

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0330

Property at 5 Appin Place, Edinburgh EH14 1PW

(“The Property”)

The Parties:-

Majda Al-Kharusi, 5 Appin Place, Edinburgh EH14 1PW

(“the Tenant”)

Mark Gordon Meldrum, 12 Home Street, Edinburgh EH3 9LY

(“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) in relation to the house concerned, and taking account of the written representations by the Tenant and the inspection, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Nick Allan – Surveyor/Ordinary Member

Background

1. By application received on 28th August 2017 the Tenant applied to the First-tier tribunal: Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) **the house is wind and water tight and in all other respects reasonably fit for human habitation,**
 - (b) **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,**
 - (c) **any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.**
3. By letter dated 23rd October 2017 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, his agents CMC Property Management Limited trading as CMC Property of 6B New Mart Road, Edinburgh EH14 1RL (the Agents) and the Tenant.
5. Following service of the Notice of Referral, no written representations were received from the Landlord or the Agents.
6. On 17th November 2017, the tribunal issued a direction which was intimated to the Landlord and the Agents by letter of 20th November 2017 (the Direction). The Direction required the Landlord to provide a copy of the Electrical Installation Condition Report (EICR) for the Property or obtain one and provide the tribunal with a copy before the inspection and hearing.
7. Despite the issuing of the Direction and the warning that a failure to comply with the Direction without a reasonable excuse would constitute a criminal offence, the Landlord failed to produce the required EICR by the time of the inspection and hearing.
8. The tribunal noted that the recorded delivery letter containing the Direction and the earlier Notice of Referral to the Landlord were returned marked "addressee gone away". Notwithstanding, the Direction and Notice of Referral were sent to the proper address of the Landlord as recorded in the Scottish Landlord Register and to the Landlord's representatives for the tenancy in question, the Agents. In terms of Rule 6 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the tribunal was satisfied that service was deemed to have occurred on the Landlord.

9. The tribunal inspected the Property on the morning of 28th November 2017. The Landlord was not present nor represented. The Tenant was also not present at the inspection, but had arranged for access via a Margaux Timmernans a friend of the Tenant who it was stated had been staying with the Tenant since "September 2017" and would do so until 13th December 2017.
10. During the course of the inspection, a representative of the building factors, James Gibbs attended to inspect reports of water ingress to the Property and whose attendance at the same time as the tribunal was coincidental.
11. Following the inspection of the Property, the tribunal held a hearing at Room D8, 126 George Street, Edinburgh EH2 4HH. Neither the Tenant or the Landlord attended or were represented.
12. As neither party was present at the hearing, there were no further representations received and the tribunal continued to consider matters based on what had been discovered at inspection and, to a lesser extent, some comments made by Miss Timmernans. The Tribunal were able to determine as follows:
 - a) That there are 2 areas of the living area ceiling that had been affected by water ingress. These areas were in opposite corners of the living area on an external wall of the Property. In the area to the left hand-side of the external patio doors, the affected area was inspected by way of a protimeter. No evidence of surface dampness, or below surface dampness was found despite the obvious evidence of historic water ingress.
 - b) That the affected area on the right-hand side of the living area showed some evidence of dampness below the surface of the internal wall finish. On external inspection, it was noted that this area was directly under the run off drainage for the balcony of the upstairs property. It was also noted that the outlet for the drainage pipe through the external stone cladding was open exposing the internal wall construction to the elements.
 - c) In the main bedroom, it was noted there was a very evident area of water damage above the external window. Mould and staining were evident and extensive. The ceiling in this area was also very obviously 'bowed' giving clear evidence of a previous and persistent water leak. Tests by the Ordinary Member with a protimeter, and thermal imaging equipment (brought by the property factors) found no evidence of any current damp or water ingress. It was noted by the Ordinary Member of the tribunal that there was a bathroom directly above this bedroom in the apartment above.
 - d) That no EICR was available for the Property. As far as it was possible, the tribunal tested all light switches and appliances complained of in the application. The only issue that could be demonstrated was that the under unit or work top lights in the kitchen area did not work at all. The switch for same did not appear to work. Miss Timmernans confirmed that she had not experienced any short-circuits or "tripping" of lights or appliances since she had been in the Property and that, apart from the under unit or work top lights, all lights and appliances were in proper working order.
 - e) The shower heads in both bathrooms were inspected. No evidence of damage was noted to either and Miss Timmernans was asked to switch both on to

demonstrate them in use. No fault was noted and no evidence of mould was noted either.

- f) That the toilet seats in both bathrooms were undamaged and not broken.
- g) That the Property was generally untidy and relatively unkept. Whilst, the carpets in the main bedroom appeared to be marked and stained, they were not damaged.

Summary of the issues

13. The issues to be determined are whether:

- a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- b) 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,
- c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

Findings of fact

d) The tribunal finds the following facts to be established:-

- The Tenant is a tenant for the purposes of section 14(1) of the Act.
- That the tenancy commenced on or around 3rd December 2015.
- The Property is situated within the ground floor of a modern stone clad and roughcast building with concrete tiled roof with lead flashings and valley guttering. The Property forms part of a larger development of privately owned apartments.
- The Property comprises of two bedrooms, with the the master bedroom having an ensuite shower room, a separate bathroom with shower over the bath, a utility room and an open plan living area and kitchen All accessible off an internal hallway.
- The Property has a gas supply and gas boiler and central heating.
- That there was evidence of historical water ingress in the living area in two places. That despite brown staining to the affected area to the left-hand side of the external patio doors, there is no evidence of any current water ingress of dampness.
- That in the affected area to the right-hand side of the external patio doors, there is evidence of sub-surface dampness.
- That the outlet for drainage run-off pipe from the above apartment's balcony is open and not sleeved exposing the internal construction of the exterior wall to the elements.
- That in this area the Property is not wind and water tight.
- That in the master bedroom there is evidence of significant historical water ingress to the Property.
- That the ceiling to the master bedroom above the external window is badly marked with mould and is heavily 'bowed'. The plasterboard ceiling finish is not therefore in a reasonable state of repair.

- That there was no obvious odour of damp evident.
- That the electrical circuit and switch gear relative to the under-unit lighting in the kitchen were inoperative and were therefore not in a reasonable state of repair or proper working order.
- That whilst the carpet in the master bedroom was dirty and stained, it was in a reasonable state of repair.
- That the shower heads and toilet seats in both bathrooms were in a reasonable state of repair and proper working order.

Reasons for the decision

e) The tribunal was not satisfied that the Property was wind and water tight and in all other respects reasonably fit for human habitation for the following reasons:

- That the outlet for the run-off drainage for the upstairs apartment's balcony was open and exposed the internal construction of the exterior wall to water ingress. This was supported by the evidence of under surface dampness detected on inspection.

The tribunal was not satisfied that the structure of the Property was in a reasonable state of repair and in proper working order for the following reasons:

- That the ceiling in the master bedroom above the external window is significantly 'bowed' through historic water damage.

The tribunal was not satisfied that the installations in the Property for the supply of electricity are in a reasonable state of repair and in proper working order for the following reasons:

- That the electrical circuit and switch gear relative to the under unit or work top lighting in the kitchen were inoperative.
- No EICR for the Property had been produced, despite the Direction.

Decision

f) The tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(a), (b) and (c) of the Act.

g) The tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).

h) The decision of the tribunal was unanimous.

i) The Surveyor Member of the tribunal took several photographs which form the schedule attached to this decision.

Observations

- j) Whilst no evidence of current water ingress or damp could be found in the area in the living area to the left-hand side of the external patio doors, the decoration to the ceiling and internal walls has been affected through staining and cracks in the decorative surface. Such matters, if left unchecked will only worsen over time leading to more cost to remedy in the future. The Landlord may therefore wish to consider redecoration of both this area and the area affected on the right-hand side as detailed in this decision.
- k) It was noted at inspection that the Tenant appears to have covered the smoke detector in the living area with a plastic bag. This is obviously highly dangerous as it may prevent the Tenant or other occupants of the Property receiving adequate warning in the event of a fire at the Property. The smoke detectors should be uncovered immediately.
- l) Whilst not part of the Application, it was noted that there did not appear to be a carbon monoxide detector fitted to the Property, nor is one detailed in the inventory. The gas boiler is located in the kitchen which is open plan with the main living space within the Property. The fitting of a carbon monoxide detector is mandatory where there is a gas boiler within a house and, had the lack of such a detector been part of the Application, a Repairing Standard Enforcement Order would likely have been made in that regard too. However, the tribunal can only consider matters contained in the Application and no such order can be made at this time.

Right of Appeal

- m) In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.
- n) 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.

R. A. B. Cowan

Signed

Date

.....15th December 2017.....

Chairperson

Housing and Property Chamber
First-tier Tribunal for Scotland



Photograph Schedule

5 Appin Place, Edinburgh, EH14 1PW

Case Reference: FTS/HPC/RP/17/0330

Date of inspection: 28/11/2017

Time of inspection: 10.00 am

Weather conditions: Dry and bright

Present: Mr Rory Cowan – Legal Member
Mr Nick Allan – Ordinary Member
Miss Margaux Timmernans – Friend of Tenant



Photo 1 – Front elevation

*This is the schedule referred
to in the decision dated
11th December 2017*

R. A. B. Cowan

Chas.



Photo 2 – Water damage in living room (L/H)



Photo 3 – Living room (R/H)



Photo 4 – Balcony above living room



Photo 5 – Exposed inner wall



Photo 6 – Main bedroom ceiling



Photo 7 – Kitchen worktop lights



Photo 8 – Showerhead in en-suite



Photo 9 – Showerhead in main bathroom



Photo 10 – WC in en-suite



Photo 11 – WC in main bathroom

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
Housing and Property Chamber - 13th December 2017