

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/RT/23/2255

Re: Property at 11 Oxgangs House, Edinburgh, EH13 9HE ("the Property")

Title Number: MID99515

The Parties:

The City of Edinburgh Council, Housing and Regulatory Services, G1 Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG ("The applicant")

Mr Mohammed Abrar, residing at 143 Glasgow Road, East Kilbride, South Lanarkshire G74 4QA ("the Landlord")

Interested Party:

Jessica Brandon, residing at 11 Oxgangs House, Edinburgh, EH13 9HE ("the Tenant")

Tribunal Members:

**Paul Doyle (Legal Member)
Greig Adams (Surveyor 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 7 July 2023 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 says that the respondent has 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 landlord has failed to ensure that:-

(a) The house is wind and watertight and in all other respects reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act;

(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 in terms of Section 13(1)(c) of the 2006 Act;

(c) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in proper working order in terms of Section 13(1)(d) of the 2006 Act;

and

(d) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. On 14 August 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.

5. Following service of the Notice of Referral neither the Applicant made further representations by email dated 01/09/2023

6. Tribunal members inspected the Property at 10am on 11 October 2023. The Tenant was present. The Landlord was neither present nor represented. During the inspection on 11 October 2023, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 12 noon on October 2022. The applicant and the Tenant were present. Minutes after the hearing started, the Landlord and the tenant's partner, Jamie Hicks, joined the conference call. The landlord answered questions from tribunal members about their observations following inspection of the property. It was not necessary to aske questions of either the

tenant or the applicant. Mr Hicks complained that he had not had a chance to speak, but tribunal members had no questions for him, and he is not the applicant and was not tendered by the applicant as a witness.

Summary of the issues

8. 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

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

(a) The landlord is the heritable proprietor of 11 Oxbgangs House, Edinburgh, EH13 9HE ("the property"). The landlord let the property to the tenant on 09/08/2022.

(b) The property is a three bedroomed flatted dwellinghouse on two storeys forming part of a larger concrete and render block of flats. A common close and stair leads to the front door of the property, which opens onto a central hallway providing access to the kitchen and livingroom on entry level. A flight of stairs lead to an upper landing providing access to three bedrooms and a bathroom. The property has gas central heating and double glazing.

(c) The front door of the property has a multipoint door lock. There is also a locking mechanism around the latch. The door handle is loose and dropping. The timber doorstep is split. The doorstep has been retrospectively screwed into place, and the screws are open and accessible. The front door needs a new latch and locking mechanism. The front doorstep is defective and needs to be replaced. The door handle is defective and needs to be repaired/replaced.

(d) The gas central heating boiler is located in a cupboard off the living room. It was inspected by SGN on 21/01/2023 and certified as unsafe to use. No repairs have been carried out to the gas central heating boiler since 25/01/2023. The landlord does not have an up to date gas safety certificate.

(e) In the rear bedroom, on the upper floor of the property, an internal ensuite shower and WC has been created from enclosed storage space. The Landlord instructed that alteration some years ago without obtaining either a building warrant or completion certificate from the local authority. It is an unauthorised alteration.

(f) The ensuite shower room/wc is designed as a wet room, but it lacks suitable tanking and so is not waterproof. The landlord has asked the tenant

not to use the ensuite shower room/wc because whenever it is used water will leak through the walls and floor.

(g) Before the inspection the landlord carried out repairs to the kitchen window and the tenant replaced interior bedroom doors.

(h) Because of the defects in the front door of the property, the property is not suitably secure. The front door is a fixture which is not in proper working order. The property fails to meet the requirements of section 13(1)(d) of the 2006 Act.

(i) The ensuite shower room/wc is an unauthorised alteration which leaks water. It is designed as a wet room, but not built as a wet room because it lacks adequate tanking and effective drainage. The ensuite bathroom is an installation for supply of water and sanitation which is not in proper working order. The property fails to meet the requirements of section 13(1)(c) of the 2006 Act.

(j) The gas central heating boiler is defective. The landlord does not have an up to date gas safety certificate. The property fails to meet the requirements of section 13(1)(c) of the 2006 Act.

(j) The property has neither smoke alarms, heat detectors nor carbon monoxide detectors and so fails to meet the tolerable standard.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 11 October 2023. It was a crisp, autumn, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) At the front door of the property, tribunal members could see that the doorstep was fractured and split. It was obvious that a repair had been carried out, but the repair left screws fixing the doorstep exposed on the exterior of the door frame. The doorstep is defective.

(c) Tribunal members examined the locking mechanism on the door, the door handle, and the door latch. The door has a three point locking mechanism. The locking mechanism is broken so that parts of the lock do not engage. The door latch is defective. The door handle hangs loosely and is ineffective.

(d) The only conclusion tribunal members could reach is that the door stop needs to be replaced, and the door locking mechanism, latch, and door handle must be replaced.

(e) Tribunal members inspected the gas central heating boiler in a cupboard off the living room. The boiler was not working. The tenant handed tribunal members a safety warning notice from SGN dated 21/01/2023. That notice postdates the most recent gas safety certificate (dated 30/08/2022). In his oral evidence, the Landlord confirmed that he does not have an up to date gas

safety certificate, and, although he vacillated, he told us that the gas central heating boiler needs to be replaced and has not had a repair completed since the safety warning notice was issued.

(f) A combination of tribunal members observations, the available documentary evidence, and the landlord's own words, tell the tribunal that the gas central heating boiler is defective and that there is no current gas safety certificate.

(g) The tenant confirmed that repairs have been carried out to the kitchen window surround and that the tenant has replaced internal doors so that there is no longer a hole in a bedroom door nor is there a loose surround at the kitchen window.

(h) In a bedroom to the rear of the property there is a cupboard space which has been fitted with a WC and shower. The room has been designed to operate as a wet room, but there is a lack of adequate tanking and appropriate associated detailing to the floor or to the walls. There is a drainage point in the centre of a vinyl covered floor. If the room is used water will leak through the floor and walls.

(i) The tenant told us that she has not used the ensuite shower room because the landlord told her not to when she took entry to the property. The landlord told us that he instructed the creation of the en-suite room some years ago, and has not obtained either building warrant of completion certificate for the works.

(j) Relying on the expertise of tribunal members, we conclude that the ensuite shower room/wc is an unauthorised alteration which will leak water when it is used. Any retrospective application for building warrant and completion certificate (or similar documentation that can be applied for through the local authority) is not likely to be successful because the ensuite shower room/wc does not meet current building standard regulations.

(k) 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;

(l) The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 incorporated smoke and heat alarms into the tolerable standard in recognition of the danger fire poses to the occupants of a house. The revised tolerable standard includes criteria for '*satisfactory equipment for detecting fire and giving warning in the event of fire or suspected fire*'. There is now a requirement for

- one smoke alarm installed in the room most frequently used for general daytime living purposes (normally the living room/lounge);
- one smoke alarm in every circulation space, such as hallways and landings;
- one heat alarm installed in every kitchen;
- all smoke and heat alarms to be ceiling mounted; and
- all smoke and heat alarms to be interlinked.

(m) The Landlord has not complied with Scottish Government regulations and guidance on the fire safety of the Property, so the Property fails to meet the tolerable standard. The Landlord should take immediate steps to install interlinked smoke and heat detectors within the Property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(n) Tribunal members observations tell the tribunal that the property fails to meet the repairing standard and also fails to meet the tolerable standard. We therefore make a Repairing Standard Enforcement Order requiring the landlord to

(a) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating system and boiler in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

(b) Ensure that interlinked smoke and heat detectors, and carbon monoxide detectors are installed within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Repair or replace door stop, door handle & latch and multipoint locking mechanism on the front door to the property

(d) To obtain either (i) a Building Warrant/and or Completion Certificate issued by the local authority, or (ii) obtain a report from the local authority's Property Inspection service, or (iii) obtain a Certificate of Completion for the en-suite shower room/wc. If the local authority refuse to (iv) grant Building Warrant and/or Completion Certificate, or (v) detail remedial works required within the Property Inspection service report or (vi) refuse to grant a Certificate of Completion, either a) remove the ensuite shower/wc and reinstate the pre-existing storage space or b) carry out all works recommended by the local authority advised in obtaining items (i)-(iii) and also progress all works to comply with the Building (Scotland) Regulations 2004.

All within 28 days.

Decision

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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.

P Doyle

Signed

Legal Member

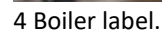
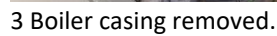
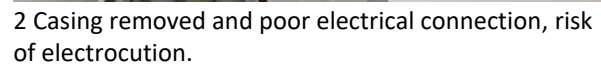
12 October 2023



**11 Oxfangs House, Edinburgh, EH13
9HE
“the Property”/ “the House”)**

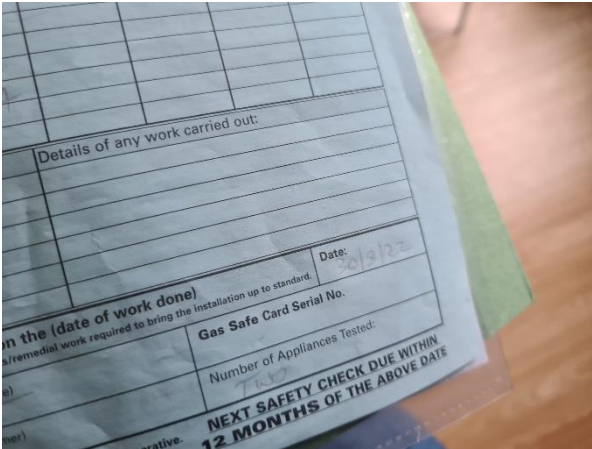
Chamber Reference: FTS/HPC/RT/23/2255

SCHEDULE OF PHOTOGRAPHS



5 Safety Warning Notice dated 21 January 2023.

6 Gas Safety Certificate dated 30 August 2022.



7 Gas Safety Certificate – date.



8 2-hook multipoint locking system with defective central latch to main entrance door.



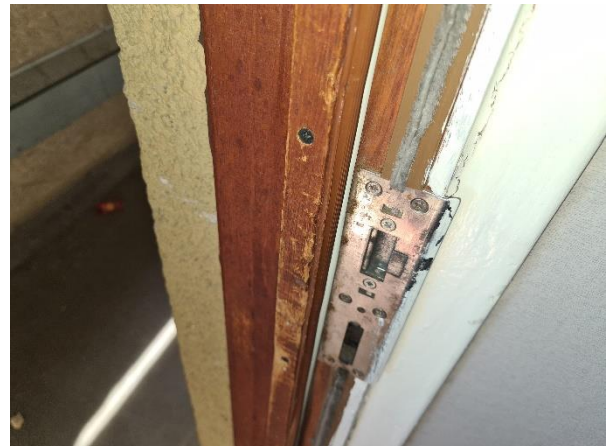
9 2-hook multipoint locking system to main entrance door.



10 Defective central latch to main entrance door.



11 Timber external door stop to main entrance door split.



12 Retrofit screws to doorstop, capable of removal.



13 Primary and secondary seals to entrance door.



14 Loose lever handle to main entrance door.



15 Kitchen window sill – fair order.



16 Kitchen window sill – fair order.



17 Kitchen trickle vent boxing with retrofit capping cover plate.



18 Kitchen trickle vent boxing with retrofit capping cover plate.



19 "En-Suite" Bathroom.



20 Shower within "En-Suite".



21 Vinyl sheet floor covering.



22 Poor perimeter detailing to floor and wall junctions of wet room area.



23 Poor perimeter detailing to floor and wall junctions of wet room area.



24 Poor perimeter detailing to floor and wall junctions of wet room area.



25 Oxgangs House elevation.