

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RP/16/1029**

**1/7 Salmond Place, Abbeyhill, Edinburgh, EH7 5ST  
("the Property")**

**The Parties:-**

**Miss Alembec Walsh, residing at the Property  
(represented by Mr Thomas Mulligan, nominated by reason of the  
application of the Adults with Incapacity (Scotland) Act 2000)  
("the Tenant")**

**Ms Charlotte Cotton, 25 Wellington Street, Edinburgh, EH7 5EE  
(represented by her agent Mr Craig Wonnacott, Property Manager of  
Messrs Orchard and Shipman, 2 Anderson Place, Edinburgh, EH6 5NP  
("the Landlord")**

**The Tribunal**

**Mr Maurice O'Carroll (Legal Member and Chair)  
Ms Carol Jones (Ordinary Member)**

**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 evidence led by both the Landlord's and the Tenant's representatives at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application received on 21 December 2016 the Tenant applied to the 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 she considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

The installations in the Property 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 property working order in terms of section 13(1)(c) of the Housing (Scotland) Act 2006.

Specifically, the Tenant stated on her application form that she has had ongoing water, plumbing and gas issues within the property. She stated that she has been unable to use the toilet, that there is a smell of waste, and water gurgling in the drain and coming up the plug holes. She further stated that there is black mould in the shower and there are problems with the water pressure and temperature in the shower and issues with the pressure of the gas boiler and gas pressure on the stove.

3. The Convenor of the Housing and Property Chamber intimated a decision to refer the application to the Tribunal on 23 January 2017 in terms of section 23(1) of the Act.
4. By letter dated 6 February 2017, the Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. The Tribunal served a Direction on the Landlord dated 16 February 2017 requiring her to provide a copy of the Gas Safety Certificate pertaining to the Property. That Direction was complied with on 10 March 2017.
6. Following service of the Notice of Referral the Tenant made further written representations to the Tribunal in relation to her ability to appear at the inspection and her difficulties in that regard. The Landlord's agent also made written representations to the Tribunal in relation to gaining access to the Property in order to comply with the Tribunal's Direction. He also stated concerns about the welfare of the Tenant and her ability to allow entry to the Property for the inspection given that she had changed the locks but was not residing there.
7. The Tribunal inspected the Property at 10am on 17 March 2017. The Tenant was not present or represented. The Landlord's agent was present during the inspection.
8. Following the inspection of the Property the Tribunal held a hearing at George House, George Street Edinburgh at 11.30am. Present at the hearing was Mr Wonnacott on behalf of the Landlord and Mr Mulligan who asked to represent the Tenant since she was unable to be present herself for health reasons. Permission to represent the Tenant was granted to Mr Mulligan. The Tribunal heard evidence from both parties.

9. Mr Mulligan on the Tenant's behalf submitted as follows:-

He visited the Tenant at the Property shortly before Christmas 2016. When present he found that the toilet in the Property was blocked and did not function with the result that waste required to be collected in buckets. There was also a strong odour in the Property as a result of the malfunctioning of the toilet within the Property. The state of the sanitation was having a severely adverse effect on the health and well being of the Tenant.

He also gave evidence that in his view the shower in the Property was sub-standard and the surrounding tiles needed to be "sand blasted". The shower did not have any pressure and as such could not be used. The Tenant was prevented from doing something as basic as washing in the flat which she rented and was forced to go to the public gym at Meadowbank in order to have a shower. The expenditure of a small amount of money to install a Mira electric shower or similar appliance would have afforded the Tenant with the basic dignity of being able to wash herself at home as one would normally expect.

10. Mr Wonnacott on the Landlord's behalf submitted as follows:-

The letting agents for the Property had sent out plumbers to clear the toilet on three separate occasions. On each occasion they had found that the plumbing system itself operated correctly and were of the view that the blockage had been caused by tenant damage. Specifically, the view expressed was that excessive amounts of toilet paper had been placed within the toilet causing the blockage complained of. The Tribunal was provided with an email dated 4 September 2016 from Kelly Trade Solutions and an invoice dated 12 October 2016 to vouch this account. A further email dated 8 February 2017 from Gas Care Domestic vouched this view. A further result of the blockage so caused was flooding which had severely affected the property directly below the Tenant's flat in October 2016.

He further stated that the gas system worked correctly and he had recently obtained the Gas Safety Certificate as required by the Tribunal in its Direction of 16 February 2017. He undertook to send in a signed copy of the Certificate to the Tribunal directly after the hearing. He also stated that the shower in the Property worked satisfactorily and in all respects the Property met the Repairing Standard.

**Summary of the issues**

11. The issue to be determined is whether the Landlord has met her obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal related to (1) whether the plumbing within the Property function correctly and (2) whether the shower and gas appliances function correctly.

## **Findings of fact**

12. The Tribunal finds the following facts to be established:-

- The tenancy is a short assured tenancy which commenced on 27 November 2014 for a period of six months. The tenancy thereafter continued by means of tacit relocation.
- The rent is £500 per calendar month which is paid by the local authority directly to the Landlord.

The inspection of the Property revealed the following:

- The Property is situated on the first floor of a five storey tenement building of traditional sandstone construction with a pitched slate roof. It is located in the Meadowbank area of Edinburgh around one mile east of the city centre.
- The Property itself is a one bedroom flat consisting of the following: An entrance from the common stairwell leading into a small hallway. Directly ahead of the entrance into the hallway is the bedroom. To the left on entry is the bathroom which contains a WC, sink and shower. The shower operates directly from the combination boiler which is situated in the kitchen/living room area. The open-plan kitchen living room area is located at the other end of the entrance hallway.
- The Property is in relatively poor decorative order throughout.
- There was a mains operated smoke alarm and carbon monoxide detector in the hallway. There was a further carbon monoxide detector in the kitchen area of the flat. There was no inter-connected mains operated smoke alarm in the kitchen/living room area or heat sensor in the kitchen.
- Therefore, the Property does not meet current requirements regarding fire safety.
- All four burners on the gas hob were tested and found to function correctly.
- The boiler was ignited and the shower was tested and found to provide hot water of a satisfactory temperature at a satisfactory pressure.
- There was no mould visible within the shower area and the extractor fan was working properly.
- The toilet was tested and was found to be clear and to flush normally.
- There was no odour in the bathroom or elsewhere in the Property.

13. A schedule of photographs taken at the inspection is appended to this decision.

## **Reasons for the decision**

14. There was clearly a conflict in the evidence between Mr Wonnacott and Mr Mulligan at the hearing. The Tribunal did not have any reason to doubt

the evidence of Mr Mulligan in respect of the state of the Property on the single occasion when he visited the Tenant in December 2016. However, it also had no reason to doubt the evidence of Mr Wonnacott. It was prepared to accept that qualified plumbers had attended the Property on three occasions and found the plumbing system to be in order during September and October 2016. The Tribunal considered that the Landlord was entitled to accept the views of qualified plumbers as to the cause of the malfunctioning of the toilet in the Property when it had occurred.

15. The Tribunal also had the benefit of inspecting the Property itself, the results of which have been narrated above. Therefore, on the balance of probabilities, it found that the plumbing system in the Property functions properly and that any blockages which had occurred in the course of the tenancy were not as a result of any defect in the plumbing system. The view of the Tribunal is therefore that the installation for sanitation within the Property meets the Repairing Standard.
16. In relation to the operation of the shower within the Property, the Tribunal reached a similar view. It had no reason to doubt the testimony of the respective witnesses for the Landlord and for the Tenant. However, based upon its own observations at the inspection, it decided that on the balance of probabilities, the shower system and surrounding tiles, whilst being very basic, did not fail to meet the Repairing Standard. It also itself observed that the gas boiler and all burners on the gas hob functioned properly.

### **Decision**

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

### **Recommendations**

19. Notwithstanding the findings above, the Tribunal considers that the shower within the Property could easily be upgraded at a fairly modest cost and recommends that the Landlord does so. A shower curtain could also be provided at modest cost to prevent spray onto the bathroom floor.
20. The provision for detecting fire in the Property does not meet current required standards. This should be rectified forthwith and in any event prior to any new tenancy of the Property taking place in order to meet the Repairing Standard.

### **Right of Appeal**

21. **A landlord or tenant 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**

22. 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.

M O'Carroll

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Signed

Date: 23 March 2017

Legal Member and Chair