

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Reference number: FTS/HPC/RT/23/2723

Re: Property at 11 Oxgangs House, Edinburgh, EH13 9HE ("the Property")

Title Number: MID99515

The Parties:

**The City of Edinburgh Council, Housing and Regulatory Services, G1 Waverley
Court, 4 East Market Street, Edinburgh, EH8 8BG ("The applicant")**

**Mr Mohammed Abrar, residing at 143 Glasgow Road, East Kilbride, South
Lanarkshire G74 4QA ("the Landlord")**

Interested Party:

**Jessica Brandon, residing at 11 Oxgangs House, Edinburgh, EH13 9HE ("the
Tenant")**

Tribunal Members:

**Paul Doyle (Legal Member)
Greig Adams (Surveyor Member)**

Whereas in terms of their decision dated 15 January 2024, 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 not in a reasonable state of repair nor are they in proper working order in terms of Section 13(1)(c) of the 2006 Act;
- (b) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in

proper working order in terms of Section 13(1)(d) of the 2006 Act;

And

- (c) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

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 to

- (a) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property and all electrical appliances and equipment supplied by the landlord and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with satisfactory EICR and PAT test certificates prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

- (b) replace the laminate flooring with new correctly laid laminate flooring in the landing and bedrooms on the upper floor of the property.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 28 days 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 Paul Doyle, solicitor, 20 York St, Glasgow G2 8GT, legal member of the tribunal at Edinburgh on 22 January 2024 before Emma Doyle, 20 York St, Glasgow G2 8GT

E Doyle

witness

P Doyle

Legal Member

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)

Reference number: FTS/HPC/RT/23/2723

Re: Property at 11 Oxfangs House, Edinburgh, EH13 9HE (“the Property”)

Title Number: MID99515

The Parties:

The City of Edinburgh Council, Housing and Regulatory Services, G1 Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG (“The applicant”)

Mr Mohammed Abrar, residing at 143 Glasgow Road, East Kilbride, South Lanarkshire G74 4QA (“the Landlord”)

Interested Party:

Jessica Brandon, residing at 11 Oxfangs House, Edinburgh, EH13 9HE (“the Tenant”)

Tribunal Members:

Paul Doyle (Legal Member)
Greig Adams (Surveyor Member)

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 presented by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 9 August 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

2. The applicant says that the respondent 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 not in a reasonable state of repair nor are they in proper working order in terms of Section 13(1)(c) of the 2006 Act;
- (b) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in proper working order in terms of Section 13(1)(d) of the 2006 Act;
- (c) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act; and
- (d) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in terms of Section 13(1)(g) of the 2006 Act.

and

- (e) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. On 13 September 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (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 neither the Applicant, nor the Landlord, nor the Tenant, made any further representations.

6. Tribunal members inspected the Property at 10am on 15 January 2024. The Tenant was present. The Landlord was neither present nor represented. The applicant was represented by Ms R Laidlaw. During the inspection on 15 January 2024, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. A hearing took place at George House, George Street, Edinburgh at 11.45am on 15 January 2024. The tenant attended. Ms R Laidlaw represented the Applicant. The landlord was neither present nor represented.

Summary of the issues

8. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 11 Oxfords House, Edinburgh, EH13 9HE ("the property"). The landlord let the property to the tenant on 09/08/2022.

(b) The property is a three bedroomed flat dwellinghouse on two storeys forming part of a larger concrete and render block of flats. A common close and stair leads to the front door of the property, which opens onto a central hallway providing access to the kitchen and livingroom on entry level. A flight of stairs lead to an upper landing providing access to three bedrooms and a bathroom. The property has gas central heating and double glazing.

(c) An RSEO was made in a separate application involving the same parties (FTS/HPC/RT/23/2255) on 12 October 2023. That RSEO requires the landlord to

(a) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating system and boiler in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

(b) Ensure that interlinked smoke and heat detectors, and carbon monoxide detectors are installed within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Repair or replace door stop, door handle & latch and multipoint locking mechanism on the front door to the property

(d) To obtain either (i) a Building Warrant/and or Completion Certificate issued by the local authority, or (ii) obtain a report from the local authority's Property Inspection service, or (iii) obtain a Certificate of Completion for the en-suite shower room/wc. If the local authority refuse to (iv) grant Building Warrant and/or Completion Certificate, or (v) detail remedial works required within the Property Inspection service report or (vi) refuse to grant a Certificate of Completion, either a) remove the ensuite shower/wc and reinstate the pre-existing storage space or b) carry out all works recommended by the local authority advised in obtaining items (i)-(iii) and also progress all works to comply with the Building (Scotland) Regulations 2004.

All within 28 days.

(e) After a reinspection on 15 January 2024, tribunal members refused to issue a certificate of completion for the RSEO made on 12 October 2023 and found that the landlord must complete the following works before a certificate of completion can be issued

(a) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating system and boiler in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

(b) Ensure that carbon monoxide detectors are installed within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Repair or replace door stop, door handle & latch and multipoint locking mechanism on the front door to the property

(d) complete removal of the ensuite shower/wc and reinstate the pre-existing storage space by capping the soil pipe properly.

(h) There is already an extant RSEO. The tribunal has already found that

(i) The property now has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act, but

(ii) The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in terms of Section 13(1)(g) of the 2006 Act.

and

(iii) The house does not meet the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

(i) The property has a supply of electricity. The landlord has not exhibited a satisfactory up to date EICR report nor a satisfactory up to date PAT test certificate.

(j) The landing and each of the bedrooms of the property have wooden laminate flooring. The laminate flooring is loose and broken. The individual pieces moved when walked on. The flooring is past its useful life and needs to be replaced.

(k) Laminate flooring is designed to be a floating floor surface connected by tongue and grove joints. The joints in the flooring have failed. Laminate flooring is not designed to be fixed in place by nails, screws, or adhesive.

(l) The laminate flooring is a fixture which is not in proper working order. The property fails to meet the requirements of section 13(1)(d) of the 2006 Act.

(m) The landlord has not provided an electrical installation condition report (EICR) or Portable Appliance Test Certificate (PAT). Up-to-date, satisfactory EICR and PAT certificates are still required.

(n) The property fails to meet the requirements of section 13(1)(c) of the 2006 Act.

(o) Without a satisfactory up to date EICR report and a satisfactory up to date PAT test certificate the property cannot meet the tolerable standard.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 15 January 2024. It was a cold, bright, winter's, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) Although there are 5 heads of claim in the third party's application, the complaints under section 13(1) (f),(g) & (h) are duplicates of an earlier complaint and still subject to an extant RSEO (FTS/HPC/RT/23/2255). Ms Laidlaw agreed that we need not consider those heads of claim further as the landlord is already obliged to complete those works.

(c) It is easy to see that the house has a supply of electricity and a number of portable electrical appliances have been provide by the landlord.

(d) The landlord has not provided a satisfactory up to date electrical installation condition report (EICR) nor a satisfactory up to date Portable Appliance Test Certificate (PAT).

(e) In the absence of up to date satisfactory EICR and PAT test reports, the landlord cannot meet the requirements of s.13(1)(c) of the 2006 Act. A repairing standard order is necessary

(f) The flooring on the landing and in the two bedrooms within in the property is wooden laminate flooring. Several boards are broken. All of the boards are loose. The tongue and grove fittings have failed. The flooring is past its useful life and needs to be replaced.

(g) The laminate flooring is a fixture which is not in proper working order. The property fails to meet the requirements of section 13(1)(d) of the 2006 Act.

(h) The bathroom flooring is not part of this application, but it was easy for tribunal members to see (from the landing) that two layers of vinyl have been laid over broken and loose ceramic tiles. The bathroom floor covering is a trip hazard which the landlord will want to replace.

(i) The tenant says that the property does not meet the tolerable standard. The tolerable standard is set out in section 86 of the Housing (Scotland) Act 1987 (as amended) as follows.

a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(ca) has satisfactory thermal insulation;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;

(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;

“the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;

“the relevant requirements” are that the electrical installation is adequate and safe to use;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;

(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health,

and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.

(j) The tribunal has already found that the house does not meet the tolerable standard because it lacks a carbon monoxide detector. Because an up to date EICR has not been provided, the house fails to meet the tolerable standard because it is not demonstrated that the property complies with the relevant requirements in relation to the electrical installation for the purposes of that supply.

(n) Tribunal members observations tell the tribunal that the property fails to meet the repairing standard and also fails to meet the tolerable standard. We therefore make a Repairing Standard Enforcement Order requiring the landlord to

(a) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property and all electrical appliances and equipment supplied by the landlord and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with satisfactory EICR and PAT test certificates prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

(b) replace the laminate flooring with new correctly laid laminate flooring in the landing and both bedrooms on the upper floor of the property.

All within 28 days.

Decision

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 of the Act.

12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the tribunal is unanimous.

Right of Appeal

14. 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

15. 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 Doyle
Legal Member

22 January 2024

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Inspection Report

Chamber Ref: FTS/HPC/RT/23/2723



Property: 11 Oxfangs House, Oxfangs Grove, Edinburgh EH13 9HE ("The Property")

Title No: MID99515

THE PARTIES:

The City of Edinburgh Council, Housing and Regulatory Services, G1 Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG ("The applicant")

Mr Mohammed Abrar, residing at 143 Glasgow Road, East Kilbride, South Lanarkshire G74 4QA ("the Landlord")

Interested Party:

Jessica Brandon residing together at 11 Oxfangs House, Edinburgh, EH13 9HE ("the Tenant")

THE TRIBUNAL:

Tribunal members: Paul Doyle (Legal Member/Chair) and Greig Adams (Ordinary/surveyor Member)

Background:

On 9 August 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.



Access:

The inspection was undertaken on 15 January 2024 by the Tribunal Members. The inspection extended to an inspection of the various items of complaint comprising part of the Application.

Brief Description of Property:

The Property comprises of a maisonette arranged over two floors with a living room and kitchen arranged at first floor level and an internal staircase leading to the bathroom and 3 No. bedrooms. The larger building is of concrete construction incorporating external walkways.

Purpose of Inspection:

The purpose of the inspection was to allow the Tribunal members to review the tenant's disrepair complaint prior to the forthcoming Hearing scheduled for 15 January 2024.

The inspection:

The numbered items contained below provide a brief summary of each of the individual items of complaint contained within the Application. Below each of the numbered items are commentary of the inspection undertaken with regards to each item:

1. Smoke and heat detection

Landlord works have been progressed to extend the previous smoke detection system and provide suitable interlinked smoke and heat detection within the Property. The property now has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act

2. Carbon Monoxide detection.

We were not able to find any obvious Carbon Monoxide detector in a suitable location. The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in terms of Section 13(1)(g) of the 2006 Act.

3. Electrical Installations and Portable Appliances

The Landlord has not exhibited either an Electrical Installation Condition Report (EICR) nor a Portable Appliance Testing certification to evidence that the electrical installations and portable appliances are in good working order and safe.

4. Laminate Flooring

Laminate flooring has been installed to the upper landing and Bedrooms within the Property. Within the Main Bedroom, the laminate flooring was noted to be damaged with areas of veneer noticeably worn through in addition to open joints. Various minor areas of damage to the veneer at corners and edges of planks was also noted elsewhere within the Property. Within the Second Bedroom (with former En-Suite) the planks of the laminate floor were notably sliding under foot with planks not adequately secured, creating a safety hazard. Within both the Second Bedroom and Hallway there was evidence of panel pins having been installed through the laminate flooring into the substrate whilst a number of these panel pins were noted to protrude above the level of the veneer, creating a safety hazard. Various joints

(proprietary click systems) to the laminate have failed. A floating floor requires to expand and contract independently from the substrate and the provision of mechanical fixings such as panel pins or equivalent restrict the movement of the laminate floor whilst panel pins are not considered to be a suitable solution and will be prone to loosen resulting in a safety hazard especially to children's feet.

As an observational point, vinyl floor coverings have been laid directly over failed ceramic floor tiles within the Bathroom which are damaged and delaminating.



Greig Adams

Greig Adams BSc (Hons) FRICS C. Build E FCABE LETAPAEWE
Surveyor Member

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

Appendix A – Photographic Record



1 Gas fired boiler not operational.



2 Gas fired boiler not operational.



3 Satisfactory smoke detection.



4 Satisfactory smoke detection.



5 Satisfactory heat detection.



6 Satisfactory smoke detection.



7 Satisfactory smoke detection.



8 Front door defective locking mechanism.



9 Front door – defective door stop.



10 Former En-Suite Bathroom.



11 Sanitaryware removed.



12 Pipework tails above floor level.



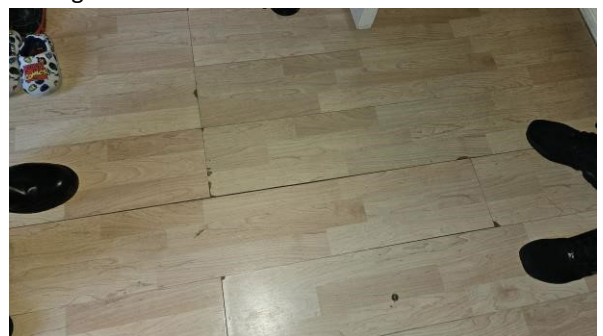
13 Poor silicon sealant capping to soil pipe.



14 Minor adjacent above Kitchen door at cable penetration from smoke/heat detector cabling.



15 Minor damage at circulation corridor adjacent to with cabling penetration.



16 Second Bedroom – poor original installation continuous joints resulting in weakened floor covering, panel pins noted.



17 Second Bedroom – sliding of planks and unsecured pin fixing joints.



18 Close view of failed joint and panel



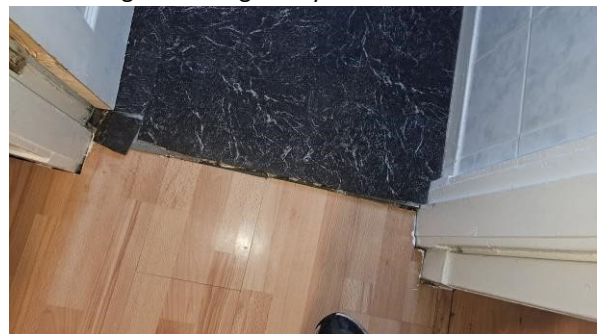
19 Hall – split plank and various panel pin fixings.



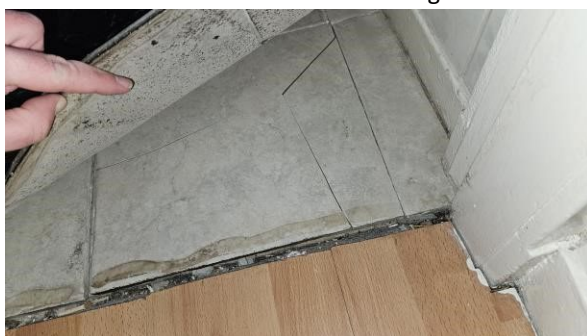
20 Example of panel pin protrusion above veneer height creating safety hazard.



21 Main Bedroom – failed floor covering.



22 Bathroom floor.



23 Bathroom floor – damaged floor tiles below vinyl floor coverings.



24 Portable convector heater – inappropriate