

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/22/1795

Flat 3/2, 1 Canning Street, Dundee, DD3 7RZ ("The Property")

The Parties:-

Mrs Linda Etchels residing at Flat 3/2, 1 Canning Street, Dundee, DD3 7RZ ("the Tenant")

Mr Shadman Khan residing at 26 Menzieshill Road, DD2 1PU ("the Landlord")

Dundee City Council Private Sector Services Unit, 5 City Square, Dundee, DD1 3BA ("the Applicant")

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 had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence obtained at the inspection and also led by both the Landlord and the Applicant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. In June 2022, the Applicant, on behalf of 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 Applicant stated that they considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that the following particular requirements had been met:-

- The house is wind and watertight and in all other respects reasonably fit for human habitation
 - 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;
 - 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;
 - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
 - Any furnishings provided by the landlord under tenancy are capable of being used safely for the purpose for which they are designed;
 - The house does not meet the tolerable standard
3. By Minute of Decision dated 20 July 2022, a Convener, with delegated authority on behalf of 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 a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, the Tenant and the Applicant.
 5. Following service of the Notice of Referral the Landlord made brief representations via their solicitor, Campbell Boath, to the Tribunal dated 9 September 2022. This comprised a copy of an Electrical Installation Condition Report ("EICR") dated 18 April 2022 and copy correspondence to the Tenant from Campbell Boath alleging that tradesmen were being put off attending at the Property because of clutter and requiring the Tenant to ensure it was tidier so that repairs could be carried out.
 6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Ms C Jones, Ordinary Member & Surveyor) inspected the Property on the morning of 28 September 2022. The Applicant was represented by Mr Stuart Cuthill of Dundee City Council. Mr Khan, the landlord, was present and was accompanied by his daughter. The Tenant, Mrs Etchels, was present as was her husband.
 7. Following an inspection of the Property the Tribunal held a hearing by teleconference at 2pm on 28 September 2022. Again Mr Cuthill was present. Mr Khan was present on the call along with his daughter. The Tenant was not on the call.

8. The Applicant submitted that they had been involved in relation to required repairs to the Property since 2020. They had notified the Landlord by letter dated 17 December 2020 of various items that they, as the local authority, had felt required attention. These included the absence of an Electrical Installation Condition Report (EICR), electrical repairs, the installation of a proper smoke detection system, kitchen repairs, repair of a hole in the living room ceiling and related damp investigations, window and door repairs and repairs to the toilet and shower. Whilst some progress had been made the Landlord had not attended to all matters and the Applicant had felt it necessary to apply to the Tribunal for a determination.
9. The Landlord submitted that they were willing to do the work necessary to address any issues the Tribunal felt were outstanding. They highlighted that they had now attended to a number of the items listed in the Applicant's letter of 17 December 2020, although it was accepted that a number of these had only been attended to a few days before the inspection and hearing. The Landlord highlighted that they felt the Tenant had not always helped in giving access and did not look after the Property well themselves.

Summary of the issues

10. The following potential repair issues identified by the Applicant in December 2020 required to be determined by the Tribunal:-

- Whether there was an adequate EICR in place for the Property;
- Whether there was a compliant smoke/heat detection system in the Property;
- Whether the kitchen units needed repaired or replaced;
- Whether the kitchen sink was draining properly and needed repair;
- Whether there was a hole in the living room ceiling and any ongoing water ingress/damp and also whether redecoration was required;
- Whether the windows in the Property were in proper working order and met the repairing standard;
- Whether the main door to the flat was in proper working order and met the repairing standard or not
- Whether the toilet seat was in working order or required to be repaired or replaced
- Whether the sealant around the shower required to be replaced

Findings of fact

11. The Tribunal found the following facts to be established:-

- The subjects comprise a top floor flat situated in a 4 storey traditional stone tenement built in the late 19th century. It is located near the corner of Strathmartine Road in the Hilltown district of Dundee. This is an area of mixed residential and commercial properties around one mile north of Dundee city centre. The accommodation comprises an entrance hall, living room with small open plan kitchen, two bedrooms and a shower room. The windows are all Upvc double glazed and there is a gas central heating system.
- The EICR was not adequate as it did not appear to be issued by a suitably qualified and registered electrician;
- There was a compliant smoke/heat detection system installed within the Property;
- The kitchen units did not meet the repairing standard and were beyond economic repair and needed to be replaced
- The kitchen sink did not appear to be functioning correctly;
- The hole in the living room ceiling had been repaired but not yet redecorated. There was evidence of ongoing damp penetration;
- The lounge and bedroom windows/sills did not meet the repairing standard and required to be repaired or replaced;
- The external door exiting to the communal stairway did not meet the repairing standard;
- The toilet seat was broken and required to be replaced;
- The shower sealant required to be replaced.

Reasons for the decision

12. The Tribunal based its decision primarily on the evidence obtained during the course of its inspection where it had the benefit of seeing the actual condition of the Property.

The Tribunal had some concerns regarding the validity of the EICR provided by the Landlord. Whilst, on the face of it, this appeared to have been properly completed and assesses the installation as “satisfactory”, however the Tribunal was unable to identify the electrician that had issued it as being suitably qualified and registered with a recognised trade association. There are a number of regulatory bodies to which an electrician can be a member of that allow an electrician to issue a valid EICR. The EICR had been signed by a David Shepherd but the Tribunal was unable to find any such electrician

registered with any of the regulatory bodies. The Tribunal also noted that it was apparent that the fans/vents in both the bathroom and kitchen were clearly inoperative yet the EICR had not picked this up. Overall the Tribunal was not satisfied that the electrician was suitably qualified and registered and had done a proper job. Accordingly a fresh EICR would be required, produced by a suitably qualified and registered electrician. The Landlord would require to carry out any works required by the EICR to ensure it was issued without any works labelled as C1 or C2 in the EICR.

The Tribunal did note, however, that a valid smoke/heat detection system had been installed and appeared to be interlinked as required and was working on the day. Although outwith the ambit of the complaint, the Tribunal did note that a new boiler had been recently installed and that the relevant carbon monoxide detector was present, although it would benefit from being relocated in a higher position, above all doors and windows, where possible, to ensure compliance with current statutory guidance.

The Tribunal inspected the kitchen units. They were clearly a good number of years old and had suffered significant wear and tear. A number of doors were ill fitting and misaligned, some had defective hinges/missing door handles and there was evidence of damage to the internal framework and panels in some units. It was apparent that previous repairs had been made although this appeared to be unfinished with debris left by tradesmen in one base unit. The Tribunal would normally specify that it was for a landlord to carry out repairs or replacement as they saw fit. However, in this particular case, the Tribunal was of the view that the units were of an age and condition that they could not reasonably be repaired as any repairs would only last briefly. The units were beyond their economic life and accordingly required to be replaced. The Tribunal also inspected the kitchen sink. This did appear to be draining correctly on the day. However, there was a bottle jammed between the edge of the unit and the drain underneath the sink to facilitate this. On the basis the Tribunal had determined that the units needed to be replaced, then the plumbing/drainage would need attention as part of the kitchen replacement anyway.

The Tenant had advised that there had been a leak in the corner of the lounge around two years ago and a small area of the ceiling had come down. It was apparent that this had now been attended to and the ceiling hole had been patched to an acceptable standard. The Tenant advised that this had been done the day before the inspection. Redecoration works had not yet been completed and this would require to be done by the Landlord. The Landlord was vague as to the cause of the leak and whether works had been done to address the root cause of this before fixing the ceiling. In any event the Tribunal took damp meter readings on the wall below where the hole had been. There were moderate to high meter readings in evidence that would suggest that water penetration was still occurring. Accordingly, the Landlord would require to carry out investigations to identify the source of the water ingress and to carry out all appropriate works to rectify this and thereafter carry out any redecoration required.

The Tribunal then inspected the windows in the kitchen, lounge and bedroom. The kitchen window did appear to be working correctly. However, the lounge window was badly fitted with the sill and there were gaps between the window and the sill that did not meet the repairing standard. The Tribunal did manage to open and close the lounge window but with the greatest of difficulty and it was clearly not in proper working order. Likewise, on inspecting the bedroom window, it was apparent that this did not open and close correctly and at least one of the hinges was broken. The Landlord would therefore require to carry out repairs to the lounge and bedroom windows/sills to ensure they were capable of opening and closing properly, were draught free and otherwise met the repairing standard.

The Tribunal then inspected the main door of the Property that led to the communal stairway. A new door had been installed the day before the inspection. There appeared to be some lengthy history between the parties as to how a previous door had become damaged that involved lost keys and the fire brigade. The convoluted explanation was of little relevance to the Tribunal and, in any event, the Landlord had appeared to take on responsibility for replacing the door. Whilst there was now a working door the Tribunal noted that the Landlord appeared to have installed a basic internal door. As this was the main external door an internal door was insufficient. In terms of the Building Standard Domestic Technical Handbook (2018 Edition) flat entrance doorsets that allow access directly in to a dwelling from a shared or communal area are required to provide fire and smoke protection. Whilst the Tribunal appreciated that the Landlord had attempted to achieve compliance here, what had been installed did not meet the required technical standards and the Landlord would require to install a new main entrance door compliant with the relevant regulations.

The Tribunal then inspected the shower room. The Landlord advised that he had provided a new toilet seat recently. However, the one present appeared to the Tribunal to be older and the connections on it were broken. A new toilet seat would require to be provided and installed by the Landlord.

The Tribunal also inspected the sealant around the shower. This was in poor condition and would benefit from being replaced by the Landlord.

The Tribunal considered the various works that were required to be undertaken by the landlord to achieve compliance with the repairing standard. Whilst there were a good number of items, individually none of them should require a significant period to allow them to be dealt with. On that basis the Tribunal was satisfied that a period of two months would be adequate for the Landlord to deal with these

Photographs taken during the course of the inspection are annexed to this Decision for information.

Decision

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

Right of Appeal

16. 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.

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.

Effect of section 63

17. 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.

Signed

Chairperson

Date

Housing and Property Chamber

First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 3/2, 1 Canning Street, Dundee
DD3 7RZ by the First-tier Tribunal for Scotland (Housing and Property Chamber)
on Wednesday 28 September 2022

Reference Number : FTS/HPC/RT/22/1795



Front Elevation



Hall - ceiling mounted smoke detector
(interlinked)



Living Room - ceiling mounted smoke detector
(interlinked)



Kitchen - ceiling mounted heat detector
(interlinked)



Kitchen - wall mounted cabinets - right side -
misaligned doors/gaps etc



Kitchen to right side- wall mounted double unit - misaligned doors/defective hinges



Kitchen to left side- double base unit - damaged internal framework



Kitchen to left side - double base unit - one door not closing properly/missing handle



Kitchen to left side- double base unit - interior base panels damaged/debris left by joiner



Kitchen - large gap to side of washing machine



Kitchen - pipework below sink/small plastic bottle jammed between pipe and side of cabinet



Living Room - north east corner of ceiling replastered



Living Room - internal face of rear wall (north facing) moderate damp meter readings to left of window across large area



Living Room - internal face of rear wall (north facing) localised high damp meter readings to left of window



Living Room window



Living Room window sill split/gaps



Kitchen window



Kitchen - extractor fan above window - not in proper working order



Main Bedroom window



Main Bedroom - left side middle window - damaged mechanisms/hinge



Hall - new front door (hollow core interior type)



Hall - old front door frame in situ/rubber seal defective



Close Landing - old front door damaged/removed by fire brigade



Shower Room - toilet seat not fixed to bowl



Shower Room - damaged seat fitting on rim of toilet bowl



Shower Room - defective seal to shower tray



Shower Room - extractor fan - possibly defective/
electrical fault



Kitchen - wall mounted gas boiler (Observation)



Living Room - wall mounted CO detector
(Observation)