

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/RP/23/2910

**100 Hawick Drive, Dundee DD4 0TD
("The Property")**

The Parties:-

**Ms Amy Knowles, 100 Hawick Drive, Dundee DD4 0TD
("the Tenant")**

**Mr Ben Holohan, Lochend Farm, Coylton, Ayr, South Ayrshire KA6 6JS
("the Landlord")**

Tribunal Members

**G Harding (Legal Member)
R Buchan (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 Landlords have 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 Tenant and the Landlord 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. By application acknowledged by the Tribunal administration on 25 August 2023 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 stated that Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-**
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.**

- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

Specifically the Tenant complained that:-

The kitchen had multiple defects including cupboard doors warping and peeling;

Kitchen worktop crumbling;

Kitchen cupboards without shelves;

Kitchen cupboard missing part of the carcass exposing vent to the outside;

3. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord's representatives on 11 December 2023 and a further set of case papers was sent to the Landlord on 18 January 2024.
4. The Tribunal inspected the Property on the morning of 7 February 2024. The tenant and her mother were present during the inspection. The Landlord did not attend. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
5. Following the inspection of the Property the Tribunal held a hearing at Endeavour House, Dundee and heard from both the Tenant and the Landlord.

The Hearing

6. At the commencement of the hearing the ordinary Member of the Tribunal summarised the Tribunal's findings at the inspection. These were that the kitchen cupboard doors on either side of the oven were damaged with the decor being cracked. There was some softness of the floor at the back door and a nail or screw protruding through the vinyl flooring. The kitchen worktop over the washing machine was crumbling. There was a hole in the wall below the gas boiler that had been patched with some loose insulation but daylight was visible through the cupboard which did not have any back. There was no door stop at the kitchen sink cupboard which had a bare screw protruding. The drawers in the drawer unit could not be closed properly. There was a lack of shelving in some of the cupboards and the decorative corning above the kitchen units was loose.
7. The Tenant confirmed that she had previously sent photographs of the problems with the kitchen to the Landlord's letting agents, Slater Hogg & Howison but had been told that the Landlord was not prepared to replace the kitchen.

8. The Tribunal indicated to the Landlord that given its findings at the inspection it was apparent that the property did not meet the repairing standard given the hole in the wall it was not wind and watertight and given the condition of the kitchen units they were not in a reasonable state of repair and in proper working order.
9. The Landlord said that he did not have the money to pay for a new kitchen and in any event had relied on the advice he had received from his letting agents who had said that their contractor thought that any defects were cosmetic. It was pointed out by the Tribunal that repair of the issues rather than replacement was an option.
10. The Tenant said that the contractor Mr Derek Walker had not said that any defects were cosmetic but had told her that the kitchen needed to be replaced.
11. The Landlord confirmed that the property was his only rental property and that it was now his intention to sell. He confirmed that the current rent was £715.00 per month and that the property was subject to a standard security costing £560.00 per month. He said he also had to pay letting agents' fees.

Findings in fact

12. The parties entered into a Private Residential tenancy that commenced on 9 August 2019.
13. The current rent is £715.00 per calendar month.
14. The property is subject to a standard security.
15. It is the Landlord's intention to sell the property.
16. The kitchen units are in a poor state of repair with some door fronts cracked and broken.
17. The drawer unit in the kitchen does not open and close properly.
18. There are shelves missing from the kitchen cupboards.
19. The door stop in the cupboard beneath the kitchen sink is missing.
20. The cornicing above the kitchen units is loose.
21. The worktop in the kitchen is crumbling.
22. There is no back to the cupboard below the gas boiler and there is a hole in the wall at the back of the cupboard.

23. There is movement in the floor at the back door and a screw or nail is protruding through the vinyl flooring.

Reasons for the decision

24. The kitchen units in their current condition are not in a reasonable state of repair or in proper working order. The Tenant has used tape to try to stop the defects from becoming worse but the doors beside the oven are damaged. The drawers do not open and close properly and various shelves are missing from the cupboards. The cupboard beneath the sink has a protruding screw that is likely to be dangerous and cause injury and the cornicing above the kitchen units is loose and not attached to the units. There is an open vent in the wall below the gas boiler through which daylight can be seen. This renders the property not wind and watertight. Further investigation of the floor is required to determine whether or not repair is required and to remove the protruding nail or screw.
25. The Landlord has suggested that he does not have funds to carry out the repairs to the property that are clearly necessary and that he intends to sell the property. However, that is not a valid reason for avoiding his obligations under Section 14(b) of the Act. The Landlord must ensure that the property meets the repairing standard.

Decision

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

Right of Appeal

29. A landlord or tenant 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

30. 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.

G Harding