

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1A) of the Act 2006

**Chamber Reference number:** FTC/HPC/RP/17/0543

**Parties:** Gordon Barr residing at 40 Langton Road Pollok Glasgow G53 5DD ("the Tenant") and Elspeth Adair ("the Landlord") residing at 35 Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116 Elderslie Street, Glasgow G13 7AW ("the Landlords' Agents")

**Property:** 40 Langton Road Pollok Glasgow G53 5DD registered in the Land Register of Scotland under Title Number GLA86822

### **Tribunal Members**

Karen Moore (Chairperson)

Nick Allan (Ordinary Member)

### **Decision**

The Committee, 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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not complied with the duty imposed on her by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (d) of the Act and that for the reasons set out below.

### **Background**

1. By application received on 27 November 2017 ("the Application"), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b) and 13(1) (d) of the Act. Specifically, the Application stated that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard as there is extensive damp and mould in the Property and, as the lock to the Property is broken, it cannot be secured. In the Application, the

Tenant stated that the condition of the Property is affecting the health of the occupants.

2. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral dated for 24 January 2018, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 6 March 2018 at 10.00 a.m. and 11.30 a.m., respectively.
3. By email dated 29 January 2018, the Tenant contacted the tribunal advising that the Landlord and he had been in contact and that the Landlord had indicated that she was taking steps to effect repairs. The Tenant asked that the Inspection and Hearing fixed for 6 March 2018 be "put on hold". The Tenant's email was copied to the Landlord who advised the tribunal by email dated 20 February 2018 that repairs had been instructed but that no date was arranged for the works to be carried out. Further, no detail of the planned work was intimated by the Landlord.
4. The tribunal having considered the Tenant's request and the Landlord's comments thereon by Minute dated 27 February 2018 declined to exercise its discretion in terms of Regulation 28(1) and declined to adjourn or postpone the Hearing fixed for 6 March 2018. Therefore, the Inspection and Hearing fixed for 6 March 2018 at 10.00 a.m. and 11.30 a.m., respectively, proceeded.

#### **Inspection**

5. The Inspection took place on 6 March 2018 at 10.00 a.m. at the Property. The Tenant was not present at the Inspection, however, his partner, Ms. Green was present. The Landlord and Mr. Fleming of the Landlord's Agents were both present at the Inspection.
6. The tribunal inspected the parts of the Property referred to by the Tenant in the Application namely:-
  - i) The dampness throughout the Property being in the living room, the bedrooms, the kitchen, the hallway and the bathroom;
  - ii) The lock on the hallway door;
  - iii) Broken plasterwork and
  - iv) The external aspects of the roof and outside walls of the Property.
7. At the Inspection, Ms. Green advised the tribunal that she and the Tenant were unable to attend the Hearing.
8. At the Inspection, the tribunal took dampness meter readings and digital photographs which photographs form the Schedule annexed to this decision.

#### **Hearing**

9. Following the Inspection, a Hearing was held at Wellington House, 134-136, Wellington Street, Glasgow, G2 2XL on the same day at 11.30 a.m. The Tenant was not present. The Landlord and Mr. Fleming of the Landlord's Agents were both present
10. At the outset of the Hearing, the tribunal explained to the Landlord and Mr. Fleming the statutory duty on the Landlord, the scope of the Repairing Standard and the tribunal's remit all as set out in the Act.

25. From the Hearing, the tribunal accepted that the Landlord had made attempts to have the property factor attend to the complaints made by the Tenant. The tribunal also accepted that the external parts of the Property, being the roof and the outside walls, are common property and that, until recently, the co-owners had been reluctant to agree to repairs.
- Summary of the Issues**
26. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a), 13(1) (b) and 13(1) (d) at the date of the Inspection and Hearing.
- Decision of the tribunal and reasons for the decision.**
27. The tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.
28. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the tribunal found that the level and extent of dampness throughout the Property is so severe and so extensive that the Property is not wind and watertight and is not reasonably fit for human habitation. The tribunal had regard to the Landlord's apparent difficulty in dealing with co-owners and property factors but took the view that this could not overcome her absolute duty in terms of Section 14(1)(b) of the Act to ensure that the Property meets the repairing standard at all times during the tenancy. The tribunal was skeptical of the Landlord's assertion that there had been no signs of dampness when she visited on 28 December 2017, as, in its professional opinion, the condition of the Property is such that the dampness is deep rooted and has developed over considerable time, and so, ought to have been apparent to the Landlord on her visit. The tribunal noted that the Tenant was drying washing in several places throughout the Property and is of the view that, although this practice can in some circumstances contribute to condensation and so contribute to evidence the surface dampness, it is not sufficient in this case to cause the extreme levels of dampness found throughout the Property. Accordingly, the tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
29. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the tribunal accepted that the structure and exterior of the Property is common property but took the view that it is within the Landlord's power and discretion to repair and, if necessary, renew the roof, roughcasting and rainwater goods at her own cost, and so, the fact that these parts of the Property are common property does not overcome the Landlord's absolute duty in terms of Section 14(1)(b) of the Act. Accordingly, the tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
30. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that the fixtures, fittings and appliances provided by her under the tenancy are in a reasonable state of repair and in proper working order, the tribunal took the view that the door at the top of the internal stairway provides a measure of control of risk of falling from the top of the internal stair and fire. Therefore, the fact that the lock on this door is inoperative poses a health and

safety risk to the occupants. Accordingly, the tribunal took the view that the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and so the tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

31. The decision is unanimous.

**Repairing Standard Enforcement Order**

32. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

33. The tribunal has serious concerns in respect of the condition of the Property. Therefore, the tribunal directs that a copy of this Decision together with the Repairing Standard Enforcement Order be sent, at the same time as its issue to the Landlord and the Tenant, to the Environmental Health Service and the Housing Service of Glasgow City Council to allow them to carry out their own enquiries into the condition of the Property.

**Appeal**

34. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**Effect of Section 63**

35. 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.

Signed

K Moore

Karen Moore, Chairperson

11 April 2018

11 April 2018  
This is the schedule of photographs  
referred to in the foregoing decision,  
Karen Moore

*Chairperson.*

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Photograph Schedule**  
**Upper flat, 40 Langton Road, Pollock, Glasgow, G53 5DD**

**Case Reference:** FTS/HPC/RP/17/0543

**Date of inspection:** 06/03/2018

**Time of inspection:** 10.00 am

**Weather conditions:** Overcast with rain

**Present:** Mrs Karen Moore – Chairperson  
Mr Nick Allan – Ordinary Member  
Mr Alan Kerr – Tribunal Clerk  
Mrs Elspeth Adair – Landlord  
Mr Fleming – Landlords Agent  
Ms Green – Partner of Tenant



**Photo 1 – Rear elevation**



**Photo 2** – Water damage in living room



**Photo 3** – Saturated ceiling and walls



**Photo 4** – Damp and mould in living room



**Photo 5** – Bed 2. Saturated wall + ceiling



**Photo 6** – Bed 2. Damp and mould on ceiling



**Photo 7** – Dampness present



**Photo 8** – Bed 1. Damp and mould on ceiling



**Photo 9** – Bed 1. Dampness in ceiling



**Photo 10** – Bed 1. Saturated wall in press



**Photo 11** – Bed 1. Saturated press floor



**Photo 12** – Broken lock + damp at window



**Photo 13** – F/E Evidence of roof repairs

### **Supplementary inspection notes: -**

#### **1. Living Room**

There is visible evidence of dampness and mould in this room. Damp meter readings taken to the wall area to the right-hand side of the chimney breast, and on the ceiling,

indicate that the affected areas are completely saturated below the surface. Photos 2-4 refer.

2. Bedroom 2

There is visible evidence of dampness and mould in this room. Damp meter readings to the wall and ceiling area to the right of the chimney breast indicate that these areas are completely saturated below the surface. Similar damp readings were recorded across a large section of the bedroom ceiling. Significant surface and below-surface damp readings were also recorded around the window opening. Photos 5-7 refer.

3. Bedroom 1

There is visible evidence of dampness and mould in this room. Significant damp meter readings were recorded around the window opening, and on a large section of the ceiling.

It was recorded that the internal walls and floor of the press were completely saturated, with water droplets forming on these surfaces. Photos 8-11 refer.

4. Kitchen

The presence of dampness was recorded to the right-hand side of the window opening at the junction of the wall with the ceiling.

5. Bathroom

Meter readings taken of the floor section adjacent to the bath indicate complete below-surface saturation.

6. Exterior rendering

It was observed that the roughcast finish on each elevation was cracked, and beginning to fail in several places.

7. Parapet wall

It was observed that there was evidence of previous repair attempts to the parapet wall roof section on the front elevation of the property, immediately adjacent to the point of severe water ingress in Bedroom 1. Photo 13 refers.

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber - 21<sup>th</sup> March 2018

# Housing and Property Chamber First-tier Tribunal for Scotland



## REPAIRING STANDARD ENFORCEMENT ORDER

**Chamber Reference number:** FTC/HPC/RP/17/0543

**Parties:** Gordon Barr residing at 40 Langton Road Pollok Glasgow G53 5DD ("the Tenant") and Elspeth Adair ("the Landlord") residing at 35 Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116 Elderslie Street, Glasgow G13 7AW ("the Landlords' Agents")

**Property:** 40 Langton Road Pollok Glasgow G53 5DD registered in the Land Register of Scotland under Title Number GLA86822 ("the Property")

### Tribunal Members

Karen Moore (Chairperson)  
Nick Allan (Ordinary Member)

### Notice to Landlord

Elspeth Adair residing at 35 Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116 Elderslie Street, Glasgow G13 7AW

Whereas in terms of its decision dated 11 April 2018, the First-tier Tribunal for Scotland determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlords have failed to comply in respect of Sections 13 (1) (a), 13 (1) (b) and 13 (1) (d) of the Act and have failed to ensure that the Property is wind and watertight and reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order and that that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair, the First-tier Tribunal now requires the Landlords to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlords must on or before 25 May 2018: -

1. Instruct a Chartered Building Surveyor to carry out a full inspection of the Property to provide a fully documented report ("the Report") on the roof of the Property including the chimneys and chimney heads, the ridges, skews, flashings, gutters and the supporting beams and sub-structure the purpose of which is to identify the source, or sources, of the water ingress to the Property and to recommend works to the roof, including replacement if necessary, to ensure that the roof is made wind and

watertight and the roughcasting and external parts of the Property including the down pipes the purpose of which is to recommend works to the roughcasting and external parts of the Property including replacement if necessary, to ensure that the Property is made wind and watertight and in a reasonable state of repair;

2. Submit the said Report to the tribunal and, at the same time, provide a copy to the Tenant;
3. Instruct a roofing contractor capable of providing a 30-year guarantee to carry out the works recommended by the Report in respect of the roof and confirm in writing to the tribunal and the Tenant the identity of the roofing contractor, the date on which the works will commence and the estimated date for their completion;
4. Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the Report in respect of the roughcasting and external parts and confirm in writing to the tribunal and the Tenant the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;
5. Instruct a SELECT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that, given the extent of dampness in the Property, the electrical installation in the Property is safe and fit for purpose, and to prepare an electrical installation condition report ("EICR")(ii) to repair or renew any parts which require to be renewed or repaired to ensure the installation is fully functioning and meets current regulatory standards and submit a copy of the EICR to the tribunal and the tenant ;
6. Repair or renew the lock on the door at the top of the internal stairway to ensure that it is fully operative and
7. Make good any décor damaged as a result of these works.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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. That 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 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

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement

in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the preceding page are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 11 April 2018 before this witness:

W Moore

witness name

Witness

Karen Moore

Norman William Moore

Witness address

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