

Housing and Property Chamber
First-tier Tribunal for Scotland



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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act
2006, Section 24(2)**

Chamber Ref: FTS/HPC/RP/19/2018

**Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH (Title number GLA12687)
("The House")**

The Parties:-

**Mrs Maria Cernakova, Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH
("the Tenant")**

**Govanhill Law Centre, Samaritan House, Lower Ground Floor, 79 Coplaw Street,
Glasgow, G42 7JG
("the Tenant's Representative")**

**Ms Shaheen Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
Cumbernauld, Glasgow, G67 2PL
("the Landlord")**

**Mr Mohammed Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
Cumbernauld, Glasgow, G67 2PL and Mr Tahir Bashir, GPS Legal & Estate, 467
Victoria Road, Glasgow, G42 8RL
("the Landlord's Representatives")**

**NOTICE TO Shaheen Ashraf
(the LANDLORD)**

WHEREAS in terms of its decision dated 1 October 2019 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 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in the following respects:

- “(a) the house is wind and water tight 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,
(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,*

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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:

1. To repair or replace the living room ceiling and cornicing to ensure the structural integrity of the ceiling and cornicing and to ensure that it is in a satisfactory state of repair; and to make good the decoration.
2. To ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. To remove all polystyrene tiles from the kitchen ceiling, reinstate the ceiling and ensure that it is structurally sound and in a satisfactory state of repair; and make good the decoration.
4. To remove all mould in the bathroom and redecorate the walls and ceiling.
5. To obtain a report from Environmental Health or an independent contractor in relation to the rat infestation in the Property; to take any recommended steps in any said Report or otherwise ensure that there is no rat infestation in the Property.

The tribunal orders that the works specified in this Order must be carried out and completed within 28 days from the date of service of this Notice.

Right of Appeal

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 an 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 two preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, Legal Member and chair of the tribunal

S. Tanner _____

Legal Member / Chair

signed on 1 October 2019 (date) at Edinburgh

before this witness:-

D. Tanner _____

Witness

David Henderson Tanner

name in full

Parliament House,

Address

Parliament Square, Edinburgh

EH1 1RF

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/19/2018

**Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH (Title number GLA12687)
 (“The House”)**

The Parties:-

**Mrs Maria Cernakova, Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH
 (“the Tenant”)**

**Govanhill Law Centre, Samaritan House, Lower Ground Floor, 79 Coplaw Street,
 Glasgow, G42 7JG
 (“the Tenant’s Representative”)**

**Ms Shaheen Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
 Cumbernauld, Glasgow, G67 2PL
 (“the Landlord”)**

**Mr Mohammed Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
 Cumbernauld, Glasgow, G67 2PL and Mr Tahir Bashir, GPS Legal & Estate, 467
 Victoria Road, Glasgow, G42 8RL
 (“the Landlord’s Representatives”)**

Tribunal members

**Susanne L. M. Tanner Q.C., Legal Member and Chair
 Nick Allan, Ordinary Member**

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter "the 2006 Act") in relation to the House, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

1. The House

- 1.1. The Title number for the House is GLA12687.
- 1.2. The House is a top (third) floor flat (see images in attached **Schedule of Photographs taken on 16 September 2019**) with rooms as follows:
 - 1.1.1. Internal: hall, one bedroom, lounge, kitchen, and bathroom;
 - 1.1.2. External: common parts of the tenement within which the House is situated; common garden ground at rear of tenement.

2. Parties and parties' representatives

- 2.1. The Tenant making the application is as designed above. She lives in the House with her partner, Mr Mohammed Mahmoud.
- 2.2. The Tenant's Representative is Govanhill Law Centre. Christopher Waite, caseworker, submitted the Application. On 23 August 2019 the Tenant's Representative asked that the caseworker be changed to Wendy Malloy.
- 2.3. The Landlord is an individual and is the sole registered proprietor of the House.

2.4. The Landlord's Representatives are her husband, Mr Mohammed Ashraf, and Mr Tahir Bashir, letting agent, GPS Legal & Estate, 467 Victoria Road, Glasgow, G42 8RL.

3. Procedural Background

3.1. On 2 July 2019, the Tenant's Representative, acting on the Tenant's behalf, made an Application to the tribunal in terms of Section 22(1) of the 2006 Act for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

3.2. The Application states that the Tenant considers that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and indicates the elements of the Repairing Standard that the Tenant thinks the Landlord has not complied with (paragraphs (a), (b), (f) and (h) of Section 13(1) of the Act):

(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.

(f) the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;

(h) the House meets the tolerable standard.

3.3. In Section 8 (including the paper apart), the Tenant's Representative listed details of how the Tenant considers the Landlord has failed to meet the repairing standard:

"Letters sent to the Landlord on 03/06/19 and 25/06/19 advising of the required repair work and the breach of the repairing standard. However, no repairs have been done. The landlord has been advised that an independent architect has carried out a report on the property and the finding[s] have been included in the letter. Again the landlord has failed to reply to these letters or carry out the required repair works."

3.4. The Tenant stated in Section 9 (including the paper apart) that the nature of the work which needs to be done is:

- *"A significant part of the cornicing in the living room has fallen down and other areas appear cracked and weak. There are [a] number of cracks in the living room ceiling,*
- *There are no working smoke detectors in the property*
- *The polystyrene tiles fixed to the kitchen ceiling are highly flammable and produce toxic gases in the event of fire*
- *There is significant dampness in the bathroom*

- *There is a defect in the gutter which could lead to water penetration in the property*
- *Rat infestation.*”

3.5. The Tenant's Representative attached to the Application:

3.5.1. A two page “lease agreement” dated 30 April 2015;

3.5.2. A recorded delivery letter from the Tenant's Representative to the Landlord at the Landlord's Representative's business address, dated 3 June 2019, with a signed mandate from the Tenant dated 7 January 2019, authorising the Tenant's Representative to act on her behalf; with proof of service on 6 June 2019;

3.5.3. A recorded delivery letter from the Tenant's Representative to the Landlord at the Landlord's Representative's business address, dated 25 June 2019, with mandate, with proof of service on 27 June 2019; and

3.5.4. A letter by Professor Tim Sharpe, to the Tenant's Representative, dated 1 May 2019, attaching a schedule of photographs.

4. Referral of Application

4.1. On 16 July 2019, the Application was referred to the tribunal for determination.

4.2. An inspection of the House and a hearing were fixed for 16 September 2019.

4.3. On 6 August 2019, the parties were advised of the referral of the Application and the date time and place of the inspection and hearing. Parties were advised that any written representations or a request to make oral representations must be made and returned to the tribunal's offices by 27 August 2019.

5. Parties' wishes to attend Hearing; Written Representations and Documents

5.1. On 25 August 2019 the Landlord's Representative, GPS Legal, submitted written representations to the tribunal together with the following documents:

5.1.1. A “satisfaction note” dated 11 April 2019, apparently signed by the Landlord, in respect of a new boiler for a different property from that in the application;

5.1.2. A receipt from Perfect Glazing Group Limited to the landlord's Representative, Mr Ashraf, for 1 set of upvc French doors, 3 upvc windows and one upvc door, dated 7 June 2018;

5.1.3. Bill to "Shaheen" in respect of a washing machine repair at the Property dated 13 February 2018.

6. Directions

6.1. On 10 September 2019, the tribunal issued Directions ordering both parties to do specified things by the hearing at 1130h on Monday 16 September 2019.

6.2. On 12 September 2019, the Tenant's Representative complied with the tribunal's Directions and produced written representations dated 10 September 2019 and an indexed numbered bundle of 12 documents for the hearing.

6.3. The Landlord and the Landlord's Representatives did not comply with the tribunal's Directions.

7. Summary of the Issue to be determined by the tribunal

7.1. The issue to be determined is whether the House meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

7.2. All repairs listed in the Application form by the Tenant had been notified to the Landlord by the Tenant's representative by letters of 3 and 25 June 2019.

8. Inspection of the House – 16 September 2019 at 1000h

8.1. The tribunal members inspected the House on 16 September 2019 at 1000h.

8.2. The Tenant was present at the inspection.

8.3. The Tenant's partner, Mr Mohammed Mahmoud, was present at the inspection.

8.4. Wendy Malloy and Donna Alexander, caseworkers from the Tenant's Representative were present at the inspection.

8.5. The Landlord did not attend the inspection.

- 8.6. Mr Mohammed Ashraf, the Landlord's Representative, did not attend the inspection. Mr Tahir Bashir, from GPS Legal, the Landlord's Representative, attended the inspection.
- 8.7. The tribunal confined its inspection on 16 September 2019 to the six notified repairs issues detailed within the Application and made other observations as necessary.
- 8.8. Photographs were taken at the inspection, and a **Schedule of Photographs** is appended to and forms part of this Decision.
- 8.9. The weather at the time of the inspection was dry and overcast.
- 8.10. The inspection revealed the following with reference to each of the Tenant's six complaints in the Application:
- 8.11. (1) "A significant part of the cornicing in the living room has fallen down and other areas appear cracked and weak. There are [a] number of cracks in the living room ceiling"**
- 8.12. The tribunal observed that a significant part of the cornicing was missing in the area above the fireplace and that other sections of the cornicing appeared loose. The tribunal observed a number of cracks in the ceiling. The tribunal observed that areas of the ceiling were uneven and that in parts it appeared to be held up / together with layers of wallpaper.
- 8.13. The Tenant's partner advised that the whole section fell down in February and that the photographs with the Application included images of the cornicing lying on the floor where it fell. Ms Malloy stated that Independent architect has carried out a report and findings summarised in letters of 3 and 25 June.
- 8.14. Mr Bashir advised that he had obtained a quotation for work on behalf of the Landlord and that contractor's suggestion was that the whole ceiling needs to come down and be replaced, with new cornicing being fitted thereafter. The work is estimated to take approximately two weeks and would require the Tenant and partner to move out temporarily as it would be disruptive and would create a lot of dust. The proposed work includes upgrading and re-siting of the kitchen in addition to repair work. Mr Bashir did not have a copy of the quotation available at the inspection but stated that he had the quotation and could provide it at the hearing.

8.15. (2) “There are no working smoke detectors in the property”

8.16. The tribunal observed that there are no smoke or heat detectors in the Property. The tribunal also observed that there is no carbon monoxide detector in the Property, despite there being a gas boiler in the kitchen.

8.17. The Tenant’s partner stated that there have been no smoke detectors in the Property at any time since they moved in. He further advised that the central heating was fitted in around April 2019.

8.18. Mr Bashir stated that he had obtained quotes on behalf of the Landlord for fitting hard wired smoke detectors. He confirmed that the central heating and replacement windows had been fitted in April 2019, since the Application was submitted to the tribunal and stated that there was no reason why the smoke detectors were not fitted at the time. Mr Bashir stated that it was intended to fit the smoke detectors when the more extensive repairs and upgrades are carried out. Mr Bashir acknowledged that there was no carbon monoxide detector in the Property despite the gas central heating boiler having been fitted in April 2019.

8.19. (3) “The polystyrene tiles fixed to the kitchen ceiling are highly flammable and produce toxic gases in the event of fire”

8.20. The tribunal observed that the kitchen ceiling had what appeared to be polystyrene tiles affixed throughout. The tribunal did not do any tests or sampling on the tiles in order to ascertain whether they might be flammable or would produce toxic gases in the event of fire. The ordinary member was of the view that such tiles were inappropriate for a residential property and he was in agreement with the points that the architect had made in his report about the potential flammability and toxicity of the tiles.

8.21. The Tenant’s Representative, Wendy Malloy, stated that the potential flammability and toxicity of the tiles had been raised by the architect in the independent report which had been instructed. A summary of the findings of the Report had been sent to the Landlord after it was obtained.

8.22. Mr Bashir accepted that the tiles were inappropriate and stated that the removal of the ceiling tiles and redecoration was included in the quotation for upgrading and repair works to which he had already referred.

8.23. (4) “There is significant dampness in the bathroom”

8.24. The tribunal observed that there was a significant amount of black staining on the walls of the bathroom which appeared to have been caused by dampness and a lack of adequate ventilation / extraction in the room. An electric shower was present in the bathroom. A mechanical extractor fan was present in the bathroom and appeared to be in working order.

8.25. The Tenant’s partner advised that the shower and extractor fan had been fitted earlier in 2019 but that no redecoration had been done following those works.

8.26. Mr Bashir stated that the mechanical extractor fan was installed in January 2019 but that no decoration had yet been carried out. He stated that replacement of the whole bathroom was included in the quotation he had obtained on behalf of the Landlord for upgrading and repair work.

8.27. (5) “There is a defect in the gutter which could lead to water penetration in the property”

8.28. The tribunal inspected both internally and externally at the front and rear of the tenement in which the Property is situated. There was no obvious problem with the guttering. There was some staining on the front elevation below gutter level. It was not possible to tell if it was current or historic.

8.29. Ms Malloy, the Tenant’s Representative stated that the Tenant had not seen any water ingress in the Property. The complaint had been included in the notification and Application because it was in the architect’s report. He identified that there was a potential problem with water ingress.

8.30. (6) “Rat infestation”

8.31. The tribunal did not observe any rats while in the Property. The tribunal observed rodent droppings in the Property. The tribunal observed that rat traps had been placed in the kitchen alcove, to the left of the washing machine. The tribunal was advised that there were holes around the inlet and outlet pipes to the rear of the washing machine.

8.32. The Tenant’s partner stated that they had regularly seen rats in the kitchen, with the most recent sighting being last week. When they see rats they bang on the walls to scare them away. They do not know where they are

coming in. Environmental health had laid traps behind the washing machine as there are holes around the pipes.

8.33. Mr Bashir said that he would seek information from Environmental Health in relation to the measures which had been taken.

8.34. Observations

8.35. As noted above, during the inspection, the tribunal observed there is no carbon monoxide detector in the House. There is gas central heating and the gas boiler is situated in the kitchen. Mr Bashir, the Tenant's Representative, accepted that there had been no such detector installed at the time that the gas central heating was installed or since that time.

8.36. No current gas safety certificate by a Gas Safe registered contractor has been exhibited to the tribunal.

8.37. During the inspection, the tribunal observed that the light fitting in the bathroom is non-compliant for its location and purpose.

9. The Hearing – 16 September 2019 at 1130h

9.1. The hearing took place at Glasgow Tribunals Centre, 20 York Street, Glasgow, on the same day as the inspection.

9.2. The Tenant and her partner were not present at the hearing.

9.3. Wendy Malloy and Donna Alexander, caseworkers from the Tenant's Representative, were present at the hearing.

9.4. The Landlord did not attend the hearing.

9.5. The Landlord's partner, Mohammed Ashraf, attended the hearing as the Landlord's Representative.

9.6. Mr Tahir Bashir from GPS Legal attended the hearing as the Landlord's Representative.

9.7. Documents lodged at hearing

9.8. No additional documents were lodged by the Tenant's Representative at the hearing.

9.9. Mr Bashir said that he and the Landlord had not prepared a written response or a bundle of documents and accepted that they had failed to comply with the tribunal's Directions. No explanation was provided by the Landlord or the Landlord's Representative to the tribunal for the failure to comply with the tribunal's Directions. Mr Bashir apologised for the failure to comply. The tribunal asked whether the relevant documents could be produced by Mr Bashir's office and emailed to the tribunal during the court of the hearing. Mr Bashir stated that they could not do that as there was nobody in the office because they were all out doing inspections. He stated that the earliest he could produce documents would be the day after the hearing.

9.10. At the hearing, the Landlord's Representative, Mr Bashir, produced:

9.10.1.1. an unsigned "lease agreement" dated 16 April 2018.

9.10.1.2. A letter from Dixon Builders dated 1/1/2019 attaching an estimate dated 01/1/2018 in respect of renovation works at the House.

9.11. In relation to the "lease agreement", The tribunal observed that the unsigned lease agreement appears has a commencement date of 1 May 2018. It is in similar terms to the two page signed "lease agreement" document produced by the Tenant's Representative with the Application. The Property address is stated. The Landlord is named as the "lesser" (also referred to in the document as the "lessor". The Tenant and her partner, Muhammed Safdar Mahmood are named as the Tenant(s). The rent is stated to be £350 per calendar month. The document provides in paragraph 7 that "all repairs or work desired to carried out on the premises shall be notified to Shaheen Ashraf in writing ...".

9.12. In relation to the quotation, the tribunal observed that the cover letter and quotation had different dates.

9.13. Mr Bashir advised that there was a typographical error in the estimate from Dixon builders, which should be dated 1/1/2019.

9.14. There was no opposition by the Tenant's Representatives to the late lodging by the Landlord's Representative and the tribunal allowed the Landlord's Representatives to lodge the two documents.

9.15. Parties' oral submissions

- 9.16. The Landlord's Representative's made a number of general submissions in relation to the Property, the tenancy and the property management, in relation to the orders in the tribunal's Directions, with which they had failed to comply.
- 9.17. Mr Bashir stated that the Landlord had created the "lease agreement" document and provided a copy to GPS Legal for the purposes of their consultancy work. Mr Bashir accepted that it did not contain the prescribed terms for a Private Residential Tenancy ("PRT") agreement and that it was not signed. Mr Bashir stated that he had not been provided with a signed version but stated that the Tenant may be in possession of a signed version. Mr Bashir stated that he would advise the Landlord on the required terms for a PRT.
- 9.18. Mr Ashraf confirmed that at that time the lease agreement was drafted, he and his wife did not have GPS looking after the property. He stated that GPS have been the letting agents since October / November 2018. However, Mr Bashir stated that GPS are not, nor have they been, letting agents for the Landlord at any time but are assisting the Landlord and Mr Ashraf to come to an amicable agreement with the Tenants, in the role of "consultants", which requires them to speak to the Tenants and the Landlord.
- 9.19. There was further debate between Mr Ashraf and Mr Bashir during the hearing, which was unresolved, with Mr Ashraf claiming that he or his wife had instructed GPS as letting agent and had also instructed GPS to carry out repair works. The tribunal asked whether there was any paperwork in relation to the contract of agency between the parties or the instruction of repair works and was told by Mr Bashir that there was not. Mr Ashraf was unable to produce any contract of agency between his wife, the Landlord, and GPS legal, or any evidence that he or his wife had instructed GPS to instruct repair works on their behalf.
- 9.20. The tribunal asked Mr Ashraf when he or his wife had last been in the Property. Mr Ashraf stated that he was present when the central heating was installed in around April 2019. He stated that Mr Bashir had also been present.
- 9.21. Mr Ashraf stated that he had not noticed in April 2019 that there were no smoke alarms, heat alarms or CO alarm in the property. He said that he had been informed by GPS following the tribunal's inspection on the morning of the hearing. He stated that it will be installed on Wednesday 18 September 2019 on the instructions of GPS who had instructed a contractor. Mr Ashraf then changed his position and stated that he thought that he had discussed with Mr Bashir the fact that there were no smoke alarms. He stated that the idea had been to get everything that was required done at one time. He and his wife were living 20 miles away so he passed on everything to GPS. He stated that GPS did inspections and prepared a report. Mr Ashraf stated that he had

instructed Mr Bashir to instruct contractors to do certain things. From the beginning of January 2019, GPS were instructed. Mr Ashraf stated that he is not running away from any responsibility. He assumed that the work would get done quite quickly and did not think that the timescale would extend to the present timescale.

9.22. Mr Bashir responded that the client had told him that he wanted to get everything done together and that is how matters were left. He denied that he had been instructed by the Landlord or her husband to carry out any of the required repair works.

9.23. With reference to the Dixon quotation which had been produced at the hearing, Mr Bashir stated that the quotation covers all of the works as well as upgrading. He stated that the largest item of work is the lounge ceiling and the kitchen ceiling. He stated that removal of ceilings creates a lot of soot. There is also a proposal to upgrade the Property by relocating the kitchen and replacing the bathroom. The total time period is estimated at 3 to 4 weeks.

9.24. In relation to the discussions which the Mr Bashir stated had taken place with the Tenant and her partner, Mr Bashir advised that it was all verbal with Mr Mahmood. One of the properties offered was at 4 Gartcosh Street, in Govanhill. He stated that the viewing was cancelled by the tenant. Mr Bashir stated that there was another one in Battlefield Road. The proposal was for the Tenant and her partner to be temporarily relocated for a short period of time to allow works to be carried out. Both of the properties offered were managed by GPS Legal and were available at the time. However, Mr Mahmood said that the two properties were too far from his work in Albert Drive.

9.25. In relation to any arrangement as regards access for a month while the Tenant and her partner were away, Mr Bashir stated that the tenant advised that he was going abroad in June 2019. Mr Bashir further stated that there was an arrangement with Mr Mahmood that he was supposed to contact Mr Bashir to confirm that access would be allowed for works during their holiday. Mr Bashir stated that he had instructed the contractors. He had nothing in writing as it was all verbal. Mr Bashir stated that he cancelled the contractors and put everything is on hold. In response to a question from the tribunal, Mr Bashir stated that neither he nor the Landlord have not made any application to the tribunal to get access to the property for repairs.

9.26. Mr Bashir stated that subsequent to the inspection on the same morning as the hearing, he had discussed matters with Mr Ashraf and they may do essential repairs first and enhancements later. The Tenant may be able to stay in the Property during the works although Mr Bashir noted that Mr Mahmood has asthma which may be exacerbated by the ceiling works. In terms of stock

available for temporary relocation, Mr Bashir stated that he would need to look at what was available at the time.

9.27. In addition to the written and oral submissions already made, the tribunal heard submissions from the parties present in relation to the six repairs issues notified and included in the Application:

9.28. (1) “A significant part of the cornicing in the living room has fallen down and other areas appear cracked and weak. There are [a] number of cracks in the living room ceiling”

9.29. Ms Malloy referred to the Application and architect’s report and stated that the Tenant was offering to prove that the cornicing and ceiling did not meet the repairing standard, paragraphs (a), (b) and (h).

9.30. The Landlord’s Representatives stated that they do not dispute the complaints about the ceiling and the cornicing. Mr Bashir stated that he has suggested to Mr Ashraf that the contractors remove the affected areas of ceiling and cornicing now and remedy the issues; and consider upgrading works at a later date.

9.31. (2) “There are no working smoke detectors in the property”

9.32. Ms Malloy referred to the Application and stated that the Tenant was offering to prove that the lack of smoke detectors did not meet the repairing standard, paragraphs (a) and (f).

9.33. The Landlord’s Representatives conceded that there are no smoke (or heat) detectors in the Property. Mr Bashir stated that the work has now been instructed and is being carried out on Wednesday 18 September 2019. Mr Bashir stated that he was awaiting a time at which access would be required and stated that he would contact the Tenant to confirm, with an email to the Tenant’s Representative.

9.34. (3) “The polystyrene tiles fixed to the kitchen ceiling are highly flammable and produce toxic gases in the event of fire”

9.35. Ms Malloy referred to the Application and architect’s report and stated that the Tenant was offering to prove that the flammability and potential toxicity of the ceiling tiles did not meet the repairing standard, paragraphs (a) and (b), especially as there was no adequate fire and heat detection. Ms Malloy stated that it was not an issue which had been brought up by the Tenant but it had been identified in the independent architect’s report. On the 2nd page, para 5,

photos 34-38 showed the tiles. The architect made the point that there was no fire detection. The Tenant's Representative had notified the issue to the Landlord and had had no response. At the time of notification, they thought that it was an urgent safety matter, particularly having regard to the lack of fire and heat detection.

9.36. Mr Bashir stated that following discussions with Mr Ashraf, the Landlord was looking to get the tiles removed and then address what is left behind by repair and redecoration.

9.37. The tribunal noted that the kitchen ceiling is not in the Dixon quotation. Mr Bashir stated that it should be in the quotation as he had discussed it with the contractors.

9.38. The ordinary member asked whether the quote was still available given that the time had expired. Mr Bashir stated that he has not gone back but that it is still available as the contractor does a lot of work for the letting agency.

9.39. The Tenant's Representative stated that the Tenant wants as much work as possible done safely and quickly and she had her partner expect some disruption. They do not want to move out but accept that they may have to, particularly as Mr Mahmoud is asthmatic. The Tenant's Representative added that Mr Mahmoud had told her that he was not asked to hand the keys in for the period he went on holiday. He also said that he had not been offered other properties.

9.40. Mr Bashir disputed what had been submitted and Mr Ashraf stated that it was "definitely lies".

9.41. (4) "There is significant dampness in the bathroom"

9.42. Ms Malloy referred to the Application and stated that the Tenant was offering to prove that as a result of significant dampness in the bathroom, the Property did not meet the repairing standard, paragraphs (a) and (b), further stating that she was making reference to paragraph a) because it is extensive

9.43. Mr Bashir stated that the electrical extractor fan had been fitted in February 2019.

9.44. The ordinary member asked the Landlord's Representatives why, if electrical work had been carried out in February, the smoke and heat alarms had not been fitted.

9.45. Mr Bashir stated that the idea was to get the whole thing done by the contractors at the same time. He stated that all GPS managed properties have smoke alarms installed.

9.46. Mr Ashraf repeated that his original understanding, even until the day of the hearing, was that he and his wife had instructed GPS to carry out necessary repairs including smoke alarms. He stated that GPS had inspected and provided a report to him and that he had told them that whatever is needed they should do it. He stated that there had been communications issues. He said that he had phoned Mr Mahmoud and received no reply. He said he had left messages. He repeated that he had instructed GPS to fit smoke detectors. Mr Ashraf stated that his intention was to get the property up to standard.

9.47. Mr Bashir stated that what Mr Ashraf had stated was not correct. GPS had informed the clients that this work was required. GPS was asked to provide estimates. GPS was not instructed to carry out works. Mr Bashir stated that there is a misunderstanding on the LL's part.

9.48. Mr Ashraf then stated that it looks like there was a misunderstanding. He stated that there was never any intention not to adhere to the recommendations, stating that "It is just a matter of obstacles." He further stated that when he went in April, he did not notice the issues as he was only there for 10 or 15 minutes.

9.49. (5) "There is a defect in the gutter which could lead to water penetration in the property"

9.50. Ms Malloy referred to the Application and the Architect's Report and stated that the Tenant was offering to prove that as a result of defects in the common gutter, the Property did not meet the repairing standard, paragraph (b). She stated that the affected area had been noted to be at the front of the Property. The architect had indicated that there is no internal dampness. He suggested that there were indications of defects around the gutter which could cause internal dampness. Ms Malloy accepted that on inspection, there were no obvious issues within the flat.

9.51. Mr Bashir initially stated that this is the sort of matter which would be addressed by the factors as it is a common repair. Mr Ashraf stated that he thinks he has raised this a few times with the Factor and did not think that anything had been done because they were trying to get in touch with the rest of the owners. Mr Bashir and Mr Ashraf stated that they intended to speak to the Factors about the architect's findings and opinion and would proceed accordingly.

9.52. (6) "Rat infestation"

9.53. Ms Malloy referred to the Application and stated that the Tenant was offering to prove that as a result of rat infestation, the Property did not meet the repairing standard, paragraphs (a), (b) in respect of the points where the rats were coming in and (c).

9.54. She stated that environmental health had put out traps but that there are still rats. The Tenant and her partner have said that they hear rats more than see them. They reported seeing one the week before the hearing. They think that they are mainly in the kitchen. They bang on the wall as a way to stop them from coming out of the walls. The traps are not successful.

9.55. Mr Bashir stated that he will be trying to fill the holes around the washing machine pipes and intends to contact environmental health for a report. Thereafter he may instruct a private company if required.

10. Discussions at end of hearing

10.1. The tribunal chair asked both parties if there were any other submissions they wished to make.

10.2. Ms Malloy was satisfied that she had covered everything she wished to in relation to the repairs issues in the Application. She stated that she had not seen the tenancy agreement which had been produced by Mr Bashir at the hearing and was not confident that the Tenant has a copy of it.

10.3. Mr Bashir stated that if the Tenant and her partner agree, GPS would advise the Landlord to put a correct tenancy in place for signing by both parties.

10.4. Mr Ashraf stated that the Landlord intends to submit an application to the tribunal for rental arrears and another for access, if required. Mr Ashraf stated that there are about 6 months' rent arrears and that Mr Mahmoud had advised that that he has retained and banked it into a separate account because of the repairs issues.

10.5. Ms Malloy stated that a Letting Agent complaint has been lodged by the Tenant and is ongoing, with a hearing date fixed for 18th September. Written representations were sent in as no one is able to attend. The complaints arise out of the same repairs issues. GPS have indicated in their submissions that they are not the letting agent.

- 10.6. Observations by the tribunal about matters not contained in the Application
- 10.7. The tribunal informed parties that they had observed that there was no carbon monoxide detector in the Property.
- 10.8. The tribunal Chair advised parties of the procedure following the hearing with regard to the issuing of a decision (and, if applicable, an RSEO).
- 10.9. The tribunal Chair stated that any updates on repair works which are carried out before the decision is issued could be submitted to the tribunal's administration and they would be passed to the tribunal.
- 10.10. Parties did not have any further submissions or questions. The hearing adjourned.

11. The tribunal made the following findings-in-fact:

- a. The Landlord is the registered proprietor of the House.
- b. A tenancy was entered into between the Landlord and the Tenant, with an initial tenancy term from 8 September 2017 to 7 March 2018 which continued on a monthly basis thereafter.
- c. The Tenant took possession of the House on or about 8 September 2017.
- d. The Landlord manages the majority of matters relating to the tenancy.
- e. The Landlord has also instructed GPS Legal to act as a letting agent in relation to the House in relation to some matters.
- f. The Landlord has been notified on 3 June and 25 June 2019 of all the repairs issues that are listed by the Tenant in the Application.
- g. A significant part of the cornicing in the living room has fallen down.
- h. The remaining cornicing appears to be loose and defective in places.
- i. Areas of the living room ceiling are cracked and uneven.
- j. Areas of the living room ceiling have excessive wallpaper, which appears to be holding together sections of the ceiling.

- k. There are no smoke or heat detectors in the House.
- l. The polystyrene tiles fixed to the kitchen ceiling are highly flammable and could produce toxic gases in the event of fire in the House.
- m. There is damage to the décor in the bathroom which has been caused by significant dampness and a lack of adequate ventilation.
- n. There is no obvious current defect in the gutter on the front elevation of the Tenement in which the House is situated.
- o. There is no obvious water penetration in the House at or near to the front elevation of the tenement which appears to have arisen from any defective guttering.
- p. There is a rat infestation in the House.

12. Discussion regarding the items in the Application and the repairing standard, paragraphs (1)(a), (b), (f) and (h)

13. Section 13(1) of the Housing (Scotland) Act 2006 provides:

“(1) A house meets the repairing standard if—

- (a) the house is wind and water tight 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, [...]*¹
- (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, and*
- (h) the house meets the tolerable standard.”*

14. The definition of a house meeting the tolerable standard, as referred to in Section 13(1)(h) of the 2006 Act, is defined in Section 86 of the Housing (Scotland) Act 2007, as follows:

"(1) Subject to subsection (2), 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;

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

14.1. In the present Application the Tenant complains that the House fails to meet the repairing standard, section 13(1)(a), (b), (d) and (f) in respect of the repairs issues complained of.

14.2. (1) "A significant part of the cornicing in the living room has fallen down and other areas appear cracked and weak. There are [a] number of cracks in the living room ceiling"

14.2.1. There is no dispute on behalf of the Landlord that the living room ceiling and cornicing are defective in the ways alleged by the Tenant. The tribunal observed on inspection that one piece of cornicing had fallen down and that other pieces did not look like they were securely fixed. The tribunal also had regard to the photographs produced by the Tenant showing the section of cornicing which had fallen down earlier this year. The ceiling is

uneven and appears to be held together in places with thick layers of wallpaper, so its structural integrity is questionable.

14.2.2. The tribunal was satisfied on the balance of probabilities that the house is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the repairing standard, as required by section 13(1)(a); that the structure and exterior of the House are not in a reasonable state of repair and in proper working order, and do not meet the repairing standard, as required by section 13(1)(b); and that the House does not meet the tolerable standard, as required by Section 13(1)(g) in that it is not “structurally stable”.

14.3. (2) “There are no working smoke detectors in the property”

14.3.1. There is no dispute on behalf of the Landlord that at no time during the tenancy have there been any smoke detectors in the Property.

14.3.2. The tribunal also observed that there is no heat detector in the Property or carbon monoxide detector in the Property.

14.3.3. The tribunal was satisfied on the balance of probabilities that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, as required by section 13(1)(f).

14.4. (3) “The polystyrene tiles fixed to the kitchen ceiling are highly flammable and produce toxic gases in the event of fire”

14.4.1. There is no dispute on behalf of the Landlord that the polystyrene tiles affixed to the kitchen ceiling are not appropriate. The tribunal was of the view that such tiles are not suitable for a residential property. The tribunal accepted the findings in the architect’s report that the tiles are potentially highly flammable and would produce toxic gases in the event of fire.

14.4.2. The tribunal also observed the connected issue of the lack of smoke and heat detection in the Property, as already referred to.

14.4.3. The tribunal was satisfied on the balance of probabilities that the house is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the repairing

standard, as required by section 13(1)(a); and that the structure and exterior of the House are not in a reasonable state of repair and in proper working order, and do not meet the repairing standard, as required by section 13(1)(b).

14.5. (4) “There is significant dampness in the bathroom”

14.5.1. There was no dispute on behalf of the Landlord that there had been significant dampness in the bathroom and that a mechanical extractor fan had been installed around six months before the inspection. The tribunal was satisfied that there had been significant dampness in the bathroom and that the walls and ceiling were extensively covered with black mould as a result, which required to be removed in order for the House to meet the repairing standard.

14.5.2. The tribunal was satisfied on the balance of probabilities that the house is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the repairing standard, as required by section 13(1)(a).

14.6. (5) “There is a defect in the gutter which could lead to water penetration in the property”

14.6.1. The tribunal was not satisfied on the balance of probabilities that there is a current defect in the common guttering on the front elevation of the tenement capable of causing water penetration into the House. Although there is evidence of staining on the front external elevation of the tenement in which the House is situated that could be historic. As at the date of the inspection there was no evidence of prior or current water penetration inside the House. The architect’s report had only raised the possibility that water penetration may be caused by the common guttering were it not attended to.

14.6.2. The tribunal was not satisfied on the balance of probabilities that as a result of the common guttering, the house is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the repairing standard, as required by section 13(1)(a); and that the structure and exterior of the House are not in a reasonable state of repair and in proper working order, and do not meet the repairing standard, as required by section 13(1)(b).

14.7. (6) "Rat infestation"

14.7.1. The tribunal accepted the Tenant's evidence that there are rats infesting the Property, with the most recent sighting being the week before the hearing. The steps taken by Environmental Health by laying traps have not eliminated the problem. Rodent droppings were seen on inspection.

14.7.2. **The tribunal was satisfied on the balance of probabilities that the house is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the repairing standard, as required by section 13(1)(a); and that the structure and exterior of the House are not in a reasonable state of repair and in proper working order, and do not meet the repairing standard, as required by section 13(1)(b).**

14.8. Submissions relating to tribunal's observations regarding lack of carbon monoxide detector; lack of heat detector; and bathroom light fitting

14.9. The tribunal observed the following issues during its inspection of the Property

14.9.1. There is no carbon monoxide detector in the Property;

14.9.2. There is no heat detector in the Property; and

14.9.3. The bathroom light fitting is not compliant with current regulations for its location and purpose.

14.10. **Although none of those matters feature in the Application, the tribunal gives notice to the Landlord that it has observed these issues during the inspection, all which raise health and safety concerns and which could form the basis of another Application that the Property does not meet the repairing standard.**

15. Repairing Standard Enforcement Order (RSEO)

15.1. Because the tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the repairing standard and has therefore made a Repairing Standard Enforcement Order ("RSEO") in terms of Section 24(2) of the 2006 Act.

- 15.2. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 28 days having regard to the likely length of time to instruct a contractor to carry out the required works.

16. Right of Appeal

- 16.1. **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.**

17. Effect of section 63

- 17.1. 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 **S. Tanner** Susanne L M Tanner, Queen's Counsel
Legal Member / Chair of the tribunal

Date 1 October 2019

Housing and Property Chamber
First-tier Tribunal for Scotland



This is the schedule of photographs referred
to in the foregoing decision of the tribunal
in application RP/19/2018, dated 1 October 2019

S. Tanner Signed

SUSANNE L.M. TANNER QC Name

1 October 2019 Date

Schedule of Photographs

**Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH
(Title number GLA12687)**

Case Reference:	FTS/HPC/RP/19/2018
Date of inspection:	16 September 2019
Time of inspection:	10.00 am
Weather conditions:	Dry and overcast
Present:	Susanne Tanner QC – Legal Member Nick Allan – Ordinary Member Mrs Maria Cernakova - Tenant Mr Mohammed Mahmoud - Tenant's partner Ms Malloy and Ms Alexander - Tenant's Representatives Tahir Bashir - Landlord's Representative



Photo 1 – Damaged and loose cornicing in L/R



Photo 2 – Polystyrene ceiling tiles (kitchen)



Photo 3 – Distressed L/R ceiling



Photo 4 – Location of washing machine (kitchen)



Photo 5 – Rodent droppings (kitchen)



Photo 6 – Mould in bathroom



Photo 7 – Bathroom extractor fan

Nick Allan – Ordinary Member
First-tier Tribunal
Housing and Property Chamber
Date: 30th September 2019