

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/20/0615

Re: 121 Glentinar Drive, Moodiesburn, Glasgow, G69 0HW (“ the house”)

Land Register Title No: GLA141536

The Parties:

Mr Aran Stanton, formerly residing at 121 Glentinar Drive, Moodiesburn, Glasgow, G69 0HW (“the former tenant”)

Mr Lee Chapman, C/O Victoria Letting, 4 Chancellor Street, Glasgow, G11 5RQ (“the landlord”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Andrew McFarlane (Ordinary (Surveyor) Member)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on it 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 landlord has not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 24 February 2020, the former tenant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

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

- the house is wind and watertight and in all other respects reasonably fit for 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
- 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 former tenant made numerous complaints in his application, as set out in more detail below.

1. Exterior

- All gutters need emptying and cleaning
- Wooden windows need repainting as no longer protected
- Decking needs replacing as it is unsafe and is the only access to the bins
- The shed needs to be emptied of the former tenant's refuse
- The back gate is broken and needs to be secured

2. Lounge

- Carpet trim needs replaced as it is not properly fixed down and there are screws sticking out
- Doors need adjusting as they do not stay shut
- Ceiling needs repaired following leaks from the bathroom
- Windows need resealing as they are not wind tight

3. Kitchen

- Window needs resealing due to not being wind tight
- Worktop that the sink is attached to needs fixed down
- Sink needs resealed as it is leaking into the cupboard underneath
- Tap needs replacing as it is leaking onto the sink and onto the worktop
- Wall extractor fan needs replacing as it does not work
- Wall hung cupboards need fixed as the bases are badly damaged and they cannot be used
- Drawer nearest to the sink needs fixed as the drawer front is not attached

- The lock on the patio doors is faulty
- The cooker extractor fan does not work.
- Boiler works but is ineffective and has a faulty fan

4. Stairs

- Carpet is thin and the carpet strips used to attach it are protruding through the carpet and cutting our feet
- There are sharp items caught under the carpet on the landing between the bedrooms

5. Bedroom one

- Windows need resealing as they are not wind tight
- Door needs adjusting as it does not stay shut

6. Bedroom two

- Windows need resealing as they are not wind tight
- Door needs adjusting as it does not stay shut
- Electrical socket is loose and cannot be used

7. Bedroom three

- Windows need resealing as they are not wind tight
- Door needs adjusting as it does not stay shut

8. Bathroom

- Bathroom was condemned by one contractor
- Broken toilet was replaced but new one wasn't fixed to the wall
- Shower screen is leaking as the seals are perished
- Basin has unsafe sharp edges
- Extractor fan does not work so there is no ventilation
- Shower riser kit is not properly fixed as walls are rotten
- Newly laid lino is not sealed and was laid on a saturated floor
- Some tiles are not correctly grouted

9. Attic

- Visible hole in the lining under the tiles
- No insulation on the top rafters making it very poorly insulated.

4. On 8 May 2020, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. It was not possible to arrange an inspection and hearing at that time due to the Covid-19 pandemic, and the application was therefore put on hold for some months.

5. The tribunal later arranged a case management discussion (CMD) for 20 January 2021, 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 by 1 January 2021. An email was received from the

former tenant on 18 December 2020, confirming that he had vacated the house on 22 May 2020. No written representations were received from the landlord.

6. The tribunal issued a Minute of Continuation on 21 December 2020, confirming its intention to continue with the application, on the basis that it should be determined on public interest grounds due to the nature of the alleged repairs issues and the potential effects of any future tenants/occupiers if the allegations were substantiated.
7. The tribunal issued a direction on 21 December 2020, requiring the landlord 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. An email was received from the landlord's letting agent, Victoria Letting Ltd, on 11 January 2021, enclosing an EICR dated 16 July 2019 and two gas safety certificates relating to the house dated 4 July 2019 and 23 July 2020 respectively.

The house

8. While the tribunal was unable to carry out an inspection of the house, it was able to ascertain from the land certificate and the information provided by the landlord's agent that it is a two-storey three bedroomed house built sometime between 2000-2003.

The case management discussions

9. Three teleconference CMDs were held in order to take the application forward, as the tribunal was unable to carry out an inspection due to the ongoing coronavirus restrictions. The first CMD was held on 20 January 2021 by telephone conference call. The landlord was represented at each CMD by Ms Annette Hanna, Business Manager, of Victoria Letting Ltd (and her then colleague, Ms Jillian Loan, was also present at the first CMD).
10. At the first CMD, Ms Hanna confirmed that the former tenant had left the house on 22 May 2020 by agreement. She said that there had been a new tenant living there since 21 July 2020. She told the tribunal that most of the repairs issues in the application had now been addressed. In particular, the bathroom, which had been the subject of numerous complaints, had now been entirely replaced. The bathroom installation had been completed in early May 2020, shortly before the former tenant left the house.

11. Ms Hanna told the tribunal that various parts of the boiler had been replaced, but that it had broken down again in October 2020 and had been replaced with a new boiler.
12. Ms Hanna also said that all of the windows complained about had been resealed and all doors complained about had been adjusted. She advised that many of the other issues complained about had been addressed, as set out in detail in the note of that CMD dated 20 January 2021. The tribunal decided to postpone the CMD to a later date, to allow Ms Hanna to produce further information and evidence about the repairs which had been carried out. It also issued a direction to the landlord setting out the information which was required.
13. At the second CMD on 17 February 2021, the tribunal considered the further evidence which had been provided by Ms Hanna in response to its direction. It considered each of the former tenant's complaints in turn, and Ms Hanna gave evidence on each of these. Having considered this evidence, the tribunal noted that while many of the repairs issues had been addressed, there were others which were still to be attended to. Ms Hanna undertook to provide evidence that these works had been completed once this had happened. She also undertook to provide some further evidence as discussed in relation to various issues discussed at paragraph 9 of the note of the second CMD.
14. The tribunal decided again to postpone the CMD to a later date, to allow time for the remaining repairs to be completed and for any further evidence of repairs to be produced. The third CMD was held on 20 April 2021.

The evidence

15. The evidence before the tribunal consisted of:
 - The application form completed by the former tenant, together with accompanying documents, including a document headed 'Issues with 121 Glentanar Drive' which listed his specific complaints and an inventory of the house prepared by Victoria Letting dated 24 January 2020.
 - Registers Direct copy of Land Register title GLA141536, which confirmed that the house has been owned by the landlord since January 2003.
 - Scottish Landlord Register registration details for the house, showing that the landlord is the registered landlord for the house.

- Private residential tenancy between the landlord and the former tenant in respect of the house signed by the parties on 16 January 2020.
- Copy email sent by the former tenant to Ms Loan dated 3 March 2020, notifying the landlord of his complaints, together with attachment headed 'Issues with 121 Glentanar Drive' which listed his specific complaints.
- Further emails from the former tenant to Ms Loan dated 12 and 26 February 2020 regarding his complaints.
- Email from the former tenant dated 18 December 2020, confirming that he had vacated the house on 22 May 2020
- Email dated 11 January 2021 from Ms Hanna in response to the tribunal's direction of 21 December 2020, enclosing an Electrical Installation Condition Report (EICR) dated 16 July 2019 and two gas safety certificates relating to the house dated 4 July 2019 and 23 July 2020 respectively.
- Email from Ms Hanna dated 16 February 2021 in response to the tribunal's direction of 20 January 2021, accompanied by several invoices for work carried out at the house, photographs of the house, and an inventory and schedule of condition relating to the house produced by the letting agent and dated 25 January 2021.
- An undated email from the current tenant of the house to Victoria Letting produced by Ms Hanna at the second CMD.
- Two emails dated 8 April 2021 from Ms Hanna, together with various attached documents and photographs of the house.
- The oral representations of the landlord's representative at the three CMDs.
- Energy Performance Certificate in respect of the house dated 26 April 2021 produced by an accredited assessor, provided by Ms Hanna following the third CMD.

Summary of the issues

16. 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 landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

17. The tribunal made the following findings in fact:

- The house is owned by the landlord, who is the registered landlord for the house.

- The parties entered into a private residential tenancy agreement which commenced on 24 January 2020.
- The tenancy of the house is managed on behalf of the landlord by Victoria Letting, 4 Chancellor Street, Glasgow G11 5RQ.
- The tenant vacated the house at some point on or around 22 May 2020.
- All of the items complained about by the former tenant had been addressed as at the date of the third CMD.

Reasons for decision

18. The tribunal determined, on the basis of the information provided by Ms Hanna in advance of the second CMD, that the main repairs issues raised by the former tenant had been addressed. Firstly, regarding the boiler, Ms Hanna had provided the tribunal with a copy of an invoice from LJM Gas Glasgow Ltd for the installation of a new boiler at the house dated 26 October 2020, together with a photograph of the new boiler. The tribunal was satisfied on the basis of this evidence that the boiler which was the subject of the former tenant's complaint had been replaced.
19. Secondly, in relation to the former tenant's numerous complaints relating to the bathroom. Ms Hanna told the tribunal at the first CMD that the installation of a new bathroom had been completed prior to the former tenant's departure from the house. Prior to the second CMD, she produced an invoice from RPM Construction dated 15 June 2020 (invoice no: 2360) for the installation of a new bathroom suite, flooring and painting of the bathroom walls and ceiling. She also provided some photos of the bathroom fittings. The tribunal was satisfied on the basis of this information that the bathroom issues raised in the application had been addressed.
20. Thirdly, with regard to the sealing of the windows and adjustment of doors throughout the house, Ms Hanna had prior to the second CMD produced an invoice (invoice no. 3986) from CDPS dated 1 June 2020 showing that these issues had been attended to. The tribunal was content on the basis of the evidence before it that these issues had been addressed.
21. The tribunal's findings regarding each of the remaining complaints made by the former tenant are set out below.

1. Exterior

22. **Gutters-** Ms Hanna told the tribunal at the second CMD that these were in the process of being attended to. In advance of the third CMD, she provided an invoice from George Patton Building and Landscaping dated 29 March 2021, which included works to unblock the gutter. She also provided photographs of the gutters, which appeared to show them to be clear.
23. **Decking in rear garden** - Ms Hanna told the tribunal at the second CMD that work to remove the decking was due to take place when the weather improved. The invoice of 29 March 2021 referred to above included work to remove the decking and replace it with slabs. Ms Hanna had also produced 'before and after' photographs of the rear garden, showing the broken decking and the new paving slabs.
24. **Refuse in the shed**– Ms Hanna advised the tribunal at the first CMD that the shed had been emptied. At the second CMD, the tribunal noted that the photograph of the inside of the shed at page 6 of the inventory dated 25 January 2021, which showed it to be full of various items, was date stamped 25 January 2021. Ms Hanna confirmed that the items in this photograph belonged to the current tenant.
25. **Back gate**– the invoice of 29 March 2021 referred to above included works to repair the back gate. Ms Hanna also produced a photograph of the gate prior to the third CMD, which showed that new hinges had been attached, together with a new upright at the closing edge.
26. In light of the evidence before it, as discussed above, the tribunal determined that all of the issues under the 'exterior' heading had been addressed and that each of these items were in a reasonable state of repair and in proper working order.

2. Lounge

27. **Carpet trim** - Ms Hanna advised the tribunal at the second CMD that the carpet had been replaced with laminate flooring, as shown in the photograph on page 4 of the inventory, which was date stamped 25 January 2021. The tribunal was therefore satisfied that any repairs issue relating to the carpet/carpet trim had been addressed.
28. **Ceiling** - Ms Hanna told the tribunal at the second CMD that the only repairs required to the ceiling following leaks from the bathroom were the application of stain block and painting. This had been done, as evidenced by the invoice from RPM Construction dated 15 June 2020 (invoice no: 2360). The tribunal also noted that the photographs on page 4 of the inventory and associated text showed the ceiling to be freshly painted and in apparently good repair. It therefore determined

that the ceiling was in a reasonable state of repair and in proper working order.

3. Kitchen

29. **Worktop /sink** - Ms Hanna told the tribunal at the second CMD that the worktop attached to the sink had been repaired, and that the sink had been resealed to stop the leak into the cupboard below. She had however been unable to locate the invoice for this work and undertook to double check this and look for any relevant email correspondence. She pointed out that no issues were noted regarding the sink and/ or the worktop in the inventory of 25 January 2021. Moreover, no issues had been raised by the current tenant; following the recent inspection, the current tenant had sent an email to Victoria Lettings with a list of repairs issues. She forwarded this undated email (which referred to the inspection carried out the previous week) to the tribunal during the CMD. The tribunal noted that this email did not mention the worktop or the sink.
30. At the third CMD, Ms Hanna told the tribunal that she had been unable to find the invoice/email correspondence but reiterated that the work had been done. The tribunal noted that, although the photograph of the kitchen provided in advance of the CMD showed it to be in good order, it was difficult to ascertain from this whether this work had been done. The tribunal however accepted Ms Hanna's evidence and determined that on the balance of probabilities the worktop and sink were in a reasonable state of repair and in proper working order.
31. **Leaking tap** –Ms Hanna told the tribunal at the second CMD that the tap had been replaced by the former tenant, and the cost had been deducted from his rent. Prior to the third CMD, she produced an email from the former tenant to Ms Loan dated 6 May 2020, stating that as he was shielding due to a medical condition, he would replace the tap himself and deduct the cost from his rent. The tribunal determined that on the balance of probabilities, the replacement tap was in a reasonable state of repair and in proper working order.
32. **Wall extractor fan**–Mrs Hanna told the tribunal that, rather than an electric extractor fan, this complaint actually related to a mechanical vent, which was in good repair. Prior to the second CMD, she produced a photograph of this vent. This showed a wall vent with a pullcord at the bottom. Ms Hanna advised that this cord opened the vent to the outside, with no fan to assist air flow. She pointed to the invoice dated 29 March 2021, which included works to reinstate the external vent cover. The tribunal accepted this explanation and noted that in any case, the windows, when opened, provided sufficient ventilation in the

kitchen. The tribunal determined that on the balance of probabilities the vent was in a reasonable state of repair and in proper working order.

33. **Wall hung cupboards**– Ms Hanna told the tribunal at the second CMD that some repairs had been carried out to these cupboards, but she could not produce an invoice for this work. She said that the current tenant had not raised any issues with the cupboards. The tribunal noted that there was no mention of the wall hung cupboards in the email from the current tenant mentioned at paragraph 29 above. The photograph of the kitchen provided prior to the third CMD showed that the wall hung cupboards were all in place and appeared to be in good order. The tribunal determined on the basis of the evidence before it that, on the balance of probabilities, the cupboards were in a reasonable state of repair and in proper working order.
34. **Drawer nearest to the sink** – Ms Hanna told the tribunal at the second CMD that this drawer had been replaced, but it had broken again. This issue was included in the email from the current tenant referred to at paragraph 29 above. Ms Hanna told the tribunal that the drawer was no longer repairable and would be replaced soon. The tribunal noted at the third CMD that this work was included in the invoice of 29 March 2021, and that the photograph of the kitchen which had been submitted appeared to show that all drawers were in good order. The tribunal determined on the basis of the evidence before it that, on the balance of probabilities, the drawer was in a reasonable state of repair and in proper working order.
35. **Lock on the patio doors**–Ms Hanna told the tribunal at the second CMD that the lock had been fixed during the former tenant’s tenancy. She also pointed out that this issue was not mentioned in the email from the current tenant referred to at paragraph 29 above. In advance of the third CMD, she produced an invoice from 911 Locksmiths dated 21 February 2020 for the replacement of the locking unit. While noting that this slightly predated the receipt of the former tenant’s application, the tribunal determined on the basis of the evidence before it that on the balance of probabilities the lock was in a reasonable state of repair and in proper working order.
36. **Cooker extractor fan**– at the second CMD, Ms Hanna pointed out that the inventory of 25 January 2021 stated (at page 5) that the cooker extractor fan was working, but that one of the bulbs required replacement. Prior to the third CMD, she produced a short video of the extractor fan, which showed it to be working. The tribunal determined on the basis of the evidence before it that the cooker fan was in a reasonable state of repair and in proper working order.

4. Stairs

37. Ms Hanna told the tribunal at the second CMD that no issues had been found with protruding carpet strips or sharp items under the carpet on the landing during a recent inspection. The tribunal noted that the inventory of 25 January 2021 stated that the carpet was thin and may possibly need underlay. The tribunal accepted Ms Hanna's evidence, and it determined that on the balance of probabilities the carpet was in a reasonable state of repair, although it observed that the carpet may benefit from the addition of underlay.

5. Bedroom two

38. **Electrical socket**—at the first CMD, Ms Hanna told the tribunal that the electrical socket, which had a screw loose, had been re-attached. The tribunal noted at the second CMD that this repair was included in the invoice (invoice no. 3986) from CDPS in respect of the house dated 1 June 2020. The tribunal was satisfied on the basis of this invoice, together with the satisfactory EICR for the house dated 16 July 2019, that the electrical installation in the house, including the socket, was in a reasonable state of repair and in reasonable working order.

6. Attic

39. **Hole in the lining under the tiles** -Ms Hanna told the tribunal at the second CMD that a roofer had been sent to the house, and had adjusted a tile, which had addressed the issue regarding a visible hole in the lining under the tiles. This repair was included in the invoice (invoice no. 3986) from CDPS dated 1 June 2020. The tribunal accepted Ms Hanna's evidence, and in the absence of an inspection, it determined on the basis of the available evidence that, on the balance of probabilities, the roof was wind and watertight and in a reasonable state of repair.

40. **Insulation**—the tribunal notes that in terms of section 86(1) (ca) of the Housing (Scotland) Act 1987, a house meets the tolerable standard if it has satisfactory thermal insulation. Further, the tribunal noted the terms of the proposed Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019, which were due to come into force in April 2020 but have been delayed due to the Covid-19 pandemic. These regulations set out a minimum level of energy efficiency for properties in the PRS, namely an 'E' rating on their Energy Performance Certificate (EPC).

41. As it was unable to carry out an inspection of the house, the tribunal asked Ms Hanna at the third CMD to provide a copy of the EPC for the house. On 26 April 2021, an email was received from Ms Hanna to which an EPC dated 26 April 2021 in respect of the house was

attached. The EPC was produced by an assessor accredited by Qidos, an approved organisation appointed by Scottish Ministers. The EPC showed that there was 270mm loft insulation within the roof space, which was given a star rating of 4 out of 5. The house was given a 'C' rating overall, and no recommendations were made in relation to the insulation.

42. On the basis of the information contained in the EPC, the tribunal determined that the roof insulation within the house meets the tolerable standard.

Summary of decision

43. On the basis of all the evidence before it, the tribunal determined that the landlord had not failed to comply with its duty under section 14(1) (b) of the Act. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the former tenant's application.

Rights of Appeal

44. 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.
45. 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... **S O'Neill**Date... 28 April 2021
Sarah O'Neill, Chairperson