

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/23/3949

Title no: ANG39428

49 Meadowside, Dundee DD1 1EQ ("The Property")

The Parties:-

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

Miss Moonstarlyn Enweremadu, 49 Meadowside, Dundee DD1 1EQ ("the Tenant")

Mr Sean Lewis, SGL Investment Limited, Registered Office, Top Floor, India Buildings, 86 Bell Street, Dundee DD1 1HN ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Donald Wooley (Ordinary Member)

Decision

The property does not meet the Repairing Standard. The landlord has not complied with the duty imposed by section 14 (1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary and is made.

Background

1. By way of application the third party applicant seeks for the Tribunal to make a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act in respect of the property.
2. In the application the third party applicant states that the Landlord has failed to comply with his duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the repairing standard put at issue, as defined by section 13 of the Act, are those contained within section 13(1)(a), (b), (c) and (h):

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - Whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in property working order.
 - Whether 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.
 - Whether the house meets the tolerable standard.
3. Notices of referral were issued to parties on 16 January 2024.
4. Based upon the terms of the application and accompanying documents, the Tribunal issued a Direction dated 17 January 2024 which required the landlord to produce:-
- a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
 - a copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.

The said documentation required to be lodged with the Chamber no later than 5pm on Friday 2 February 2024. No such documentation was produced.

5. Email communications between the tenant and the landlord's letting agency, Belvoir, extending from late 2022 through to 2024 were lodged. This highlights the persistent concerns raised regarding water ingress. That email communication chain was also supported by a number of photographs of the internal condition of the property which disclosed clear evidence of water penetration and resulting internal damage.

Inspection 27 February 2024

6. The Tribunal inspected the property on 27 February 2024 at 10.00 am. The third party applicant was represented by Mr Stuart Cuthill, Enforcement Officer, Private Sector Services Unit. The landlord's

interests were represented by Ms Aimi Lewis. The tenant allowed entry to the Tribunal members and others for the purposes of the inspection.

The Hearing

7. A hearing took place at 11.45 am on 27 February 2024 at Endeavour House, Dundee. All of those present at the inspection were present at the hearing.

Summary of Issues

8. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard in respect of those items put at issue within the application, as at the date of the hearing.
9. The application by the third party applicant was accompanied by copy documentation issued to the landlord on 16 October 2023. The following issues were identified and narrated in the application:-
 - i. No EICR or gas safety certificate was available for the property.
 - ii. There was no satisfactory provision for the detection and warning of carbon monoxide. A carbon monoxide detector purchased by the tenant was found to be positioned at a low level in a front room.
 - iii. The application otherwise highlights concerns regarding the issue of long-term water penetration into the property with other consequences for the condition of the property within.

Findings in Fact

10. The Tribunal makes the following findings in fact:-
 1. The title to the subjects known as 49 Meadowside, Dundee DD1 1EQ is held by the landlord. His interest is registered in the Land Register of Scotland under title number ANG39428
 2. The private residential tenancy between the parties commenced on 8 July 2022. The monthly rent is £750 per month.
 3. The property is a ground floor self-contained converted flat in a four storey and attic late nineteenth/early twentieth century city centre building originally occupied as offices. The property is entered by a common passageway and access is shared with thirteen other flats. The outer walls are predominantly of traditional stone construction incorporating a number of architectural features on the front elevation and the main roof is pitched clad with slates.

4. The external fabric is in need of some repair. Viewed externally from ground level it would appear that recent maintenance of the fabric and most notably the rainwater goods has been neglected. There is evidence of vegetation around the front parapet and signs of moss, vegetation and significant corrosion at the cast iron rain water goods at the rear.
5. The rear projection, within which most of the flat is located, incorporates a number of significant valley gutters most notably at the junction with the main building, the projecting wall of the four storey rear "extension" and the parapet wall belonging to 51-53 Meadowside.
6. The property is located at the rear of the building and extends into a single storey brick projection under a relatively complex roof, predominantly flat, and partially pitched clad with slates. The accommodation comprises living room with open plan kitchen, bathroom on the lower level and a bedroom located on a mezzanine floor.
7. Within the living room / kitchen and cupboard there is evidence of significant damp staining affecting the walls and ceiling plaster resulting in localised residual damage to sections of the wall plaster. Significant staining has also affected the living room carpet immediately below that area where there is evidence of previous water ingress at ceiling level. Moisture readings taken throughout were inconclusive, varying from dry to levels likely to cause further deterioration to the internal fabric should they remain.
8. Natural light to the mezzanine floor is, in part, provided by a raised high level window, immediately below a section of flat roof. Internally, the lower part of the window coincides with the "valley area" adjacent to the four storey rear projection. Internally there is significant evidence of previous water ingress, staining and deterioration of the plasterboard.
9. The electrical ventilator in the bathroom is defective/broken. Surrounding the ventilator is evidence of significant damp staining on the bathroom ceiling, sections of which are at a moisture level likely to cause further damage. Other areas were relatively dry. It is almost certain that the broken electrical fan is the direct result of water penetration through the fitting, with the likely source being the valley gutter between the single storey projection and the main building.
10. The ceiling area immediately above the fitted shower in the bathroom is coated with mould. This has almost certainly been

caused by a lack of any ventilation within the bathroom creating conditions highly suitable for condensation.

11. The tenant was not in possession of an up to date satisfactory Gas Safety Certificate or Electrical Installation Condition Report (EICR).
 12. The property has interlinked smoke and heat detectors and a carbon monoxide detector.
11. Reference is made to the Tribunal's corresponding schedule of photographs produced with this decision which is referred to for its terms.

Discussions at the hearing

12. Ms Lewis represented the interests of SGL Investment Limited who is the landlord. She is the sister of Mr Sean Lewis who is the director of the landlord company. She also revealed that she is the Branch Manager of Belvoir Lettings which manages the whole of the block within which the property is comprised. There are 14 flats within the block, 4 of which are owned by the landlord company and the others are owned by a related company which has the same director. Ms Lewis candidly accepted that the tenant has been let down and that the landlord's duties have not been fully fulfilled.
13. Ms Lewis reported that both the EICR and the Gas Safety Certificate were available for the property, despite not having been produced. These documents had been asked for many months ago from the third party applicant and further by the Tribunal issuing the direction a month prior to the inspection hearing. Ms Lewis advised that the failure to provide these documents at an earlier stage was an oversight. She produced the documents she had to the Tribunal for their consideration. It was noted that the EICR is dated 1 July 2021. She accepted however that there was no evidence that the electrician who carried out the inspection (which does state that the installation is satisfactory) is registered with one of the required bodies. She further accepted that the terms of the Gas Safety Certificate is not satisfactory as two defects are noted which she was unable to provide any further explanation about.
14. Ms Lewis otherwise fully accepted the findings of the Tribunal at the earlier inspection, namely that there was evidence of ongoing water penetration into the property. She provided, for the first time, photographs and an invoice regarding work carried out to repair a soil pipe on the roof area immediately above the property and clear debris from the valley gutter / flat roof around this area. A relevant invoice for the work which was carried out in December 2023 was provided. Ms Lewis acknowledged that the work carried out would not be capable

of remedying all of the water ingress into the let property given that other areas are affected which could not be explained by the location of the soil pipe which was repaired. She further stated that around October 2023 other work had been carried out around that area of the roof to the brick built structure to clear vegetation from the gutterings. No evidence of this was however provided. It was further noted that the scope of those works, again, could not resolve some of the water ingress reported by the tenant.

15. The tenant stated that she has suffered, and continues to suffer, the consequences of continued water ingress even after all works reported to have been instructed by the landlord have been carried out.
16. In order to afford the landlord an opportunity to provide further necessary documents to evidence the existence of both a satisfactory EICR and Gas Safety Certificate, it was made clear that the Tribunal would not reach any final decision for a period of 7 further days. This was to enable Ms Lewis to provide evidence of the electrician's accreditation as at the date of the EICR, and to provide further information on the defects noted on the Gas Safety Certificate, together with confirmation that these have been resolved. Otherwise, it was agreed at the hearing that given the continuation of water ingress into the property that this would require to be the subject of a Repairing Standard Enforcement Order.

Post-hearing submissions and documentation from Respondent

17. Ms Lewis submitted information from the Select Public Register showing that the current firm of Henderson Electrical is a current accredited member, together with an email from Select Scotland showing that the firm was previously known as Arelkie Electrical; the name change taking place in 2022. She further provided clarification from the gas engineer in respect of the two defects noted on the Gas Safety Certificate. The first relates to the non-existence of a flame safety device on the hob. The second defect relating to the flue is that it passes through the kitchen into the bedroom. Whilst there are two inspection hatches a further is required in the kitchen area.

Reasons for Decision

18. The Tribunal determined the application having regard to the bundle of papers including all additional late documents provided, their findings at their inspection on 27 February 2024, and the representations made by all parties at the hearing.
19. The Tribunal is only able to consider the complaints which formed part of the intimated application and has an obligation to consider the complaints as at the date of the hearing.

20. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient evidence available to reach a fair determination of the application.
21. The Tribunal has reached the decision that the landlord has not complied with his 'repairing standard' duties based upon the circumstances noted at the time of their inspection.
22. Despite having been given ample opportunity to provide an EICR and Gas Safety Certificate for the property in satisfactory terms, the landlord has failed to do so prior to the inspection and hearing. The landlord was asked for these documents by Dundee City Council in October of 2023 and failed to provide them. The Tribunal, by Direction, asked for them in mid-January 2024 and they were not produced. The Certificates provided, at the time of the hearing, were not in satisfactory terms for the reasons discussed then and which are referred to earlier in this decision. The Tribunal generously afforded the landlord's representative the opportunity of an additional 7 days to provide further evidence.
23. Reference is made to the further submissions and documents provided by Ms Lewis after the hearing, as earlier set out. The Tribunal was satisfied that the EICR, which confirms that the electrical installation is satisfactory, was completed by an appropriately accredited electrician.
24. It is accepted on behalf of the landlord that the two defects referred to within the Gas Safety Certificate, which has been produced, required to be the subject of rectification and it is understood that steps are being taken to instruct the necessary work. There is no evidence that these have been resolved and given the history the requirement to undertake the work must be supported by a corresponding legal requirement within the RSEO.
25. It is appreciated on the basis of the explanations and documentation provided by the landlord (though late in the process) that relevant works have been instructed to seek to remedy water ingress into the property. It further appears that the work already undertaken is likely to have had a degree of success as the damp readings in certain areas were lower than perhaps would have been expected if active water ingress was ongoing in all areas. However, there is clear evidence that the tenant continues to experience active water ingress into the property in wet weather and this has been the case since any works to the roof instructed by the landlord have been undertaken.
26. It was accepted on behalf of the landlord by Ms Lewis that water ingress continues into the property. It is not a matter for the Tribunal to identify exactly how the water is coming into the property. It is clear that the property is not wind and watertight and there is similarly clear


evidence that the exterior of the property is not in a reasonable state of repair.

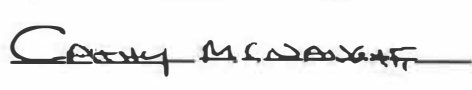
27. The Tribunal has issued a Repairing Standard Enforcement Order (RSEO) simultaneously which requires the landlord to carry out necessary works. This will be registered in the Land Register. Failure of the landlord to comply with that RSEO is a criminal offence.

Right of Appeal

28. 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.
29. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 5 March 2024 before this witness:-





Name