

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/RT/17/0354

Title no/Sasines Description:

**63 Restalrig Avenue, Edinburgh, EH7 6PN
ground with house, referred to in the feu disposition to John Lyon recorded 17
February 1926 in the General Register of Sasines for the County of Midlothian
 (“The House”)**

The Parties:-

**City of Edinburgh Council, Private Rented Services, 101 Niddrie Mains Road,
Edinburgh, EH16 4DS
 (“the Third Party Applicant”)**

**Mr Balwant Singh and Mrs Rajwant Kaur Singh, 54 Durham Square, Edinburgh,
EH15 1PP
 (“the Landlord”)**

**represented by Lucky Singh and Sanjay Singh, c/o 54 Durham Square,
Edinburgh, EH15 1PP
 (“the Landlord’s representative”)**

**Ms Julie Graham, 63 Restalrig Avenue, Edinburgh, EH7 6PN, Tenant of the
House (“the interested party”)**

**as represented by Ms Leslie Davis, Social Work, City of Edinburgh Council,
East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS
 (“the interested party’s representative”)**

Tribunal members

**Susanne L M Tanner Q.C. (Legal Member)
Greig Adams (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 submitted by parties and the parties' 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.

The House

4. The House is the ground with house, referred to in the feu disposition to John Lyon recorded 17 February 1926 in the General Register of Sasines for the County of Midlothian
5. The House is a two storey detached property with front and rear garden ground. (See external view in the attached *Schedule of photographs*).
6. On ground level there is an entrance hall, front living room (being used as the main bedroom at the time of inspection), back living/dining room, kitchen and conservatory. On the half landing there is a bathroom. On the upper floor there are three bedrooms, two of which were occupied by the tenant's children at the time of inspection.

Parties and Application

7. The Application was made by the Third Party Applicant as designed above in terms of Section 22(1A) of the 2006 Act.
8. The tenant is an Interested Party and was represented in correspondence with the tribunal by Lesley Davis, the allocated social worker for the tenant's children.
9. The Landlord is as designed above. The Landlord was represented by family members, Lucky Singh and on 18 December 2017, by Sanjay Singh.

The Tenancy

10. The House has been let to the Interested Party for some years. A copy of the most recent short assured tenancy agreement for the House was lodged with the tribunal. The tenancy commenced on 11 March 2015 and the termination date was 11 March 2016. It has continued thereafter on a monthly basis. Rent is £1400 per calendar month.
11. The House appears to be let on a part-furnished basis with white goods.
12. It is understood by the tribunal that the Landlord has now served a Notice to Quit on the Interested Party.

Procedural Background

13. By application received on 13 September 2017 (hereinafter referred to as “the Application”), the Third Party Applicant applied to the tribunal in terms of Section 22(1A) of the 2006 Act for a determination as to whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the 2006 Act.
14. The Application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the 2006 Act:

“

(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,

(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire [, and]

(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”

15. The Application included the Third Party Applicant's Inspection Report (following an inspection on 12 September 2017) which listed the repairs issues which were considered by the Third Party to be outstanding at the time that the Application was made. By reference to the said Inspection Report the Third Party Applicant complained of the following repairs issues:

a. Bathroom.

- i. The electric shower did not work as the electric pull cord had burned out. The switch requires to be replaced. There is no hot running water in the House.
- ii. There was no button or handle for flushing the toilet. To flush the toilet, the resident had to remove the toilet cistern lid and operate the flush valve. The toilet flush button requires to be replaced.
- iii. The bath seals with the wall tiles were in a poor state of repair. It is believed that this may be contributing to water leaking into the kitchen below if the shower is used. The tenant had a friend to undertake some work to renew the seals, however further works are required to ensure that there are no gaps to allow water to penetrate behind the bath.
- iv. Only one spotlight in the bathroom worked. The tenant advised that the bulbs keep failing very quickly. One of the spotlights was hanging loose from the ceiling over the bath. The spotlights require to be checked over by a qualified electrician to make sure that they are the correct IP rating for their location in the bathroom and are replaced if necessary, including properly securing the loose spotlight.
- v. There had been a blockage in the toilet which lead to a leak of foul water into the kitchen below. This had been rectified, however, the water penetration through the floor had caused the toles to come loose and crack. The broken and loose floor tiles should be replaced. This is likely to be the source of damp smell in the bathroom.

b. Liam's bedroom [*tribunal note – second bedroom on the left hand side of upstairs hall*]

- i. The wall light switch is broken and does not operate correctly to switch the light on or off. The electricity could be heard sparking from within the switch. The light flickered on and off. A qualified electrician should replace the faulty light switch.

- c. Ciaran's bedroom [*tribunal note – bedroom at far end of upstairs hall with window to front of House*]
 - i. No significant issues identified in this room. However, it was noted that the room appears to have only one useable electrical socket as the other is positioned behind a radiator pipe. Therefore, the one socket may become overloaded as a four-gang extension cable is used. It is recommended that the single socket is converted to a double and the other usable single socket is repositioned and changed to a double socket.

- d. Front living room [*tribunal note – being used as a main bedroom by the tenant at the time of the tribunal's inspection*]
 - i. This room has a gas fire. According to the tenant the fire has never been serviced or checked by a Gas Safe registered engineer. However, there is currently no gas to the House as the supply was cut off several weeks ago. Once the gas supply has been reconnected the appliance must be serviced and checked for safety by a Gas Safe registered engineer.
 - ii. The light fitting in the centre of the room is hanging loose and does not appear to be correctly secured to the ceiling. Ensure the light fitting is checked and, if required, properly secured.

- e. Hall
 - i. There is a fixed electrical smoke detector in the hall at the foot of the stairs which works. However, the detector at the top of the stairs has been partially removed and does not work. This smoke detector must be re-instated.

- f. Kitchen
 - i. According to the tenant, the central heating boiler in the kitchen does not work. However, the gas supply was cut off several weeks ago and as a result it was not possible to check. Therefore, there is no heating or supply of hot water in the House as the electric shower is also broken. The tenant stated that the boiler was always breaking and that she frequently had to re-pressurise the system. A tray was present underneath the boiler to collect water. Once the gas supply is re-connected the central heating boiler should be serviced and repaired by a Gas Safe registered engineer as should the gas hob.
 - ii. There appear to be problems with the plumbing in the kitchen under the sink. Several containers are positioned under the waste pipes to collect leaking water. According to the tenant, use of the washing machine or dishwasher causes water to leak on the kitchen floor. The plumbing issue required to be

investigated by a competent plumber and works completed to address the water leaks.

- iii. The kitchen floor tiles are cracked and loose. It is considered that the water leaks may have caused the floor tiles to be damaged. The damaged and loose floor tiles should be replaced.
 - iv. The integrated fridge does not work. The fridge requires to be repaired or replaced.
 - v. The electrical isolation switch casing for the cooker located behind the chest freezer is broken. The broken switch should be replaced by a qualified electrician.
- g. Back living room [*tribunal note – being used as a dining area with kitchen appliances at the time of the tribunal's inspection*]
- i. The main chandelier type light fitting had only one operational candle type bulb. The other bulbs appeared to have blown. However, according to the resident, none of the other fittings work. The light fitting should be checked by an electrician and replaced if necessary.
 - ii. There is an aged gas fire in this room, however, according to the tenant it has never been serviced or checked by a Gas Safe registered engineer.
- h. Portable electrical appliances
- i. There was no evidence of portable electrical appliances being tested. The tenant also confirmed that no testing had taken place.
- i. Conclusion
- i. There are a significant number of repair issues within the House, some of which pose significant safety risks to the occupants. In addition the House has no hot running water. Therefore the House in its current condition is deemed unfit for human habitation.

16. Photographs were included in the Third Party Applicant's Inspection Report illustrating the listed repairs issues.

17. For the purposes of section 14(3) of the 2006 Act, and this Decision, the listed complaints were notified by the Third Party Applicant to the Landlord on 31 August 2017, prior to the Application being made to the tribunal.

18. The Application was intimated the tenant. She indicated that she did not wish to be treated as a party to the Application. On 14 September 2017 the tribunal's

administration notified her that she was considered to be an Interested Party to the Application, together with information as to what that means.

19. By letter of 26 October 2017, the President of the tribunal intimated a decision of 10 October 2017 to refer the Application to a tribunal for determination, under section 23(1) of the 2006 Act. The tribunal served a Notice of Referral, Inspection and Hearing in terms of Paragraph 1 of Schedule 2 to the Act upon the Third Party Applicant and the Landlord. The House inspection and hearing were fixed for 4 December 2017.
20. On 10 November 2017 the Landlord indicated that he wished to attend a hearing and that he wished to send written representations. Written representations were attached which appeared to indicate that all the listed work had been completed; but also advised that the Landlord was having access issues to the House as a result of the tenant.
21. The Landlord gave authority for his son Lucky Singh to act as a representative and on 28 November 2017 his son was added as a party to the case.
22. The Third Party Applicant did not send any written representations.
23. On 30 November 2017 the Landlord contacted the tribunal's administration to provide an Electrical Installation Condition Report ("EICR") dated 12 October 2017; a PAT test (undated) and an expired Gas Safety Certificate dated 22 November 2016. In the cover email the Landlord advised that he was having difficulty accessing the House to complete outstanding repairs.
24. On 2 December 2017 the Landlord contacted the tribunal to advise of further access issues at the House when contractors (Scottish Gas and Central Carpets) attended at the agreed time on 2 December 2017 to carry out repairs and were refused access by the tenant.

First inspection and hearing – 4 December 2017

25. On 4 December 2017 the tribunal attended at the House for the purposes of inspection. The Third Party Applicant did not attend for the inspection. The Landlord did not attend for the inspection. The tribunal chair rang the doorbell on a number of occasions but there was no answer. The tribunal was unable to inspect the repairs issues.
26. A hearing took place at George House, George Street, Edinburgh at 1130 hours. The Third party did not attend the hearing. The Landlord and the Landlord's representative attended the hearing.

Decision on Adjournment

27. On 4 December 2017 the tribunal issued a written Decision in relation to adjournment of the hearing to a date to be determined, in terms of Rules 24, 28, 29 and 53 of the First-tier Tribunal for Scotland Housing and House Chamber (Rules of Procedure) Amendment Regulations 2017 ("the Rules"), adjourning the hearing to 18 December 2017 and decided that an inspection of the House should be carried out on the same date. The Decision is referred to for its full terms and reasons.
28. The Decision was intimated to the Third Party Applicant, the Landlord, the Landlord's representative, the tenant/Interested Party and the Interested Party's representative.

Written representations, documents and attendance at hearing

29. On 6 December 2017 the Landlord submitted further written representations together with a number of documents including a letter to the tenant sent by recorded delivery advising that entry would be required for an inspection on 18 December 2017 at 1000 hours.
30. On 8 December 2017 David Ross of the Third Party Applicant advised that he would attend the inspection on 18 December 2017 but would not attend the hearing. He advised that the tenant's social worker was attempting to communicate the date and time of the inspection to the Tenant.
31. On 15 December 2017 the tenant's representative advised that the tenant had not been engaging with her but that she had advised the tenant's mother of the date and time of the inspection. The representative said that she was not available to attend the inspection or hearing.

Inspection and Schedule of Photographs – 18 December 2017

32. On 18 December 2017 an external and internal inspection of the House took place.
33. David Ross from the Third Party Applicant, the Landlord and another son of the Landlord attended the inspection. The tenant and her two sons were present in the House during the inspection.
34. The Landlord advised that his representative was unable to attend due to medical reasons. The Landlord was accompanied by another son, Sanjay Singh and the

Landlord requested that this son act as his representative for the purposes of that day's hearing mainly to assist with English. The tribunal agreed to the request.

35. The weather at the time of the inspection was dry.
36. Photographs were taken at the inspection, and a Schedule of said photographs is appended to and forms part of this decision.
37. The tribunal's findings on inspection are noted below. For ease of reference the tribunal inspected the repairs issues in the House in the same order as they were listed in Third Party Applicant's Inspection Report:

a. Bathroom

- i. The electric shower pull cord had been replaced, as had the electrical switch. The electric shower produced hot water on testing. There was no hot running water from the taps in the bath or sink but the tenant advised during the inspection that there was no money in the gas meter so there was no central heating or hot water as a result. The tenant left the House during the inspection to go and buy a gas card at a nearby shop and returned during the inspection to add the credit to the meter. However, the card she bought was only £5.00 and that was insufficient to restore a gas supply as there were arrears on the meter. The tribunal was therefore unable to inspect whether the boiler was capable of heating the water in the House.
- ii. The toilet flush handle had been replaced and was operating correctly.
- iii. The bath sealant with the wall tiles was in a poor state of repair. There are gaps which would allow water to penetrate behind the bath. The Landlord claimed that a repair had been carried out (date not specified) and the tenant had not let the sealant dry for the required 24 hours. The ordinary member of the tribunal advised the Landlord that it did not appear that the old sealant had been correctly removed out before new sealant was applied, and that the sealant did not appear to meet the repairing standard.
- iv. The bathroom spotlights were all operational at the time of the inspection and none were loose.
- v. Several floor tiles were broken and loose and the surface was uneven. There was no damp smell in the bathroom at the time of the inspection.

b. Liam's bedroom [*tribunal note – second bedroom on the left hand side of upstairs hall*]

- vi. The light switch had been replaced and was operational at the time of the tribunal's inspection.
- c. Ciaran's bedroom [*tribunal note – bedroom at far end of upstairs hall with window to front of House*]
 - vii. There are only two electrical sockets visible within the room although the tribunal's inspection was limited by the location of furniture and a large pet cage in the room. One single electrical sockets cannot be used as it is positioned directly behind a radiator pipe. The other electrical socket has a four-gang extension cable plugged into it to service a television and other electrical equipment.
- d. Front living room [*tribunal note – being used as a main bedroom by the tenant at the time of the tribunal's inspection*]
 - viii. At the time of the tribunal's inspection the front living room was being used as a bedroom by the tenant. She advised that for personal reasons she preferred to use this room as her bedroom rather than the third bedroom upstairs. This room has a gas fire. According to the tenant the fire has never been serviced or checked by a Gas Safe registered engineer. The Landlord advised that the gas fire had recently been serviced and checked for safety by a Gas Safe registered engineer and that a certificate could be produced at the hearing. As noted below, the tribunal observed that there were no smoke, heat or CO detectors in this room.
 - ix. The light fitting in the centre of the room was hanging loose and was not correctly secured to the ceiling.
- e. Hall
 - x. The tribunal inspected the provision of smoke, heat and CO detectors. There was an operational fixed electrical smoke detector in the hall at the foot of the stairs. There was a heat detector in the kitchen. There was a CO detector in the kitchen which had been fitted in an incorrect position. There was a wall mounted smoke detector in the back living room which was operational and a CO detector in the same room. The smoke detector at the top of the stairs was not operational. There was no smoke, heat or CO detector in the front living room.
- f. Kitchen
 - xi. As noted above in relation to the lack of hot water, as the gas supply was cut off at the time of the inspection due to lack of credit it was not possible to check whether the boiler and central

heating was operational. There was no evidence of a water leak or a tray under the boiler to collect water. The tenant advised that the buttons on the boiler did not operate correctly. The thumb turn controls were missing. The Landlord advised that replacements had been ordered and arrangements would be made to fit them when received. The Landlord advised that the boiler had recently been serviced and checked by a Gas Safe registered engineer, that a part had been ordered and that it required to be fitted. The contractor had attended to fit this on 2 December after notification to the tenant of the appointment but had been unable to get access from the tenant. As there was no gas supply, the tribunal was unable to inspect the gas hob. The Landlord advised that the the gas hob had recently been inspected by a Gas Safe registered engineer. The Landlord advised that the certificates in respect of the boiler, heating, gas hob and gas fires could be produced at the hearing.

- xii. The plumbing in the kitchen under the sink was defective in a number of respects. According to the Landlord the plumbing had recently been repaired by a qualified plumber. However, the pipework supplying the washing machine was hanging loose and copper wire, rather than a bonding clamp, was being used to hold a joint together. There was a piece of plastic/paper wedged into a joint which should not have been there as it was affecting the seal. The moving pipework would put the joints under pressure and be likely to cause leaks.
- xiii. The damaged kitchen floor had been replaced with new linoleum. (The tribunal noted that the waste materials from the flooring had been left in the conservatory by the Landlord / his contractors.)
- xiv. The integrated fridge had been removed by the time of the inspection and the cupboard had been “blanked off” so that it was unusable. There was no fridge in the kitchen at the time of the inspection. A fridge had been supplied by the Landlord and put into the back living room. The tenant also had her own fridge which was also in the back living room. The tenant advised that she was happy with the location of both fridges in the back living room. The Landlord’s fridge was not included on the undated PAT test (see below).
- xv. The electrical isolation switch casing for the cooker located behind the chest freezer was not securely fixed to the wall and there was unsafe loose cabling beneath it. It was surface mounted and not recessed into the wall. The back plate was not secured properly. There is only one screw and the socket can move. It is a requirement of the IET that it is securely fixed.

There should ideally be a conduit to protect the cables. The minimum requirement is that the back cables cannot be moved. In addition, it should be IP protected to stop someone putting their hands around the cables.

- g. Back living room [*tribunal note – being used as a dining area with kitchen appliances at the time of the tribunal's inspection*]
 - xvi. The main chandelier type light fitting appeared to be operational at the time of the inspection.
 - xvii. The tribunal was unable to inspect the gas fire in order to determine if it was operational due to the gas being disconnected at the time of the inspection. The Landlord advised that it had recently been serviced or checked by a Gas Safe registered engineer and that a certificate could be produced at the hearing.
- h. Portable electrical appliances
 - xviii. The certificate (undated and attached to EICR of 12 October 2017) relating to testing of the Landlord's portable electrical appliances did not include all the portable electrical appliances which had been provided by the Landlord. It listed 4 kitchen appliances, namely tumble drier, microwave, dishwasher and washing machine. The Landlord's freezer, which was in the kitchen, had not been tested. The new fridge which had been supplied by the Landlord had not been tested.
- i. Conclusion in relation to notified repairs issues
 - xix. The tribunal agreed that the inspection revealed a significant number of repair issues within the House, some of which pose significant safety risks to the occupants. The House has no hot running water or central heating but the tribunal was unable to establish during the inspection if there are any problems with the boiler or heating/ hot water appliances or if these are operational when the tenant purchases credit for gas.

37.1. The tribunal observed several additional issues during the inspection which are noted below for information only as they do not form part of the Application. Some / all of the issues could form the basis of another application to the tribunal:

- 37.1.1. There was a wooden contraption on the third step of the main stairs which prevented the tribunal and occupants from proceeding safely up and down the stairs. The tenant advised that she had made the contraption to stop the dog from going upstairs. The tribunal asked if it

could be removed as the only way to go up and down the stairs was to climb over it. It was removed during the inspection.

- 37.1.2. There were several lengths of wood lying on the stairs and in the upper hall which the Landlord advised had been left by the Landlord / his contractors. They posed a safety hazard for the occupants.
- 37.1.3. The upstairs hall carpet outside the bathroom is in a very poor state of repair with loose areas.
- 37.1.4. The kitchen units were in a very poor state of repair with many falling apart. Some kitchen unit doors were missing and / or not properly attached to the frames. The integrated fridge and its door had been removed and replaced with a piece of wood.
- 37.1.5. There was a large pile of off cuts of linoleum in the conservatory which the Landlord advised had been left at the time that the new floor was fitted.
- 37.1.6. There was a redundant washing machine sitting in the conservatory.
- 37.1.7. There was a broken wall mirror in the kitchen above the freezer.
- 37.1.8. There was a broken ceiling panel in the upstairs hall and a water ingress issue in the upstairs hall ceiling.
- 37.1.9. There were several drill holes below radiator in back living / dining room which suggested that there may have been a problem with dampness. The tribunal asked the Landlord for an explanation of when and why the holes had been made. The Landlord said that the boiler was in the living room at one stage before the kitchen extension was built and then it was moved into the kitchen, so it may have been something to do with that.
- 37.1.10. The floor covering in the back living room was in a poor state of repair.
- 37.1.11. Externally there are areas of the roof and window frames in a poor state of repair. It is obvious that some tiles have slipped, particularly from around the dormer window, and are lying loose. One dormer has extensive decay and a section of timber is lying loose in the valley. Quite a lot of paintwork is detached from the timber.
- 37.1.12. There is debris as well as several redundant household items in the front garden.

38. The Landlord advised during the inspection that the tenant had been served with a Notice to Quit the House a week before the inspection and would be evicted after the requisite period had elapsed.

Adjourned Hearing – 18 December 2017

39. Thereafter a hearing took place at George House, 126 George Street at 11.30 hours. The Third Party Applicant did not attend. The Landlord and his new representative attended.

Additional documents at hearing

40. The tribunal permitted the Landlord to lodge two documents at the hearing, despite the fact that they were late, namely Gas Safety Records dated 17 November 2017 and 13 December 2017.

Submissions at the Hearing

41. The Landlord's representative made oral submissions at the hearing.

a. Bathroom

- i. The Landlord advised that the electric shower pull cord had been replaced, as had the electrical switch, on 12 October 2017 by Kevin Foreshaw of KF Electrical. He also repaired / replaced smoke detectors, carbon monoxide detectors, the faulty electrical switches. The electric shower produced hot water on testing. The Landlord advised that the boiler had been fixed on 13 December 2017 by Nick Patterson at Titans Heating, rather than making a further appointment with Scottish Gas who had attended on 2 December and been unable to gain entry. Titans Heating fixed the boiler, provided a gas safety certificate. Nick Patterson advised the Landlord there an internal part known as a modulator was required. The Landlord has ordered the part and will arrange for Titans heating to fit the part once it has arrived. The heating engineer advised the Landlord to get new controls put on the boiler. The toilet flush handle had been replaced and was operating correctly.
- ii. The Landlord's representative advised that he had applied the new sealant but he accepted that he had not properly removed the old defective sealant and that at present the sealant was not waterproof in several places.
- iii. The Landlord advised that the bathroom spotlights were all repaired / replaced by a qualified electrician.
- iv. The Landlord admitted that he had missed the issue of the floor tiles when he was dealing with the list of complaints and accepted that several tiles were broken and loose. He advised that he could attend to replacement of the flooring after

Christmas. There was no damp smell in the bathroom at the time of the inspection and the Landlord advised that the leak and resultant damp smell had already been rectified.

- b. Liam's bedroom [*tribunal note – second bedroom on the left hand side of upstairs hall*]
 - v. The Landlord advised that the light switch had been replaced by an electrician in October.

- c. Ciaran's bedroom [*tribunal note – bedroom at far end of upstairs hall with window to front of House*]
 - vi. The Landlord advised that the electrician did not do any replacement or repair of the electrical sockets in this room. The Landlord accepted that one of the two single sockets was inaccessible as it was located behind a radiator pipe.

- d. Front living room [*tribunal note – being used as a main bedroom by the tenant at the time of the tribunal's inspection*]
 - vii. When the House was let to the Tenant this was the principal living room. The Landlord stated that he had become aware in November 2017 when repairs were being carried out that the tenant was using this room as a bedroom. The Landlord recommended that to the tenant that she move back upstairs but she was unwilling to do so for personal reasons. The tenant told them that she was not using the gas fire. The landlord stated that when the engineer inspected the fire on 17 November 2017 everything which had been seen at the inspection to be piled up in front of the fire had been moved to allow access for the inspection. The Landlord accepted that there was no smoke detector in the living room and stated that this was due to access issues to the room at the time that the electrician had attended.
 - viii. The Landlord said that the tenant was not willing to allow the electrician who attended to access to the room to securely fix the central light fitting to the ceiling. The Landlord intends to make an appointment for the electrician to come back to the House and attend to this.

- e. Hall
 - ix. The Landlord advised that the smoke detectors in the lower and upper halls were now fixed and operational.

f. Kitchen

- x. In relation to the central heating boiler the Landlord advised that the boiler had been inspected by a Gas Safe Engineer on 13 December 2017, when there was gas supply in the House and a gas safety certificate had been issued on the same date. The Certificate which was lodged by the landlord at the hearing showed that the central heating boiler had been inspected and was safe to use. The Landlord advised that the boiler was re-pressurised and that the pressure is fine when there is gas being supplied to the appliance. The Landlord advised that the thumb turn controls and another boiler part had been ordered and arrangements would be made to fit them after they arrive. The engineer had also inspected the gas hob on the same date as the boiler and the Certificate was completed with details of the inspection. However, the entries on the Certificate relating to the gas hob were in the opinion of the tribunal internally inconsistent, particularly in the absence of the warning notice which was mentioned therein. Although the engineer had indicated that the gas hob was safe to use, he had also recorded that there was no FSD on the gas hob and that the back hob was not working. He had issued a warning notice for the latter reason and advised not to use. He stated that a warning tag / sticker had been fixed to the appliance. The warning notice was not produced by the Landlord with the certificate. The tribunal had not had sight of a warning sticker during the inspection. The Landlord said that he would have to follow up the issues with the Gas Safe Engineer. The Landlord advised that a different company had carried out the gas safety inspections on 17 November 2017 (gas fires) and 13 December 2017 (boiler and gas hob).
- xi. The Landlord stated that the work which had been observed at the inspection had been carried out by a professional plumber but no additional details were provided. The Landlord said that he would have to arrange for the plumber to come back to rectify the matters which had been observed by the tribunal and identified as being deficient in several respects.
- xii. The Landlord stated that he did not realise that the contractors had left the offcuts. He said that they would be removed in the week following the hearing. The Landlord also said that the old washing machine which was sitting in the conservatory would be removed at the same time.
- xiii. In relation to the location of the new fridge in the living room the Landlord stated that he had recommended to the tenant that it should be put into the kitchen but that she had indicated that she

was happy with its location in the back living room. It had only been provided in the last two weeks which is why it had not yet been safety tested as a portable appliance. The Landlord's fridge was not included on the undated PAT test (see below).

xiv. The Landlord originally said that this switch had been repaired and then said that it must have been missed during the electrical works. The Landlord was advised to consult a qualified electrician in relation to the requirements for its repair / replacement.

g. Back living room [*tribunal note – being used as a dining area with kitchen appliances at the time of the tribunal's inspection*]

xv. The Landlord advised that the main chandelier type light fitting had been repaired by an electrician.

xvi. The Landlord referred to the Gas Safety Certificate dated 17 November 2017 which stated that the fire was safe to use.

h. Portable electrical appliances

i. The Landlord advised that the new fridge would be tested. The Landlord advised that he was intending to remove the kitchen freezer in the week following the hearing.

i. Conclusion in relation to notified repairs issues

xvii. No additional representations.

41.1. In relation to the additional issues which the tribunal had observed during the inspection the Landlord was made aware of the issues during the inspection and/or at the hearing.

41.1.1. The Landlord said that the lengths of wood on the stairs and in the upstairs hall would be removed.

41.1.2. The dog stair guard contraption had been put in place by the tenant and not the Landlord and was removed during the inspection.

41.1.3. The Landlord advised that once the tenant has been evicted he is intending to replace the kitchen units. The tenant has asked them not to do the work while she is living there.

41.1.4. The Landlord advised that the linoleum off-cuts would be removed by him in the week following the hearing.

41.1.5. The Landlord was made aware of the broken mirror in the kitchen. He did not make any additional representations.

41.1.6. The Landlord said was made aware of the broken ceiling panel in the upstairs hall and a water ingress issue in the upstairs hall ceiling.

41.1.7. As noted above, the drill holes in the back living room floor were discussed at the hearing.

41.1.8. The Landlord did not make any additional representations about the external repairs issues.

42. The Landlord's representative advised in relation to the Notice to Quit that his brother Lucky had the documents which had been served two weeks before the hearing. The Landlord was expecting to get vacant possession soon.

43. The hearing finished at 12.30 hours.

Summary of the issue to be determined by the tribunal

44. The issue to be determined by the tribunal is whether the House meets the repairing standard as laid down 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.

Findings-in-Fact

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

- a. The Landlord is the registered owner of the House.
- b. A tenancy exists between the Landlord and Tenant.
- c. The Tenant took possession of the House on 11 October 2010. Rent is currently £1400 per calendar month.
- d. The provisions of Chapter 4 of Part I of the 2006 Act apply to the tenancy.
- e. The Third Party notified the Landlord about the defects in the House, which defects are now the subject of the Application to the tribunal.
- f. The three thumb turn controls on the boiler are missing and the turn mechanism is difficult to operate without them.
- g. The back ring on the gas hob is not operational even when there is gas supply and a warning notice has been issued with advice being given to the tenant by an engineer that it should not be used.
- h. There is no flame failure safety device (FSD) on the gas hob.

- i. Ciaran's bedroom (with window on front elevation) has a single electrical socket which is located behind a radiator pipe and cannot be used.
- j. The electrical socket in the kitchen behind the chest freezer is insecure and the wiring is not securely clipped.
- k. The flexible pipework securing the washing machine is not properly secured or adequately supported. Copper wire has been used instead of a clamp fixing. There is plastic paper stuck in the U bend.
- l. The bathroom floor has loose and uneven tiles.
- m. The sealant on the bath is deficient and not watertight.
- n. The ceiling light fitting in the front living room is not properly secured to the ceiling.
- o. The Portable Appliance Test Certificate does not include all appliances provided by the Landlord. In particular, a fridge and freezer are in the House but do not appear on the test certificate.
- p. There is no interlinked and functioning smoke alarm in the front living room. Although the room was, on the date of the inspection on 18 December 2017, being used by the tenant for living and sleeping purposes, it is the main habitable living room in the House and there is a gas fire in the room so it should comply with the current Scottish Government guidance for a living room.
- q. The CO detector in the kitchen is located on the window frame.

46. The tribunal was satisfied that in respect of a number of items in the Application the House did not meet the repairing standard specified in Section 13 of the 2006 Act:

- 46.1. 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)). In particular:
 - 46.1.1. the three thumb turn controls on the boiler are missing and the turn mechanism is difficult to operate without them;
 - 46.1.2. The back ring on the gas hob is not operational even when there is gas supply and a warning notice has been issued with advice being given to the tenant by an engineer that it should not be used.

- 46.1.3. Ciaran's bedroom (with window on front elevation) has a single electrical socket which is located behind a radiator pipe and cannot be used.
- 46.1.4. The electrical socket in the kitchen behind the chest freezer is insecure and the wiring is not securely clipped.
- 46.1.5. The flexible pipework securing the washing machine is not properly secured or adequately supported. Copper wire has been used instead of a clamp fixing. There is a piece of paper stuck in the U-bend.
- 46.2. The 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)). In particular:
- 46.2.1. The bathroom floor has loose and uneven tiles.
- 46.2.2. The sealant on the bath is deficient and not watertight.
- 46.2.3. The main ceiling light fitting in the front living room is not properly secured to the ceiling.
- 46.2.4. The Portable Appliance Test Certificate does not include all portable electrical appliances provided by the Landlord. In particular, there are a fridge and freezer in the House which were supplied by the Landlord under the tenancy which are not included on a current Portable Appliance Test certificate.
- 46.3. The House does not have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire, when regard is had, as required, to Scottish Government Guidance issued 1 December 2016 and the revised Domestic Technical Handbook guidance which states that there should be at least: one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes; one functioning smoke alarm in every circulation space, such as hallways and landings, one heat alarm in every kitchen, and all alarms should be interlinked. (Section 13(1)(f)).
- 46.3.1. The absence of an interlinked smoke alarm in the front living room does not comply with the guidance. Although the room was, on the date of the inspection on 18 December 2017, being used for living and sleeping purposes, it is the main habitable living room in the House and there is a gas fire in the room.
- 46.4. The House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, when regard is had, as required, to the Scottish Government Guidance issued on 1 December 2016 under sections 13(1)(g) and 13(6) of the Housing (Scotland) Act 2006. In particular, unless otherwise indicated by the manufacturer, CO detectors should be either: ceiling mounted and positioned at least 300 mm from any wall or wall mounted and positioned at least 150

mm below the ceiling and higher than any door or window in the room. CO detectors should not be positioned next to a door or window.

46.4.1. The carbon monoxide detector which is located on the kitchen window frame is not appropriately positioned having regard to the said guidance. (Section 13(1)(g) of the 2006 Act.)

47. 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 have therefore issued a Repairing Standard Enforcement Order in terms of Section 24(2) of the 2006 Act.

Repairing Standard Enforcement Order (RSEO)

48. The tribunal made an RSEO.

49. Having decided to make an RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 30 days having regard to the issues which require to be addressed. The tribunal recognises that the date for effecting repairs will be close to or after the end of the tenancy.

Right of Appeal

50. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

51. 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.

S Tanner

Signec Susanne L M Tanner, Queen's Counsel,
Legal Member and Chairperson of the tribunal

Date... 24 January 2018

SCHEDULE OF PHOTOGRAPHS

HOUSE: 63 Restalrig Avenue, Edinburgh, EH7 6PN

REF: FTS/HPC/RT/17/0354

DATE: 4 December 2017 and 18 December 2017

This is the Schedule of Photographs referred to in the foregoing decision of the tribunal dated 24 January 2018.

S Tanner

SUSANNE L. M. TANNER Q.C.
LEGAL MEMBER AND CHAIRPERSON



**63 RESTALRIG AVENUE,
EDINBURGH, EH7 6PN**

**GROUND WITH HOUSE, REFERRED TO IN THE FEU
DISPOSITION TO JOHN LYON RECORDED 17
FEBRUARY 1926 IN THE GENERAL REGISTER OF
SASINES FOR THE COUNTY OF MIDLOTHIAN
("THE HOUSE")**

Chamber Ref: FTS/HPC/RP/17/0235

SCHEDULE OF PHOTOGRAPHS



1 View of bathroom sealant.



2 Close view of defective bathroom sealant.



3 Close view of defective bathroom sealant.



4 Electrical pull cord replaced.



5 Toilet flush replaced.



6 Cracked and defective bathroom floor tiling.



7 Close view of defective, loose and raised bathroom floor tiles at threshold



8 Bathroom spotlights operational.



9 Electric shower – operational and producing hot water on testing.



10 Light switch to Liam's Bedroom replaced and operational.



11 Ciaran's Bedroom – socket located behind radiator pipework.



12 Front Living Room – loose light fitting to ceiling.



13 Smoke Detector in Living Room (rear)



14 Smoke Detector in ground floor hall.



15 Heat detector in Kitchen.



16 Smoke detector in upper hall.



17 Carbon Monoxide detector in rear Living Room.



18 Carbon Monoxide detector in Kitchen above window.



19 Missing thumb turn controls to boiler.



20 General view of boiler – unable to be tested.



21 Inappropriate plumbing connection with copper wire in lieu of jubilee clip.



22 Material within plumbing connection affecting seal.



23 Loose pipework – no clipping. Pipework looped and not correctly fitted.



24 New kitchen flooring.



25 Poor electrics behind chest freezer, backplate not secured.



26 Damaged kitchen units.



27 Damaged kitchen units.



28 Dining Room light fitting.



29 Gas fire – unable to be tested.



30 Stair gate and builders debris.



31 Vinyl remnants remaining.



32 Damage to carpet at bathroom threshold.



33 Front Elevation.