

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Notice of a Decision to Vary a Repairing Standard Enforcement Order
Ordered by the Tribunal**

Housing (Scotland) Act 2006, section 25

Chamber Ref: PRHP/RT/16/0146

Title Number: MID34920

Re: The residential dwellinghouse at

**4/5 Restalrig Crescent
Edinburgh
EH7 6EX
("the Property")**

The Parties:-

**Mr Gordon Shaw
resident at the Property
("the Tenant")**

**The City of Edinburgh Council
East Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS
("the Third Party Applicant")**

and

**Mr Christopher Divens
20 Hermitage Park, Edinburgh, EH6 8HB
("the Landlord")**

The tribunal comprised Mr Ron Handley, Chairperson

The First-Tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 20 October 2016 that the Repairing Standard Enforcement Order ("the RSEO") dated 12 August 2016 and relative to the Property should be varied, varied the RSEO with effect from the date of service of this Notice in the following respects:-

The period allowed for completion of the works required in the RSEO is extended. The required works should be carried out and completed on or before 4 weeks from the date of service of this Notice.

A Landlord(s) or Tenant(s) 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. The 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 the Order is suspended until the appeal is abandoned or finally determined by the Upper Tier. Where the appeal is abandoned or finally determined by upholding 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.

In witness whereof this and the preceding page are subscribed by Ronald G Handley, Solicitor, Chairperson of the Tribunal at Dunbar on 9 February 2017
before this witness:-

J Handley

R Handley

Witness

Chairperson

JANE HANDLEY

Name in full

23 LESLIE WAY, DUNBAR

Address of witness

EDINBURGH EH42 1GP

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 25(1)(a)

Chamber Ref: PRHP/RT/16/0146

Title Number: MID34920

Re: The residential dwellinghouse at

**4/5 Restalrig Crescent, Edinburgh, EH7 6EX
("the Property")**

The Parties:-

**Mr Gordon Shaw, resident at the Property
("the Tenant")**

**The City of Edinburgh Council
East Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS
("the Third Party Applicant")**

and

**Mr Christopher Divens
20 Hermitage Park, Edinburgh, EH6 8HB
("the Landlord")**

The Tribunal comprised Mr Ron Handley, Chairperson

DECISION

Background

1. On or around 10 April 2016 the Tenant applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

The Application

2. In his application the Tenant alleged that the Landlord had failed to comply with the duty to ensure that the Property met the Repairing Standard. In particular it was submitted that the Landlord had:

- failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order;
 - failed to ensure that any fixtures, fitting and appliances provided by the Landlord under the tenancy were in a reasonable state of repair and in proper working order;
 - failed to ensure that any furnishings provided under the tenancy were capable of being used safely for the purpose for which they were designed;
 - failed to ensure that the Property had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular it was submitted that there was dampness and mould within the Property, the toilet seat was missing and the cistern was not working. There was no handle on the bathroom door, the kitchen door was missing as were kitchen cupboards. It was also suggested that the washing machine was unsafe. The Tenant further submitted that there were problems with the guttering, the window keys were missing, the front door was unsafe and there was no letter box. It was stated that the bathroom tiles were coming off the wall.
 4. The Committee inspected the Property at 10.00 hrs on 1 August 2016. The Tenant was present at the inspection. The Landlord did not attend the inspection and was not represented.

Findings

5. The Committee found the following facts to be established:
 - The Property is a top floor flat located in a block of flats at 4/5 Restalrig Crescent, Edinburgh, EH7 6EX.
 - The Tenant previously entered into a Tenancy Agreement with the Landlord that related to the Property.
 - The seat for the WC is missing and the external handle of the bathroom door is missing. The cistern is in proper working order. There is a shower over the bath but there is no shower screen/curtain. When the shower is being used the shower water is not all contained within the bath (as it should be) and has resulted in water ingress under the bath. There are loose tiles in the bathroom and the sealant is inadequate. There is water ingress in the internal wall between the kitchen and the bathroom. An electric extractor fan has been installed in the bathroom but it is not working.
 - The kitchen is off the living room and there is no kitchen door. A door from a kitchen unit (next to the cooker) is missing. The washing

machine leaks when in use and is not in a reasonable state of repair or in proper working order.

- The internal front door has a “Yale” lock which is in proper working order. The letter box in the internal front door is also in proper working order.
 - There is evidence of mould/dampness in the walls and ceilings of the single bedroom, the double bedroom and in the living room.
 - The windows within the Property comprise lockable PVC double glazed units. Although the windows open and close properly, there are no keys for any of the units and consequently it is not possible to lock the windows. The window are not in proper working order.
 - A battery operated smoke alarm is located in the hallway and is in proper working order. The provision for smoke alarms within the Property does not meet the requirements of the relevant building regulations.
6. Having inspected the Property and considered all the available evidence, the Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act. The Committee issued a Repairing Standard Enforcement Order (“the RSEO”) on 8 September 2016. The required works had to be carried out and completed on or before 6 October 2016.
 7. On 20 October 2016 the Surveyor Member of the Committee re-inspected the Property and having done so determined that none of the required works had been completed. A copy of the Re-inspection report is attached hereto.
 8. On 20 October 2016 the Landlord advised the Tribunal that due to factors beyond his control he had been unable to carry out the required works. Consequently he sought further time to complete the required works and requested a variation of the RSEO.
 9. Having considered the request the Tribunal agreed to vary the RSEO and ordered that the works specified in the RSEO be carried out and completed on or before 4 weeks from the date of service of the Notice to Vary the RSEO.
 10. A Landlord or Tenant or any 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. The party must seek permission to appeal within 30 days of the date the decision was sent to them.
 11. 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 Tier. 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.

R Handley

Signed _____
R Handley, Chairperson

Date 9/2/2017



The Private Rented Housing Committee

RE-INSPECTION REPORT

PRHP/RT/16/0146

Title Number: MID34920

Re: The residential dwellinghouse at

4/5 Restalrig Crescent Edinburgh EH7 6EX ("the Property")

The Parties:- Mr Gordon Shaw resident at the Property ("the Tenant")

and

Mr Christopher Divens 3 Marionville Crescent Edinburgh EH7 6AU ("the Landlord")

Date of Re-Inspection: 20th October 2016 Time 11:00 hrs

Surveyor: Ian H Murning TD FRICS Weather: Bright, Overcast, Dry

Present: The Landlord was present

The Tenant was present

The Committee required the Landlord to carry out such works as are necessary for the purposes of ensuring that the Property 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 Committee required the Landlord to:

1. Install a shower screen/curtain in the bathroom to ensure that water is contained within the bath when the shower is being used.
2. Repair or replace the missing tiles within the bathroom and then carry out such investigations and remedial works to ensure that there is no ingress of water between the bath and the internal wall.



3. Replace the door handle on the bathroom door.
4. Replace the seat in the WC.
5. Connect an electrical supply to the extractor fan which is located within the bathroom and then ensure that the extractor fan is in proper working order.
6. Replace the missing door of the kitchen unit (located next to the cooker).
7. Repair the washing machine (or replace it) to ensure that it is in proper working order.
8. Clean and remove the vegetation growing in the guttering and thereafter carry out such repairs as are necessary to ensure that the guttering is in a reasonable state of repair and in proper working order.
9. Carry out investigations to identify the source of dampness within the Property and, if necessary carry out such works as are necessary to ensure that the Property is wind and water tight.
10. Ensure that all the windows in the Property can be locked/unlocked and provide the Tenant with a key for each window.
11. Carry out such work as is necessary for the purposes of ensuring that the provisions for detecting fires and for giving warning in the event of fire or suspected fire within the Property comply with the statutory guidance of the Repairing Standard and in particular require that mains powered smoke alarms are installed. The alarms should be installed in accordance with the recommendations contained in the British Standard on the Design of Fire Detection Installation for Dwellings (BS5839 Part 6).

The Private Rented Housing Committee orders that the works specified in the RSEO must be carried out and completed within the period of 4 weeks from the date of service of the RSEO.

Works in the RSEO undertaken:

At the time of the re-inspection:

None of the items 1 to 11 above had been carried out



Works inn RSEO outstanding:

At the time of the re-inspection:

All of the works Items 1 to 11 above were outstanding.

I Murning

(Signed)

Ian H Murning

20th October 2016