

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0248

Re: Property at Flat 1F/2, 20 Hawthornvale, Newhaven, Edinburgh, EH6 4JL ("the House")

The Parties:-

Mr Andrew Maloney, residing at the property ("the Tenant")

Mr Andrew Khaleeli, 10 Craigmock Park, Blackhall, Edinburgh, EH4 3PL ("the Landlord")

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the House, and taking account of the evidence presented and the written and oral representations, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised:-

Mrs Nicola Weir, Legal Member

Mr Kingsley Bruce, Ordinary Member

Background

1. By Application received on 3 July 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the House meets the Repairing Standard and in particular that the Landlord had failed

to ensure that:- the house is wind and watertight and in all other respects reasonably fit for human habitation; 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; that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complained that there were no gas fires for heating – reason: cost too high for replacement; kitchen drains – no reason given on why not replaced; shower not working – no reason given; excessive cold drafts – no reason given; excessive dust – no reason given; open floorboards – no reason given; gas cooker, oven and grill – no reason given; tenancy agreement stolen from ‘twin lock files’ held at property, the top cover of which was found smashed and that the gas fires need to be replaced; the kitchen drains need to be replaced; the shower needs to be properly fixed; the flooring needs attention/replacing/repair; the cooker, stove & grill needs to be replaced and breaches of security need to be challenged (*sic*). Apart from the application form, the Tenant also submitted as part of his Application copies of two letters to his Landlord dated 29 June 2017, the first setting out the Tenant’s summary of the details of the tenancy and the second detailing the repairs issues the Tenant considered outstanding in respect of the House. This second letter also had attached the Tribunal’s pro forma ‘Landlord notification of repair letter’ completed by the Tenant. Said letters provided some further details of the repairs issues subsequently included in the Tenant’s application form submitted to the Tribunal and was accepted as proof that the Tenant had intimated the repairs issues to the Landlord before submitting his Application to the Tribunal.

2. On 24 July 2017, a Convener of the Tribunal, acting under delegated powers, made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing dated 2 August 2017 in terms of Schedule 2, Paragraph 1 of the Act was thereafter served upon both the Landlord and the Tenant. In terms of said Notice of Referral, written representations or requests to make oral representations were to be submitted to the Tribunal by 23 August 2017.
3. The Landlord’s response received on 7 August 2017 stated that he wished to attend the Hearing and did not wish to submit written representations. The Tenant’s response stated that he wished to attend the Hearing and submit written representations. The Tenant submitted written representations by email dated 22 August 2017 and attached a copy Inventory of Productions and copy correspondence to the Tenant from Messrs Lindsays, solicitors who appeared to be acting for the Landlord in an eviction action against the Tenant at Edinburgh Sheriff Court. The Tenant’s representations related to an apparent dispute with the Landlord

concerning the details of his tenancy and to said correspondence from Messrs Lindsays.

4. On 31 August 2017, the Tribunal issued a Notice of Direction dated 30 August 2017 to the Parties in terms of Schedule 2, Paragraphs 2(1) and 3(1)(b) of the Act and Regulation 38 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Regulations") requiring the Landlord to produce to the Tribunal by 8 September 2017 a copy of the Tenancy Agreement/Lease relating to the House, a current gas safety record from a Gas Safe registered engineer and a current Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) from a suitably qualified and registered electrical contractor. This Direction was not complied with (although information provided at the subsequent Hearing, referred to below, has a bearing on this).
5. On 6 September 2017, the Landlord emailed to the Tribunal a request that the case be dismissed or that the Inspection and Hearing on 11 September 2017 at least be postponed, given that the Landlord advised that he had won his court eviction action against the Tenant on 5 September 2017 primarily on the ground that the Tenant had not allowed him and his tradesmen access to carry out repair and upgrading to the House. He said that the Tenant was due to leave the House on 1 November 2017. The Landlord advised that the court case had been very stressful and that the Tribunal hearing on 11 September 2017 would involve more confrontation. The Landlord raised the issue that the original termination date of the lease had been 1 May 2017 and that the Tenant had made his application to the Tribunal well after that. He authorised his solicitor from Messrs Lindsays, solicitors to act on his behalf in respect of the Tribunal case and that she would forward further information to the Tribunal. Late in the afternoon of 6 September 2017, the Landlord's solicitor emailed further details and papers regarding the court case and its outcome to the Tribunal in support of the Landlord's request for a postponement. Said papers included a copy of the Summary Cause Summons and Statement of Claim, a copy of her Written Submissions on behalf of the Pursuer (the Landlord), a note detailing the Sheriff's oral judgement following the Proof on 5 September 2017 and a copy of an email sent to her from the Tenant on the evening of 5 September 2017 referring to the court action and apparently stating an intention to move out of the House.
6. The Landlord's request was emailed to the Tenant on 8 September 2017, requesting his urgent response. No response was received from the Tenant in time so the Tribunal proceeded to make their decision on the Landlord's request that the case be dismissed. The Tribunal considered in this regard the submissions and papers submitted by the Landlord and his solicitor on his behalf. The Tribunal noted that the Tenant had not indicated any intention to withdraw his Application to the Tribunal in terms of Schedule 2, Paragraph 7(1) of the Act. Although it appeared from the papers submitted that the Sheriff had been satisfied that the contractual tenancy between the parties had been terminated around 1 May 2017 by the Landlord serving

the relevant notice and also that the Sheriff had granted an eviction decree in the court action on 5 September 2017, the tenancy had not yet been "lawfully terminated" such that the Tribunal would treat the Tenant as having withdrawn his Application, in terms of Schedule 2, Paragraph 7(1) of the Act. In deciding this, the Tribunal had regard to Section 18(7) of the Housing (Scotland) Act 1988 which states "...the sheriff may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated, and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect." It appeared to the Tribunal that the Sheriff's order was not due to take effect until 1 November 2017 and that the statutory assured tenancy would continue until that date. The Tribunal then considered the Landlord's request for a postponement and had regard to Regulation 48 of the Regulations in doing so, as well as the overriding objective of the Tribunal to deal with proceedings justly in terms of Regulation 3 of the Regulations. The Tribunal considered the timing of the Landlord's request and, although appreciated that the court action between the parties had only concluded within the past few days, felt it was significant that the Landlord had not submitted any representations previously concerning the pending court action or made any prior request for an adjournment of the Tribunal proceedings on the basis of said pending court action. In addition, the Tribunal was of the view that the Tenant's Application to the Tribunal involved different considerations to those in the court action and that the Application to the Tribunal could still be justly determined in terms of Regulation 48. The Tribunal accordingly decided that good reason had not been shown and that it would not be just to adjourn the Inspection and Hearing on 11 September 2017 at such short notice and that the Landlord's request should be refused. The parties and the Landlord's solicitor were advised accordingly on the afternoon of 8 September 2017. The Tenant subsequently emailed the Tribunal to advise that he was intending to appeal the Sheriff's decision, that he was not willing to withdraw his Application to the Tribunal and did not want the Inspection and Hearing postponed.

7. The Tribunal inspected the House on the morning of 11 September 2017. The Tenant, the Landlord and his wife, Mrs Khaleeli, (as supporter) were present during the inspection, although the Landlord and his wife waited in the common close outside the House for much of the inspection as was their wish.
8. Following the inspection of the House, the Tribunal held a Hearing at George House, 126 George Street, Edinburgh, EH2 4HH. Both the Tenant and Landlord attended and gave evidence. The Landlord's wife was also present (as supporter) but took no part in the proceedings.

The Inspection

9. At the time of the inspection, it was sunny with little wind. The Tribunal noted that the House is a first floor middle flat in a four storey mid-terraced traditional tenement with two flats at ground floor level and three flats to each of the upper levels. The tenement was constructed circa 1870, is of solid stone construction and has a slate clad pitched roof. The House is accessed from a common entrance and stair. The accommodation comprises: hall, living room/kitchen, bedroom and shower room.

The following observations were noted during Inspection:

- (a) The flat was heavily plenished and there were significant quantities of boxes, papers and other items stored throughout the property, covering large areas of the floorspace and most other surfaces. Inspection of the property was hampered by the presence of plenishings and stored items. Access was restricted to narrow "walkways" between items.
- (b) The gas fire in the living room was covered with sheeting. The sheeting was removed and it could be seen that the fire was disconnected and therefore not operational. It was not possible to see whether or not there was still a gas fire in the bedroom, due to the presence of items stored against and in front of the wall where the parties indicated the fire was, or had been, located. There appeared to be no other source of heating within the House.
- (c) The electric shower in the shower room was not operational, demonstrated by the tenant, who turned it on. There was an isolation switch for the electricity supply to the shower located in a cupboard/larder in the living room, which did not appear to work, when switched on. It was noted that the shower cubicle had a number of items stored within it.
- (d) There was a leak at the outlet from the kitchen sink. There was a basin in the cupboard underneath the sink to catch the water that flowed out of the leak in the outlet pipe when the sink was drained. There was no indication of a blockage in the sink drainage.
- (e) The gas hob in the kitchen had items stored on top of it. The Tenant stated that it still works and that he still uses it but that Scottish Gas had stated previously that it was unsatisfactory. There was no evidence of any warning notice or similar having been affixed to the appliance by Scottish Gas or any other party.
- (f) There was no carbon monoxide detector fitted in the House that could be seen.
- (g) Windows were seen to have been replaced in pvc frame double glazed type, which appeared to be free from significant defect. Within the limits of the inspection, which was necessarily restricted, by the exceptional quantity of stored items and plenishings, there were no indications of significant draughts or sources of alleged draughts and dust. Typically, the floor appeared to be of traditional suspended timber type with fitted floor coverings. Despite the contentions of the tenant that sources of draughts and dust included flooring, skirtings and walls, no evidence of such were apparent. The exterior of the House and the tenement of

which it forms part, when viewed from the street outside appeared to be free from significant defect.

(h) The House was dusty in places.

A Schedule of Photographs taken during the Inspection is attached to this Statement of Decision and executed as relative hereto.

The Hearing

10. At the Hearing, the Tribunal had before it a copy of the Application, all supporting documentation, the written representations and other documentation received from the Tenant in response to the Notice of Referral, all as referred to above.
11. The Tenant and Landlord proceeded to give evidence and answered questions from the Tribunal.
12. The Tenant advised that the gas fire in the bedroom had been sealed off when he took entry to the House in 1997 or shortly thereafter. He advised that this was not a problem for him as he did not sleep much and used the bedroom mostly for storage. He did not use the living room fire much as he was working a lot and was not concerned about this being the only heating in the House as he had always intended to move on after around two years. Around 1998, he started noticing that the flame in the fire was burning orange or yellow, rather than blue and felt that it produced a lot of fumes. Carbon soot was coming onto the bars of the fire and part of the fire cracked and gave way. He stopped using it and would use the cooker burners for heat when it was very cold but would have to open the windows because of the fumes. When asked if he had reported his concerns regarding the fire to the Landlord, the Tenant was unclear about this. It appeared that he had not reported this in the earlier years of the tenancy because he was intending to move on. He mentioned that the Landlord used a local contractor, Munro, and it appeared they had attended the property from time to time over the years and would bill the Landlord for any work. The Tenant thought that he "would have" reported his concerns about the fire to the Landlord and that, with the Landlord's consent, he would then have arranged to get Munro out. The Tenant advised that, in 2013, Scottish Gas came out to do a gas check and sealed off the fire in the living room at that time. The Fire Brigade had also carried out a fire and safety check. The Tenant confirmed that the Landlord had been out to the House since and that the lack of heating had been discussed. The Tenant said that the Landlord had said the [fire] flues were too expensive to sort out and had suggested electric heaters. The Tenant's position had been that these were too expensive to run. The Tenant confirmed that the Landlord had then suggested central heating, which the Tenant said he was agreeable to. He stated that one person came out to measure up for central heating but that a second person did not come or had come when the Tenant was out working and did not then get back to the Tenant to rearrange.

13. The Landlord advised that he was aware that the gas fire had been "condemned" as he had been told this after it had been disconnected by Scottish Gas. He knew that an alternative source of heating was required. He suggested to the Tenant that an electric heater could be installed, the chimney flue was found to be defective and the cost of repair would be excessive but the Tenant refused, saying it would cost too much to run. The Landlord stated that he was happy to pay for central heating to be installed that cost was not the issue for him as had been suggested by the Tenant. The Landlord referred to the fact that he had paid for double glazing to be installed a few years prior to that to improve the House. However, the Landlord advised that, by 2012/2013, the House was beginning to look like it does now and that the central heating company said that they could not install central heating unless the House was sufficiently cleared. The Tenant was told this but did nothing to improve the situation. Historically, the Landlord advised that the Tenant was frequently unavailable and rarely at home so they had an arrangement whereby the Landlord gave the Tenant full authority to call Munro when things needed done and the Landlord would then be billed directly by Munro. The Landlord advised that, as far as he was concerned, at that time, everything was done when it was needed. The Landlord was asked by the Tribunal if he was aware of the obligation to get a gas safety check carried out annually. The Landlord advised that, in the past, these things were done but that the Tenant then stopped allowing access to the House. The Landlord stated that the Tenant has put several locks on the front door and that he does not now have keys to all the locks and cannot therefore access the House. He said that he has been unable to access the House for a few years and that this was when he felt he was starting to lose control of the situation. The Landlord stated that he does not dispute that works are needing done, that he owns other properties and is aware of his responsibilities. However, he has been denied access by his Tenant to repair and improve the House and this is why he eventually felt he had no option but to instruct a lawyer and subsequently raise the court action. The court decided last Tuesday that he had indeed been denied access and granted decree to evict the Tenant on this ground. He mentioned that the Tenant had been denied Legal Aid in connection with the court proceedings as, in the Landlord's view, the Tenant had been abusing the evidence. The Landlord believes the Tenant to have mental health issues but said that the Tenant had refused a Mental Health Assessment. The Tenant was alleging that people, including the Landlord, were coming into his house when he was not there and doing all sorts of things. The Landlord said he would have been reluctant to enter the House when the Tenant was not there due to the accusations being made by the Tenant about his belongings being stolen, etc but said that, even if he had wanted to, he would not have been able to access the House because he did not have keys to the several additional locks the Tenant had added to the front door. The Landlord maintained that, over recent years, the Tenant had refused access to tradesmen or not been in to allow access at the appointed time even although the appointments had been arranged directly between the tradesman and the Tenant. The Landlord stated that the electrician had not been able to gain access in 2012 in connection with the shower, despite

attempting to do so on several occasions. The Tenant was not compliant in cooperating with tradespeople. Although the gas central heating company got in, they said they could not install central heating as they had no physical space to work, due to the volume of items being stored by the Tenant throughout the House. The Landlord said that he did not know that the Fire Brigade had been out to the House until during the court action. The Landlord said, in any event, he realised that something had to be done so that the House was safe and legally compliant. In an attempt to resolve the matter, the Landlord offered another of his properties to the Tenant at the beginning of 2016. The Landlord stated that it was in a good, quiet area, in good condition and would have given the Tenant more space. He said that the market value rent was higher than for the House but he said that he had offered the alternative property to the Tenant at the same rent and had offered to meet the Tenant's removal costs. Through his lawyer, he then offered the Tenant additional financial incentives to move but the Tenant refused these offers. The Landlord said that he had required to proceed with the court action as he had tried everything else. He said he was not trained to deal with mental health problems. He wanted the House to be safe and habitable and said that he also had to think of the other eleven flats in the tenement beside the House. He said that the court process took a year and has cost him around £15,000. He said that the Tenant seems to think the whole thing is a game. The Landlord said that he had even offered the Tenant more time to vacate the House than would be the norm and this is why the court eviction order will not be implemented until 1 November 2017. The Landlord thought it important that the court had also granted him the expenses of the court action which he believes would not always be the case. The Landlord confirmed that his future plans for the House are to bring it up to standard and then re-let it. When asked by the Tribunal if he had offered the alternative property to the Tenant on a temporary basis with a view to the Tenant moving back into the House after the works were carried out, the Landlord replied that he would have agreed to that if the Tenant had said that he wanted that, but that the Tenant had simply refused. The Landlord also confirmed that he had had the House refurbished directly before the Tenant moved in in 1997. The Landlord did not think that there is still a gas fire in the bedroom, his recollection being that the fire had been capped off and boarded up before the Tenant moved in.

14. The Tenant confirmed that the Landlord had offered him alternative accommodation and that he had refused it. He reiterated that the Landlord has always had keys and that he gave the Landlord a key to every single lock on the front door before the Landlord served the Notice to Quit. He also reiterated that he has had tradesmen in the House. As regards the Fire Brigade, the Tenant advised that they had been to the House three times. He said the first two visits came about from them doing courtesy calls in the area. The Tenant said that the third visit arose from the involvement of Environmental Health, the City Council and the Scottish Legal Aid Board whom the Tenant thought were sharing information about him. He said the Fire Brigade had concerns about the way the House was laid out and about lack of clear passage in the event of fire and that they

had fitted a smoke alarm on the hallway ceiling which the Tenant confirmed is operational.

15. Regarding the cooker, the Tenant advised that it works but that he rarely uses it and conceded that he stores crockery inside the oven. When the House was very cold, he advised that he would sometimes put on the hob burners for heat but there were too many fumes. When asked by the Tribunal if it was he who had blocked off the extractor fan in the kitchen area, the Tenant confirmed that he had, because insects were coming in. When asked if he had complained to the Landlord about the fumes from the cooker, he mentioned again about Scottish Gas having come out in 2013 and that they had assessed the cooker as being a health and safety risk. When asked by the Tribunal if Scottish Gas had put a sticker on the cooker to this effect, the Tenant said that they had not done so as they had wanted to leave him the use of the cooker. The Landlord stated that it did not sound to him as if Scottish Gas had condemned the cooker. He denied that the Tenant had complained to him about the cooker or provided him with a copy of any report from Scottish Gas concerning the cooker. The Tenant stated that a copy of the report had always been available and had been kept on the mantelpiece in the House if the Landlord had wished to see it. The Landlord reiterated that he was not entering the House when the Tenant was not there and that he had not seen a copy of this report.
16. As regards the drainage in the kitchen sink, the Tenant advised that his position was that the leak should be addressed. He confirmed that Munro, the contractors used by the Landlord came out to assess the leak and twice flooded the whole kitchen area. The Tenant advised that the Landlord and Munro were in direct communication about this. This was around 2008. The Tenant said he was asked to contact other local services to get quotes and that one other person came out. However, nothing was done. The Tenant said that he asked the Landlord again about the sink four years later, in 2012, but that no further works have been done on the sink. The Landlord confirmed that he had been aware of the problem with the sink in 2008 and thought it had been rectified until the Tenant raised the matter recently in connection with this Tribunal Application.
17. The Tenant advised that he did without a working shower between 2002 and 2006 when a new shower was fitted by a plumber. That worked fine until around 2012 when the shower stopped working. An electrician came out and put in a new circuit and reset switch. The reset switch worked once or twice but then failed to work and the light would then not come on on the main switch. The Tenant thought the fuse had gone and said he contacted the Landlord and told him about this but that no one has been out to see the shower since. The Landlord stated that the problem was that, in 2012, an electrician had called on three separate occasions at the House regarding the shower but the Tenant was never in. The Landlord's position was that the tradesman and the Tenant were arranging these dates and times directly with each other as his own relationship with the Tenant was breaking down. The Landlord advised that the Tenant had not spoken to him about the shower since 2012. The Tenant responded that

he may have been sending texts but that his phone had been jammed or interfered with in some way, he thought by the Landlord.

18. The Tenant was asked about his complaints about draughts and dust entering the House. He explained that there had been several "open wall" areas in the House where he could see through to the outer walls. He mentioned the wall area to the right-hand side of the living room window and other such areas in the shower room, under the sink, at the front door frame where the door had been forced and to gaps between the skirting and walls and in the floor. The Tenant said that he had filled these gaps himself. When asked by the Tribunal if he had complained to the Landlord about the draughts, the Tenant said he had asked permission of the Landlord to do this work himself and that the Landlord would have said to go ahead and do it. The Tenant confirmed that he billed the Landlord £270 for this work, a quarter of the full amount. The Landlord confirmed that he did pay this and also that he had arranged for new windows to be installed in 2010 to help out. He confirmed that the Tenant had mentioned to him, in passing, the draughts coming from under the floor but that, as far as he was concerned, the building was windproof from the outside. As regards the dust complaint, the Landlord stated that the Tenant has such a lot of stuff in the House that attracts dust. The Tenant stated that the wind coming up through the floorboards was so strong that the carpets would rise up and dust gathered underneath the carpets. He said that in 2011, he deep-cleaned the House as he had visitors and after a few days, a quarter inch of white powder had gathered. The Tenant stated that he had complained to Environmental Health and the City Council but no one has responded. Everyone says that none of these things are happening. He has contacted the Edinburgh Housing Partnership but is still awaiting their representation.

19. In summing up, the Tenant stated that he has been suffering and been left to suffer by the Landlord who is looking at the economic principle of re-letting the House. He said he has provided the Landlord with everything he needed and that the Landlord has a responsibility to his Tenant. He said that the Landlord should not pretend that he does not have access. He said that he has had his belongings stolen from the House. The Tenant reiterated that before the Notice to Quit was served in the court action that he had provided the Landlord with a full set of keys to the House. He said that the landlord was suggesting that he does not have a set of keys and is suggesting that the Tenant is to blame. The Landlord needs to take responsibility, go in to the House and get the job done. The Landlord has sole responsibility for this. The Tenant said that he enjoys having showers, cooking, etc and that this is affecting his health. He is a singer and is being affected by the dust. He said the Landlord had been cooking up a story and pointed out that he, the Tenant, had allowed access to the Tribunal this morning.

20. The Landlord summed up by stating that there was proof produced in the court action of what he is saying and that the Sheriff had accepted this, so he does not mind being called a liar by the Tenant. He said that he had

had suspicions about the Tenant's mental health and had therefore tried to approach the matter with "kid gloves" all along, until he had no other choice but to raise the court proceedings about a year ago. When asked if he had been aware of the access procedures available to landlords through the Tribunal, the Landlord said no but had he been, he would have availed himself of those.

Findings in Fact

- 21.** The House is a first floor middle flat in a four storey mid-terraced traditional tenement located at Flat 1F/2, 20 Hawthornvale, Newhaven, Edinburgh, EH6 4JL.
- 22.** The Tenant has occupied the House since around May 1997 and lives alone. The original tenancy documentation is missing. The Tenant currently occupies the House under a statutory assured tenancy, the Landlord having served previous notice bringing the contractual tenancy to an end and the Sheriff at Edinburgh Sheriff Court having granted decree for eviction against the Tenant following a Proof Hearing on 5 September 2017. Said decree is not to be implemented until 1 November 2017 at the earliest. The ground for eviction relied on by the Landlord in the court proceedings was that the Tenant had refused the Landlord reasonable access to the House for purposes of repair and maintenance. The Tenant had disputed this ground. The Sheriff had found in favour of the Landlord.
- 23.** Repairs issues had arisen at various times during the tenancy. The Tenant did not take up earlier repairs issues with the Landlord as his intention was to rent the House only on a short-term basis. It was unclear which later repairs issues were reported directly to the Landlord by the Tenant, how this had been done or when this was. A practice arose whereby the Landlord authorised the Tenant to contact the Landlord's contractor, Munro, direct and Munro would attend at the House and thereafter bill the Landlord direct in relation to repair works carried out.
- 24.** The relationship between the Tenant and Landlord subsequently deteriorated. From around 2012, the Landlord and his contractors had more difficulties getting access to the House from the Tenant. This coincided with the Landlord noticing that the volume of items being stored within the House by the Tenant was increasing. The Tenant has accused the Landlord and others of going into the House when he is not there and interfering with or stealing his belongings. The Tenant has accused the Landlord of interfering with his mobile telephone messaging. The Tenant believes that organisations are working together against him. The Landlord believes that the Tenant has mental health issues.
- 25.** Reference is made to the Tribunal findings at the Inspection of the House on 11 September 2017. The Landlord fully accepts that there are repairs issues affecting the House and that he has been aware of some of them for some time. The Landlord has been unable to have these repairs issues

resolved either because of his contractors not being able to get access to the House or not being able to undertake works due to conditions within the House, namely the storage by the Tenant of numerous items as referred to in the Tribunal findings at the Inspection.

26. The Landlord was aware of the problem with the kitchen sink in 2008 but had thought this matter had been resolved by his contractor at the time. The Tenant had not complained to him about this since, until the Tenant made his Tribunal Application.
27. The Landlord was aware of the Tenant's complaint about the electric shower not working again in 2012. An electrician had tried to get access to the House on behalf of the Landlord on three separate occasions to fix the shower but the Tenant was not in or did not allow access at the arranged times.
28. The Landlord was aware that the gas fire in the living room had been disconnected by Scottish Gas in 2013 and that the Tenant had no alternative heating source. The Landlord had agreed to have central heating installed at that time. He made arrangements to progress this but the contractor declined to take on this work due to the said conditions in the House. The Tenant was aware of this. Despite this, the Tenant has not taken steps to clear the House.
29. The Landlord had not been made aware of any issues concerning the gas cooker.
30. The Landlord was aware of the Tenant's complaints about draughts and dust entering the House. The Landlord had arranged for the installation of replacement double glazed windows in the House around 2010. The Landlord had authorised the Tenant to carry out works himself to fix gaps in the floor and walls that the Tenant had complained about. The Landlord reimbursed the Tenant for some of the work/materials involved in this.
31. The Tenant has not, in recent years, cooperated with the landlord to allow the Landlord or his tradesmen access to the House to carry out repairs. The Tenant has since added several locks to the front door of the House to which the Landlord does not have keys. Around 2016, the Landlord sought legal advice about the situation. The Landlord offered an alternative flat to the Tenant, at the same rental, in return for the Tenant agreeing to remove from the House. The Landlord also offered to pay the Tenant's removal costs. He subsequently offered additional financial incentives to the Tenant to move. The Tenant refused said offers. The Landlord required to proceed with a Sheriff Court eviction action in order to recover possession of the House from the Tenant. Said proceedings have been protracted and expensive. The Landlord is due to recover possession of the House on 1 November 2017.

Reason for decision

- 32.** The Tribunal considered the repairs issues set out in the Application and noted at the Inspection and Hearing.
- 33.** In the Tribunal's view, the House does not meet the repairing standard as follows:- 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 and proper working order in terms of Section 13(1)(c) of the Act in that the gas fire in the living room is not operational and there is no other source of heating in the House and in that there is a leak in the pipe outlet underneath the kitchen sink into which the kitchen sink drains; any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act in that the electric shower is not operational.
- 34.** In the Tribunal's view, there was no breach of the repairing standard in respect of the gas cooker, hob and oven in that there was no evidence that it was not operational, nor that it was defective in any way. The Tenant himself confirmed that the cooker was working and that he still used it for cooking sometimes. The complaint from the Tenant was that the cooker gave off a lot of fumes and that Scottish Gas had previously declared it unsafe. However, there was no sticker affixed to the cooker to this effect by Scottish Gas or similar. The Tenant had not produced any report to the Tribunal from Scottish Gas or similar confirming that the cooker was defective, although he maintained that such a report existed. When pressed on the matter of there being no Warning Notice or similar affixed to the cooker by Scottish Gas, as would be normal practice if they had found an appliance to be unsafe, the Tenant's explanation was that Scottish Gas had decided to leave him with the use of the cooker for the time being.
- 35.** In the Tribunal's view, there was no breach of the repairing standard in respect that there was no carbon monoxide detector fitted in the House. The gas fire in the House was disconnected and non-operational. In terms of the Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, the requirement to have a carbon monoxide detector does not apply if the only fixed combustion appliance in the house is a cooker.
- 36.** In the Tribunal's view, there was no evidence of draughts or dust entering the House from the exterior. There were no visible gaps or defects in the walls or floors which could have given rise to such draughts and dust in the manner described by the Tenant. The exterior of the House when viewed from outside appeared to be substantially free from significant defect, as did the replacement double glazed windows. The House was dusty in places. However, in the Tribunal's view, the dust most likely arose naturally and settled on the number of items being stored within, rather than entering the House from an external source, as alleged by the Tenant.

37. In respect of the defect with the drainage from the kitchen sink, whilst the Tribunal was satisfied that the Landlord had been made aware of the problem by the Tenant around 2008, the Tribunal was not satisfied that the Tenant had made the Landlord aware that there was an ongoing issue with the sink, until the Landlord received notification of the Tenant's application to the Tribunal. The Landlord's evidence to the Tribunal that he had been aware of the issue in 2008 but thought that the matter had been rectified at the time by his contractor, Munro, appeared to the Tribunal to be credible, particularly given the practice that both parties had referred to in evidence as being in place at that time whereby the Landlord had authorised the Tenant to instruct repairs directly through Munro and the Landlord would then be billed directly by Munro for works carried out. In contrast, the Tribunal was of the view that the Tenant's evidence that, following the sink not being fixed in 2008, he had then left the matter for four years until raising it again with the Landlord, was not credible. Moreover, the Tenant was not clear as to how he had notified the Landlord of this ongoing issue and no evidence of such notification was produced to the Tribunal, other than the notification sent to the Landlord in the context of the present application to the Tribunal. When pressed by the Tribunal on the issue of notification to the Landlord of alleged defects, the Tenant repeatedly stated that he "would have" reported the issues to the Landlord but could not produce proof of text messages, etc as the Landlord had intercepted or interfered with the Tenant's mobile telephone messaging in some way. The Tribunal preferred the Landlord's evidence in this regard and were accordingly of the view that, although the repairing standard was not met in respect of the drainage from the kitchen sink, the Landlord's duty in terms of Section 14(1)(b) of the Act had not been breached as the Landlord had not been notified, or otherwise become aware that there was an ongoing issue, in terms of Section 14(3) of the Act.

38. In the Tribunal's view, the Landlord had not completed the works required in order to meet the repairing standard within a reasonable time of being notified of the repairs issues by the Tenant in respect of the electric shower and in respect of the gas fire in the living room and lack of alternative heating and had not, therefore, complied with the duty to repair and maintain in terms of Section 14(1)(b) of the Act. However, the Tribunal was satisfied on the evidence that, in terms of Section 16(4) of the Act, the Landlord should not be treated as having failed to comply with the Section 14(1) duty as the purported failure occurred only because the Landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. The Tribunal was persuaded by the Landlord's evidence that, although he was aware in 2012 of the alleged problem with the electric shower and in 2013 that the gas fire had been disconnected and that there was no other source of heating within the House, that he had taken reasonable steps to get his contractors in to carry out the necessary works. These attempts failed, in the case of the shower due to the electrician trying, unsuccessfully, on three separate occasions to get access via the Tenant and in the case of the heating, although the contractor was able to get access to the House,

he indicated that he could not proceed with installing central heating as he could not access the areas he needed to within the House, unless the House was cleared of the Tenant's stored belongings. The Tenant did not dispute that the electrician had tried to get access (although he claimed that the electrician kept attending at the House when the Tenant was at work) nor that the central heating contractor had declined to proceed with installing central heating for the reason stated. The Tenant did not dispute that he had made accusations that the Landlord and others had been accessing the House when he was not there and had stolen or interfered with his belongings. Indeed, the Tenant repeated these accusations in his evidence. Despite this, the Tenant appeared to be of the view that the Landlord should just have been accessing the House to get repairs and other works done, whether or not the Tenant was in to give access. The Tribunal did not consider this a reasonable stance for the Tenant to take, particularly in the circumstances of this case. Nor did the Tenant dispute that he had added several locks to the front door of the House to increase his security, resulting in the Landlord not being able to physically access the House, even if he had wanted to. There was a dispute between the parties as to whether or not the Tenant had provided the Landlord with keys to the new locks but, even if the Tenant's evidence were to be preferred in this regard, he stated that he had only given the Landlord the keys at the time the Notice was being served by the Landlord to bring the tenancy to an end ie. relatively recently. The Tenant did not dispute that the Landlord had offered him an alternative flat, removal costs and other financial incentives to move out of the House, in an attempt to avoid having to take court eviction proceedings, nor that he had refused these offers. It was not disputed by the Tenant that, having heard both parties' evidence in the court eviction action, the Sheriff had found in favour of the Landlord and granted decree for eviction on the ground that the Tenant had been denying the Landlord and his contractors access to the House over a period of some years for purposes of repair and maintenance. Having regard to all these matters, the Tribunal was of the view that the Landlord's evidence on the issue of access was more credible than that of the Tenant. The Tribunal thought it unfortunate that the Landlord had not been aware of the procedures available through this Tribunal to assist a landlord in trying to secure access. However, other than that, the Tribunal was persuaded that the Landlord had taken all reasonable steps to obtain access to the House in order to comply with his duty to repair and maintain, including pursuing, as a last resort, his ultimate remedy of recovery of possession of the House through Sheriff Court eviction action.

Decision

- 39.** The Tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 40.** The decision of the Tribunal was unanimous .

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

In terms of Section 63 of the Act, 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.

Nicola Weir

Signed.. Date: 11 October 2017
Nicola Weir, Legal Member of the Tribunal

Glasgow, 11 October 2017

This is the Schedule of Photographs referred to
in the foregoing Statement of Decision.

Nicola Weir

Legal Member of the Tribunal

Schedule of Photographs

Inspection Date: 11 September 2017

Property: Flat 1F/2, 20 Hawthornvale, Edinburgh













