

**First-tier
tribunal for
Scotland
(Housing and Property Chamber)**

Housing and Property Chamber First-tier Tribunal for Scotland



**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: PRHP/RP/16/0363

Title no: GLA132377

**Flat 2/1, 3 Cherrybank Road, Glasgow, G43 2PQ
("The Property")**

The Parties:-

**Miss Emma Manning, residing at the property
("the Tenant")**

**Miss Joan Morran, 25 Kingshurst Avenue, Glasgow, G44 4QZ
("the Landlord")**

Whereas in terms of their decision dated 29 January 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:-

- (i) 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.
- (ii) 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.
- (iii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health,

the tribunal now requires the landlord 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 landlord:-

- (a) To repair or replace the right-hand window in the kitchen to ensure that it is in a reasonable state of repair and in proper working order.
- (b) To instruct an appropriately qualified contractor to carry out a full inspection of the balcony and to carry out such works as may be identified by such a report as necessary to fix the crack located on the floor of the balcony to ensure that the balcony is in a reasonable state of repair and in proper working order.
- (c) To repair or replace the cooker hood extractor fan to ensure that that is in a reasonable state of repair and in proper working order.
- (d) To produce a complete Electrical Installation Condition Report by a suitably qualified and registered electrician and a Portable Appliance Test Certificate on all portable electrical appliances and equipment supplied by the Landlord and located within the property.
- (e) To install an appropriately placed carbon monoxide detector within the property in accordance with current regulations.

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


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.

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 and the preceding page are executed by Patricia Anne Pryce, solicitor, Atlantic Quay, Glasgow, chairperson of the tribunal at Glasgow on 29 January 2017 before this witness:-

N Pryce witness
NICHOLAS PRYCE name in full
55 BLYTHWOOD ST Address
GLASGOW

P Pryce
Chairperson 

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: PRHP/RP/16/0363

**Flat 2/1, 3 Cherrybank Road, Glasgow, G43 2PQ
("The Property")**

The Parties:-

**Miss Emma Manning, residing at the property
("the Tenant")**

**Miss Joan Morran, 25 Kingshurst Avenue, Glasgow, G44 4QZ
("the Landlord")**

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Andrew McFarlane	-	Ordinary Member

Background

1. By application dated comprising documents received on/between 21 and 30 November, both 2016 the Tenant applied to the Private Rented Housing Panel (which was succeeded by the First-tier Tribunal (Housing and Property Chamber) on 1 December 2016) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that: -

- (a) One of the kitchen windows mechanisms does not work correctly.
- (b) There is a large crack in the balcony.
- (c) There is no documentation to show that the gas appliances are checked annually.
- (d) There is a leaking pipe in the heating system, namely, in the boiler.
- (e) The cooker hood does not work despite being wired in.
- (f) There is no carbon monoxide detector present.

The Tenant considers that the Landlord is in breach of her duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) 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.
 - (ii) 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.
 - (iii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By Minute dated 1 December 2016 the Convener of the First-tier Tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
 4. 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.
 5. Following service of the Notice of Referral (by letter dated 15 December 2016), the Tenant made no further written representation to the tribunal other than to advise that she wished to attend the hearing. The Landlord submitted representations to the tribunal by way of an email dated 4 January 2017.
 6. On 19 December 2016, the tribunal issued a Notice of Direction requiring the Landlord to produce to the tribunal an Electrical Installation Condition Report ("EICR"), a Portable Appliance Test ("PAT") Certificate, a Gas Safe report and an Energy Performance Certificate ("EPC"). In response to the Direction, the Landlord produced page one of an EICR. The Landlord did not produce a PAT Certificate. The Landlord produced a Gas Safe report and an EPC. The tribunal notes that the Landlord therefore failed to comply with the Direction as she did not produce a complete EICR nor a PAT Certificate.

7. The tribunal inspected the Property on the morning of 24 January 2017. The Tenant and the Landlord were present during the inspection.
8. Following the inspection of the Property the tribunal held a hearing at Glasgow and heard from the Tenant only. The Landlord did not attend the hearing nor was she represented at the hearing as she had advised that she had to care for her young grandchildren and could not attend the hearing.
9. The Tenant submitted as follows: -
 - She had lived at the property since August 2016 and had repeatedly asked the Landlord to carry out the outstanding repairs.
 - She had asked the Landlord to send someone round to look at the crack on the floor of the balcony as she was concerned that this could be unsafe. However, the Landlord sent round her husband who viewed the balcony from inside the living room and told the Tenant that the balcony was safe. The Tenant did not believe that the Landlord's husband was qualified to make this judgement.
 - The Tenant confirmed that the vacuum cleaner in the property belonged to the Landlord and that this was the only portable appliance in the property which was owned by the Landlord.
 - The Landlord had not carried out the outstanding repairs despite the Tenant asking for these to be done on several occasions and in terms of the correspondence the Tenant had produced as part of her present application.
 - The Tenant confirmed that the Landlord had served her with a Notice to Quit and that her tenancy was due to expire on 15 February 2017.

Summary of the issues

10. The issue to be determined is whether the repairing standard has been met in light of what the tribunal observed at the inspection together with the submissions made by the Tenant.

Findings of fact

11. The tribunal finds the following facts to be established: -
 - The tenancy is a short-assured tenancy.
 - The property comprised a three apartment second floor flat in a residential area of Shawlands in Glasgow and was located within building of brick and rendered construction. Access to the property is by a common staircase located to the front elevation of the property.
 - The property comprises a hallway, kitchen, bathroom, lounge with balcony off the lounge and two bedrooms.

- The floor of the balcony is cracked along its width which crack is visible from above and below the balcony. In short, the crack runs through the depth of the balcony.
- The mechanism for opening the right-hand kitchen window is broken.
- There is no carbon monoxide detector located in the kitchen of the property.
- The cooker hood extractor fan does not function.

Reasons for the decision

12. At the inspection, the tribunal noted that some of the works mentioned in the application had been completed, namely, that the non-working light fitting in the kitchen had been removed leaving ample light fittings functioning in the kitchen, the bathroom door handle had been fixed and the buttons to operate the toilet had been fixed. However, the tribunal noted that a number of works in terms of the application remained outstanding. In particular, the tribunal noted that: -

- (1) There was a large crack on the floor of the balcony which ran the width of the balcony and continued into the balcony of the neighbouring property. This crack could be seen from below the balcony and penetrated the full depth of the balcony.
- (2) The boiler in the kitchen was switched on and seemed to be functioning well. There was no drip apparent from any of the pipes leading from the boiler.
- (3) The mechanism to open and close the right-hand window of the kitchen was broken. The window was a "tilt and turn" window which, on opening, both tilted and turned at the same time which it should not have done. It thereafter proved very difficult to close the window due to the fault.
- (4) The cooker hood extractor fan was wired in but did not function.
- (5) There was no carbon monoxide detector in the property. At the inspection, the Landlord handed a carbon monoxide detector which was still in its box to the Tenant without apparently realising that the Landlord is responsible for the proper installation of such a detector.
- (6) There was a space on the kitchen ceiling where a further light fitting had been and had been removed but this left ample functioning lighting within the kitchen.

The ordinary member of the tribunal took several photographs which form the Schedule attached to this decision.

The tribunal accepts that the Landlord has made some effort to carry out a couple of the repairs but a number of repairs remain outstanding. The tribunal is concerned that the Landlord seemed to consider that handing a boxed carbon monoxide detector to the Tenant at the inspection fulfilled her duties in relation to the repairing standard in this regard. Furthermore, despite repeated requests by the Tenant, the Landlord failed to address the outstanding works.

The tribunal notes that the Landlord advised that she could not attend the hearing as she required to take care of her grandchildren, however, the tribunal further notes that the Landlord had received at least five weeks' written notice of the hearing and could have made alternative child care arrangements to allow her to attend the hearing. The Landlord attended for the inspection with her grandchildren in tow.

At the inspection, the Landlord advised that the crack located on the floor of the balcony was a common repair. The tribunal has some sympathy for the Landlord as this is a common repair but it falls to be considered as being an issue which must meet the repairing standard and may be a potential danger to any occupant of the property.

Given all of the circumstances, the tribunal is not satisfied that 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 as the tilt and turn mechanism of the right-hand kitchen window is not working and there is a large crack located on the floor of the balcony. The tribunal is not satisfied that 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 as the Landlord did not produce as complete EICR when ordered to do so by the tribunal. The tribunal is not satisfied that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order as a result of the cooker hood extractor fan which does not function and the Landlord did not produce a PAT Certificate as directed to by the tribunal. The tribunal is satisfied that the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as the Landlord has failed to install such a detector.

Decision

13. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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

17. 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 the 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 so determined.

Signed

P Pryce

Date

29 January 2017

Chairperson



Property Address

2/1 3 Cherrybank Road
Glasgow
G43 2PQ

Case Reference

PRHP RP 16 0363

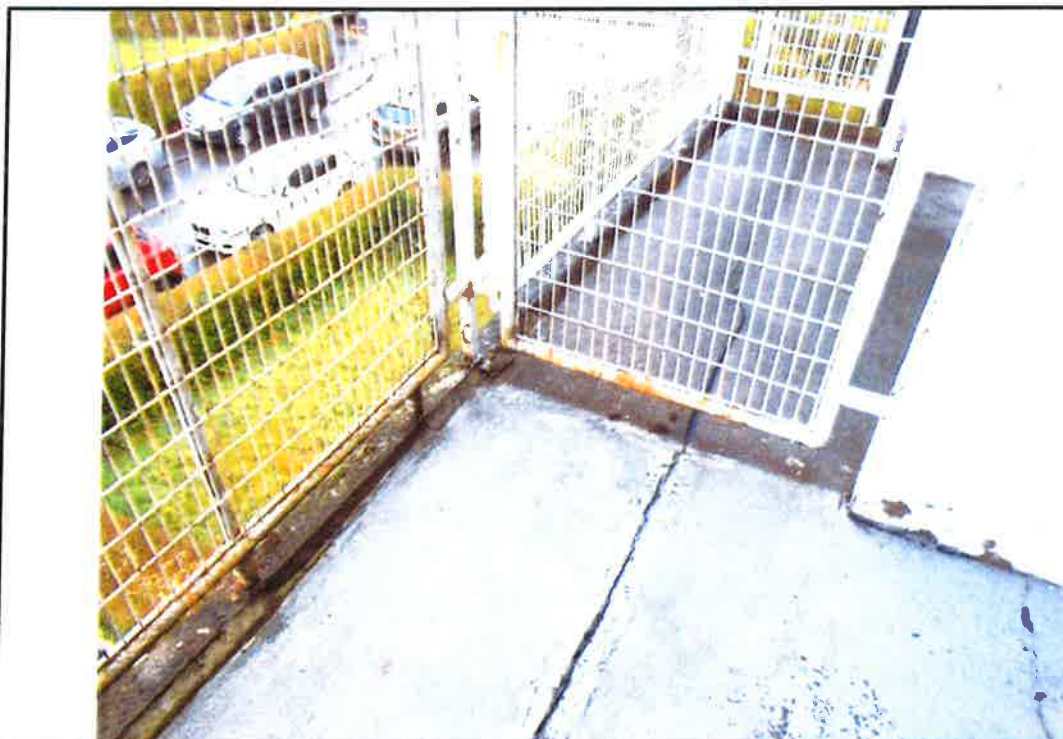
Schedule of Photographs taken during the inspection by tribunal members on 24 January 2017



1. Balcony as viewed from Flat 2/1



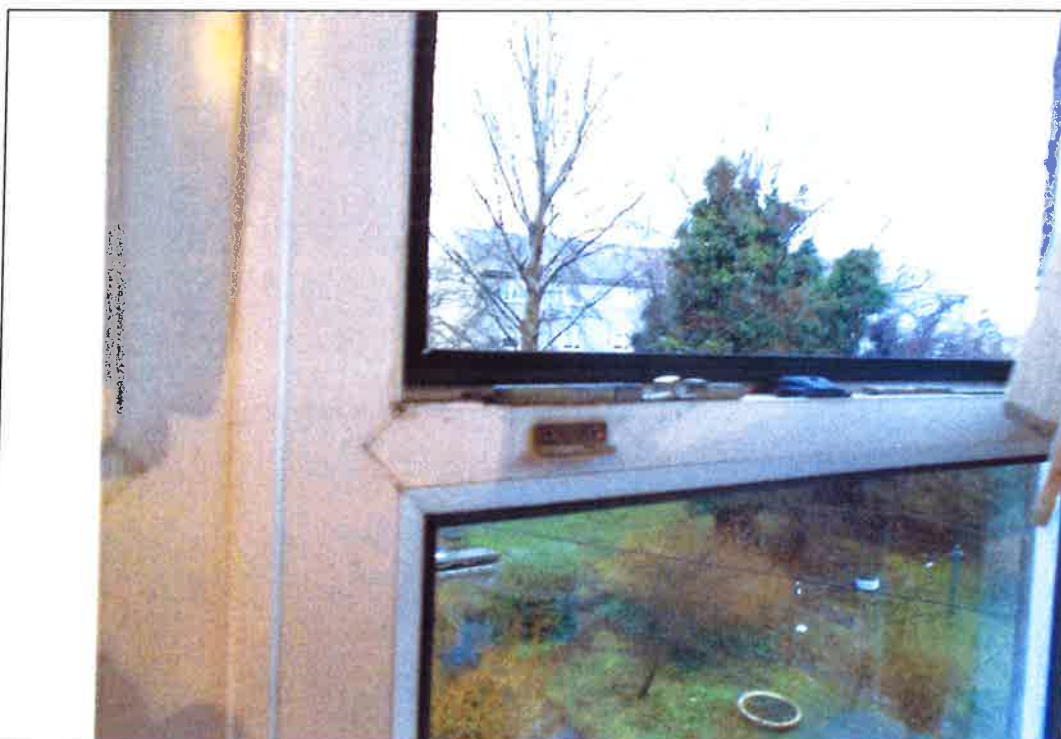
2. Balcony upper surface



3. Balcony upper surface looking towards Flat 2/2



4. Kitchen window



5. Kitchen window



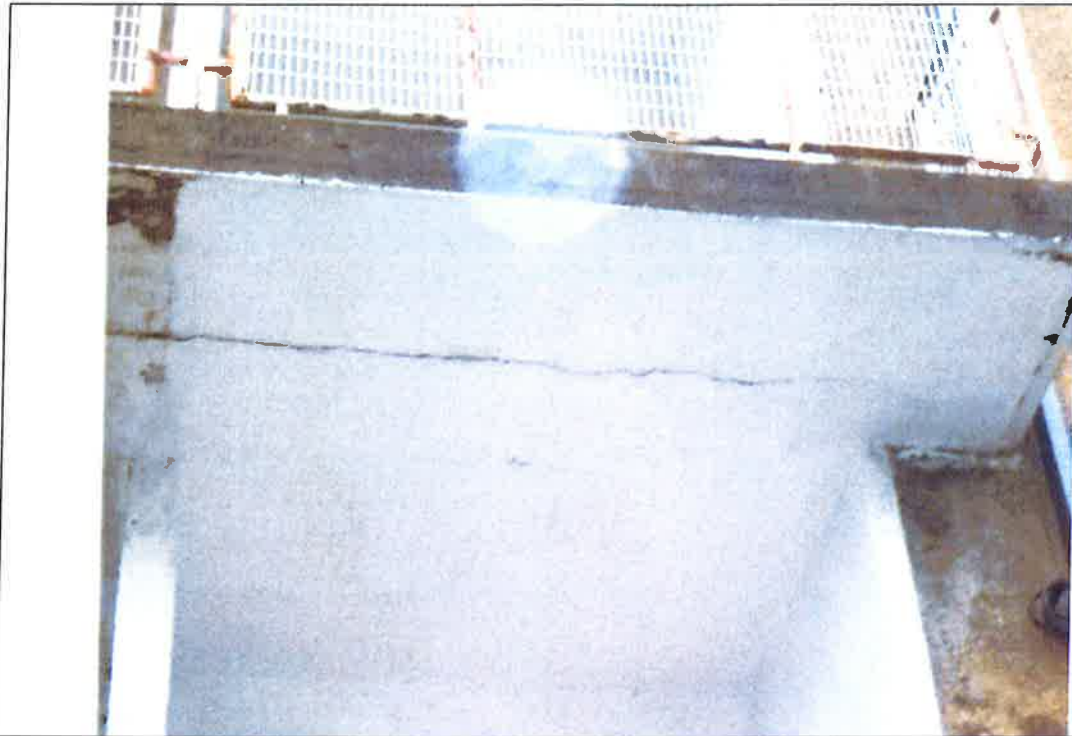
6. Cooker hood



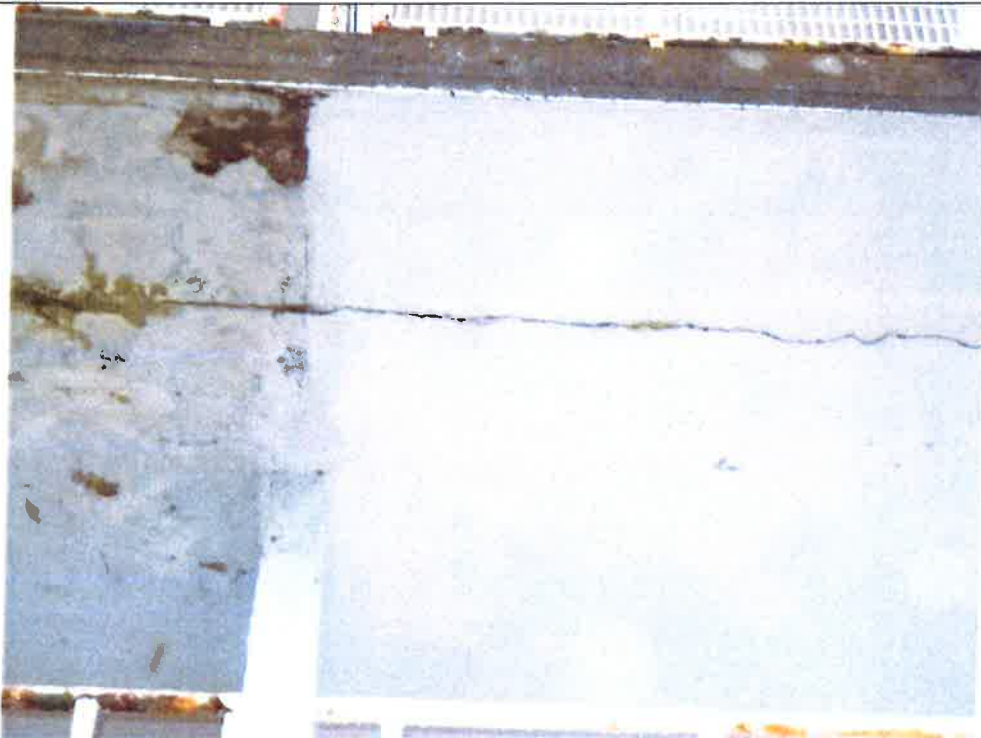
7. Cooker hood power supply



8. Balcony from below



9. Balcony from below



10. Balcony from below