wall. The handle on the door between the living room and the hallway was loose and not working properly. An electric heater was positioned in the living room which provided the main source of heat to the room. Electric panel radiators were attached to the wall below the window were not in use by the tenant. The tenant said that when switched on the heater would produce smoke. It was also stated by the tenant that activating the electric wall heater in conjunction with the shower unit, hot water

immersion heater and various combinations of electrical appliances can overwhelm the electrical supply and cause the electrics to trip.

14. **Bedroom 1 facing to the front of the building.** The door which led from the hallway into the bedroom had broken from its hinges and was leaning against the bedroom wall. Black mould spores were evident on the wall to either side and below the window. Surface readings were taken from below the window showing notable levels of dampness. The surveyor identified condensation related mould on the bottom of the wall of the bedroom at the right hand side of the window. The window sill was damp with condensation.
15. **Bathroom.** Condensation on the tiles on the walls and behind the toilet was evident. The window sill was damp with condensation. No hot water was obtained from the tap in the bathroom sink. It was noted that the light fitting on the ceiling was an inappropriate fitting for such an environment. Black mould spores were in evidence around the bathroom window. Readings taken by the surveyor revealed dampness beneath the surface of the floor tiles to the right hand side of the WC unit and mid-way towards the bathroom door. The door handle did not close or lock properly.
16. **Bedroom 2 facing the rear of the building.** Condensation was evident on the window. Black mould spores were evident on the external wall of the room. The window sill was damp with condensation. No wall dampness readings of any significance were obtained in this room.
17. **Hallway.** During the inspection it was noted that beads of condensation were forming on the wall opposite the bathroom.
18. That water is potentially penetrating the property around the windows.
19. That no valid Electrical Installation Condition Report for the property was available.

Hearing of evidence

20. A hearing of evidence took place at Glasgow Tribunals centre at 11.30am. In attendance was the tenant and the tenant's friend, Mr Olukunle Ogunsola. The landlord was represented by Angie Wylie, general manager at Infiniti Properties. Due to the tenant's wife being absent at the hearing, the interpreter was not required to remain and did not participate in proceedings.
21. The tribunal chair took the parties through the tenant's application.

Evidence of the tenant

22. In respect of the allegation that the hot water was not working, the tenant submitted that there had been no hot water at the tenancy since July 2019. The tenant had reported the issue to the letting agent by telephone 4 times. He advised that, living at the tenancy with him is his wife and four children aged, 16, 14, 4 and 4 months. To wash, clean and cook, the family make use of water boiled in a kettle. Prior to July 2019 there had been a regular issue with hot water. To remedy the problem, the tenant would turn the water off at the mains and attempt to restart the process of heating the water. The problem was that this would cause the lights to trip. The tenant therefore had ongoing concerns with the electricity supply and wiring in the property. The response from the letting agent to his complaints was to look for another property if he was unhappy with the flat. The tenant submitted that the central heating system is not in working order either and suspected that this may be related to there being no hot water.
23. In respect of his complaint that all windows at the flat were leaking water, the tenant submitted that this has been a long standing issue. He had reported the issue to the letting agents several times. They had sent contractors to inspect the windows and the recommendation was that the windows be replaced. However the tenant had been advised that the landlord could not afford this repair and the windows remained in this state. It was confirmed that the trickle vents at the living room windows did not work and had never operated. The tenant confirmed that he kept the windows open during the summer months but felt that the entire flat was lacking in ventilation. He explained that only one of the windows in the living room opens.
24. With regards to the doors, the tenant submitted that the door of bedroom 1 has been an issue since 2017. The tenant referred to an email exchange between himself and the letting agents from 31st January 2017. The email was within the papers which the tenant had lodged with his application. The email was a report to the letting agents about a number of disrepair issues, including the bedroom door. The email read,

“...i will like you to know that not only the ceiling have problem in this property, it also water closet and kitchen door and one of the rooms door. please i will advice (sic)

you to advising the repairer to use a quality materials (sic) for the repair because this will be second time on the same problem/issue."

25. The tenant accepted that the letting agents had sent tradespeople to the tenancy to repair the door but the repair had been unsuccessful. In the tenant's opinion this was due to inadequate materials being used in the repair which were not strong enough for the weight of the door. The tenant submitted that the closing mechanism and handles on the doors of the kitchen, bathroom and living room were not in working order.

26. In respect of the leaking pipe at the toilet and issues in the bathroom, the tenant referred again to his email of 31st January 2017 which he claimed was intimation of the issue to the landlord. The email referred to photographs attached. The only photograph before the Tribunal was that of the boiler in the kitchen but it was alleged that the issue with the toilet was intimated at this time, also. A reply email from the letting agents read,

"I have asked our plumber Graeme McDonald of MCD Plumbing... to come out and repair the leaking water tank."

27. The tenant had understood from this that a repair would extend to the toilet. He submitted that the toilet has been inspected on a number of occasions but remains unfixed. A few months following this report the tenant received a Notice to Quit from his landlord.

28. The surveyor commented that the surface of the bathroom floor was wet to touch on inspection. The surveyor also explained that his damp meter, on a different setting, had recorded readings of dampness beneath the floor's surface and noted that these dampness reading diminished closer to the side of the bath unit. The tenant advised that the bathroom floor was 'permanently' wet.

29. Next the tribunal turned to the allegation that the walls of the tenancy were damp. For the benefit of Ms Wylie, who had been absent at the inspection, the surveyor made reference to the readings of the walls which he had taken. Reference was also

made to the beads of moisture forming on the walls of the hallway during the course of the inspection. The tenant insisted that the walls are always wet and despite requests to his landlord to address the issue, nothing has been done. The tenant advised that the tenancy is inspected annually as part of his agreement with his landlord. The problem is so bad that he would have expected it to be identified in the course of any inspection.

30. Finally, the tenant addressed the issue of the hole in the kitchen ceiling. He explained that it had occurred following two separate floods at the property above. The first time the ceiling was damaged was 2015. Although the flood occurred in 2015, the tenant submitted that no repairs were undertaken to the ceiling until 2016. At this time the damaged area was re-plastered. The tenant was told that the delay was because the landlord did not have the money to pay for repairs. In 2017 the ceiling in the kitchen and the ceiling in the kitchen cupboard both collapsed following a second flood from the property upstairs. The hot water cylinder is located in this cupboard. The tenant submitted that, to date, no repairs have been undertaken to repair the ceiling notwithstanding his email from 31st January 2017. The tenant advised that he had sent a reminder letter to the landlord but this had not brought about any change.

Response on Behalf of the Landlord

31. Ms Wylie began by accepting that the landlord and letting agent did not dispute the issues raised by the tenant nor that repairs were required, as identified. Ms Wylie referred to the written submissions lodged by the letting agent dated 4th December 2017. This provided a timeline of events and responses by the landlord and letting agents.
32. Ms Wylie submitted that the difficulty throughout has been the lack of response from the landlord. In advance of the hearing the landlord has communicated with Ms Wylie on 3rd January. Ms Wylie claimed to have had a frank conversation with the landlord. She had made it clear that should the repairs not be completed then the letting agents would be required to consider whether they could continue to act for him. Ms Wylie claimed that the letting agents are a professional organisation and the failure to act upon these complaints did not sit well with them. Ms Wylie submitted

that the letting agents take the view that the property does not meet the repairing standard, at present.

33. In relation to the kitchen ceiling issue, in mitigation, Ms Wylie submitted that there had been a difficulty in accessing the property above the tenancy initially. Ms Wylie confirmed that a repair was carried out to the ceiling on 7th July 2016 following the flood in 2015. She accepted that the ceiling collapsed a second time on 31st January 2017 and the landlord and letting agents were informed. Again, the occupants above delayed access. Ms Wylie accepted the tenant's submission that no repairs had been carried out to repair the ceiling since then. The landlord had no insurance and no money to fund any repairs. She accepted that a Notice to Quit was served.
34. Ms Wylie confirmed to the Tribunal chair that the landlord has continued to charge full rent for the property notwithstanding the outstanding repairs.
35. It was explained that contractors had attended the property on 9th December 2019. They had inspected the issues raised by the tenant and had provided a written estimate to the landlord of the cost of the works. A copy of this quotation was made available to the tenant and the Tribunal.
36. The Tribunal allowed the quotation to be received as part of the process there being no objection from the tenant to the Tribunal considering the document. The Tribunal noted that the list of repairs was silent on repairs to the toilet and the lack of hot water and heating. The quotation included supply and fitting a new shower.
37. Ms Wylie indicated that she was unaware that there was an issue with the heating system, this having never been raised specifically by the tenant. The surveyor commented that one common denominator between the heating and hot water immersion heater is that according to the tenant, when activated together or in conjunction with other electrical fixtures and appliances, they can cause the electrical system within the property to trip.
38. On behalf of the landlord, Ms Wylie provided the Tribunal with an undertaking to carry out repairs to the property. These repairs would begin on 13th January and it would take no more than 7 days to complete. The landlord intends to take a view on what to do with the property in the longer term once these repairs are complete. . Separately Ms Wylie gave an undertaking to the Tribunal and to the tenant to arrange

a further inspection of the property in relation to the dampness alleged and to have the toilet and electrics looked at that day. The tenant confirmed that access would be provided.

39. The surveyor highlighted to the letting agent that he had observed that the light fitting in the bathroom was inappropriate for its operating environment, and that the security entry system in the property, insofar as it can control access through the main door of the building is not functioning. The surveyor accepted that these did not form part of the application but shared these observations with Ms Wylie as she had been absent at the inspection. Again, Ms Wylie undertook to look into these matters although she highlighted that the security entry system may be a communal issue at the building. In the absence of a factor, her experience that issues with common property can prove difficult to address.

Findings in fact

40. That a short assured tenancy agreement exists between the parties in respect of the property.
41. That the tenancy began on 9th March 2015.
42. That the tenant resides at the property with his wife and children aged, 16, 14, 4 and 4 months.
43. That the tenant intimated to the landlord a list of issues of disrepair under cover of email dated 31st January 2017.
44. That, the repairs having not been completed, the tenant made an application to the Tribunal, dated 3rd October 2019.
45. That the application was intimated to and received by the landlord and the landlord's letting agent.
46. That an inspection of the property took place on 6th January 2020 at which neither the landlord nor the letting agent were present.
47. That there was no hot water at the property at the time of the inspection.
48. That there had been no hot water at the property for some months.

49. That, in 2019, the landlord, through the letting agent, knew of the lack of hot water at the property.
50. That, at the time of inspection both below-surface dampness and condensation was in evidence around the windows of the kitchen, bathroom and bedroom 1.
51. That, at the time of inspection significant below-surface damp readings were obtained from a section of wall to the left of the living room window. Further, condensation related pools of water formed on all window sills during the course of the inspection.
52. That, at the time of inspection the existing window trickle vents were jammed shut and immovable.
53. That the landlord had knowledge of the tenant's complaint about the windows at the property.
54. That the windows had been inspected by contractors on behalf of the landlord.
55. That the recommendation of the contractors was that the windows be replaced.
56. That no repairs or replacement of the windows had been carried out.
57. That water is potentially penetrating the property around the windows.
58. That the closing mechanisms and handles of the internal doors of the property at the kitchen, bathroom and living room are not in proper working order.
59. That there is no internal door in place at bedroom 1 of the property.
60. That the internal doors are "fixtures."
61. That there is below surface dampness is affecting the bathroom floor in places.
62. That the toilet waste pipe or cold water supply pipe may be one cause of the dampness issues in the bathroom.
63. That the source of the dampness is unclear and requires specialist investigation.
64. That condensation was evident on the walls in the hallway of the property.
65. That there is dampness on the walls of the living room, bedrooms, hallway, kitchen, kitchen cupboard and bathroom.
66. That the source of the dampness is unclear and requires specialist investigation.
67. There is condensation related surface mould in the property most severely in Bedroom 1.

68. That there is a hole in the kitchen ceiling, and the exposed timber supports are still damp.
69. There is a hole in the kitchen cupboard above the water cylinder.
70. That the kitchen ceiling forms part of the structure of the property.
71. That electrical panel heaters provide heating to the property.
72. That the electrical panel heaters were not in working order at the time of the inspection.
73. That no valid Electrical Installation Condition report was available before the Tribunal.

Reasons for decision

74. The tenant made various allegations of disrepair at the property in his application of 3rd October 2019. The landlord's letting agent did not dispute the areas of disrepair. In fact, in her evidence, the landlord's letting agent accepted that the property does not meet the repairing standard in its present condition. Since making the application, the landlord has failed to address any of these issues. Many of the issues date back some years. It is a matter of agreement that inspections of the various issues have been undertaken at different times, advice had been offered to the landlord but no repairs had been taken.
75. The Tribunal identified significant condensation and dampness on the walls, floors and around the windows throughout the property. Specialist investigations are required to identify the source of the dampness and what measures are required to remedy the issue. The tenant's submissions in this regard were not disputed by the landlord's letting agent. The extent of the condensation and dampness renders the house neither wind nor water tight and in all other respects fit for human habitation. The Tribunal determine therefore that the property does not meet the repairing standard as required by section 13 (1)(a) of the Act.
76. The landlord's letting agent accepted the tenant's evidence that there had been two floods from the neighbouring flat into the property in 2015 and 2017. Ms Wylie accepted that there had been no repairs undertaken to the ceiling following the flood in 2017. The photographs from the surveyor's report demonstrate the extent of the hole in the kitchen ceiling and kitchen cupboard. The ceiling is part of the structure of

the property. Section 13 (1) (b) of the Act provides that a house meets the repairing standard if 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. There are holes in the ceilings of the kitchen and kitchen cupboard. Therefore the property does not meet the requirements of section 13 (1) (b) of the Act.

77. Ms Wylie submitted that the landlord continued to charge rent at the full sum. Ms Wylie submitted that the landlord was without the funds necessary to address the repair, despite requests from the tenant. The landlord must comply with the duties incumbent on him under section 14 of the Act. The landlord's duty exists regardless of his financial position.
78. The Tribunal identified that there was no hot water at the property at the time of the inspection. It was the tenant's evidence that this had been the situation for some months. The electric panel heaters at the house were not in proper working order. No EICR was available before the Tribunal. This evidence was not disputed by Ms Wylie. Section 13 (1) (c) of the Act provides that a house meets the repairing standard if the installations of 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. The landlord is under a duty to ensure that there is adequate provision for heating water at the property. In the absence of same the property does not meet the repairing standard as required by section 13 (1)(c) of the Act.
79. The Tribunal identified that the handles and closing mechanisms of the internal doors at the bathroom, kitchen and living room were in a state of disrepair. There was no door fitted to the bedroom at the front of the property. This was not disputed by Ms Wylie. The doors are fixtures in terms of section 13 (1) (d) of the Act and must be in a reasonable state of repair and in proper working order to meet the requirements of the repairing standard. At present the Tribunal determines that the doors do not meet the repairing standard.
80. It was noted at the time of the inspection that there are a combination of issues with the windows in respect of condensation caused by defective trickle vents, and potentially external weatherproofing and sealant failures. Section 13 (1) (a) requires the house to be wind and water tight and in all other aspects fit for human habitation.

For this reason the Tribunal determines that the property does not meet the repairing standard in terms of section 13 (1) (a).

81. The waste pipe from the toilet was wet at the time of the inspection. The surveyor identified below surface dampness in the bathroom. It was unclear why this was occurring. Further investigation is required to identify the source of the problem and a solution to eradicate it.

Decision

82. The Tribunal accordingly determines that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by section 24 (1) of the Act in the following terms:-

- *To repair or replace the installations in the house for the supply and heating of water to ensure that there is an adequate supply of hot water in the property.*
- *To repair or replace as necessary all windows to ensure that they are wind and water tight.*
- *To repair or replace as necessary the internal doors at the living room, kitchen, bathroom and bedroom 1 to ensure that they are in a reasonable state of repair and in proper working order.*
- *To have a suitably qualified expert investigate the source of the dampness throughout the property and to produce a report showing findings.*
- *To produce an Electrical Installation Condition Report ("EICR") from a registered member of SELECT or NICEIC post dating this order.*
- *To repair or replace as necessary the ceiling in the kitchen and kitchen cupboard ensuring that the ceiling is dry.*

83. The Tribunal considers it reasonable to allow a period of **6 weeks** from the date of service of the RSEO to carry out these works.

84. The decision of the Tribunal was unanimous.

85. The Tribunal require the landlord to carry out such works as are necessary to ensure that the property meets the repairing standard.

Right of Appeal

86. 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.

Effect of Section 63

87. 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 such an 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 determined.

S Sweeney

Legal chairing member Simone Sweeney 3rd February 2020

Housing and Property Chamber First-tier Tribunal for Scotland



Photograph Schedule 5 Sunnyside Place, Barrhead, G78 2RT

06/02/2020

Case Reference: FTS/HPC/RP/19/3193 *I certify this schedule of photographs to be that referred to in decision of 03/02/2020.*

Date of inspection: 06/01/2020

Time of inspection: 10.00 am *S Sweeney*

Weather conditions: Overcast with heavy rain

Present: Mrs Simone Sweeney – Legal Member
Mr Nick Allan – Ordinary Member
Mr Kehinde Sojobi-Alogi – Tenant
Mrs Sojobi-Alogi – Tenant's wife
Interpreter



Photo 1 – Front elevation



Photo 2 – Water damaged kitchen ceiling



Photo 3 – Damaged cupboard ceiling



Photo 4 – Defective kitchen door



Photo 5 – Dampness below tiles



Photo 6 – Immersion heater for water cylinder



Photo 7 – Broken bedroom door



Photo 8 – Condensation on windows



Photo 9 – Condensation in hallway
S Sweeney



Photo 10 – Below surface dampness on floor



Photo 11 – Dampness beneath floor tiles



Photo 12 – Broken socket in Living Room



Photo 13 – Bathroom light fitting

S Sweeney



Photo 14 – Mould on wall in front bedroom



Photo 15 – More mould in same room

Additional comments

1. High dampness readings were obtained from a section of wall between the left hand side of the Living Room window and the gable wall.
2. No surface or below surface damp readings were obtained in the front Bedroom at the location of the mould.
3. The heat detector and smoke alarms were tested, are interconnected and operative.
4. There is a fault preventing the ground floor main door entry system being operated from within the flat.
5. A number of the window sills were damp from persistent condensation.
6. The airflow trickle vents on the windows appear to be jammed shut.

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
Housing and Property Chamber – 21st January 2020

S Sweeney