

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/20/0886

Re: 12 Lesmuir Drive, Scotstoun, Glasgow, G14 0EQ (“ the house”)

Land Register Title No: GLA203934

The Parties:

Miss Karen Grant, residing at the house (“The tenant”)

Mrs Nirmal Kaur Sumal and Mr Joghinder Singh Sumal, 15 Wyvis Avenue, Bearsden G61 4RD (“The landlords”)

Tribunal Members – Sarah O'Neill (Legal Member) and Andrew McFarlane (Ordinary (Surveyor) Member)

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 said duty. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal’s decision is unanimous.

Background

1. By application received on 12 March 2020, 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 her application (comprising her completed application form, a covering letter, a copy of her tenancy agreement and her notification letter to the landlord dated 27th January 2020), the tenant stated that she believed

the landlords had failed to comply with their duty to ensure that the house met the repairing standard as set out in sections 13(1) (a) (b) (c)(d) and (h) of the Act. Her application stated that the landlords had failed to ensure that:

- the house is 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 in a reasonable state of repair and in proper working order
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- the house meets the tolerable standard.

3. The tenant made the following complaints in her application:

1. There is a leak under the kitchen sink.
2. The toilet is leaking, which has damaged the bathroom floor.
3. There is a leak through from the bathroom to the kitchen ceiling, which is badly damaged.
4. The bathroom sink taps do not turn properly and move when they are turned on.
5. The shower has no thermostat, and the water is either too hot or too cold.
6. The hall windowsill has always been broken.
7. There are holes in the ceilings of the two upstairs bedrooms.
8. The front bedroom ceiling is water damaged due to leaks from roof.
9. Parts of the roof need to be replaced.
10. The living room ceiling has water damage due to leaks from roof.
11. A window in one of the upstairs bedrooms does not open properly.
12. The front door is of poor quality: very badly marked, the handle is very slack; there is no letterbox; the door is difficult to open and close at times.
13. The fridge socket in the kitchen is very old and is not attached to the wall correctly.
14. The skirting of cupboards in the kitchen has never been properly attached to cupboards.
15. The doors of the two upstairs bedrooms are very old and have dangerous glass panelling.
16. The downstairs bedroom window frame fell down when a curtain rail and curtains were put up.
17. All flooring is in poor condition.

4. There was some further correspondence between the tribunal administration and the tenant regarding proof of notification of the repairs. The tenant was also asked to confirm that the application, which had originally named only Mrs Sumal as the landlord, could be amended to add Mr Sumal as a joint landlord, as they were joint owners of the house. The tenant provided the further information requested and confirmed that she was happy for the application to be amended to include Mr Sumal as a landlord.
5. On 8 May 2020, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. Unfortunately, it was not possible to schedule an inspection and hearing at that time, due to the continuing effects of the Covid-19 pandemic and the government restrictions which were in place.
6. A case management discussion (CMD) was later arranged for 20 January 2021. The purpose of the CMD was to explore whether an inspection of the house was necessary and to gather any further information which was needed to take the application forward. The parties were invited to submit written representations to the tribunal by 31 December 2020. Written representations were received from the tenant on 7 January 2021. No written representations were received from the landlords by that date.
7. The tribunal issued a direction to the landlords on 21 December 2020, requiring them to provide to the tribunal an up to date electrical installation condition report (EICR) and gas safety certificate for the house by 13 January 2021. No response to the direction was received prior to the CMD.
8. A CMD was held on 20 January 2021 by telephone conference call. The tenant was present and represented herself. The landlords were not present or represented at the conference call. The tribunal was satisfied that the requirements of rule 17 (2) of the schedule to The First-tier Tribunal for Scotland Housing and Property Procedure Rules 2017 (“the 2017 rules”) regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the landlords in terms of rule 29 of the 2017rules.
9. The tribunal considered each of the tenant’s complaints in turn. The tenant told the tribunal that all of the repairs issues contained in her application were still outstanding.
10. The tribunal noted that in her written representations received on 7 January 2021, the tenant had included photographs of some items which had not been included in her original application. The tenant

confirmed that she wished the tribunal to consider several additional repairs issues, which are listed at paragraph 12 below.

11. The tribunal chairperson noted that these issues were not currently part of the tenant's application. As things stood, the tribunal could not therefore consider these issues. If the tenant wished, however, she could write to the tribunal requesting permission to amend her application to include these issues.
12. The tenant submitted a letter to the tribunal dated 20 January 2021, requesting to amend her application. The letter was sent to the landlords by the tribunal on 26 January 2021. In the letter, the tenant stated that she wished to amend her application to include the following four additional repairs issues:
 - 1) The boiler is very old and unsafe.
 - 2) The radiators are very old and some don't function.
 - 3) Some of the ceiling light fittings need replaced and are covered up with ceiling.
 - 4) The oven is 'hanging out' from the wall. The glass panel inside the oven door slides out, which is a hazard- the clips are broken.
13. On the same date, an email was received from the tenant enclosing a gas safety certificate in respect of the house dated 14 January 2020.
14. The tribunal issued a second direction to the landlords on 3 March 2021. This invited them to make written representations in response to, or request the opportunity to make oral representations on, the tenant's amendment request of 20 January 2021, by 26 March 2021. The direction also again required the landlords to provide an up to date EICR and gas safety certificate in respect of the house, noting that the landlord should have carried out a further gas safety check in January 2021. It also required the landlords to provide a written report from a suitably qualified heating engineer that the heating and hot water systems within the house including the shower, the boiler and the radiators were operating correctly.
15. No response to the direction was received from the landlords. Further emails were received from the tenant on 5 and 28 March 2021 providing updates on the repairs issues.
16. An inspection was arranged for 16 July 2021. This had to be postponed the day before it was due to take place, as it had not been possible for the tribunal administration to complete the necessary covid-19 check with the landlords. It later became apparent that the letter sent by

recorded delivery on 21 June 2021 notifying the landlords of the inspection had not been picked up from the delivery office. The letter was returned to the tribunal administration on 21 July 2021.

The inspection

17. The tribunal inspected the house on the morning of 4 August 2021. The weather conditions at the time of the inspection were warm and sunny. The tenant was present at the inspection. The landlords were not present or represented at the inspection.
18. Photographs were taken during the inspection. A pre-hearing inspection summary and schedule of photographs, a copy of which is attached to this decision, was sent to the parties prior to the hearing.
19. The tribunal had been informed by the tribunal administration the day before the inspection that the landlords would be unable to attend the inspection as they were on holiday but were happy for the inspection to proceed in their absence. Their representative, Mr Singh, disputed this at the hearing. He said that while the landlords had been on holiday, they had not indicated that they were happy for the inspection to go ahead in their absence. He indicated that, while he wished this to be noted by the tribunal, as the inspection had now been completed, and the schedule of photographs sent to the parties, he was happy for the hearing to go ahead.

The house

20. The house is a semi-detached house within a block originally constructed for the local authority. Main outer walls are of brick, largely finished with roughcast, under a hipped, pitched slate clad roof. Gutters and downpipes are a mixture of cast iron and uPVC. Windows and external doors are uPVC framed with sealed double glazed units. Accommodation comprises: **Ground Floor** living room, bedroom, kitchen and hallway; **First Floor** two further bedrooms, hallway and a bathroom.

The hearing

21. On 11 August 2021, the tribunal held a hearing by telephone conference call. The tenant was present on the call. The landlords were represented by their son, Mr Paman Singh.

Preliminary issues

22. The tribunal noted that there appeared to be some confusion over the landlords' address and identity. The address stated for the landlord on the tenancy agreement was 15 Wyvis Ave, Bearsden G61 4RD, which was also the address stated on the land certificate for the house. However, the address given for the landlord in the summary attached to the tenancy agreement was 15 Wyvis Avenue Glasgow G13 4PF. The stated address for the landlord on the Scottish Landlord Register was 14-18 Peterson Park Post Office, Yoker, Glasgow G13 4PF.
23. This had led to some confusion as the tenant had sent her initial notification to the G13 4PF postcode. The tenant stated in her correspondence that she had never met the landlords and that all of her dealings with the landlords had been through a Mrs Singh, to whom she paid the rent at Peterson Park Post Office, and whom she had corresponded with via text message regarding the repairs. Mr Singh explained to the tribunal that 'Mrs Singh' was in fact another name by which Mrs Sumal, who worked at the said post office, was known.
24. When asked by the tribunal whether he had seen all of the papers for the application, Mr Singh said that he had only seen the schedule of photographs, the lease and the photographs sent by the tenant on 9 August 2021. He indicated that he had some understanding of the repairs issues to be considered but that he did not have a list of these in front of him. He appeared to be under the impression that the tribunal would also be considering issues related to eviction and non-payment of rent by the tenant. The tribunal chairperson clarified that the tribunal could only consider the repairing standard application at this hearing. If a separate application had been made by the landlords for eviction and/or payment of rent arrears, that would be considered by another tribunal.
25. The tribunal asked the tribunal clerk to send to Mr Singh by email copies of the tenant's application; the tenant's notification to the landlords; the note of the CMD held on 20 January 2021; the tribunal's second direction; and the tenant's letter of 20 January 2021, requesting to amend her application. The tribunal then adjourned the hearing for twenty minutes to give Mr Singh time to read the documents. Following the adjournment, Mr Singh indicated that he was content for the hearing to continue.
26. The tribunal chairperson then explained to Mr Singh that the tenant's letter requesting to amend her application to add the four complaints set out at paragraph 12 above had been sent to the landlords together with the note of the CMD by recorded delivery post and had been signed for on 28 January 2021. The landlords had therefore received notification or otherwise become aware of the additional complaints, and been given a reasonable time to address these, in terms of section 14(4) of the Act. In its direction of 3 March 2021 (which had been signed for on 5 March), the

tribunal had given the landlords the opportunity to make written representations in response to the amendment, or request the opportunity to make oral representations, by a date not less than 14 days from the date on which intimation of the amendment had been served, in terms of rule 14 (2) of the 2017 rules.

27. No response to the direction had been received from the landlords, and the tribunal was minded to allow the amendment. Mr Singh stated that he was happy to proceed on the basis that the application was amended to include the additional issues.
28. The tribunal also noted that the photographs of the house received from the tenant on 9 August 2021 showing the impact of torrential rain over the previous weekend had been submitted late. It considered, however, that in the circumstances it was reasonable to allow these to be considered. Mr Singh indicated that he had no objection to this. The tribunal also allowed Mr Singh to submit an EICR and gas safety certificate in respect of the property, and email correspondence between the letting agent and the tenant, during the course of the hearing.

The evidence

29. The evidence before the tribunal consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title GLA203934, which showed that the house is owned jointly by the landlords.
 - Scottish Landlord Register registration details for the house, showing that Mrs Nirmal Sumal is the registered landlord for the house.
 - Tenancy agreement between Mrs Sumal and the tenant in respect of the house which commenced on 1 September 2016.
 - Copy letter dated 27 January 2020 sent by the tenant to Mrs Sumal, notifying her of the complaints.
 - Letter to the tribunal administration from the tenant dated 16 March 2020.
 - Email from the tenant to the tribunal administration dated 20 April 2020, together with screen shots of text messages between the tenant and 'Miss Singh' dated between 3-9 February 2020.
 - Email from the tenant to the tribunal administration dated 12 May 2020.
 - Copy notice headed: "s.33 Notice to Quit" from Mrs Sumal to the tenant dated 2 March 2020.

- Copy text message to tenant signed 'Mrs Sumal' dated 3 February 2020, stating "I have read your letter' and 'don't worry we will arrange to carry out the repairs shortly.'
- Several other text messages between Mrs Sumal (Miss Singh) and the tenant dated 7 February 2020.
- The tenant's written representations received on 7 January 2021.
- The tenant's letter to the tribunal dated 20 January 2021 requesting to amend her application.
- The email received from the tenant enclosing a gas safety certificate produced by JS Heating Ltd, a gas safe registered engineer, dated 14 January 2020.
- Emails received from the tenant on 5 March and 28 March 2021.
- The tenant's oral representations at the CMD.
- The tribunal's inspection of the house.
- The oral representations of the parties at the hearing.
- Email with photographs of the property received from the tenant on 9 August 2021.
- EICR dated 17 May 2021 in respect of the house carried out by and Zulfqar Khan of ZAK Systems Ltd, a NAPIT registered contractor, which was provided by Mr Singh during the hearing.
- Gas safety certificate dated 1 March 2021 addressed to Mr Sumal in respect of 221 Millburn Avenue, Glasgow G81 1ES, provided by Raj Bamrah of Gas Glow 2000, Glasgow, a gas safe registered engineer, and updated gas safety certificate by the same contractor and with the same date in respect of the house, submitted by Mr Singh on 19 August 2021.
- Forwarded email correspondence from Regent Property to the tenant dated between 7-22 April 2021, received from Mr Singh during the hearing.

Summary of the issues

30. 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 have complied with the duty imposed by section 14 (1) (b).

Findings of fact

31. The tribunal made the following findings in fact:

- The house is owned jointly by the landlords.
- Mrs Sumal is the registered landlord for the house.

- Mrs Sumal and the tenant entered into a short-assured tenancy agreement which commenced on 1 September 2016.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. The overflow pipe underneath the kitchen sink was not connected to the drain. Any water entering that pipe would discharge into the cupboard below the sink. A temporary repair appeared to have been carried out by installing new white plastic pipes. This pipework connected the outlet from the bottom of the sink to the drainage system. A basin had been placed underneath the white pipes, which was dry at the time of the inspection (photos 1, 2 and 3 of the photograph schedule).
 - ii. The toilet pan was leaking; the connection from the WC to the drainage system was misaligned (photos 50-51).
 - iii. Meter readings were taken on the flooring underneath the vinyl below the toilet outlet. These revealed the presence of dampness (photo 52).
 - iv. There was staining on the kitchen ceiling underneath the WC (photos 7-8).
 - v. Damp meter readings taken on the kitchen ceiling at the stained area found that it was dry at the time of inspection (photos 9-10).
 - vi. The taps on the bathroom sink were loose and not securely fixed (photo 53).
 - vii. There was an over bath shower connected to the bath taps, which had no thermostat (photo 54).
 - viii. The internal windowsill on the stair window was broken, with large parts of it missing (photos 27-28).
 - ix. There was a patched area of ceiling in the front bedroom, with damaged decor to the outer wall and mutual wall with the adjacent attached property (photos 29-31).
 - x. Meter readings were taken on the ceiling in the front bedroom adjacent to the outer wall. The readings revealed the presence of dampness (photograph 32).
 - xi. Meter readings were taken on the outer wall in the front bedroom. The readings revealed the presence of dampness the levels of which increased towards the bottom of the outer wall (around windowsill level) (photos 33-34).
 - xii. Two patched areas, staining and a hole were observed on the ceiling in the rear upstairs bedroom (photographs 35- 38).
 - xiii. Damp meter readings were taken on the stained area of ceiling in the rear upstairs bedroom. This area was found to be dry at the time of inspection (photos 39-40).

- xiv. The tribunal did not observe any obvious source of water penetration on viewing the roof externally. There was a parapet wall at the front of the roof behind which there was expected to be a gutter or an area of flat roof, but this was not visible from ground level (photos 55-57).
- xv. Damaged decoration was observed to the ceiling and outer wall of the living room and the wall mutual with the adjacent property (photos 16-17).
- xvi. Meter readings were taken on the plaster of the living room outer wall where the décor was damaged. These revealed the presence of dampness (photos 18-19).
- xvii. The window in the rear upstairs bedroom was open on the tribunal's arrival. It was found when tested to be very stiff to operate. Dirt/debris was observed in the operating mechanism of the window's opening sash (photos 41-42).
- xviii. The main entrance door of the house was observed to be missing an external letter plate. The door also had a broken catch. The closing edge of the door leaf was fouled by the locking mechanism on the door frame. A misaligned Yale lock had been added to the door (photos 22-26).
- xix. The socket in the kitchen which the fridge was plugged into was firmly fixed to the wall (photo 11).
- xx. The skirting/plinth running along the main row of base units in the kitchen was not attached to the units. There appeared to be no fixings to secure the skirting to the legs of the base units (photos 12-15).
- xxi. The door to the rear upstairs bedroom was of an older style and was in poor condition. The door did not close fully; the catch and inner door handle were missing; and the outer door handle was in poor condition. A bolt had been added to the outside of the door to secure it (photos 43-47).
- xxii. The door to the front upstairs bedroom was missing. There was evidence that there had previously been a door attached (photos 48-49).
- xxiii. The plastic trim above the window in the downstairs bedroom was missing (photos 20-21).
- xxiv. The vinyl floor covering in the bathroom was uneven (photo 58).
- xxv. There were worn areas in the laminate floor covering in the rear upstairs bedroom (photos 59-60).
- xxvi. The laminate floor covering in the front upstairs bedroom was distorted, apparently due to water damage (photo 61).
- xxvii. The laminate floor covering in the living room and downstairs hallway was worn in places (photos 62-64).

- xxviii. There were two missing sections of laminate flooring in the kitchen (photo 65).
- xxix. The laminate floor covering in the downstairs bedroom was worn in places (photos 66-67).
- xxx. The wall mounted boiler and heating controls in the kitchen were of an older style (photos 68-69).
- xxxi. The thermostatic valves were missing from some of the radiators, including those in the downstairs hallway and downstairs bedroom (photos 70-71).
- xxxii. The oven unit in the kitchen was not fully recessed and protruded slightly beyond the units on either side of it (photo 4).
- xxxiii. The inner glass on the oven door was loose and was missing a retaining clip in the lower left corner (photos 5-6).
- xxxiv. There was a loose ceiling rose on the light fitting in the upper hallway (photo 72).
- xxxv. The ceiling rose in the upstairs front bedroom was missing (photo 73).
- xxxvi. There was a loose ceiling rose on the light fitting in the rear bedroom (photo 74).
- xxxvii. There were several misaligned cupboard doors in the kitchen and a taped-up trim above the tiling above the cooker recess in the kitchen (photos 75-77).

Reasons for decision

Alleged difficulties in obtaining access for repairs

- 32. Mr Singh told the tribunal that he had become involved in dealing with the repairs issues at the house in around March 2021, at the request of his parents. There had been ongoing issues with communication between the landlords, for whom English was not their first language, and the tenant. He had later engaged a letting agency, Regent Property, to manage the property. The agency had contacted the tenant several times seeking to gain access to investigate the maintenance issues within the house but had difficulties in obtaining access. During the course of the hearing, Mr Singh forwarded several emails dated between 7-22 April 2021 from Regent Property to the tenant requesting dates when they could attend the property to investigate the various issues.
- 33. The tenant said that Regent Property had carried out an electrical check at the property and had looked at the outstanding repairs issues. She said however that she had been unable to provide dates when she could give access to the house as she had already taken a lot of time off work and had no availability. She pointed out that the repairs issues had been

ongoing for more than a year before the letting agency had contacted her regarding access. The tribunal noted that it was clear from the copy text messages submitted by the tenant that Mrs Sumal was aware of the issues in early 2020, if not before.

34. Mr Singh confirmed that the landlords had not made an application to the tribunal to exercise their right of access to carry out repairs, although he was aware that such an application could be made. In all the circumstances, the tribunal did not consider that the landlords had shown that any failure to comply with the repairing standard duty occurred only because they lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, in terms of section 16 (4) of the Act.
35. The tribunal considered each of the tenant's complaints in turn, as set out below.

1. *Leak under the kitchen sink*

36. The tribunal found at its inspection that the overflow pipe underneath the kitchen sink was not connected to the drain as it should have been. A temporary repair appeared to have been carried out by installing new white plastic pipes. This pipework connected the outlet from the bottom of the sink to the drainage system. A basin had been placed underneath the white pipes, which was dry at the time of the inspection. There was, however, dirt in the basin which suggested that at some stage dirty water had been flowing into it.
37. The tenant told the tribunal that the landlords had not repaired the overflow pipe after she had notified them of the problem. She said that when the sink was used, water had been flowing over onto the floor. She had therefore carried out a temporary repair to stop this from happening, but said that when the sink was full, water would flow through the overflow pipe into the basin.
38. Mr Singh said that he accepted what was shown in the tribunal's photographs (1-3) and had nothing to add.
39. The tribunal determined on the basis of the evidence before it that the pipework under the sink was not in a reasonable state of repair and in proper working order.

2. *Leaking toilet, which has damaged the bathroom floor*

40. The tribunal observed at its inspection that the toilet pan was leaking, and that the connection from the WC to the drainage system was misaligned. The pipe, passing through the outer wall of the property to connect with

an external downpipe, appeared to be set too high to connect correctly with the toilet. Meter readings were taken on the flooring underneath the vinyl below the toilet outlet. These revealed the presence of dampness. The tribunal noted that as a result of the leak, the meter reading was much higher than might normally be expected below a toilet outlet.

41. The tenant told the tribunal that the toilet had leaked since the start of her tenancy. She said that Mr Sumal had tried to fix it in around 2018, but that this had been unsuccessful. Mr Singh did not dispute that the toilet was leaking.
42. On the basis of the evidence before it, the tribunal determined that neither the toilet nor the floor below the outlet were in a reasonable state of repair and in proper working order.

3. Leak through from bathroom to kitchen ceiling

43. This complaint was directly related to item 2 above. The tribunal observed at its inspection that there was staining on the kitchen ceiling underneath the WC, indicative of water damage. Damp meter readings taken on the kitchen ceiling at the stained area found, however, that it was dry at the time of inspection.
44. The tenant told the tribunal that she accepted that the ceiling had been dry at the time of the inspection. Mr Singh said that he had nothing to add to the tribunal's findings on this issue.
45. The tribunal noted that while the staining on the ceiling was unsightly, this was a cosmetic issue rather than a repairing standard matter. If the toilet was to be repaired to stop it leaking, there should be no further leaks through to the kitchen ceiling. The tribunal determined that the kitchen ceiling was, at the time of its inspection, in a reasonable state of repair and in proper working order.

4. Bathroom sink taps

46. The tribunal found at its inspection that the taps on the bathroom sink were loose and were not securely fixed. The tenant told the tribunal that they had been loose since she moved into the property in 2016. She said that she had asked the landlords to fix the taps in around 2017-18, but that they had not been repaired.
47. Mr Singh stated that he had nothing to add in relation to this issue. The tribunal determined that the taps were not in a reasonable state of repair and in proper working order.

5. The shower has no thermostat

48. The tribunal observed at its inspection that there was an over bath shower connected to the bath taps, which had no thermostat. The tenant told the tribunal that it was not possible to run the shower at a reasonable temperature- it was either too hot or too cold. Her children had to have baths rather than showers in order to avoid being scalded.
49. It became apparent at the hearing that the tenant had installed the shower herself. She said that when she first moved into the property, no shower was provided. She had asked the landlords to install one, but they had refused to do so. She considered that a shower should have been provided, as she believed that this should be a standard requirement nowadays. She had therefore decided to install the current shower herself.
50. Mr Singh told the tribunal that he did not consider that the issues with the shower amounted to a breach of the repairing standard. The tribunal agrees with Mr Singh on this point. The repairing standard requires that any fixtures, fittings and appliances *provided by the landlord under the tenancy* are in a reasonable state of repair and in proper working order. It was clear in this case that the shower was not provided by the landlord under the tenancy but had been installed by the tenant.
51. Moreover, there is no requirement under the tolerable standard, which is part of the repairing standard, for a house to have a shower. To meet the tolerable standard, a house is required only to have a fixed bath *or* shower, in terms of section 86 (1) (fa) of the Housing (Scotland) Act 1987. The tribunal therefore determined that there was no breach of the repairing standard in respect of the shower.

6. The hall windowsill is broken

52. The tribunal observed at its inspection that the internal windowsill on the stair window was broken, with large parts of it missing. The tenant told the tribunal that the windowsill had been broken when she moved into the house. There were children living in the house and she was concerned that this was a safety hazard.
53. Mr Singh disputed that the windowsill had been broken when the tenant had moved in. The tribunal asked him whether an inventory had been produced at the start of the tenant's tenancy, which might provide evidence on this point. Mr Singh said that he did not believe that there had been an inventory, as there was no mention of this in the tenancy agreement.

54. The tribunal noted that in some circumstances a broken windowsill may be viewed as a cosmetic issue. In this case, however, given the sharp broken edges and the location of the windowsill close to the top of the stairs, it took the view that there was a repairing standard issue to be considered here. It appeared that the breakage had been the result of some considerable force having been applied to the windowsill at some point, but it was not possible to conclude how or when this had happened.
55. The tribunal found the tenant to be a credible and reliable witness, and noted that she had freely accepted that some of the other repairs issues may have been partly the result of wear and tear by herself/ her family. Other than Mr Singh's assertion that the windowsill had not been broken at the start of her tenancy, there was no evidence before the tribunal to support this. On the basis of the evidence before it, the tribunal determined that on the balance of probabilities the windowsill had been broken before the tenant moved in. It determined that the windowsill was not in a reasonable state of repair and in proper working order.

7. There are holes in the ceilings of the two upstairs bedrooms

8. The front bedroom ceiling is water damaged due to leaks from roof

9. Parts of the roof need to be replaced

10. The living room ceiling has water damage due to leakage from roof.

56. The tribunal considered that items 7,8, 9 and 10 were related and therefore considered these together. The tribunal observed the following during its inspection:
57. Front bedroom - There was a patched area of ceiling, with damaged decor to the outer wall and mutual wall with the adjacent attached property. Higher than normal dampness readings were obtained on the ceiling in the front bedroom adjacent to the outer wall and on the outer wall, with increasing levels of dampness towards the bottom of the outer wall (around windowsill level).
58. Living room -damaged decoration was observed to the ceiling and outer wall and the wall mutual with adjacent attached property. Higher than normal dampness readings were obtained on the plaster of the outer wall where the décor was damaged.
59. Roof- the tribunal did not observe any obvious source of water penetration on viewing the roof externally. There was a parapet wall at the front of the roof behind which there was expected to be a gutter or an area of flat roof, but this was not visible from ground level.

60. Rear bedroom - two patched areas, staining and a hole were observed on the ceiling. Damp meter readings were taken on the stained area of ceiling. This area was found to be dry at the time of inspection.
61. At the hearing, the tenant told the tribunal that there had been issues with the roof since she had moved in. When it rained, there were leaks into the front upstairs bedroom, which then leaked through to the living room below. She said that these had been manageable in the past but had got worse in recent months. She said that she had contacted the landlords in March 2021 about the leaks, and they had sent a roofer to the house a few days later. She said that he had only been there briefly and that she did not believe he had carried out any repairs.
62. Mr Singh told the tribunal that the tenant had notified him directly about the issues with the roof in March. He said that the roofer had told him that there were no obvious signs of external damage, and that he had replaced some roof tiles which has slipped down and cleared the gutters. He said that, as he had heard nothing further from the tenant since then about the roof, he had assumed that there were no further issues.
63. The tenant stated that the weather had been largely dry since that time, which meant that the roof issues had not been an immediate problem for some months. She said that the very heavy rain over the previous weekend had resulted in severe leaks into the bedroom, and that as a result she had to sleep in the living room. The living room ceiling had come down while she was asleep and the power had gone off for a time due to the water coming in. She had submitted photographs to the tribunal which were consistent with this.
64. The tribunal noted that the problem with the roof appeared to be related to the area behind the parapet wall and that adjoining the neighbouring property. Mr Singh confirmed that he had been contacted by the owner of the neighbouring property who had also experienced water ingress over the weekend. He agreed that there was a need for the issues with the roof to be investigated and for repairs to be carried out. He said that he had been in contact with a roofer about the current situation, who would be going to the house later in the week.
65. In relation to the tenant's complaints about the roof, the front bedroom and the living room, the tribunal determined that the house was not wind and watertight and in all other respects reasonably fit for human habitation. In view of the sizeable hole in the ceiling of the rear upstairs bedroom, it also determined that that room was not wind and watertight.

11. Window in the back (upstairs) bedroom

66. The tenant told the tribunal at the CMD that one of the windows in the bedroom at the back did not open properly. The tribunal observed during its inspection that the window was open on its arrival. When tested, the window was found to be very stiff to operate. Dirt/debris was observed in the operating mechanism of the window's opening sash.
67. Mr Singh pointed out that the tenancy agreement stated at clause 30 that the tenant is required to have the windows cleaned internally and externally. The tenant said that she accepted this to be the case.
68. The tribunal took the view that the responsibility to clean the windows would not normally be taken to include cleaning the hinges. In any case, it was likely that the dirt and debris observed had built up over a period of years, possibly starting prior to the tenant's tenancy. The tribunal determined that the window was not in a reasonable state of repair and proper working order at the time of its inspection.

12. The front door

69. During its inspection, the tribunal observed that the front door was missing an external letter plate. The door also had a broken catch. The closing edge of the door leaf was fouled by the locking mechanism on the door frame. A misaligned Yale lock had been added to the door.
70. At the hearing, the tenant told the tribunal that all of these issues had been present at the start of her tenancy. Mr Singh did not dispute the various issues observed by the tribunal at its inspection. The tribunal determined that the front door was not in a reasonable state of repair and in proper working order.

13. The fridge socket

71. At the CMD, the tenant told the tribunal that the socket in the kitchen which the fridge was plugged into was very old and was not attached to the wall correctly. The tribunal observed at its inspection that the socket was now firmly fixed to the wall.
72. Both parties confirmed that the electrician sent to the house by the landlords to carry out an EICR had fixed the socket to the wall. The tenant confirmed that she was happy that the issue had been addressed. The tribunal therefore determined that the socket was in a reasonable state of repair and in proper working order.

14. Skirting of cupboards in kitchen

73. The tribunal observed that the skirting/plinth running along the main row of base units (below oven/hob and adjacent units) in the kitchen was not attached to the units. There appeared to be no fixings to secure the skirting to the legs of the base units as would be normal or accepted practice in such cases. The tenant told the tribunal that the skirting had not been attached when she moved into the house and had never been fixed. Mr Singh told the tribunal that he had nothing to add to what the tenant had said about the issue. The tribunal determined that the skirting/plinth was not in a reasonable state of repair and in proper working order.

15. Doors in the upstairs bedrooms

74. The tenant told the tribunal at the CMD that the doors of the two upstairs bedrooms were in poor condition. They were older style doors with glass panelling. She had removed one of these for safety reasons as there was a large crack in the glass. The other door was still in place, and she was concerned that it was unsafe.

75. The tribunal observed at its inspection that the door to the rear upstairs bedroom was of an older style and was in poor condition. The door did not close fully; the catch and inner door handle were missing; and the outer door handle was in poor condition. A bolt had been added to the outside of the door to secure it. The door to the front upstairs bedroom was missing. There was evidence that there had previously been a door attached.

76. Mr Singh agreed that the doors needed to be replaced. The tribunal determined that the doors were not in a reasonable state of repair and in proper working order.

16. Window frame in downstairs bedroom

77. The tribunal observed during its inspection that plastic trim had been added around windows to seal the gap between window frames and adjacent walls. A section of this trim above the window in the downstairs bedroom was missing. It was clear that there had previously been plastic around this window.

78. The tenant told the tribunal that she had put up a standard curtain pole and light cotton curtains, and that the whole thing had come down within a week.

79. The tribunal noted that at present, there was no way for the tenant to put up curtains or a blind as exists in many other rooms in the house above

the window. The tribunal determined that the plastic trim was not in a reasonable state of repair and in proper working order, nor was the gap between the window frame and wall structure sealed to prevent draughts and it was not therefore fully wind and watertight.

17. All flooring is in poor condition

80. The tenant told the tribunal at the CMD that all of the floor coverings in the house were of poor quality. She had replaced the hall carpet herself, but the flooring elsewhere required attention.

81. The tribunal observed the following at its inspection:

- i. The vinyl floor covering in the bathroom was uneven.
- ii. There were worn areas in the laminate floor covering in the rear upstairs bedroom.
- iii. The laminate floor covering in the front upstairs bedroom was distorted, apparently due to water damage.
- iv. The laminate floor covering in the living room and downstairs hallway was worn in places.
- v. There were two missing sections of laminate flooring in the kitchen.
- vi. The laminate floor covering in the downstairs bedroom was worn in places.

82. The tenant told the tribunal that while she accepted that some of the issues were due to wear and tear, there were missing sections of laminate flooring in the kitchen when she moved in. The bathroom flooring had also been uneven when she had moved in. The damage to the laminate in the front upstairs bedroom had been caused by water coming in.

83. Mr Singh agreed that some of the issues were due to wear and tear. He suggested that the bathroom vinyl could just be ill fitting and could possibly be fixed rather than replaced. When asked by the tribunal how long ago the current flooring had been installed in the house, he said he thought most of it had been done between 2009, when the landlords bought the house, and 2016, when the tenant moved in. He said that he believed there had been three tenants in the house prior to the current tenant.

84. The tribunal considered that the current state of the laminate flooring was consistent with up to 12 years of wear and tear in a house with a number of people living in it. There was no evidence of any active damage or abuse. The tribunal determined that the floors in the kitchen, bathroom and upstairs front bedroom were not in a reasonable state of repair and in proper working order. The laminate flooring elsewhere, while showing

clear signs of wear and tear, was not currently unsafe and was in a reasonable state of repair.

18. The boiler is very old and unsafe

19. The radiators are very old and some don't function

85. The tenant told the tribunal that she felt the boiler was unsafe, especially as the leak from the bathroom was directly above the boiler. She said the heating costs were very high, and that each year she had to remind the landlord to carry out gas checks. She also said that some of the radiators did not work and that she could not control them as the thermostats were missing. She was concerned that the radiators were not safe to use.
86. The tribunal observed at its inspection that the wall mounted boiler and heating controls in the kitchen were of an older style. The thermostatic valves were missing from some of the radiators, including those in the downstairs hallway and downstairs bedroom.
87. The tribunal noted that the gas safety certificate dated 14 January 2020 which had been produced by the tenant showed that the boiler and heating system were safe. That only considered the safety of the system, however. The tribunal had directed the landlords (in its second direction) to provide a report from a suitably qualified heating engineer as to whether the heating and hot water systems were operating correctly. No such report had been produced, however. The tribunal pointed out that it is a criminal offence to fail to comply with a direction from the tribunal.
88. The tribunal also noted that a new gas safety certificate would have been required in January 2021. Again, the tribunal had directed the landlords to produce this, but nothing had been received.
89. Mr Singh told the tribunal that the boiler had been checked and certified as safe throughout the tenant's tenancy. He sent a gas safety certificate dated 1 March 2021 provided by a registered gas safe engineer to the tribunal by email during the course of the hearing. Unfortunately, while this was addressed to Mr Sumal, it appeared to relate to a different property. Mr Singh said that this was a mistake and said that he would send a corrected version to the tribunal. An updated gas safety certificate by the same contractor dated 1 March 2021 in respect of the house was received from Mr Singh on 19 August 2021. This showed that the gas installation, including the boiler was satisfactory.
90. Mr Singh told the tribunal that the radiators had been provided with thermostat valves at the beginning of the tenant's tenancy. The tenant

disputed this, saying that the valves had been missing when she moved in.

91. In light of the updated gas safety certificate dated 1 March 2021 received from Mr Singh, the tribunal determined that the boiler was safe and in a reasonable state of repair and in proper working order. In relation to the radiators, the tribunal accepted the tenant's evidence that valves were not present at the time she moved into the property. The tribunal determined that the radiators were not in a reasonable state of repair and in proper working order.

20. Ceiling light fittings need replaced

92. The tenant had told the tribunal at the CMD that some of the ceiling light fittings were old and could not be replaced because the ceiling had not been put up correctly. The tribunal observed at its inspection that:

- i. There was a loose ceiling rose on the light fitting in the upper hallway.
- ii. The ceiling rose in the upstairs front bedroom was missing.
- iii. There was a loose ceiling rose on the light fitting in the rear bedroom.

93. The tenant told the tribunal that she did not use any of the ceiling lights in these rooms as she felt that they were unsafe, although she thought some of them may actually work. Mr Singh noted that the EICR made C2 recommendations (i.e. potentially dangerous. Urgent remedial action required) relating to all three of the light fittings in question. He indicated that he accepted that these issues required to be addressed.

94. The tribunal determined that the light fittings were not in a reasonable state of repair and in proper working order. It also noted that the EICR provided by Mr Singh found that the overall electrical installation was unsatisfactory and identified a number of other C2 and F1 recommendations which required to be attended to urgently. Given the issues with the electrical supply reported by the tenant following the recent torrential rain, the tribunal urges the landlord to have the electrical installations checked again by a registered contractor.

21. The oven

95. The tenant told the tribunal that the oven had been replaced in January 2020. It did not fit into the space in the kitchen and was 'hanging out' from the wall. The glass panel in the oven door was loose- the clips were

broken- and had previously fallen out. The tenant said that she had to be very careful as to how she opened and closed the door to make sure it did not fall out and hurt someone.

96. The tribunal observed at the inspection that the oven unit was not fully recessed and protruded slightly beyond the units on either side of it. The inner glass on the oven door was loose and was missing a retaining clip in the lower left corner.
97. Mr Singh said that his father had installed the oven in January 2020. He said that it had been brand new and suggested that the missing clip was likely to have been caused by the tenant. The tenant denied this.
98. The tribunal considered that while the oven was protruding slightly beyond the units, it was secure and was therefore safely installed. With regard to the glass in the oven door, this was currently a safety hazard. It was clear that there was a clip missing, and that the glass needed to be better secured. There was a dispute over whether the clip had been missing when the oven was installed, or whether this was due to something the tenant had done. In the absence of any other evidence to the contrary, the tribunal noted that Mr Singh had not been present when the oven was installed and accepted the tenant's evidence, which it found to be credible and reliable. The tribunal therefore determined that the oven door was not in a reasonable state of repair and in proper working order.

Observations by the tribunal

99. The tribunal wishes to make observations about several potential repairing standard issues which it observed during its inspection, but which did not form part of the tenant's application. Firstly, there were several misaligned cupboard doors in the kitchen. The tenant said that these had been in that condition since she moved in. There was also a taped-up length trim above the tiling above the cooker recess in the kitchen. Mr Singh said that this was superficial, having had been left by a tiler, and that the tape could be removed.
100. The tribunal also heard a regular loud beeping noise in the house throughout its inspection. While this appeared to be coming from one of the alarms downstairs in the house, it was difficult to pinpoint which one it was. The tribunal noted from the EICR provided by Mr Singh that one of the smoke detector backup batteries had expired. It therefore seems likely that this was the cause, and that the batteries require to be replaced.

Summary of decision

101. On the basis of all the evidence before it, the tribunal determined that the landlords had 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 house 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
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.
- some fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.

102. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

103. 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.

104. 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.

S.O'Neill

Signed

.....Date: 30 August 2021

Sarah O'Neill, Chairperson