

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/23/3925

Property at 3A Strathmartine Road, Dundee, DD3 7RL ("the Property")

Land Register Title Number: ANG41642

The Parties:-

**Miss Beth Jowett, 3A Strathmartine Road, Dundee, DD3 7RL
("the Tenant")**

**Mr Ihsan Haq, 25 Lintrathen Gardens, Dundee, DD3 8EJ
("the Landlord")**

Tribunal Members:

Gillian Buchanan (Chair) and Angus Anderson (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 Property, and taking account of the documentary and oral evidence given by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received on/between 7 and 14 November 2023 the Tenant applied to the tribunal 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 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 watertight and in all other respects fit for human habitation.
 - (b) 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.

- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (d) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By letter dated 22 November 2023 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
 4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.
 5. Following service of the Notice of Referral the tribunal received the following additional written representations from the parties:-

On behalf of the Tenant:-

Email from Terri Kean, Technical Officer Enforcement (Community Safety & Protection) at Dundee City Council dated 22 January 2024 with attachments.

6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Angus Anderson, Ordinary Member, inspected the Property on the morning of 28 February 2024. The Tenant was not in attendance but her mother, Mrs Shirley Jowett, provided access. The Tenant was represented by Ms Terri Kean, Technical Officer Enforcement (Community Safety & Protection), Dundee City Council. The Landlord was present. Photographs were taken and are contained in the attached Pre-inspection summary and Schedule of Photographs ("the Schedule of Photographs").
7. At the time of the inspection it was fair and dry.

Hearing

8. Following the inspection of the Property the tribunal held a hearing at Endeavour House, 1 Greenmarket, Dundee, DD1 4BQ. At the hearing the Tenant was again represented by Ms Terri Kean. The Landlord was in attendance.

Preliminary issues

9. At the Hearing the Tribunal first raised two preliminary issues as follows:-
 - a. The Tribunal noted the title to the Property to be in a different name to that of the Landlord, namely Ahmad Raza Ihsan. The Tribunal sought clarification on whether the Landlord and Ahmad Raza Ihsan are in fact the same person. The Landlord advised that Ahmad Raza Ihsan is his son. His son is 8 years of age. Title to the Property was put into the name of Ahmad Raza Ihsan in 2021 by the solicitor who acted in the purchase of the Property and who was aware of the position.
 - b. The Tribunal had been advised at the inspection that the Tenant was to be removing from the Property on Friday 1 March. Ms Kean stated she would advise the Tribunal if that took place as scheduled.

Repairs

10. The Ordinary Member then summarised the Tribunal's findings at the inspection as follows:-
- a. In the bedroom the PVC trims had been removed from around the window and water staining could be seen on all sides. The moisture levels were within normal parameters at 15 and 24%. Some of the timbers around the window were soft particularly the soffit above the window. A bead of silicon had been applied externally between the window and the stone lintel. The stonework had degraded.
 - b. In the rear utility area of the kitchen there was staining around the window and the plaster finish has bubbled. There were patches of dampness to both sides of the window. Parts of the window had previously been repaired and there were also patches of dampness inside the adjacent cupboard housing the boiler. A bead of silicon had been applied externally and the stone lintel above the window was weathered.
 - c. The heat and smoke alarms within the Property were tested and were found to be in proper working order and interlinked.
 - d. A carbon monoxide detector was present in the kitchen at mid height.
 - e. In the communal stairwell, damp was very obvious on the same wall as that which affects the utility area off the kitchen. Within the communal stairwell that wall recorded a damp meter reading at 99%.
 - f. Externally, the Tribunal observed green staining next to the utility room around the downpipes and the stonework was noted to be weathered. The stonework was in a similar condition around the bedroom window.

Representations for Tenant

11. Ms Kean stated that she was satisfied that the heat and smoke alarms are properly installed and interlinked.
12. With regard to the ingress of water into the bedroom and rear utility area of the kitchen, she stated that the rain penetrates when the weather is very stormy. She first visited on 31 October 2023 just after Storm Babette. The Tenant had required to lift the carpet back in the bedroom as it was very wet and she required to remove the bed. The Dundee City Council surveyor who attended with Ms Kean, namely Raymond Wright, removed the PVC facings from around the bedroom window and found the window to be wet and mouldy behind.
13. Ms Kean had not visited the property since 31 October 2023. She was not aware of what works has been undertaken in the intervening period. Ms Kean does not know who undertook any repairs.
14. Ms Kean wrote to the Landlord on 31 October 2023 about her findings but received no response and none of the Certificates requested were produced. The Landlord is not registered.
15. The Tenant last reported dampness in the Property on 2 January 2024. She had emailed photographs and videos from the over the December period and had gone to sleep at her parent's house. Ms Kean had heard nothing further since then.

Landlord Representations

16. The Landlord stated that the silicon seal had been applied externally on 17 December 2023. He produced a copy of a receipt from New Carden Roofing & Building in the sum of £250. That document states "Resealed windows at back of property materials and labour".
17. The Landlord stated he has already planned to undertake further works. He could not get entry to the Property previously. He tried to make arrangements to attend with a joiner. He stated that on 13 December 2023 entry was refused. He produced to the Tribunal exchanges of text messages with the Tenant some of which were dated, some of which were not.
18. The Landlord stated that he wants to repair the Property as soon as possible. He wants to repair the seals and carry out work from the inside. No date has been booked for these works to be carried out as he was awaiting confirmation of the Tenant's removal.
19. Rent has not been paid for the last four months.
20. The Tribunal asked the Landlord who had been giving him advice with regard to the repairs. He said the joiner had come round and checked everything. No quotation had yet been provided. He will come again after the Tenant's removal. He referred to the wood being replaced and new PVC linings being applied. He said the water had been coming in from outside and that has now stopped. The water only came in during extreme weather. He is not doing any further external work.
21. The Landlord said he is not precisely sure what further works the joiner intends to do and has not been given precise details.
22. The Tribunal asked whether the Landlord had a damp or timber specialist look at the Property. He said that had not been done. He said the roofer had told him the main problem was from the outside and that is now resolved.
23. The Tribunal referred to there still being dampness within the utility area of the kitchen.
24. The Landlord said he had no new tenant lined up to take entry to the Property. He would not relet the Property until the work had been done. He said no water had come into the Property after 17 December 2023.
25. The Landlord produced to the tribunal a copy of the Private Residential Tenancy Agreement with the Tenant that commenced on 1 April 2022.

Summary of the issues

26. The issues to be determined are:-
 - (a) Whether the windows and the surrounding areas in the rear utility area of the kitchen and in the bedroom are wind and watertight and in a reasonable state of repair.
 - (b) Whether 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 such that water cannot penetrate into the utility area of the kitchen and into the bedroom.
 - (c) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

- (d) Whether the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings of fact

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

- (a) The Landlord is father of the heritable proprietor of the Property, Ahmad Raza Ihsan, who is a child of 8 years old. In the absence of proof of the sufficiency of the capacity of Ahmad Raza Ihsan it is presumed that he does not have legal capacity to take part in these proceedings. The Landlord is the legal representative of Ahmad Raza Ihsan and is therefore liable in that capacity.
- (b) The Property is situated in a mixed residential and commercial within Dundee City centre.
- (c) The Property is a first floor flat within a three storey tenement containing a total of two flats on the upper floors and retail premises at ground level. The building was constructed around 1900. The walls are solid stone and the roof is pitched and slated. The windows are PVC framed and are double glazed.
- (d) The accommodation comprises: entrance hallway, Lounge, kitchen, bathroom bedroom and box room.
- (e) The Property has been leased by the Landlord to the Tenant since 1 April 2022 in terms of Private Residential Tenancy Agreement.
- (f) The Tenant removed from the Property on or around 1 March 2024.
- (g) It is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
- (h) In the bedroom, the timber linings around the PVC window were damp and at the top and to the right-hand side of the window the timber had deformed due to dampness. Externally, the stonework around the window, particularly to the lintol, has degraded due to spalling and weathering of the face of the stone. A bead of silicon had recently been applied to the joint between the window frame and masonry.
- (i) In the rear utility area of the kitchen, high moisture readings affected the plaster linings to both sides of the rear window frame and to patches of the linings within the boiler cupboard. The stonework around the window, particularly to the lintol, has degraded due to spalling and weathering of the face of the stone. A bead of silicon had recently been applied to the joint between the window frame and masonry.
- (j) Very high moisture readings affect the plaster linings of the dividing wall between the rear utility area of the kitchen and the communal staircase, close to the junction with the rear wall. Staining, efflorescence and mould indicate that the water ingress had been occurring over some time.
- (k) Within the communal staircase, significant staining from damp ingress was present to the area adjacent to the rear kitchen, where dampness was found. Moisture meter readings showed widespread high dampness (99%).

- (l) Externally, there is green staining on the surface of the rear wall, adjacent to the drain pipe near the rear kitchen window, indicating ongoing or previous leakage. The drain pipe appears to be split or cracked, around mid-way up the adjacent window, co-incident with the top of the green staining. The stonework and pointing around the rear kitchen window and bedroom window appears weathered, with spalled stonework and cracks and gaps to the pointing. Previously, the stonework around the rear kitchen window had been re-faced. Around a third of the repair has fallen away. Similarly, the stonework around the bedroom window had been re-faced in the past, with around half of that repair having fallen away. Without a sharp edge at the window lintols, rainwater will follow the stonework under the lintol to the window frame, rather than drip downwards and clear of the interior of the wall.
- (m) A carbon monoxide detector was present, mounted to the wall at a height of approximately 1.7m. The alarm sounded when tested. The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (n) A heat alarm was mounted on the ceiling of the kitchen. Smoke alarms were mounted on the ceilings of the hall and lounge. When tested, the alarms were found to be interlinked. The Tribunal is satisfied that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Reasons for the Decision

- 28. There were light showers of rain on the day of the inspection with similar conditions over the preceding day.
- 29. The inspection commenced within the bedroom in relation to damp in the vicinity of the window. Moisture levels were tested using a Protimeter Surveymaster moisture meter.
- 30. The rear utility area of the kitchen was then inspected followed by the communal staircase. The Tribunal also inspected the Property externally.
- 31. The Property does not meet the Repairing Standard. In particular there is evidence of water ingress into the bedroom and rear utility area of the kitchen at and around the windows and widespread evidence of dampness in those location as well as in the linings of the cupboard housing the boiler. The Property is therefore not wind and water tight and in all other respects reasonably fit for human habitation. There are obvious defects to the outer walls and rain or drain pipes that render the structure and exterior of the house (including drains, gutters and external pipes) not in a reasonable state of repair.

Decision

- 32. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 33. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 34. The decision of the tribunal was unanimous.

Right of Appeal

35. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Effect of section 63

36. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed _____

Date : 26 March 2024

Legal Member and Chairperson