

Housing and Property Chamber First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (“RSEO”) under section 24 (1) of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RT/16/0310

Property: 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the property”)

Title Number: MID30943

The Parties:-

Mr Robert Slominski, 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the tenant”)

Mr David Ross, Housing and Regulatory Services, City of Edinburgh Council, City Chambers, 249 High Street, Edinburgh, EH1 1YJ (“the third party”)

Shercor Limited having their registered office at 32 Sir William Wallace Wynd, Aberdeen, AB24 1UW and Ms Lynn Anderson, 1, Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the landlords”)

NOTICE TO

Shercor Limited having their registered office at 32 Sir William Wallace Wynd, Aberdeen, AB24 1UW and Ms Lynn Anderson, 1, Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the landlords”)

Whereas in terms of their decision dated 18th February 2017 the First-tier tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined that the landlords have 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 landlords have failed to ensure that the property is:-

wind and water tight and in all other respects reasonably fit for human habitation (section 13 (1) (a))

the tribunal now requires the landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the tribunal requires the landlords:-

1. *To repair or replace the windows of the living room to ensure that they are wind and water tight.*
2. *To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
3. *To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
4. *To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
5. *To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*

The tribunal order that the works specified in this Order must be carried out and completed **within the period of 42 days** from the date of service of this Notice.

A landlord, tenant or third party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 type written on this page and the preceding page are executed by Simone Sweeney, legal chairing member of the tribunal at Glasgow on 18th February 2017 before this witness:-

S. Sweeney , legal chairing member, 23rd February 2017

E Dolan

..... Witness

EMMA DOLAN, MODERN APPRENTICE, BUSINESS SOLUTIONS, WHEATLEY HOUSE, 25 COCHRANE STREET, GLASGOW, G1 1HL

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of decision to issue a Repairing Standard Enforcement Order under section 24 (1) of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RT/16/0310

Property: 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the property”)

Title Number: MID30943

The Parties:-

Mr Robert Slominski, 1/7, Southhouse Square, Edinburgh, EH17 8DN (“the tenant”)

Mr David Ross, Housing and Regulatory Services, City of Edinburgh Council, City Chambers, 249 High Street, Edinburgh, EH1 1YJ (“the third party”)

Shercor Limited having their registered office at 32 Sir William Wallace Wynd, Aberdeen, AB24 1UW and Ms Lynn Anderson, 1, Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the landlords”)

Tribunal Members:

Simone Sweeney (Legal member) David Godfrey (Surveyor member)

Decision

The tribunal, having made such enquiries as it saw fit for the purpose 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 property concerned and, taking account of the evidence submitted by the third party, determined that the

landlords have failed to comply with the duty imposed by section 14 (1) (b) of the Act.

Background

1. By application received 23rd September 2016, the third party applied to the Housing and Property chamber (or as it then was, the Private Rented Housing Panel) for a determination of whether the landlords have failed to comply with the duties imposed by section 14 (1) (b) of the Act.
2. The application of the third party stated that the landlords had failed to comply with the duty to ensure that the house meets the repairing standard under section 13 of the Act and in particular, that the landlords have failed to ensure that:-

“The house is wind and water tight and in all other respects reasonably fit for human habitation (section 13 (1) (a))”

3. The complaint was made in respect of the balcony door and windows in the living room and one of the bedrooms. It was alleged that, due to the windows and the balcony door being in a poor condition, there was water ingress in the property. Further, water would leak from the property into the property below causing damage requiring repairs.
4. By minute dated 24th October 2016 a convenor of the Private Rented Housing Panel with delegated powers under section 96 of the Housing (Scotland) Act* 2014 intimated a decision to refer the application to a tribunal.
5. The tribunal served Notice of Referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and the third party. Details of the date and time of an inspection and hearing were intimated to these parties as 19th December 2016 at 10am for an inspection and 11.30am for a hearing at George House, 126 George Street, Edinburgh, EH2 4HH. By letter of 11th November 2016 the tribunal intimated to the tenant a copy of the correspondence which had been issued to the third party. The tenant was advised that as an interested person to the application intimation was for information purposes, only.

6. In response to the Notice of Referral, Mr Ross for the third party, responded to the tribunal on 1st December 2016 indicating that he intended to attend a hearing but did not intend to send written representations.
7. By email of 4th December 2016, Mr Anderson on behalf of the landlords advised the tribunal that he was travelling to Australia on 16th December 2016, returning 22nd January 2017. He requested that the inspection and hearing be rescheduled for his return.
8. Having reached the view that the email indicated that the landlords intended to participate in proceedings; and that it would not be in the interests of justice to proceed to make a decision without allowing the landlords the opportunity to participate in the process; the tribunal discharged the hearing of 19th December 2016 and a fresh date was identified for the inspection and hearing to proceed on Friday 10th February 2017. All parties were advised of the change in writing.

Inspection and hearing

9. The tribunal inspected the property at 10am on Friday 10th February 2017. Ms Patricia Pryce, legal chairing and training committee member was present for the purposes of observation and review. Mr Anderson was present on behalf of the landlords. There was no attendance by or representation for the third party. There was no one present within the property at 10am. Having made a phone call to the tenant in the presence of the tribunal and having sought the permission of the tenant to do so, the landlord accessed the property.
10. At the inspection the tribunal noted the following:-
 - The property comprises a three apartment flat, built by the local authority circa 1960. It is positioned on the top floor of a four storey tenement building. The flat has two bedrooms, a living room, kitchen and bathroom on the same level.
 - The building is of masonry construction with a flat roof. It forms part of a quadrant with 4 similar tenemental properties each containing approximately 12 individual flats.

- There is one bedroom at the rear of the property and another facing to the front of the property. The windows of the living room and rear facing bedroom had been replaced circa 2004.
- At the rear of the property is a balcony which was accessed from a door leading from the living room area. The balcony floor is concrete and flat.
- Along the foot of the exterior wall of the living room was a flashing of black bitumen felt which was not part of the original material of the building. The bitumen had been applied to overlap the concrete floor of the balcony and the bottom of the wall.
- Silver masking tape had been applied to the edge of the balcony door frame on the exterior wall.
- A sealant had been applied around the exterior frame of the living room window preventing the window from opening.
- Gaps in the cement pointing to the brickwork of the exterior wall of the balcony area underneath the living room window appeared to have been filled in with small amounts of black bitumen..
- Tests were undertaken by the surveyor to identify moisture readings in the internal areas around the balcony door and the windows of the living room and rear facing bedroom. Whilst the readings in the bedroom did not indicate high levels of moisture, there was evidence of high levels of moisture in the living room area.

11. Photographs of the interior and exterior areas of the property were taken by the surveyor and contained in his report of 10th February 2017 (attached).

12. A hearing was held at George House, 126 George Street, Edinburgh at 11.30am. There was no attendance by or representation by any of the parties to the application at the hearing.

Summary of the issues

13. The issues to be determined are whether there is evidence of water ingress at the windows of the living room and rear facing bedroom and the balcony door and, if so, whether this amounts to a breach of the repairing standard.

Findings in fact

14. That the tenancy is an assured tenancy which commenced on 13th July 2016. The lease describes the tenancy as a Short Assured Tenancy but there does not appear to be an AT5 supplied with the documentation.

15. That the title identifies Shercor Limited as the owner of the property.

16. That the tenancy agreement identifies the landlords of the property as, "*Shercor Ltd/Lynn Anderson.*"

17. That the property is currently occupied.

18. That attached to the application of 23rd September 2016 the third party had submitted various papers including a copy letter dated 17th November 2015 from the third party to the landlords. Within this letter reference is made to water leaking from the property.

19. That the letter dated 17th November 2015 from the third party to the landlords reads:-

"My Service has been contacted in relation to water ingress from the balcony at the above flat, into the same area of the two flats directly below.

I am writing to request, that appropriate action is taken by yourself, as owner of the property, to rectify the defects to the walkway of the balcony to stop further ingress..."

20. That, amongst the papers submitted by the third party in support of the application was a letter dated, 11th February 2016 from City Glass UK Ltd. addressed to a resident at the tenancy. The letter includes a quote for works required at the property to address water ingress. A copy of the letter is attached. It reads:-

— *“Upon our visit to the above property....we discovered that, the bedroom window, the living room window and the balcony door were in a poor condition and very badly fitted....There is obvious issues with the front door as the asphalt has been repaired by others and now covers the upvc cill. This will need to be removed to allow the living room window and door to be replaced.”*

21. That the landlords had received intimation of the issue of water ingress prior to the application of the third party of 23rd September 2016.
22. That, at the time of the inspection, tests of the areas of the wall around the living room window and balcony door revealed high levels of moisture.
23. That remedial works undertaken by applying bitumen felt to the exterior wall of the living room were not satisfactory to prevent water ingress to the property.
24. That remedial works undertaken by applying silver masking tape around the door frame of the balcony door were not satisfactory to prevent water ingress to the property.
25. That there was no evidence of water ingress at the window of the rear facing bedroom.

Reasons for decision

26. The inspection revealed that there was evidence of water ingress in the wall around the living room window and around the balcony door frame. The construction of the balcony is flat. The rear of the property is exposed to the elements. When rain water makes contact with the balcony, there is no gradient to enable the water to flow from the balcony. As a result, water appears to seep through the wall of the living room. The inspection of the property revealed that attempts had been made to remedy this problem by applying bitumen to any suspected gaps in the exterior wall (along the foot of the exterior wall; to any gaps in the exterior wall where it was likely that water was accessing the property and; in applying silver masking tape along any gaps in the door frame). However, the findings of the tests applied by the surveyor revealed that these repairs were not effective. In light of the findings of the surveyor's tests revealing evidence of water ingress, the tribunal

determined that the property was not wind and water tight and repairs are required. It was also noted that mastic has been applied to the exterior of the living room window to prevent water penetration however the window is no longer capable of being opened.

Decision

27. The tribunal accordingly determines that the landlords have failed to comply with the duty imposed by section 14 (1) (b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by section 24 (1) of the Act in the following terms:-

1. *To repair or replace the windows of the living room to ensure that they are wind and water tight.*
2. *To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
3. *To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
4. *To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
5. *To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*

28. The tribunal considers it reasonable to allow a period of 42 days from the date of the RSEO to carry out these works.

29. The decision of the tribunal was unanimous.

30. The tribunal require the landlords to carry out such works as are necessary to ensure that the property meets the repairing standard.

Right of Appeal

31. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

32. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where such an appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or determined.

Legal chairing member

S. Sweeney 23 February 2017

Housing and Property Chamber First-tier Tribunal for Scotland



PHOTOSHEET



Property: FLAT 7, 1 SOUTHOUSE SQUARE, EDINBURGH, EH17 8DN

Ref no: PRHP/RT/16/0310

Committee: Simone Sweeney and David Godfrey

Inspection: The property was inspected at 10.00 am Friday 10th February 2017.

Access: Mr Slominski (Tenant) was neither present nor represented.

Mr Anderson (Landlord) was present and provided access to the property.

Photographs

1. Lounge window- interior.
2. Lounge window - interior
3. Lounge door - interior
4. Lounge window - exterior
5. Lounge door - exterior detail
6. Lounge door - flashing at threshold
7. Balcony flashing
8. Balcony flashing
9. Open joints in brickwork below Lounge window
10. High damp meter reading in Lounge
11. Bedroom window - interior
12. Bedroom window - interior
13. Bedroom - acceptable damp meter reading.



Lounge window – interior



Lounge window – interior



Lounge door – exterior detail



Lounge door – flashing at threshold



Lounge door – interior



Lounge window – exterior



Balcony flashing



Balcony flashing



Open joints in brickwork below Lounge window



High damp meter reading in Lounge