

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)

Reference number: FTS/HPC/RP/22/2510

Re: Property at 15 Red Admiral Court, Dundee, DD4 0NN ("the Property")

Title No: ANG 84450

The Parties:

Miss Kitty Massie, 15 Red Admiral Court, Dundee, DD4 0NN ("the Tenant")

SGL Investment 2 Ltd, Unit 21A City Quay, Camperdown Road, Dundee, DD1 3JA ("the Landlord")

Tribunal Members:

P Doyle (Legal Member)
D Godfrey (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 and the Tenants 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. On 26 July 2022 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.
2. The applicant maintains that there is a failure to meet the repairing standard, and in particular that:

- (a) The house is not 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 not in a reasonable state of repair nor are they in proper working order
- (c) The property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (e) The house does not meet the tolerable standard.

3. On 12 September 2022 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 and the Tenant.

5. Following service of the Notice of Referral neither the Landlord nor the Applicant made further representations.

6. On 29 September 2022 the tribunal issued the following direction to the Landlord

The Landlord is required to:

(a) Either

(i) Produce an up to date, unqualified, EICR, and PAT for all landlord's appliances, with evidence that all electrical installations and appliances are functioning correctly,

or

(ii) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property, including a functional test of all electrical appliances and equipment supplied by the landlord and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas, and repair or replace installations or appliances as necessary. Thereafter, provide the First-tier Tribunal for Scotland (HPC) with either a Minor Electrical Works Installation Certificate or an unqualified EICR, prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor, and PAT certificates as required.

AND

(b) Exhibit to the tribunal an up-to-date EPC certificate for the property.

The said documentation should be lodged with the Chamber no later than close of business on 18 October 2022.

7. On 17 October 2022 the landlord's agents responded by producing an EICR certificate issued on 9 December 2019, an Energy Performance Certificated dated 16 December 2019, and a PAT testing certificate dated 28 September 2022.

8. By email dated 19 October 2022 the tenant challenged the authenticity of the PAT test certificate.

9. Tribunal members inspected the Property at 10am on 25 October 2022. The Tenant was present. The Landlord was neither present nor represented. During the inspection on 25 October 2022, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

10. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 2pm on 25 October 2022. The Tenant was present but not represented. The Landlord was represented by Ms A Lewis of Belvoir Dundee.

Summary of the issues

11. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

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

(a) The landlord is the heritable proprietor of 15 Red Admiral Court, Dundee, DD4 0NN ("the property"). The landlord let the property to the tenant in December 2019.

(b) The property is a 2 bedroomed flatted dwellinghouse on two floors. There are communal gardens to the front and the rear. A security door designed to operate with an electronic locking system opens onto a common passage and stair. The front door of the property is on the third landing. The front door opens onto a vestibule, which leads to a central hallway providing access to two bedrooms and a WC. Internal stairs lead to the top floor of the property where there is a living room to one side of the property, and, on the other side of the property, a bathroom, and a kitchen.

(c) In her application, the tenant sets out of 11 areas of complaint. By the time tribunal members inspected this property at 25th of October 2022, the landlord had carried out a series of repairs on the property. The nature of the applicant's complaints in relation to several of the original heads of

complaint has changed to complaints about the quality of the work done and the fact that no work has been carried out to redecorate areas damaged by the remedial work.

(d) The tenant initially complained about two storage radiators in the property. Prior to the inspection those two storage radiators had been removed and replaced with wall mounted electric convection heaters. The tenant said that both of those new wall mounted heaters work, but because they are smaller than the storage radiators which were removed, the decorative finish around the radiators is incomplete.

(e) The fan in the WC (at entry level of this property) has been fixed and is no longer a problem for the tenant.

(f) A window in the living room has recently had work carried out to it. A safety latch has been fitted to the window, and filler has been applied to an area in the frame to block a hole in the window frame.

(g) To one side of the living room there is generous cupboard space. Within that cupboard space there is access to the loft above the property. The tenant has been rearranging the contents of the property. The tenant's possessions were piled against the cupboard door during the tribunal's inspection on 25 October 2022. As a result, tribunal members could not inspect the loft space access.

(h) Between the date of application and 25 October 2022, the landlord's tradesmen had repaired the kitchen units. On the date of inspection, there are no defects in the kitchen cupboards.

(i) Before 25 October 2022, the landlord's tradesmen replaced the electric light on the kitchen ceiling. The light that was removed was a strip light. A small circular light has been fitted in its place, leaving an undecorated area the size and shape of the strip light fitting on the ceiling of the kitchen.

U) The internal stairs lead to a small landing area, which provides access to the upstairs rooms. Facing the top of the stairs, there is a cupboard door. Recent repairs have been carried out to fill gashes and holes on the surface of that door. The finish on the repairs is rough and uneven.

(k) In the past, there have been holes and gouges in the plasterwork on the walls surrounding the internal stairs to the property. Those holes and gouges have recently been filled. Once again, the finishes are rough and uneven.

(l) Before 25 October 2022, the landlord's tradesmen replaced an electrical socket in the living room.

(m) The flooring in the hall, bathroom, and kitchen is old and tired. It would benefit from replacement, but the flooring does not contain any defects.

(n) Recent repairs have been carried out to the main entrance to the common stair, but the facing of the lock on the exterior door is hanging off.

(o) The property has smoke and heat detectors, but it was not possible for tribunal members to test the system without causing the tenant's new-born baby distress. It is common ground that the public sector service unit of Dundee City Council believe that the fire alarms are not interlinked and do not comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(p) On the landing wall adjacent to the kitchen door, an old, uncovered, electrical fitting sits just above head height.

Reasons for the decision

13. (a) Tribunal members inspected this property at 10:00am on 25 October 2022. It was a dry, autumn, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) It was clear from tribunal members observations and inspection, and it was the position of both the tenant and landlord's agent, that the landlord's contractors had carried out work to this property between the date of application and the date of inspection.

(c) The radiators that were complained about have been replaced; the fault in the fan in the WC has been repaired; repairs have been carried out to a window in the living room; kitchen cupboard doors have been repaired or replaced; the kitchen light has been replaced; filler has been applied to holes in walls and doors, and an electrical socket in the living room has been replaced.

(d) what is left is the complaint that

(i) the bare minimum of work has been carried out, leaving decorative faults and imperfections

(ii) there is still a draught at the living room window

(iii) the flooring in the hall bathroom and kitchen needs to be replaced,
and

(iv) the fire alarms are not interlinked

(e) The tribunal can only consider the matters raised in the application. The tenant complained that the property is not wind and watertight, that the installations for the supply of water, gas and electricity etc are not in a reasonable state of repair and proper working order, that the house does not have satisfactory provision for detecting fires, and that the house does not meet the tolerable standard.

(f) There is no complaint raised in the application about the quality of fixtures and fittings, or the quality of the furnishings. Complaints about decorative finish and floor coverings are not matters which are competently before this tribunal.

(g) Minor cosmetic defects to decoration caused by remedial work does not amount to a breach of the repairing standard set out in the Housing (Scotland) Act 2006.

(h) Although the flooring in the hall, bathroom, and kitchen would benefit from replacement, there is no defect in the flooring which would engage the repairing standard as defined in the 2006 Act.

(i) The tenant says that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house-

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

U) On the facts as we find them to be, the property does not fall short of the statutory definition of the tolerable standard.

(k) The tenant complained that the property is not wind and watertight because of a draught from a window in the living room, and from the loft access space. Tribunal members inspected the window of the living room but could not see either a broken seal nor could they feel a draught at the window. The tenant did not facilitate inspection of the loft access space.

(l) The only realistic conclusion tribunal members could come to is that the property is wind and watertight. Tribunal members found no evidence of water ingress and could not feel a draught in the property.

(m) The tenant complains about the lock on the stair door, and the condition of the stairwell and the common ground. Those are not complaints which engage subsections (a), (c), (f) or (h) of section 13 of the 2006 Act (which are the matters raised in the application). Tribunal members were, however, encouraged to hear Ms Lewis say (on behalf of the landlord) that the landlord takes responsibility for maintenance of the gardens surrounding the property and for cleaning the common stair. Ms Lewis conceded that the maintenance has fallen behind, but that steps would be taken to ensure that the garden grounds surrounding the property are properly tidied up this autumn, and that the programme of stair cleaning will recommence.

(n) It is the condition of the fire alarms and the electrical installations which are still live matters for this tribunal. An EICR, which was obtained before the tenancy started in 2019, has been produced. In recent weeks two electrical radiators have been installed. On inspection, tribunal members could see an old electrical appliance on the wall outside the kitchen door. In the weeks prior to inspection a new electrical socket was fitted in the living room, and a central light was fitted in the kitchen.

(o) The tenant and the landlord's representative agree that Dundee City Council private sector services department say that the fire alarms in the property are not interlinked. It is the landlord's position that Dundee City Council are wrong and that the fire alarms are interlinked.

(p) Because recent electrical works have been carried out an up-to-date EICR is necessary. The landlord can obtain an up-to-date EICR out with specific reference to the condition of the fire alarm, the safety of the radiators and other new electrical installations in the property. The SELECT, NICEIC OR NAPIT registered electrician who provide an Electrical Condition Installation Report can confirm whether or not the fire alarm system has been fitted in accordance with the requirements of the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(q) On the facts as we find them to be, we cannot be satisfied that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order. We therefore find that the landlord has not complied with the section 13 (c) of the 2006 Act

(r) On the facts as we find them to be we cannot be satisfied that the property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act.

(s) Both of those outstanding matters can be addressed by production of an up to date EICR.

14. The tribunal makes a repairing standard enforcement order requiring the landlord to

(i) Instruct a SELECT, NICEIC OR NAPIT registered electrician to provide an Electrical Condition Installation Report (EICR) following a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any areas categorised C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards

(ii) Instruct a SELECT, NICEIC OR NAPIT registered electrician to inspect the smoke and heat detectors and carry out any necessary work to enable him to certify that the smoke and heat detectors, and carbon monoxide detectors, within the property, are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(iii) Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a clear EICR and PAT (dated after 4 November 2022) prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

All within 28 days of service of this order.

15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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

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

11 November 2022

Legal Member