

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/21/0210

1F4, 53 Bread Street, Edinburgh, EH3 9AH (Title number MID111224) (“the Property”)

The Parties:-

**Ms Daniela Schoch, 1F4, 53 Bread Street, Edinburgh, EH3 9AH
 (“the Applicant”)**

**Mr Niel Jorgensen, 132 St Stephen Street, Edinburgh, EH3 5AA
 (“the Respondent”)**

**Matrix Property Management Limited, 132 St Stephen Street, Edinburgh, EH3 5AA
 (“the Respondent’s Representative”)**

Tribunal members

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

Mr. Andrew McFarlane, 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 Respondent 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 Property, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Respondent 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

1. The Title number for the Property is MID111224.
2. The Property is a first floor one bed roomed flat in a traditional tenement (see images in attached **Schedule of Photographs taken at inspection on 29 July 2021**) with rooms as follows:
 - 2.1. Internal: hall, lounge, kitchen, bedroom, shower room (internal).
 - 2.2. External: pro indiviso share of common parts and mutual areas in the building, as per the title.

Parties and representatives

3. The Applicant is the current tenant. She is representing herself. She has made written and oral representations at three Case Management Discussions.
4. The Respondent is the proprietor and landlord and is represented by a letting agent. The Respondent and his representative have made written representations during the tribunal process but have not attended any inspection or Case Management Discussions in connections with the Application.

Procedural Background

5. On 30 January 2021, the Applicant made an application to the tribunal alleging that the Property does not meet the repairing standard (“the Application”).
6. The Applicant alleges that the elements of the Repairing Standard with which the Respondent has not complied are:
“(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; ...

(h) The house does not meet the tolerable standard."

7. The Applicant listed five allegations as to how she considers that the Respondent has failed to meet the repairing standard:

"(1) Exposed hole in toilet window;

(2) Sewage floods toilet and shower

(3) Running kitchen tap causes toilet flooding;

(4) Regular insect and slug presence in shower; and

(5) Cracked toilet."

8. The Applicant lodged documents with her Application:

8.1. A copy of a letter of notification sent by the Applicant to the Respondent; and

8.2. Six bundles of copy email correspondence between the Applicant and the Respondent.

9. The Applicant referred to photographs which had been sent to the Respondent but these were not lodged with the Application.

10. The Application was accepted for determination by the tribunal.

11. A Case Management Discussion ("CMD") was fixed for 25 March 2021 at 1000h by teleconference. Both parties were notified of the date, time and arrangements for the CMD. The Applicant attended the CMD. The Respondent and his Representative did not attend the CMD and it proceeded in their absence in terms of Rule 29 of the 2017 Rules. Reference is made to the Notes of the CMD which were produced by the tribunal and circulated to parties afterwards.

12. During the first CMD, the Applicant withdrew three of the allegations on the basis that matters had now been resolved by the Respondent, namely: (2) sewage floods toilet and shower; (3) running kitchen tap causes toilet flooding and (5) cracked toilet. The remaining allegations were (1) Exposed hole in toilet window and (4) regular insect and slug presence in shower. The Applicant also amended the Application with the permission of the tribunal to add an additional allegation number (6), which had previously been notified to the Respondent, namely defective window frame and sill in the bathroom.

13. The CMD was adjourned to 17 May 2021. Both parties were notified of the date, time and joining arrangements for the CMD.

14. Directions were issued by the tribunal to the Respondent on 25 March 2021, as follows:

The Respondent or Respondent's Representative is required to provide to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") no later than 1700h on 22 April 2021:

(i) A written report or reports from a suitably qualified tradesperson / tradespeople in relation to the bathroom window, window frame, provision for fixed controllable ventilation of the bathroom and shower enclosure, with findings and recommendations to resolve the issues identified in the Applicant's application, namely (1) hole in bathroom window; (4) regular insect and slug presence in shower and (6) rotten window frame and sill in bathroom. The impact, if any, of the recommendations on the extract fan and ventilation system passing through the window should also be addressed.

(ii) Documentary evidence of any steps taken in responses to any said findings and recommendations.

15. The Respondent did not comply with the tribunal's Directions.

16. On 25 March 2021 and 31 March 2021, the Applicant submitted further images showing insects and slugs in the bathroom and the wood panelling behind the shower in the bathroom.

17. On 22 April 2021, the Respondent sent an email to the tribunal, as follows:
"Apologies for not responding before, I've been off work due to hospitalization. In summary, the tenant's original complaint was due to a blocked communal drain. Partly due to contractors/ her access and the complexity of the problem this took longer than expected to resolve. My understanding is that the work was completed some time ago and there has been no further complaints of plumbing issues with the tenant. The cracked toilet was identified and replaced shortly after. As part of the repair the shower tray [sic] had to be removed. Any existing damaged timbers were all replaced. There is no rotten wood underneath the shower, or to the best of our knowledge anywhere else in the bathroom. The toilet window. It's an old single glazed type (we believe there may be issues due to the location with planning restrictions on the type and style of windows that can be used) The external woodwork does have some minor rot. However, we don't believe it's causing water ingress to the property. Both the window contractors we normally use have shut their operations due to the Covid pandemic, although one has emailed to state that they are opening next week. Notwithstanding the instructions from the Scottish government are quite clear that non essential repairs should be avoided where possible. A slightly rotted window does not constitute an

emergency, however it's also not something that we intend to ignore. As soon as is practical I'll send a qualified window fitter to assess. If you need anything else please don't hesitate to get in touch."

18. On 4 May 2021, the Applicant was asked whether she wished to withdraw the application; amend the application to remove any allegations for matters which you agree have been resolved; or to proceed with the application to the Case Management Discussion on 17 May 2021.
19. On 4 May 2021, the Applicant sent an email as follows: *"I would like to proceed with the application to the meeting arranged for the 17th of May. I understand the difficulties in carrying out repairs since lockdown started, however I would like to point out that I first raised these issues well in advance of COVID and am still waiting for repairs to be carried out. I have concerns about hygiene with the presence of insects in the bathroom, and while I appreciate that rotten window trim may not require immediate action, I have to disagree that the hole in the window isn't cause for concern. Further, I sent an email on the 29th with a video of an issue that unfortunately hasn't been resolved by the repairs carried out to the shower—the kitchen sink has continued backing up and is extremely slow to drain which makes cooking and cleaning extremely difficult on a regular basis. This was documented in the original application I sent in the email chain at various points. If it's acceptable to the tribunal, I'd like to submit the video as evidence"*
20. On 13 May 2021, the Applicant submitted an email to the tribunal in which she advised that the issues with the kitchen tap (which had in any event already been withdrawn from the Application at the last CMD) had now been largely resolved and that she wished to withdraw them from the Application.
21. The tribunal's administration facilitated the upload of video evidence by the Applicant but the video which was uploaded could not be viewed due to technical issues with the file. The Applicant was asked to re-submit any video evidence she wished to be considered but she had not done so prior to the second CMD.
22. The Second CMD took place on 17 May 2021 at 1000h by teleconference. Reference is made to the Notes on the CMD which were prepared by the tribunal and issued to parties afterwards.
23. The Applicant attended the CMD. The Respondent did not attend the CMD. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present, in terms of Rule 29 of the 2017 Rules.

24. At the second CMD the Applicant confirmed that there was no video evidence to submit. She confirmed that no works had been carried out since the first CMD and that the three issues (numbers (1), (4) and (6) remained outstanding).
25. The tribunal continued the case to an inspection of the Property by the tribunal on 29 July 2021 and a hearing on 5 August 2021, by teleconference.

Inspection of the Property – 29 July 2021

26. An inspection of the Property took place on 29 July 2021, as a fact finding exercise.
27. The Applicant was present during the inspection. The Respondent and his representative were not present during the inspection.
28. The ordinary member of the tribunal prepared a schedule of photographs during the inspection, which was circulated to both parties afterwards.

Hearing – 5 August 2021, by teleconference

29. A hearing took place on 5 August by teleconference.
30. The Applicant attended the hearing. The Respondent and his representative did not attend the hearing and it proceeded in their absence in terms of Rule 29.
31. The Applicant sought leave to amend the Application to add a complaint in relation to water ingress into the commercial property situated below the Property. She advised that the neighbours downstairs were in contact with the Respondent about water coming in. She stated that the downstairs neighbour asked for permission for a contractor to come up the property. They took thermal imaging. She stated that she had received a copy of the imaging at about 0800h that morning.
32. The tribunal adjourned to consider the matter and decided not to allow the amendment. The issue was a new issue and had not been notified to the Respondent by the Applicant prior to the application being made. In addition, there is no damage within the Property, but rather a complaint from the downstairs neighbour about water ingress which may be coming from the Property.
33. The Applicant stated that she would consider notifying the Respondent and making a second application to the tribunal in respect of this issue.
34. The tribunal heard oral representations from the Applicant about the three issues in the amended Application.

(1) Hole in the window

35. The Applicant stated that the hole in the window, as shown in the schedule of photographs, is still present and that the Respondent has not inspected or carried out any repair or replacement work.

(2) Slugs and insects presence

36. The Applicant stated that she has continued to see slugs. She stated that they generally occur very early in the morning from midnight until 5am. She stated that she also had a moth in the shower. She stated that she continues to see woodlice and other creatures.

(6) Defective window frame and sill in the bathroom

37. The Applicant stated that the window frame and sill in the bathroom was still defective, as shown in the schedule of photographs and that the Respondent has not inspected or carried out any repair or replacement work.

38. The tribunal adjourned to deliberate and reach a decision in relation to the application.

Summary of the Issue to be determined by the tribunal

39. The issue to be determined is whether the Property 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.

40. All three remaining repairs in the Application, as amended, namely (1), (4) and (6), were notified to the Respondent by the Applicant and he / his representative had a reasonable period within which to effect repairs.

The tribunal made the following findings-in-fact:

41. The Respondent is the registered proprietor of the Property.

42. The Applicant is the tenant of the Property.

43. The Respondent was notified by the Applicant of all the repairs issues in the Application as amended.

44. There is an exposed hole in the showerroom window caused by a defective ventilator.
45. The window frame and cill in the showerroom are defective due to decayed timber, a hole between the stonework and the bottom right hand corner of the window and vegetation growing out of the cill.
46. There are regular infestations of slugs and insects in the showerroom which may access the Property through the defective ventilator or defective window frame and sill.
47. The Property does not have adequate provision of ventilation in the showerroom.
48. The Respondent has taken no steps since notification of the said repairs issues to remedy the issues.

Discussion regarding the issues and the repairing standard, paragraphs (1)(a), (b), (c) and (h)

49. Section 13(1) of the Housing (Scotland) Act 2006 provides:

“(1) A house meets the repairing standard if—

(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 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,

(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, and

(h) the house meets the tolerable standard.”

50. The definition of a house meeting the tolerable standard, as referred to in Section 13(1)(h) of the 2006 Act, is defined in Section 86 of the Housing (Scotland) Act 2007, as follows:

“(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

- (a) is structurally stable;*
- (b) is substantially free from rising or penetrating damp;*
- (c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;*
- (ca) has satisfactory thermal insulation;*
- (d) has an adequate piped supply of wholesome water available within the house;*
- (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;*
- (f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;*
- (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;*
- (g) has an effective system for the drainage and disposal of foul and surface water;*
- (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; "the electrical installation" is the electrical wiring and associated components and fittings, but excludes equipment and appliances; "the relevant requirements" are that the electrical installation is adequate and safe to use;*
- (h) has satisfactory facilities for the cooking of food within the house;*
- (i) has satisfactory access to all external doors and outbuildings;*

and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly."

51. In the present Application the Tenant complains that the House fails to meet the repairing standard, section 13(1)(a), (b), (c) and (h), in respect of the three repairs issues complained of.

(1) Exposed hole in toilet window

52. The tribunal was satisfied on the evidence that as a result of the hole in the showerroom window, caused by a defective ventilator, that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; and the Property does not meet the tolerable standard due to lack of satisfactory provision of ventilation in the showerroom.

53. The tribunal was therefore satisfied that there is a failure to meet the repairing standard paragraphs (1)(a), (b) and (h).

(2) Slugs and insect presence in showerroom

54. The tribunal was satisfied on the evidence that there was a regular slug and insect presence in the showerroom, although no such creatures or insects were seen at the time of inspection. The tribunal accepted the evidence of the Applicant, supported by photographic evidence taken on a number of occasions. The tribunal was satisfied that the flying insects probably come through the defective ventilator and that crawling insects and creatures probably come through the defective timber window cill (see below). As a result, the tribunal was satisfied that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
55. The tribunal was therefore satisfied that there is a failure to comply with the repairing standard, paragraphs (1)(a) and (b).

Defective window frame and cill (showerroom)

56. The tribunal was satisfied on the evidence that the window frame and cill in the showerroom were defective in that there was decayed timber and (as shown in Photograph 12 taken at inspection), the bottom right hand corner of the window has a hole between the stonework and the frame and there was vegetation growing out of the cill. As noted above, it is likely that crawling insects and creatures are accessing the Property through the defective frame and cill. As a result the tribunal is satisfied that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
57. The tribunal was therefore satisfied that there is a failure to comply with the repairing standard, paragraphs (1)(a) and (b).

Repairing Standard Enforcement Order (RSEO)

58. Because the tribunal determined that the Respondent 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 Respondent 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.

59. 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 eight weeks having regard to the likely length of time to instruct and carry out the required works.

Right of Appeal

60. 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

61. 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

Signed

Ms. Susanne L M Tanner, Queen's Counsel
Legal Member / Chair of the tribunal

Date 8 September 2021

Housing and Property Chamber

First-tier Tribunal for Scotland



...This is the schedule of photographs referred to in the foregoing decision
dated 8 September 2021, reference RP/21/0210

S Tanner

Signed

Ms Susanne L M Tanner Q.C. **Name**

8 September 2021 **Date**

Schedule of Photographs

Housing and Property Chamber First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Street view / Front elevation

Property 1F4, 53 Bread Street, Edinburgh EH3 9AH

Ref No: FTS HPC RP 21 0210

Tribunal members Susanne L M Tanner QC (Legal Member) and Andrew McFarlane (Ordinary Surveyor Member)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

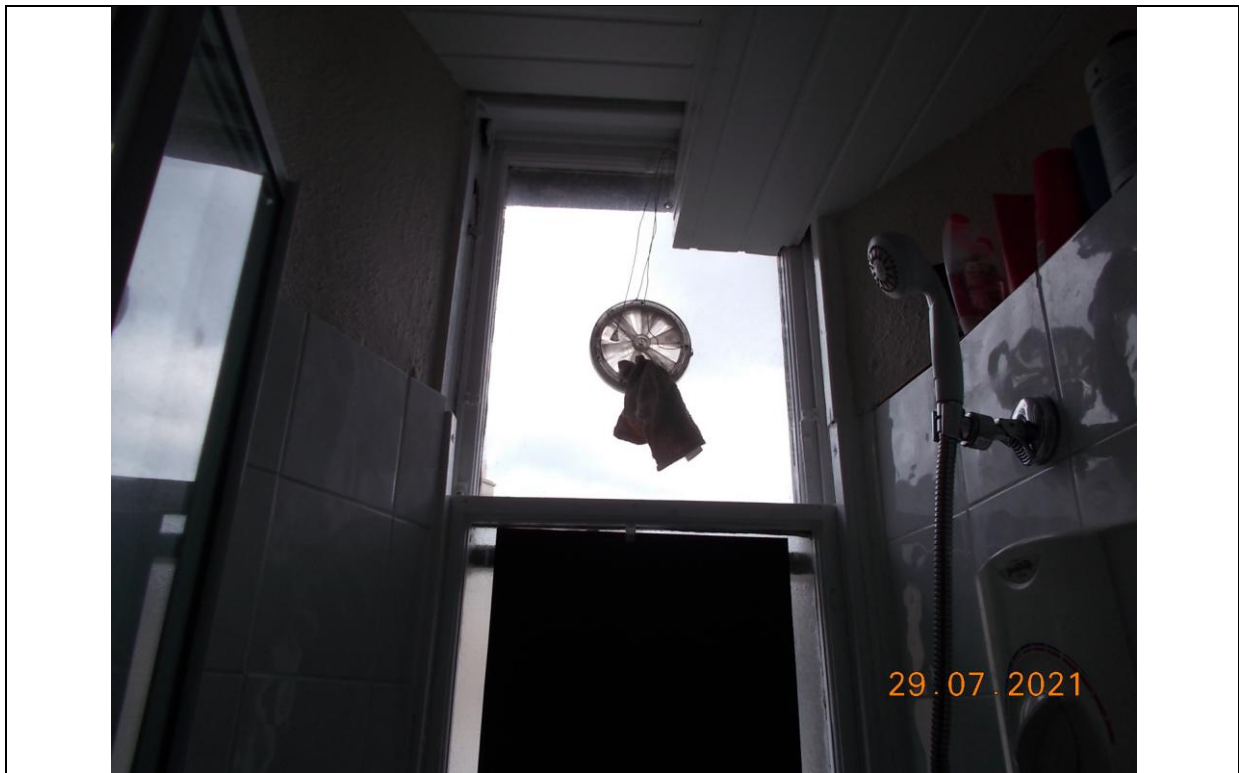
Access

The above Tribunal Members attended the property at 11:30 on 29th July 2021. Also in attendance was Ms Daniela Schoch (the Applicant)

Andrew McFarlane FRICS
Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
29th July 2021

Appendix 1

Schedule of photographs taken during the inspection on 29th July 2021 (21No photos in total)



1. Upper section of Bathroom window from inside



2. Lower section of Bathroom window from inside



3. Area below and to side of Bathroom window from inside



4. Area below and to side of Bathroom window from inside



5. Detail of window cill and lower sash of Bathroom window from inside



6. Upper section of Bathroom window from outside [Missing and loose putty to upper glazing, open joints to lower part of upper sash, missing external cover to vent, cracked and missing pointing to joint between window and stonework]



7. Lower section of Bathroom window from outside [Cill heavily decayed and vegetation established]



8. Detail of upper section of Bathroom window from outside [Missing external cover to vent, cracked and missing pointing to joint between window and stonework]



9. Detail of middle section of Bathroom window from outside [Missing and loose putty to upper glazing, open joints to lower part of upper sash, missing external cover to vent, cracked and missing pointing to joint between window and stonework]



10. Detail of lower left section of Bathroom window from outside [Cill heavily decayed and vegetation established, lower sash patch repaired, cracked and missing pointing to joint between window and stonework]



11. Detail of lower left section of Bathroom window from outside [Cill heavily decayed and vegetation established, lower sash patch repaired, cracked and missing pointing to joint between window and stonework]



12. Detail of lower right section of Bathroom window from outside [Cill heavily decayed and vegetation established, cracked and missing pointing to joint between window and stonework]



13. Shower tray and lower tiling



14. Shower tray and lower tiling



15. Area below and in front of shower tray



16. Area below and to right side of shower tray (below wash hand basin)



17. Area below wash hand basin



18. Bathroom floor and lower walls looking away from shower



19. Bathroom ceiling and upper walls looking away from shower



20. Lowered area of bathroom ceiling and upper walls looking away from shower



21. Bathroom looking away from shower