

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/RT/18/1378

**13 Glenburchy Place, Fraserburgh AB43 9QT
("The Property")**

The Parties:-

**Aberdeenshire Council, Housing Strategy, Gordon House, Inverurie
AB51 3WA
("the Third Party Applicant")**

**Mr Juris Kuzmickis, 13 Glenburchy Place, Fraserburgh AB43 9QT
("the Tenant")**

**Mr Colin Todd, 156C Finnart Street, Greenock PA16 8HY
(represented by their agent Forbes Property, 68 Broad Street,
Fraserburgh AB43 9AS
("the Landlord")**

Tribunal Members

Graham Harding (Legal Member)

Mark Andrew (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 Third Party Applicant and the Tenant at the hearing and the written submissions on behalf of the Landlord, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 8 June 2018 the Third Party Applicant 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 Third Party Applicant stated that the Third Party Applicant 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:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation. Specifically the Third Party Applicant claimed that:-
 - (i) There appears to be water penetration in the right rear corner of the front bedroom.
 - (ii) The window catch in the back bedroom does not work properly and the window vents throughout the property do not appear to be in full working order.
 - (iii) There is damp around windows, in corners of rooms and around the bath.
3. By Minute of Decision dated 14 June 2018 a Convenor with delegated powers referred the application to a Tribunal. 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 the Landlord, the Third Party Applicant and the Tenant.
5. Following service of the Notice of Referral the Tenants (by letter dated 06/08/18), made written representations to the tribunal. The Landlord's representatives, Forbes Property, (by letter dated 6 July 2018), made written representations to the tribunal.
6. The tribunal inspected the Property on the morning of 23 August 2018 Ms Julia Leonard for the Third Party Applicant, the Tenant and his wife along with a Russian interpreter and the Landlord's representative Mr Louis Forbes were present during the inspection.
7. The Ordinary Member of the Tribunal took photographs of the property and these form an appendix to this decision. The Ordinary Member also used a moisture meter to investigate apparent damp areas within the property and recorded high damp readings in the front bedroom at the rear of the right-hand gable wall and adjacent internal masonry wall.
8. Following the inspection of the Property the tribunal held a hearing at Banff Sheriff Court and heard from Ms Leonard on behalf of the Third Party Applicant, the Tenant, the tenant's wife and a witness Ms Tereze Lebedeva. As Mr and Mrs Kuzmickis' English was limited the Tribunal heard their evidence through an interpreter. The Landlord's representative, Mr Forbes chose not to attend the hearing nor did the Landlord.

9. Ms Leonard for the Third Party Applicant submitted that when she had initially visited the property the back bedroom window did not fit at all. She had a real concern about the state of the windows at that time and also with regards to condensation generally in the property. She felt that extractor fans in the bathroom and kitchen would help reduce the amount of condensation although that it may be less clear cut as to whether that could be insisted upon in terms of meeting the repairing standard. The damp around the bath was as a result of a shower being fitted above the bath but with inadequate panelling to protect the area.
10. The Tenant explained that when he and his family moved into the property two years ago it seemed really nice. It had been recently decorated. He said that shortly after moving in he noticed that the windows did not open properly and this was reported to Mr Louis Forbes. He said he waited for about two months for the repairs to be carried out. After the repairs were done the window handles still did not work and the faults were reported again and again he waited months for them to be repaired. He said the window in the back bedroom had no handle at all and the cold wind came through but nothing was done about it.
11. The Tenant went on to say that during the winter after he had moved in particularly in wet weather or snow there was damp evident in the rear corner of the front bedroom walls. He explained that his wife and children slept in this room and it had been bad for their health. He said that the problem had been reported to Mr Forbes on many occasions but it had not been fixed.
12. Ms Leonard said that she had spoken to Mr Forbes son about the damp in the bedroom and it was apparent he had been aware of the problem over a lengthy period but had not been able to explain what was wrong.
13. The Tenant went on to say that in about April or May this year he had sent his family to his sister England so that he could use mould removing chemicals on the bedroom wall. It had taken a long time for the chemical smell to leave the property and on his family's return they had to sleep in the living room as the smell was bad for their health.
14. The Tenant believed that there had been repairs to the roof of the property carried out in April or May this year but he still thought that there was water ingress when it rained.
15. The Tenant confirmed that the rear bedroom window had been replaced in the week before the inspection.
16. Mrs Kuzmickis said that when she had been pregnant she had been unable to open the windows and even now she still found them difficult to open as they were very stiff. She felt that her complaints to Forbes Property had not been taken seriously and that she had been laughed at. She was concerned that her children's health had been affected by the mould and damp.

17. Ms Lebedeva said that she had attended at Forbes Property on many occasions with the Tenant to act as interpreter and felt that the length of time it had taken for repairs to be carried out was unreasonable.
18. The Tenant said that previously an electrician had attended at the property and said that he would return to fit extractor fans in the kitchen and bathroom but he never returned and the previous week he had been told that no fans were being fitted. The Tenant confirmed that the shower above the bath was in place at the commencement of the tenancy.

Summary of the issues

19. The issues to be determined are whether the property is wind and watertight and in all other respects reasonably fit for habitation.

Findings of fact

20. The tribunal finds the following facts to be established:-
- The tenancy is a short assured tenancy.
 - The Tenant reported problems with faults in the windows and concerns about mould and damp in the property to the Landlords agents Forbes Property some months after the commencement of the tenancy. After substantial delays the rear bedroom window was replaced and the remaining windows were repaired and are now operating satisfactorily.
 - There is some surface mould in the rear bedroom that is caused by poor circulation of air and not by water ingress.
 - There is mould in the bathroom and the wallpaper is peeling of the wall around the bath.
 - The shower above the bath was in situ at the commencement of the tenancy.
 - The shower is attached to a wallpapered wall.
 - The window vent in the bathroom provides inadequate ventilation.
 - There are high damp readings in the front bedroom at the rear of the right gable and internal masonry walls indicative of water ingress from the roof of the property.
 - Although the window in the kitchen provides adequate ventilation it is difficult to access to open.

Reasons for the decision

21. The windows all appeared to open and close satisfactorily. Although the Tenant's wife still found them difficult to open and close it did not seem to the Tribunal that they failed to meet the repairing standard.
22. The Tribunal was satisfied that the surface mould in the rear bedroom was caused by a lack of ventilation and not by damp as the level of moisture was found to be low. Similar mould in the kitchen was likely to have been caused by lack of ventilation as damp meter readings taken were low.

23. The shower in the bathroom has been attached to a wallpapered wall. Wallpaper is not a suitable covering in this situation. The walls around the bath should be tiled or finished with shower wall panelling.
24. The bathroom has a small top opening window that does not provide adequate ventilation and this is leading to mould growth. A mechanical extractor is required to increase ventilation.
25. Although the Landlords representative indicated that the cause of the water ingress in the front bedroom from the roof had been attended to it did appear from the damp meter readings that there may still be a problem. According to the tenant the walls appeared wetter after heavy rain. It therefore seemed to the Tribunal that further repairs to the roof may be necessary. The existing damp plaster and plasterboard in the rear bedroom require to be removed and replaced and re-decorated thereafter.
26. Although there is adequate ventilation in the kitchen from the window it is not in the most accessible position and whilst the Tribunal felt it would not be appropriate to insist on an extractor fan being installed in the kitchen it would strongly recommend that the Landlord consider putting one in as this would no doubt improve the ventilation and reduce the risk of mould growth.

Decision

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

Right of Appeal

30. **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

31. 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



Front elevation



Rear elevation – new 1st floor bedroom window tilted inwards.



Kitchen window above worktop.

Photographs taken on 23rd August by M H T Andrew FRICS