

# 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:** Reference number: FTS/HPC/RP/23/0360

**Property:** 17 Ballantrae Terrace, Douglas, Dundee, DD4 8PP ("The property")

**Title no:** ANG28848

**Parties:**

Miss Lynne Findlay, residing at 17 Ballantrae Terrace, Douglas, Dundee, DD4 8PP ("the Tenant")

Mr Christopher Kane & Carrie-Anne Kane, residing together at 5 Craig Road, Ferryden, Montrose, DD10 9RH ("the Landlords")

**Tribunal Members:**

Paul Doyle (Legal Member)  
David 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 has complied with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. On 3 February 2023 the tenant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the repairing standard.
2. The tenant says that the landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlords have 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 proper working order, in terms of Section 13(1)(c) of the 2006 Act;

3. By interlocutor dated 20 February 2023 the application was referred to the tribunal. By letter dated 13 March 2023 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. Both the tenant and the landlord made written representations.

5. An inspection of the property took place at 10.00am on 21 April 2023. During the inspection the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto. A hearing took place at 2pm on 21 April. The tenant was present and represented by Ms R Falconer, solicitor, from Dundee Law Centre. The Landlords were present but not represented.

6. With the parties' consent, the evidential hearing was converted to a Case Management Discussion.

### **The Applicants Position**

7. The applicant said some of the works detailed in her application have been satisfactorily completed, but the tenant was still concerned about

- (i) the safety of electrical sockets,
- (ii) the condition of the bath and the wet wall panelling around the bath,
- (iii) the flimsy nature of a shower curtain rail,
- (iv) the condition of the bath panel,
- (v) the condition of the kitchen worksurfaces, and one drawer in the kitchen.

8. The landlords and the tenant thought that there is an up to date, satisfactory, EICR, but it was not amongst the papers then exhibited to the tribunal.

### **The Respondent's position**

9. The landlords were willing to carry out the work necessary to ensure the property meets the repairing standard but expressed concern about access for tradesmen.

### **Direction**

10. In an effort to resolve matters, the tribunal issued the following direction on 21 April 2023:

### **The Respondent is required to**

(i) 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 and 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. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR and PAT prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

(ii) Repair the raised joint on the kitchen worktops.

(ii) Repair the ill-fitting kitchen drawer.

(iii) Remove wet wall panelling in the bathroom, repair the wall behind, and then reinstate or replace the wet wall panelling.

(iv) Renew the sealant around the bath.

(v) Replace the broken bath panel.

(vi) Install a robust bathroom shower curtain.

All within 6 weeks of the date of this direction.

### **The Tenant is directed to**

Allow the landlords and their tradesmen access to the property so that any work required by this direction can be completed without delay.

11. In response to the direction, the landlords produced an Electrical Installation Condition Report and a Portable Appliance Test Report both dated 28/04/2023. Tribunal members find that both reports are satisfactory because the EICR certifies that there are no Category C1 or C2 items of disrepair outstanding and the PAT report certifies that all appliances tested were satisfactory.

### **Reinspection**

12. Parties were advised that the tribunal would re-inspect the property on 18 July 2023. On 13 July 2023 the Landlords made written submissions. On 11 July 2023 the applicant's solicitor made written representations.

13. On 18 July 2023 the members of the tribunal re-inspected the property. The surveyor member prepared a reinspection report which was circulated to the parties. A copy of the surveyor members reinspection report is attached hereto.

14. The surveyor member found that all of the works required by the direction dated 21 April 2023 had been satisfactorily completed and that no works were outstanding.

## **The Hearing**

15. A hearing took place to consider the application for an RSEO by telephone conference on 27 October 2023. The tenant was present and represented by Ms R Falconer, solicitor, from Dundee Law Centre. The Landlords were present but not represented.

## **Summary of the issues**

16. The issues to be determined are

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

## **Findings of fact**

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

(a) The landlord is the heritable proprietor of 17 Ballantrae Terrace, Douglas, Dundee, DD4 8PP ("the property"). The landlord let the property to the tenant on 05/10/2018.

(b) The property is a two bedroomed end terraced dwellinghouse on two storeys. The property was built in 1954 for the local authority. A garden to the front leads to the front door of the property, which opens onto a central hallway providing access to the kitchen and living-room on entry level. A flight of stairs leads to an upper landing providing access to two bedrooms and a bathroom. The property has gas central heating and double glazing.

(c) On 21 April 2023 tribunal members inspected the property. The tenant told tribunal members that some repairs had been carried out. There is no longer a problem with the space heating nor with the provision of hot water.

(d) The central heating boiler is in good working order.

(e) The bathroom has a three piece sanitary suite. The toilet is in good working order.

(f) On 21 April 2023 there was an uneven, raised, joint in the kitchen worktop, and a kitchen drawer did not fit properly.

(g) On 21 April 2023 there were defects with the wet wall panelling in the bathroom, and condensation was noted above the bath. The bath panel was broken and loose, and the shower curtain fitting was flimsy.

(h) Between 21 April 2023 and 11 July 2023, the landlords produced satisfactory EICR and PAT certificates dated 28/04/2023.

(i) After the inspection, the landlords repaired the ill-fitting kitchen drawer

(j) Between 21 April 2023 and 11 July 2023, the landlords removed the wet wall panelling, checked the wall behind the panelling, and replaced the wet wall panelling. The landlords replaced the seal around the bath and installed a new bath panel. The landlords also installed a more robust shower curtain.

(k) On 18 July 2023 the surveyor member of the tribunal re-inspected the property and found that all of the works called for by the direction dated 21 April 2023 had been carried out.

(l) The property meets the repairing standard. There is no need for a repairing standard enforcement order.

### **Reasons for the decision**

18. (a) When the applicant submitted her application, she said that there was only one part of the repairing standard which the property did not meet. In Form A, received on 03 February 2023, the applicant focused solely on s.13(1)(c) of the Housing Scotland Act which says requires 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 proper working order, in terms of Section 13(1)(c) of the 2006 Act;

(b) The applicant's specific complaint related to the Central heating boiler, the electrical supply, the bathroom fittings, and the kitchen fittings. In addition, the applicant complained of damp in the bathroom.

(c) When tribunal members inspected the property on 21 April 2023 the tenant confirmed that the central heating boiler had already been repaired, and the provision of hot water and central heating was no longer part of her application.

(d) On 21 April 2023, tribunal members could see that there was a raised joint on the kitchen work surface and that a kitchen drawer was ill fitting.

(e) On 21 April 2023, tribunal members could see that the bath fittings were tired and past their useful life. Tribunal members could see that the seal round the bath was in poor condition and the bath panel was damaged and loose.

(f) At the hearing on 21 April 2023, the landlords expressed a willingness to carry out repairs. There was a dispute between the parties about access for tradesmen (which is not unusual in cases within this jurisdiction). Parties agreed that a compromise could be achieved and that the most efficient way forward was to convert the hearing to a procedural hearing and direct that works be carried out.

(g) Between 21 April 2023 and 11 July 2023, the landlords carried out the works required by the direction and exhibited satisfactory EICR and PAT certification dated 28 April 2023.

(h) After the landlords had completed the works, the tenant still had concerns. Her solicitor made the following submission on 11 July 2023.

Ahead of the re-inspection of the property on 18<sup>th</sup> July the Applicant wishes to put forward their views on the completion of the works. The Applicant disagrees that the works have been fully carried out and to an acceptable standard. Taking each of the required works, as per the Directions Notice, in turn the Applicant states the following:

- (i) CARRY OUT EICR - An EICR has been carried out however, the works carried out by the electrician have not been listed on the report. The electrician repaired 3 sockets, which has not been recorded on the EICR. Furthermore, the sockets in the kitchen have still not been sealed.
- (ii) RAISED JOINT IN KITCHEN WORKTOP - The worktop joint has been replaced; however, the front edge is already loose.
- (iii) REPAIR ILL FITTING KITCHEN DRAWER – Works completed to acceptable standard
- (iv) WET WALL REMOVAL, WALL REPAIR & REPLACEMENT OF WET WALL – The previous wet wall has been removed. No works were carried out on the wall prior to replacing the wet wall. The new wet wall has been placed sideways on the wall and there is an overhang at the bath. There are gaps in the beading around the top of the wet wall and the sealant around the wet wall, which will allow moisture into the wall behind.
- (v) RENEW SEALANT AROUND THE BATH – Sealant has been replaced but the gap between the bath and the wall was not filled prior to new sealant being applied and therefore the same issue will arise again.
- (vi) REPLACE BROKEN BATH PANEL – This has been replaced, however, the new panel has a hole cut out the bottom left corner.
- (vii) INSTALL SHOWER CURTAIN – The rail has been replaced with a secured rail and is to satisfactory level.

The Applicant is not satisfied that the works have been fully carried out and that the previous problems will not re-occur.

- (i) We invited submissions from both the tenant's solicitor and the landlords at the hearing on 27 October 2023.
- (j) The tenant remains concerned about electrical sockets in the kitchen and insists that they should be "*sealed*", but her own solicitor confirms that "*The electrician repaired 3 sockets*". We have sight of satisfactory EICR and PAT certification dated 28 April 2023.

(k) The only realistic conclusion that can be drawn from the evidence presented is that there is no defect in the electrical system nor in electrical appliances provided by the landlord.

(l) The tenant is still concerned about a raised joint in the kitchen worktop, and says the repair already carried out has not been effective. The surveyor members observations are that the repair is satisfactory. S. 13(1)(c) of the 2006 Act requires installations to be in a reasonable (not perfect) state of repair.

(m) The tenant only raised 13(1)(c) of the 2006 Act. A kitchen work surface is not an installation for the supply of water, gas, or electricity nor for sanitation, space heating and heating water.

(n) The tenant is satisfied that the kitchen drawer has been properly repaired and that the shower curtain has been replaced.

(o) The tenant is still concerned about the quality of the remedial work carried out in the bathroom, but her concerns are about what "*will arise again*". The tenant and her solicitor are looking to the future. We have to make a decision on the facts as they are today.

(p) The facts that we find today are that the landlord has replaced the wet wall and resealed the bath. The landlord has replaced the bath panel.

(q) We reiterate that the tenant's application was restricted to a complaint that the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.

(r) The tenant agrees that repairs to the central heating boiler were carried out before the inspection on 21 April 2023 and withdrew the complaint that there were problems with space heating and heating water. The EICR and PAT certification satisfies the tribunal that there are no defects in the installations for the supply of electricity.

(s) Tribunal members observations tell them that the repairs to the wet wall, sealant, and bath panel in the bathroom have all been carried out satisfactorily. There is not a lingering damp problem in the bathroom.

(t) The tenant's residual concerns are about cosmetic defects and fears for the future, neither of which engage the repairing standard.

(u) A combination of agreed facts, persuasive evidence, and Tribunal members observations tell the tribunal that the property meets the repairing standard. We therefore dismiss the application.

## **Decision**

19. The tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

20. The tribunal dismiss the application.

21. The decision of the tribunal was unanimous.

## **Right of Appeal**

**22. 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**

23. 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                      P Doyle  
Legal Member

27 October 2023



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Reinspection report and schedule of photographs



**Property:** 17 BALLANTRAE TERRACE, DUNDEE DD4 8PP

**Ref No:** FTS/HPC/RP/23/0360

**Tribunal members:** Mr P Doyle & Mr D Godfrey

**Purpose of inspection**

The purpose of the inspection is to confirm that the works specified in the Direction have been completed and prepare an updated photographic record of the condition of the property.

**Access**

The above Tribunal Members attended the property at 11:30 on 18<sup>th</sup> July 2023.

Access to the property was provided by the Tenant Ms Lynne Finlay.

The Landlord Mr Christopher Kane was also present.

**Direction:**

The Respondent is required to

- (i) 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 and 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. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR and PAT prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.
- (ii) Repair the raised joint on the kitchen worktops.
- (iii) Repair the ill-fitting kitchen drawer.
- (iii) Remove wet wall panelling in the bathroom, repair the wall behind, and then reinstate or replace the wet wall panelling.
- (iv) Renew the sealant around the bath.
- (v) Replace the broken bath panel.
- (vi) Install a robust bathroom shower curtain.

All within 6 weeks of the date of this direction.

**Works specified in Direction carried out prior to reinspection:**

1. An Electrical Installation Condition Report prepared by IT Group Electrical Services dated 28/04/2023 was provided which confirms that the electrical wiring system is satisfactory and that there are no Category C1 or C2 items of disrepair outstanding.
2. A Portable Appliance Test Report prepared by IT Group Electrical Services dated 28/04/2023 was also provided which showed that all appliances tested passed.
3. The trim between two sections of worktop in the Kitchen has been replaced and although still uneven and slightly loose is no longer dangerous.
4. The ill-fitting drawer has been repaired and the Tenant confirmed during the reinspection that this has been completed to her satisfaction.
5. The wet wall panelling in the Bathroom has been replaced.
6. The mastic seal between the bath and the panelling has been replaced and appears watertight.
7. The broken bath panel has been replaced although it was noted that a small section approximately 50mm x 50mm has been removed in the bottom left hand corner.
8. The shower curtain rail has been replaced and the Tenant confirmed during the reinspection that this has been completed to her satisfaction.

**Works specified in Direction outstanding following reinspection:**

1. N/A

David Godfrey MRICS  
Ordinary (Surveyor) Member  
First-tier Tribunal for Scotland

18/07/2023