

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order

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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/17/0008

Title no: GLA 112319

Flat 1/1, 96 Dorchester Avenue, Glasgow, G12 0EB ("The Property")

The Parties:-

Miss Clara Massa, residing at the Property ("the Tenant")

Mr Mohammed Kamran and Mrs Farhat Naheed Kamran ("the Landlord"), both residing at 4 Broughton Road, Summerston, Glasgow, G23 5HW.

Whereas in terms of their decision dated 7th April 2017 The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and in particular that the Landlord has failed to ensure that :-

- (a) 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; and
- (b) 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 Tribunal now requires the Landlord to carry out such works as are necessary for the purpose of ensuring that the house concerned meets the Repairing Standard and that any damage caused by the carrying out of any works in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (a) To engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the gas fired heating and hot water supply installation including the boiler, all radiators,

valves, programmers and thermostats within the property. The Landlord is to follow the recommendations of that report to ensure that the entire installation is safe and in proper working order and on completion of the works provide a valid CP12 Gas Safety Certificate in terms of Section 13(1)(c) of the said Act; and

- (b) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a check and produce a certificated electrical condition check (EICR) in respect of the entire electrical installation within the property. The Landlord is to follow the recommendations of that report to ensure that the entire installation is safe and in proper working order; in terms of Section 13(1)(c) of the said Act; and
- (c) To repair or replace the electric oven so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (d) To repair or replace the freestanding freezer so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (e) To repair or replace the electric shower so that it is in proper working order; in terms of Section 13(1)(c) of the said Act; and
- (f) To repair or replace the fridge/freezer so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (g) To secure the loose hot and cold taps on the bathroom wash hand basin; in terms of Section 13(1)(c) of the said Act
- (h) To carry out all reinstatement works and decoration necessary following the completion of the works and actions referred to in points a) to g) above.

The Tribunal order that the works and actions specified in this Order must be carried out and completed within the period of **eight weeks (fifty six days)** from the date of service of this Order upon the Landlord.

Given the evidence heard from the parties at the Inspection and Hearing on 31st March 2017 there appear to have been previous communication issues regarding access for carrying out of works. The parties are reminded that access should be provided for the carrying out of ordered and recommended works and actions. It is suggested by the Tribunal that, given previous difficulties, the parties keep recorded, documentary evidence of their communications in this regard.

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.

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.

Please note that in terms of section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents, typewritten on this and the preceding page, are executed by Gerald McWilliams, Solicitor, Legal Member of the Tribunal, at Glasgow on 10th April 2017, before this witness:-

G Cusick _____ Witness

G McWilliams _____ Legal Member

CASEWORKER
2 ATLANTIC QUAY
GLASGOW.

Housing and Property Chamber

First-tier Tribunal for Scotland



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Flat 1/1, 96 Dorchester Avenue, Glasgow, G12 0EB ("The Property")

The Parties:-

Miss Clara Massa, residing at the Property ("the Tenant")

**Mr Mohammed Kamran and Mrs Farhat Naheed Kamran ("the Landlord"),
both residing at 4 Broughton Road, Summerston, Glasgow, G23 5HW.**

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 or not 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 property determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised:-

Mr Gerald McWilliams, Legal Member; and

Mr Andrew Taylor, Ordinary Member

Background

1. By Application received on 10th January 2017 the Tenant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether or not the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 as amended ("the Act").

2. The Application by the Tenant states that she considers that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard. The Application states that the Tenant believes that (i) 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; and that (ii) the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order. The Application specifically states that the gas central heating in the property has not worked for over a year, the oven and stand alone freezer have never worked, the fridge freezer within the kitchen has no freezer door, the electric shower has poor flow and lacks heat, and the plumbing and electrical wiring within the property requires to be checked.
3. The Tribunal comprised Gerald McWilliams, Legal Member, and Andrew Taylor, Ordinary Member. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 23rd February 2017.
4. The Tribunal Members attended at the property on 31st March 2017 for an Inspection. The parties were present.
5. Following the Inspection of the property the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The parties attended.

Findings on Inspection- see attached Photographs Schedule

6.
 - (i) The gas central heating programmer and controls unit within the kitchen in the property is not working. The gas central heating is not working. The hot water supply is working.
 - (ii) The oven within the kitchen in the property is not working. The fan blows cold air only and the oven is not heating up.
 - (iii) The freestanding freezer in the small bedroom, off the living room within the property, is not working.
 - (iv) There is no door on the freezer in the fridge freezer within the kitchen in the property.
 - (v) The electric shower in the bathroom in the property is producing a flow of hot water. There is no difference in the pressure of the water flow between any of the three shower settings.
 - (vi) The hot and cold taps on the wash-hand basin in the bathroom are loose.
 - (vii) Water is draining adequately from the bath within the bathroom.
 - (viii) The toilet in the bathroom flushes and drains.
 - (ix) There is a blackened area around one of the power sockets in the living room within the property. The socket is inoperative.

- (x) There is a hole in an area of the bathroom ceiling, caused by ingress of water from the flat above.

The Hearing

7. Evidence was heard at the Hearing from the parties. The Tenant stated to the Tribunal that she had moved into the property in February 2013. She stated that the property had not had heating for over a year. She stated that the electric oven had blown cold air only since she moved in. The Tenant stated that initially she had not used the freestanding freezer, in the small bedroom off the living room, when she moved into the tenancy. She stated that when she tried to use it, some months after moving in, it had not worked. The Tenant stated that the fridge freezer within the kitchen had no freezer door and that she had put duct tape there in an attempt to separate the freezer from the fridge. She stated that food in the fridge section of the unit became frozen and that this was a particular problem for fresh food which she wished to store in the fridge. The Tenant stated that the pressure in the electric shower in the bathroom had never been good. The Tenant stated that the hole in the ceiling in the bathroom, above the showerhead, had been caused by water ingress from the flat above. She stated that when she had first moved into the property there was a brown patch in the ceiling but this had kept getting worse and the hole had gotten bigger. She stated that the bath had not been draining and the toilet not flushing, and when the toilet had flushed there had been a terrible noise and she previously had to turn on the taps on the wash-hand basin to stop the noise. She stated that recently she no longer had to turn on the taps to stop the noise but that those taps were loose. The Tenant stated that a Scottish Power technician had previously attended at the property to check the electric meter and that, separately, an electrician had attended to inspect the telephone and internet services. She stated that she had never had sight of an electrical condition report for the property. She pointed out a blackened power socket where the "electrics had previously blown". She stated that there may have previously been a battery operated smoke detector within the property but that this was no longer present. At the inspection the Landlord, Mr and Mrs Kamran, had stated that they had encountered difficulties in obtaining access to the property to have repairs carried out. The Tenant denied that she had caused any difficulties.
8. The Landlord, Mr and Mrs Kamran, commented that the difficulty with the gas central heating boiler programmer and controls unit may be due to a "switch problem". They stated that they had not been told by the Tenant that the electric oven was blowing cold air only. They were not aware that the additional freezer supplied with the tenancy had to be in working order. Regarding the lack of door on the freezer section in the fridge freezer in the kitchen, the Landlord, Mr and Mrs

Kamran, commented that they had provided two freezers. Mr and Mrs Kamran acknowledged that the Tenant had complained to them about the pressure from the electric shower. Mrs Kamran stated that she and her husband were aware of the problem with water ingress from the flat above causing a hole in the ceiling. They stated that the electrical socket difficulties had only been brought to their attention today. Mrs Kamran stated that there had been a smoke detector within the property.

9. A Schedule of internal and external photographs of the Property, taken at the Inspection, is attached to this Decision.

The Repairing Standard

10. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A House meets the Repairing Standard if:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- (d) Any fixtures, fittings and appliances provided by the Landlord under the Tenancy are in a reasonable state of repair and in proper working order,
- (e) Any furnishings provided by the Landlord under the Tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings in Fact

11. The Property is a first floor flat situated in a block of flats erected around 1959. This is a residential area located around four miles west of Glasgow city centre. The accommodation comprises a hall, living room, three bedrooms, kitchen and bathroom.
12. The gas central heating programmer and controls unit, adjacent to the boiler within the kitchen in the property, is not working. There is a hot water supply but there is no heating in the property.
13. The electric oven in the kitchen is not working. It blows cold air only.

14. The freestanding freezer, in the small bedroom off the living room in the property, is not working.
15. The freezer, in the fridge in the kitchen of the property, has no door on it. As a result food in the fridge section of the fridge freezer becomes frozen.
16. There is a hot water supply from the electric shower in the bathroom. There is no difference in the pressure when each of the three settings on the shower are engaged.
17. The hot and cold taps on the wash-hand basin in the bathroom are loose.
18. In the bathroom water is draining satisfactorily from the bath and the toilet flushes and drains.
19. There is a hole in an area of the ceiling above the showerhead, over the bath in the bathroom. This has been caused by water ingress from the flat above the property.
20. There is a blackened area around a power socket within the living room of the property. A previous electrical fault has caused this. The power socket is no longer in working order.

Reasons for Decision

21. The Tribunal made its findings based upon what it found at the Inspection and after considering the evidence and representations of the parties. The gas central heating programmer and controls unit is not working. There is hot water in the property but no heating. The electric oven in the kitchen in the property is not working. The freestanding freezer in the property is not working. There is no door on the freezer section of the fridge freezer in the kitchen at the property. There is no difference in pressure when any of the the three settings on the electric shower in the bathroom are engaged. There are loose taps on the wash-hand basin in the bathroom. There is a blackened power socket in the living room at the property, indicating a previous electrical fault. The socket is not working. These defects were evident at the Inspection.
22. The Tribunal considered whether or not any of the above defects, which it found to be established, brought the Property below the Repairing Standard in terms of the said Act, as amended. The Tribunal considered matters and determined that the gas central heating programmer and controls unit, electric oven, fridge freezer, free standing freezer and electric shower within the property are not in proper working order. The hot and cold taps on the bathroom wash-hand basin are loose. Given its findings the Tribunal considered that a Repairing Standard Enforcement Order should be made and proceeded to make such an Order. The Tribunal considered that it is reasonable for the Landlord to be given eight weeks for the works and actions referred to below to be completed.

Decision

23. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Act, as stated.

24. The Tribunal proceeded to make a Repairing Standard Enforcement Order, as required by sections 24(1) and 24(2) of the Act, in the following terms:

- (a) The Landlord is to engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the gas fired heating and hot water supply installation including the boiler, all radiators, valves, programmers and thermostats within the property. The Landlord is to follow the recommendations of that report to ensure that the entire installation is safe and in proper working order and on completion of the works provide a valid CP12 Gas Safety Certificate in terms of Section 13(1)(c) of the said Act; and
- (b) The Landlord is to engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a check and produce a certificated electrical condition check (EICR) in respect of the entire electrical installation within the property. The Landlord is to follow the recommendations of that report to ensure that the entire installation is safe and in proper working order; in terms of Section 13(1)(c) of the said Act; and
- (c) The Landlord is to repair or replace the electric oven so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (d) The Landlord is to repair or replace the freestanding freezer so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (e) The Landlord is to repair or replace the electric shower so that it is in proper working order; in terms of Section 13(1)(c) of the said Act; and
- (f) The Landlord is to repair or replace the fridge/freezer so that it is in proper working order; in terms of Section 13(1)(d) of the said Act; and
- (g) The Landlord is to secure the loose hot and cold taps on the bathroom wash hand basin; in terms of Section 13(1)(c) of the said Act

(h) The Landlord is to carry out all reinstatement works and decoration necessary following the completion of the works and actions referred to in points a) to g) above.

25. In view of the nature of the failure to meet the Repairing Standard as defined in the said Housing (Scotland) Act 2006, as amended, the Tribunal determined that the Repairing Standard Enforcement Order requires to be complied with within **eight weeks (fifty six days)** from the date of service of the Repairing Standard Enforcement Order upon the Landlord.

26. The decision of the Tribunal was unanimous.

Observations

27. During the course of the Inspection it was observed that the provision for fire detection is not in accordance with current standards. It is recommended that the Landlord should provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of Fire Detection Installations for Dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.

28. It was also observed that there was no provision for the detection of carbon monoxide. It is recommended that the Landlord supplies and fits a Carbon Monoxide detector compliant with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.

29. It was further observed that an area of the bathroom ceiling is badly affected by ingress of water from the flat above. It is advised that the Landlord identifies and repairs the cause of the water ingress and makes good the ceiling and carries out any resultant, necessary decoration.

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.

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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.

Please note that in terms of section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

Signed
Gerald McWilliams, Legal Member

Date 10th April 2017