

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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber reference number: FTS/HPC/RP/21/2038

Re: Property at 7 Longstone Road, Cranhill, Glasgow, G33 3JT (“the Property”)

The Parties:

Mrs Patricia Chawner (“the Tenant”)

Mrs Roseann Gear, 151 Abbeyhill Street, Carntyne, Glasgow, G32 6LJ (“the Landlord”)

Tribunal Members:

Mrs Nicola Weir, Legal Member and Mr Nick Allan, Ordinary Member

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 duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 23 August 2021, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House, namely issues with the windows, the front door lock, kitchen drawers and cupboards, the shower and bath panel, radiators, hole in the living room wall where fireplace removed and fire doors not installed.

2. On 27 August 2021, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Case Management Discussion (“CMD”) was issued to the parties on 10 September 2021, requesting that any written representations should be lodged with the Tribunal by 1 October 2021. Written representations were lodged timeously on behalf of both parties.
3. Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an Inspection of the House at the outset to assist in the determination by the Tribunal of the application. Unfortunately, this was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (CMD) was arranged in order to discuss further procedure in the case and to ascertain if an Inspection was required or if other evidence was available or could be agreed.
4. The CMD took place by telephone conference call on 18 October 2021 and was attended by Mr James Gear (the Landlord’s husband) on behalf of the Landlord and the parties’ respective legal representatives. At the CMD, it was accepted by the Landlord that certain repairs would be carried out, namely replacement windows and front door, repairs to radiators and re-fitting of the bath panel. The Landlord did not accept responsibility for the condition of the kitchen cupboard and drawers nor the hole at the fireplace, both of which it was maintained had been caused by the Tenant. Nor did the Landlord consider that internal fire doors were required in the House in terms of the Repairing Standard. There was discussion as to requirements for the Tenant being given proper notice of when contractors would be attending and also the necessary cooperation of the Tenant in allowing access to contractors. The outcome of the CMD was that the Tribunal decided that an Inspection of the House would be required to assist the Tribunal in determining some aspects of the application, but that this would not take place until at least November 2021 to allow time for the agreed repairs to be undertaken by the Landlord. A Direction was issued following the CMD requiring the Landlord to lodge safety certificate documentation which the Landlord had indicated was available and requiring both parties to lodge any further documentation, including photographs, that they wished to rely upon in relation to their respective positions by 19 November 2021.
5. The Tribunal Members carried out an Inspection of the House on 29 November 2021. The Tenant and the Landlord’s husband, Mr James Gear, were in attendance. The Tribunal had been notified prior to the Inspection that some of the repairs issues had been attended to, namely replacement of the windows and front door and repair of the radiators. The Tribunal inspected each of the issues raised in the application and confirmed that the windows throughout and the front door had been

replaced and that the Tenant confirmed that there were no remaining issues with these and that the radiator issues had also been resolved. The Tribunal noted that the Tenant now accepted the Landlord's position that internal fire doors were not required in the House. The Tribunal noted that the kitchen drawers and cupboards were in a state of disrepair; that the bath panel was still detached; and that there was an empty alcove in the living room fireplace, where a fire presumably used to sit. The Tribunal also noted that drawer parts from the kitchen and a fire surround from the living room were stored elsewhere in the House, that there were some missing internal door facings, that there was no shower screen in the bathroom, that the pull-cord power switch was located within the shower enclosure and that, although there was a heat sensor in the kitchen, a carbon monoxide monitor in respect of the boiler and interlinked smoke alarms which were operational, the smoke alarm on the living room ceiling appeared to have been partially dismantled. A Photographic Schedule taken during the Inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

6. The Photographic Schedule referred to was circulated to parties following the Inspection, together with a further Direction requiring the Landlord to lodge gas and electrical safety certificates and both parties to intimate details of any witnesses they intended to have at the Evidential Hearing. An Evidential Hearing was fixed for 31 January 2022 but subsequently postponed by the Tribunal in terms of Rule 28 of the Regulations, due to ill-health of the Tenant. A further Evidential Hearing was fixed for 25 February 2022. Prior to said Evidential Hearings, further documentation had been lodged by both parties, including an Inventory of Productions on behalf of the Tenant containing a copy of the tenancy agreement, email correspondence between the parties' solicitors, photographs and some screenshots; photographs, a recent EICR and Gas Safety Certificate on behalf of the Landlord; and a further screenshot concerning the bath panel and responses from Scottish Fire & Rescue in respect of a Freedom of Information Request on behalf of the Tenant. Parties had also submitted details of their intended witnesses.

Evidential Hearing

7. The Evidential Hearing took place by telephone conference call on 25 February 2022 at 10am. It was attended by the Tenant, Mr James Gear (husband) on behalf of the Landlord, Ms Charis Brooks, Solicitor from Govan Law Centre on behalf of the Tenant and Ms Claudia Hoey, Solicitor of Jones Whyte LLP on behalf of the Landlord. Also in attendance was Ms Emily Campbell, Trainee Solicitor from Jones Whyte LLP as an observer only and for training purposes who took no part in the Hearing. After introductory comments from the Legal Member and it being ascertained that there were no preliminary matters that either party wished to raise, the Tribunal heard evidence from the Tenant, Mr Barry

Chawner (the Tenant's husband), Mr James Gear (the Landlord's husband) and Mr James Gear (the Landlord's son).

8. At the Hearing, the Tribunal had before it the Application and other documentation referred to above. The Tribunal also had before it a copy of Land Certificate GLA131038 relative to the House which is registered in the name of the Landlord and confirmation that the House is included in the Landlord's Landlord Registration with Glasgow City Council.
9. The Tenant gave evidence that she had first reported repairs issues to the Landlord a few years ago but that the only repairs carried out were to the boiler and recently, the new windows and front door. She confirmed the repair issues outstanding in terms of her application to the Tribunal are the kitchen drawers and cupboards, the bath panel and the hole where the fire was removed. She confirmed that she had only ever dealt with Mr Gear, her Landlord's husband, and had, in fact, thought he was her Landlord. She confirmed she had previously had a good relationship with Mr Gear until all the repairs issues arose. As to the fireplace issue, she stated that the gas fire was condemned by her Landlord's contractor when he was doing a gas safety check. This was around three years after she moved into the house which was in 2009. Her position was that she had asked the contractor if it could be removed without the consent of her Landlord and that the contractor had told her this was not necessary and that it had to be removed due to carbon monoxide risks. The contractor removed the fire and installed a vent. The Tenant stated she had asked the Landlord if she could remove the fire surround as she had her own and that she still has the Landlord's stored in the house. Reference was made to the Applicant's Production number 8 which she confirmed showed pictures of fires similar to the one removed. The Tenant stated that the fire had been the only source of heating in the living room but that quite soon after this, the Landlord had installed a new boiler and in between, he had supplied a small heater. She stated that a draught comes down the chimney as the hole is still there where the fire was removed. When it was put to the Tenant in cross-examination that it was she who had removed the fire and fireplace without the Landlord's consent and had therefore caused the hole, she denied this. As to the cupboards and drawers in the kitchen, the Tenant advised that the kitchen had been there before they moved in and that, due to wear and tear, is in a state of disrepair. She asked the Landlord about replacing it and even offered to pay a contribution towards the cost but the Landlord refused. She confirmed that the photographs lodged as Applicant's Production number 3 show the broken units, hinges and flaking paint and that these were taken by her. The Tenant stated that they only used the cupboards and drawers for normal kitchen storage but that hinges have broken, facings have fallen off and a lot of the glue holding the drawers has come apart due to condensation in the kitchen. They eventually took the drawers out all together but have kept all the parts in the house. They now have no working kitchen drawers in which to store their utensils. In cross-examination, the Tenant denied that the condition of the kitchen units and drawers was due to damage or neglect

by herself or her family. She denied that she had struggled to maintain the house or keep it clean. When asked about dents in the cupboards and damaged woodwork, she maintained that this was due to general wear and tear. The Tenant was asked to comment on the photographs lodged on behalf of the Landlord showing the condition of the kitchen and house generally. She stated that she did not think it was acceptable to come into someone's house and take photos. The Tenant did accept responsibility for a hole in the hall wall shown in one of the photographs which she said had happened when she was moving furniture and because the hall is narrow and the walls just made of Gyproc. She stated that this had since been fixed. She also stated that they have carried out improvements to the house over the years such as decorating, painting and laying a new floor in the living room and hall. The Tenant was referred to Applicant's Productions numbered 2 and 5 (emails between the parties' solicitors) but she advised that she did not have a copy of the paperwork. She was asked if she recalled contractors instructed by the Landlord failing to attend when they were supposed to and she confirmed yes. She was asked if she remembered missing any appointments which had been made for contractors to attend and she advised no. She was asked if she recalled a contractor having been given an incorrect contact number for her by Mr Gear. In response, she stated that she did not understand because as far as she was aware, Mr Gear had her correct number. Evidence was also given by the Tenant about an incident which had occurred in February 2021 when Mr Gear attended at the property. The Tenant stated that she had been told by her lawyer that he was coming to see the windows but he came with a female who turned out to be his daughter. Mr Gear became abrupt and the Tenant stated that his daughter shouted and swore at her, grabbed at her and stated that the Tenant would not be there much longer. The Tenant's position was that she was there alone and suffers from anxiety so she called the police who came out. Reference was made to Applicant's Production number 7 which she confirmed was a screenshot from her phone showing that she had called 999. In cross-examination, it was put to her that it had been Mr Gear who had contacted the Police but she maintained that it was her and that she was on her own. When asked about the breakdown in her relationship with the Landlord, the Tenant stated that it happened a couple of years ago due to an issue with her rent and benefits payments and also the repairs. She said there had been a discussion about direct payment of rent to her landlord but this was never organised. Then she went for advice on being threatened with eviction and withholding rent due to the repairs. The rent is all sorted out and is now paid direct to the Landlord.

10. Mr Barry Chawner, the Tenant's husband then gave evidence. He confirmed that the fire was removed by a CORGI registered tradesman instructed by the Landlord who had come out to do the gas safety check and that this was within their first three years of living at the property. He clarified that what has been left is not a hole in the actual wall but rather, a hole left where the fire was removed and that their issue with this is that it is unsightly. He was referred to photographs produced by his wife

(Applicant's Production no. 8) and asked if this was the type of fire removed. He confirmed it was and these fires were from the 1960s/70s. It was put to him in cross-examination that that it was they who had taken out the fire but he maintained that they did not and could not, as it required a qualified person to disconnect and remove the fire and put the vent in. It would have been too dangerous for them to do this themselves. Mr Chawner confirmed that they had removed the fireplace or surround and that this is still in the House, in the spare room. As to the kitchen units and drawers, Mr Chawner estimated that the kitchen is at least thirty years old and that there was a previous tenant in the property before them. He stated that, when they moved in, he could see that the drawers had previously been repaired with nails put in to hold them together as the glue had failed and that some of the facings were already damaged. He advised that they had made normal use of the kitchen but that eventually the plywood became more damaged and bits were hanging off. He then removed the drawers altogether but kept all the parts to show the Landlord. They have no working drawers in the kitchen. On cross-examination, Mr Chawner denied that they had caused the damage to the kitchen units and drawers and maintained this was down to wear and tear. He stated that Mr Gear was aware that he had removed the drawers and that Mr Gear had not said anything about it. He also stated that they kept the House as clean as possible and had also decorated and put down laminate and new carpets. Like Mrs Chawner, he accepted that they had caused a hole in the hall wall which occurred when they were moving a couch in, but that this has now been fixed. Mr Chawner was asked if he recalled a plumber called "Davy" coming out to fix the bath panel and was referred to text messages with Mr Gear from November 2021 (Applicant's Production). He remembers that they thought it strange that it was a plumber who was going to come out when they thought a joiner was needed. He could not remember if the contractor showed up but certainly the bath panel did not get fixed. Mr Chawner stated that it was his wife who dealt with Mr Gear and the repairs side of things and also that the Landlord, Mrs Gear, was not involved. He did not recall them missing any contractor appointments which had been made but nor did he recall specific contractors failing to attend. He stated that there was previously a good relationship with Mr Gear and that repairs issues were dealt with swiftly, other than the kitchen, until around two to three years ago. He said that Mr Gear then started to lie and say that they owed rent arrears when they did not. He did concede that there may have been a couple of rent payments made late but that he does not understand that side of things and his wife dealt with the rent and benefits. Mr Chawner was also asked about an incident involving his wife having to call the Police. He stated that he was not home at the time but that his wife had told him about it. They had been expecting someone neutral to attend with Mr Gear to see about the windows but his wife told him that Mr Gear instead turned up with his daughter who basically threatened his wife so she had called the Police. On cross-examination, Mr Chawner denied that he had also been in attendance when this incident occurred and that it had been Mr Gear who had involved the Police. He denied that there had been other

instances of arguments occurring with Mr Gear and reiterated that relations had been good until the last two years.

11. Mr James Gear (the Landlord's husband) then gave evidence. He stated that he knew from when he and his daughter went to the House last year that the condition of the whole property was a total mess. He stated that it was a nightmare. The fireplace was wrecked and gone, just leaving the brick wall, there were no skirtings, holes everywhere and filthy. The kitchen drawers and cupboards were a mess and the drawers damaged. He said he was not aware that his tenant was removing the drawers. As to the gas fire, his position is that around eight years ago, he arranged for a new boiler to be installed so there was no need for a gas fire. The contractor installed ventilation, rendered the whole wall and plastered over it and provided certification. Mr Gear was asked about the incident which had been referred to involving he and his daughter. His position was that Mr and Mrs Chawner were the aggressors and that it was he who had phoned the police in advance of the visit. He said that they were annoyed because his daughter was taking photos of the property and that Mr Chawner was there and was aggressive, pulling at his daughter's jacket and asking what she was doing there and asking if she knew who he was, Mr Gear stated that he called the Police and they came out and dealt with the situation. Mr Gear stated that he had experienced this type of aggression before from the Tenant and her partner. On a previous occasion, he had a contractor going out to replace the boiler again but the contractor could not get in so took Mr Gear in with him. He stated that the Tenant had been in bed and was shouting and acting aggressively towards them. He stated that he no longer goes to the House because of this. Mr Gear advised that he has always handled repairs quite quickly but has had difficulties with the Tenant cooperating with access. He confirmed that he has dealt with the repairs involved in this application, other than the ones which are due to the damage and neglect of the Tenant. He also confirmed that he has provided the gas and other safety certificates. On cross-examination, Mr Gear was referred to the email correspondence between the solicitors which had been lodged on behalf of the Tenant (Applicant's Productions no. 2 and 5) and asked about his assertions that the Tenant had failed to allow access for repairs to be carried out. He maintained that visits were pre-arranged but the Tenant was sometimes not in or the contractor could not get access. It was put to him that arrangements were made direct with the Tenant by telephone rather than through the solicitors as he was claiming and that he had provided a wrong number for the Tenant to a contractor. He was asked why no evidence has been produced by him supporting his position on this. He maintained that all arrangements had been made through the solicitors for well over a year. Mr Gear was referred to the text messages lodged on behalf of the Tenant dated 30 November 2021 (Applicant's Production) and if he was involved in those messages about the plumber coming out to fix the bath panel. He confirmed he was but disagreed when asked if it was the case that no contractor had turned up to do this repair. He said he had relayed this to his solicitor. On cross-examination, Mr Gear maintained his position

regarding the gas fire and the work done by his contractor to render and plaster the wall in question around eight years ago. He did not accept the Tenant's position as to the age of the kitchen nor that its condition was due to wear and tear. He considers that they have vandalised the kitchen. He stated that the kitchen had been installed about a year prior to this tenancy starting. He subsequently confirmed that there was another tenant in the House for around a year prior to this tenancy and that the kitchen had been installed while he and his wife were still living in the House, around 16 years ago. He reiterated that he feels the Tenant has failed to maintain the House to the standard it was let out. He was referred on cross-examination to the screenshot of the call to the Police from February 2021 (Applicant's Production no. 7) but maintained that it was the Tenant and Mr Chawner who were being aggressive and that it had been he who had called the Police. When asked why his wife, the Landlord, is not in attendance today, he indicated that she is present but is not participating as she has anxiety.

12. Mr James Gear (the Landlord's son) then gave evidence. He confirmed that he attended at the House with his dad in July 2020 as his dad does not drive and the Tenant had been aggressive towards his dad previously. He stated that he was curious to see his old family home. He noticed that the front door was badly damaged and as they went up the stairs, he saw a lawnmower on the middle landing, a bannister missing and the door at the top of the stairs was missing. There were missing glass panels, broken light fittings, skirtings, etc and the House was generally unkempt with rubbish and junk lying around. The kitchen drawers and cupboards were filthy and the fireplace was propped up against the wall in his old bedroom. He found this upsetting as his parents had been quite houseproud. He explained that this was why he took photographs of the House while he was there. He said he would think his dad would deal with repairs that were brought to his attention because he had always been houseproud and kept the property in good condition. He accepted it had been twenty years or so since he had lived in the House. Mr Gear said that the purpose of the visit was to do with bank details being given but that his dad was quite a private person so he did not know much background. It was his dad's business. He said that it was quite awkward and that the conversation became heated. He said the Tenant's mother was present and accosted him, accusing him of wanting to move in. He confirmed he had no interest in moving in and had only been there for the reasons he had stated. He advised that the Tenant was saying at the visit that they were doing repairs to the House and decorating. On cross-examination, Mr Gear confirmed that he was not involved in the management of the tenancy at all and had had no prior contact with the Tenant. He was unaware of whether the Tenant had known that he was going to be there with his father. He denied that the purpose of the visit was to carry out some sort of inspection and that his dad had not asked him to take photographs. He decided to do that himself. When asked why he thought the conversation became heated, he said it was to do with the bank details and repairs. Mr Gear was asked

if he recognised the kitchen units to which he said no. When asked if they were new kitchen units he said he could not be sure.

13. The Landlord's solicitor then stated that they had taken the decision that the Landlord herself would not give evidence.
14. Ms Brooks then summed up in respect of the Tenant's position. She stated that they are seeking an Order against the Landlord in respect of the three outstanding matters. As to the hole at the fireplace, she stated that it was clear the fire had been condemned by Glasgow City Council, never replaced and that the fireplace had not been left in a reasonable condition. She does not consider the Landlord's position credible that the Tenant would have removed this herself. Ms Brooks stated that the Landlord's evidence generally was not credible and, in particular, that there was no evidence that it was Mr Gear who had called the Police during the incident referred to in evidence and given that Mr Gear had claimed that they were in rent arrears when there was, in fact, no rent due. Regarding the Tenant's position that the condition of the kitchen units was down to wear and tear, she stated that there was some debate as to the age of the kitchen units. They are certainly at least 12 years old and may be 15/20 years old. She stated that it would only be if there was evidence that the Tenant had damaged the kitchen units, that the Landlord would not be under a duty to rectify this. She referred to the evidence given by the Chawners as to the number of improvement works carried out and that they take pride in their house. Finally, Ms Brooks stated that the repair to the bath panel had not been carried out and no evidence had been produced on behalf of the Landlord of a failure by the Tenant to allow access for this.
15. Ms Hoey summed up for the Landlord. She referred to the photographs lodged on behalf of the Landlord and stated that it is clear from these that the Tenant does not take pride in her home. They show mess and neglect and no attempts by the Tenant to maintain the property in a reasonable condition. The property throughout has been significantly damaged by the Tenant and the condition of it is not down to wear and tear. She requested that an order be made against the Tenant in this regard.
16. The Legal Member clarified that it is not within the Tribunal's powers to make any kind of repairs order or order for payment in respect of damages against the Tenant as part of this application and that a separate application to the Tribunal would require to be made if the Landlord wished to pursue such an order.
17. The Ordinary Member queried the Gas Safety Certificate which had been produced on behalf of the Landlord. Mr Gear confirmed that the gas safety engineer had only supplied him with the single page document which has been produced to the Tribunal and that it only covers the boiler as this is the only gas appliance in the House.

Findings in Fact

1. The tenancy commenced on 11 September 2009 by virtue of a Short Assured Tenancy Agreement between the parties of the same date.
2. The House was let on an unfurnished basis, with an initial period of 24 months and monthly rental of £480.
3. Mr Gear (the Landlord's husband) has managed the tenancy throughout on behalf of the Landlord.
4. Relations between the parties appear to have been good for many years, until approximately two to three years ago.
5. A Section 33 Notice appears to have been served on the Tenant dated 15 March 2021 and an AT6 dated 24 March 2021, specifying grounds for possession of the House as deterioration in the condition of the House and furniture provided.
6. The Tenant and her husband and daughter remain in possession of the House.
7. The Tenant had notified the Landlord prior to submitting this application to the Tribunal of repair issues outstanding.
8. There was a substantial amount of email correspondence between the parties' respective solicitors produced to the Tribunal which appears to date back to in or around December 2020.
9. This application was lodged with the Tribunal on 23 August 2021.
10. Reference is made to the Tribunal's findings on Inspection, which took place on 29 November 2021.
11. Some of the repair issues mentioned in the Tenant's application to the Tribunal had been rectified prior to the Inspection.
12. As at the date of the Evidential Hearing, the repair issues outstanding and in dispute between the parties in terms of the application were a hole in the living room where a gas fire had been removed, kitchen units and drawers in a state of disrepair and a detached bath panel.
13. The House does not meet the Repairing standard in some respects.

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations and productions lodged by the parties and the oral evidence heard on behalf of parties at the Evidential Hearing.
2. Given the present condition of the kitchen, the Tribunal is satisfied that the kitchen fixtures and fittings provided by the Landlord are not in a reasonable state of repair or in proper working order in terms of Section 13(1)(d) of the 2006 and that repairs/replacement of the various fixtures and fittings require to be carried out to ensure that the Repairing Standard is met. It is the Tribunal's view from its findings on Inspection and from the evidence heard that the kitchen units and drawers are of some vintage and likely to be beyond economic repair. It was accepted on behalf of the Landlord by Mr Gear that the same kitchen units had been there for the duration of the current tenancy (since 2009) and a previous tenancy which was estimated by Mr Gear to have lasted around a year. It was then conceded that the current kitchen had been installed whilst the Landlord and Mr Gear had still been residing in the House themselves. The Tribunal is of the view that the current condition of the kitchen units currently is due to the age of the units and wear and tear which has occurred through many years of use. The Tribunal had not seen any evidence of the condition of the House, including the kitchen units, at the time the House was let to the Tenant, such as a photographic schedule. The Landlord herself did not give evidence. The evidence of Mr Gear (Landlord's son) was that it had been twenty years since he himself had lived in the House and he had had no involvement in the management of the tenancy nor given any evidence about the condition of the House when it was let to the Tenant. Nor was the Tribunal persuaded that the Tenant or members of her family had damaged or neglected the kitchen units, such that there would be an exception to the Landlord's repairing duty in terms of Section 16(1)(b) of the 2006 Act. The Tenant and Mr Chawner were consistent in their evidence as to the deterioration of the kitchen units over the years of their tenancy and in respect of them eventually having to remove the kitchen drawers altogether, which they have kept stored elsewhere in the House. The Tribunal considered their evidence credible that they had complained to Mr Gear for some time regarding the condition of the kitchen and told him about having to remove the drawers and that they had retained all the parts for him to see. It is clear from the evidence before the Tribunal that Mr Gear feels strongly that the Tenant has not properly maintained the condition of the House generally and considers that this is most likely the reason that the Landlord has not been prepared to address the condition of the kitchen.
3. The Tribunal is also satisfied that the fixtures and fittings provided by the Landlord are not in a reasonable state of repair or in proper working order in terms of Section 13(1)(d) of the 2006 Act in respect that the bath panel has not been re-attached to the bath frame, following some plumbing repairs carried out by a contractor of the Landlord previously. Repairs/replacement of the bath panel is required in order to meet the

Repairing Standard. The Tribunal was satisfied from the evidence before it that the Landlord has been aware of the need for this issue to be attended to for some time and it was not disputed that this repair is the responsibility of the Landlord. The Tribunal was not persuaded that the reason this had not been attended to was because the Tenant had failed to allow access for it to be done. Mr Gear claimed that, for well over a year, all repairs had been organised through the parties' respective solicitors but it was clear from evidence produced that some arrangements were made between the parties direct or between contractors instructed by the Landlord and the Tenant. For example, a screenshot of text messages between Mr Gear and the Tenant from November 2021 had been produced on behalf of the Tenant which appeared to make reference to arrangements in respect of another repairs issue as well as to arrangements for a plumber to attend to fix the bath panel. Mr Gear also conceded in evidence that he had supplied contractors with the Tenant's mobile telephone number in order that contractors could contact her direct. It was suggested on behalf of the Tenant that one contractor had been given an incorrect number for her. There had undoubtedly been a history of recent problems between the parties as to arrangements for repairs being carried out and the Tribunal was of the view that there had been instances where the Tenant had refused access to contractors for various reasons but also where contractors instructed by the Landlord had failed to attend altogether or attended at a different time to what had been arranged. However, as regards this particular repair, the Tribunal preferred the evidence of the Tenant and felt that her position was more credible than Mr Gear's, especially as the Tribunal was aware that around this time in November 2021, the Tenant had allowed access to contractors to install the new windows and front door, the repairs to the radiators and also to a heating engineer to carry out boiler repairs which were outwith this application. It seemed unlikely to the Tribunal, against this background, that the Tenant would have refused access for this one particular repair to the bath panel.

4. As to the hole where the gas fire had been removed, the Tribunal was not satisfied that this amounted to any breach of the Repairing Standard. It was a matter of agreement that the gas fire which had originally been in the living room of the House had been removed around nine years ago and that shortly after the Landlord had arranged for central heating to be installed so there was an alternative means of heating. There was no suggestion that there was any current safety issue in terms of the gas fittings that remained in the fireplace alcove nor carbon monoxide. The Tribunal was of the view that what remains is not so much a "hole" as an empty alcove where the fire had been and it was noted that the alcove surround had been decorated over with wallpaper. The Tenant had made reference to a draught coming down the chimney whereas Mr Chawner's complaint about this was merely that it was unsightly. The Tribunal thought it unlikely that, if the Tenant had had such issues with the way the fireplace had been left, that she would have put up with it for so many years and only raised the issue relatively recently. The Tribunal

did accept that the fireplace looked a little odd but did not consider that this was significant enough to breach the Repairing Standard.

5. The Tribunal is satisfied that the EICR dated 11 January 2022 and the Gas Safety Certificate dated 14 January 2022 are both satisfactory and that no further enquiries or orders are required in this regard.
6. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified in paragraphs 2 and 3 above. Given the nature of the required works, the Tribunal is of the view that a period of 12 weeks is an adequate and reasonable timescale for these works to be completed.

Decision

7. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
8. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
9. 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.

Signed.. **N Weir** Date: 8 March 2022
Nicola Weir, Legal Member of the Tribunal