

# Housing and Property Chamber First-tier Tribunal for Scotland



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

(Hereinafter referred to as "the tribunal")

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

**Case Reference Number: FTS/HPC/RP/19/1210**

**Re: Flat 3/1, 53 Randolph Road, Glasgow G11 7JJ ("the house")**

**Land Register Title No: GLA28793**

### **The Parties:-**

**Dr Kevin Hart, residing at the house ("the tenant")**

**Ms Nicola Walsh and Ms Zoe Diamond, c/o Newton Letting, 87 Port Dundas Road, Glasgow G4 0HF ("the landlords")**

**Tribunal Members – Sarah O'Neill (Legal Member) and Lori Charles (Ordinary Member, Surveyor)**

### **Decision**

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house, and taking account of all the available evidence, determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The tribunal's decision is unanimous.

### **Background**

1. By application received on 18 April 2019, the tenant applied to the tribunal for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In his application, the tenant stated that he believed the landlords had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13(1) (a), (c), (d) and (h) of the Act. His application stated that the landlords had failed to ensure that:

- i. the house is wind and watertight and in all other respects reasonably fit for human habitation
- ii. 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
- iii. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
- iv. the house meets the tolerable standard.

3. The tenant included the following complaints in his application form:

- There is a leak in the main bathroom, following installation of a new shower.
- There is damp and a smell within the house, which has spread significantly to the wall in the stairwell outside the flat.
- The stairwell smells strongly of damp and has mould/fungus/bacteria growing all over it.
- There is no shower in the main bathroom, as this has been taken out.

4. He stated in his application that the following work required to be carried out at the house:

- Damp dried out
- Wall in landing cleaned and re-painted once damp dried out
- Shower re-fitted urgently

5. On 2 May 2019, a Convener of the tribunal, with delegated powers under Section 23A of the Housing (Scotland) Act 2014, issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received on 18 April 2019; and intimating her decision to refer the application to a tribunal for determination.

6. The tribunal office wrote to the parties on 22 May 2019, notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 26 June 2019. Written representations were requested by 12 June 2019.

7. On 5 June 2019, an email was received from the tenant, stating that the repairs had now been completed. Further written representations were received from the tenant on 18 June, in which he stated that he wished to proceed with the inspection and hearing to ensure that there was nothing else to be done, and no outstanding health and safety issues.
8. On 11 June 2019, written representations were received from Newton Letting on behalf of the landlords.

### **The inspection**

9. The tribunal inspected the house on the morning of 26 June 2019. The weather conditions at the time of the tribunal's inspection were dry and sunny. The tenant was present at the inspection. The landlords were represented at the inspection by Mr Riccardo Giovanacci, Managing Director of Newton Letting. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

### **The house**

10. The house is a top (third) floor flat within a four-storey tenement, which is in the region of 100 years old. It comprises an entrance hallway; living room; kitchen; two bedrooms (one with ensuite bathroom) and bathroom.

### **The hearing**

11. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The tenant was present at the hearing and gave evidence on his own behalf. The landlords were represented by Mr Giovanacci of Newton Letting.

### **Preliminary issues**

12. The tribunal chairperson noted that the tenancy agreement before the tribunal dated 7 July 2017 stated that the landlord was Martin Diamond, but the land certificate for the house showed the owners to be Nicola Walsh and Zoe Diamond. The land certificate showed that they had taken ownership of the house on 24 August 2017 in implement of a will. Mr Giovanacci confirmed that the new owners were Mr Diamond's daughters, who were now the landlords. The tribunal was satisfied that there was a tenancy in place between the parties. The tenant said that he did not have a copy of the updated tenancy agreement, but noted that the former joint tenant, Adam Roberts, had moved out some time ago, and that he was now the only tenant named on the tenancy agreement.

## **The evidence**

13. The evidence before the tribunal consisted of:

- The application form completed by the tenant
- Registers Direct copy of Land Register title GLA28793, which confirmed that the house is owned by Nicola Walsh and Zoe Diamond.
- Short assured tenancy agreement in respect of the house between Martin Diamond and the tenant and Adam Roberts, together with form AT5, both dated 7 July 2017.
- Various emails between the tenant and Newton Letting regarding the repairs alleged to be required, dated between 21 March and 8 April 2019.
- The written representations received from the landlord's agent on 11 June 2019.
- The written representations received from the tenant on 18 June 2019.
- The tribunal's inspection of the house.
- The oral representations of the parties at the hearing.

## **Summary of the issues**

14. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlords had complied with the duty imposed on them by section 14 (1) (b).

## **Findings of fact**

15. The tribunal made the following findings in fact:

- The house is owned by Nicola Walsh and Zoe Diamond, who are the registered landlords in respect of the house.
- The landlords' agent, Newton Letting, now manages the letting of the house on their behalf.
- The tenant and Adam Roberts entered into a short-assured tenancy agreement with Martin Diamond the landlords to rent the house from 7 July 2017.
- There is now a tenancy in place between the landlords and the tenant.
- The tribunal at its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:
  - i. The shower in the bathroom had recently been replaced, together with the tiles around it.
  - ii. The bath panel was removed, and dampness readings were taken underneath the bath on the wall onto which the shower was fixed.

These readings were slightly high, but within the normal range which might be expected in a bathroom.

- iii. It was not possible to take readings along the back wall under the bath, but a visual inspection found that this wall appeared to be completely dry. There was no evidence of water ingress or dampness.
- iv. A large area of staining consistent with water damage from the bathroom in the house was visible on the wall adjacent to the bathroom in the common stairwell, between the second and third floors.
- v. No smell of dampness was detected within the common stairwell.
- vi. The top section of the damaged area of the wall (cream paint) showed evidence of mould and flaking paint.
- vii. Dampness readings were taken on the common stair wall. The top section of the wall (cream paint) appeared to be within the normal range. The bottom section (green paint) showed high moisture readings. This would suggest that the plaster work is still in the process of drying out.
- viii. Another smaller area of staining due to water damage was visible on the common stair above the second-floor landing, directly below the water damaged area on the stair wall above.
- ix. No signs of cracking in the plaster on the common stair wall were observed.

### **Reasons for decision**

16. The tribunal's determinations in relation to the tenant's complaints are set out below.

#### **1. Leak in the bathroom**

17. The parties agreed that the pipe which had caused the original leak had been repaired in April. The tribunal observed no leaks at its inspection and found no signs of dampness which would be unusual in a bathroom. The tenant said that the smell of dampness was now gone, and that he was satisfied with the repairs which had been done. The tribunal therefore determines that the shower plumbing is now in a reasonable state of repair and in proper working order, and that the bathroom is wind and watertight and in all other respects reasonably fit for human habitation.

#### **2. Shower**

18. The tribunal observed at its inspection that the shower had recently been replaced, and the tiling around it reinstated. The parties agreed that the shower had been replaced around 18 April, and the tenant told the tribunal that he was

happy that it was functioning correctly. The tribunal therefore determines that the shower is in a reasonable state of repair and in proper working order.

### **3. Dampness in the stairwell/common close**

19. The tribunal observed at its inspection that a large area of staining consistent with water damage was visible on the wall adjacent to the bathroom in the common stairwell, between the second and third floors. No smell of dampness was detected within the common stairwell. The top section of the damaged area of the wall showed evidence of mould and flaking paint. Dampness readings were taken on the common stair wall. The top section of the wall (cream paint) appeared to be within the normal range. The bottom section (green paint) showed higher moisture readings. This would suggest that the plaster work is still in the process of drying out. Another smaller area of staining due to water damage was visible on the common stair above the second-floor landing, directly below the water damaged area on the stair wall above. No signs of cracking in the plaster on the common stair well were observed.
20. The tenant told the tribunal that things had improved considerably in the 9-10 weeks since the original leak. The smell of dampness had previously been very strong but had now gone. The mould had also lessened considerably. He told the tribunal that, although the other repairs had now been attended to, he had continued with his application because he was concerned that the plaster in the stairwell may raise health and safety issues. He was concerned that when the plaster dried out, parts of it may fall away and could cause an accident.
21. Mr Giovanacci told the tribunal that, as this was a common repair, the landlords and letting agent had no control over when the necessary repairs would be carried out. This was the responsibility of the property factor for the block. It was clear from the email correspondence submitted by Mr Giovanacci that he had been in contact with the property factor, Macfie and Co, regarding the repairs. He pointed to an email from the property factor dated 23 May 2019, confirming that they had obtained a quotation for the work and that this had been forwarded to the communal insurers for authorisation. He said that he had received nothing since then, but that he would contact the property factor straight away for an update.
22. Mr Giovannacci told the tribunal that the landlords were good landlords, who had been quick to carry out repairs, and expressed concern that the common repairs could be delayed were there to be an insurance excess to pay, and if some other owners were unwilling to pay their share.

23. The tribunal noted that any repairs to the landing walls will constitute common repairs. The land certificate for the house makes clear that the landlords have rights in common to all common parts of the tenement, including 'the common passages, stairs and walls enclosing the same and stairs therein', and that all common parts are to be maintained at the mutual expense of all eight proprietors within the tenement.

24. Section 15 of the Act states:

*'(1) Where a house forms part only of any premises, the reference in section 13(1) (b) [i.e. the requirement to ensure that the structure and exterior of a house is in a reasonable state of repair and in proper working order] includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burdens or otherwise.'*

*(2) Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.'*

25. The effect of this is that a landlord is required to ensure that the structure and exterior of premises which include a flat which they own is in a reasonable state of repair and in proper working order, where it has a responsibility to maintain the common parts of those premises. This applies where any part of those premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.

26. The tribunal accepts that the landlords' agent had raised the common repairs issues with the property factor, and that the landlords have dealt with the other outstanding repairs promptly. It also accepts that other owners within the tenement also have a common responsibility in relation to common repairs. It is clear, however, that the landlords have a legal obligation to their tenant to maintain the landing walls in a reasonable state of repair and in proper working order. It is equally clear that the current state of disrepair of the walls has resulted in part of the property which the tenant is entitled to use i.e. the landing walls and the stairwell being adversely affected.

27. The definition of 'house' in section 194 of the Act also makes clear that this includes 'any part of the living accommodation (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others'. At its inspection, the tribunal found high dampness

levels on some areas of the landing wall. It therefore determines that the wall is not currently wind and watertight.

28. In terms of sections 15 and 194 of the Act, the landlords have a duty to comply with the repairing standard, regardless of the fact that others share the responsibility to carry out and pay for common repairs. While it observed no signs of cracking, the tribunal shares the tenant's concern about the potential health and safety implications of the repairs issues related to the landing walls.

### Summary of decision

29. On the basis of all the evidence before it, the tribunal determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that the landing walls are not wind and watertight and are not in a reasonable state of repair and in proper working order.

30. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act. The tribunal notes that until the common stair wall is fully dried out, no repairs or redecoration can commence, and has taken this into account in considering the timescale for repairs set out in the RSEO.

### Rights of Appeal

31. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

32. 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.

Sarah O'Neill

Signed.....  
Sarah O'Neill, Chairperson

.....Date..... 28/6/19.....



# Housing and Property Chamber First-tier Tribunal for Scotland

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Date of Inspection – 26 June 2019 at 10:00am

Property Reference – FTS/HPC/RP/19/1210

Property Address – Flat 3/1 53 Randolph Rd Glasgow G11 7JJ

Surveyor – Lori Charles

Weather – Dry

## Bathroom



Shower was recently replaced and tiles made good. No evidence of water ingress or dampness behind the bath panel.

## Common stairwell



Water damage was noted to the common stairwell which appears to have been due to water leaking from a damaged pipe within the main bathroom of flat 3/1.

The top section of wall showed water damage and evidence of mould and flaking paint.

Moisture readings were taken using a proto moisture meter and the top section of wall (cream paint) appeared to be within the normal range, however the bottom section (green paint) showed high moisture reading. This would suggest that the plaster work is still in the process of drying out.

Water damage was also noted on the common stair below flat 3/1.

Until the common stair wall is fully dried out no repairs or redecoration can commence.

**Lori Charles BSc Hons MRICS**

Lori Charles

**Ordinary Member (Surveyor)**

**Date 26/06/19**

**Schedule of photographs taken by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 26 June 2019.**

Reference Number FTS-HPC-RP-19-1210