



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/23/3742

Re: Property at Flat 22 Taypark, 30 Dundee Road, Broughty Ferry, Dundee DD5 1LX (registered under title number ANG82535) (“Property”)

The Parties:

Carolann Curran Flat 22 Taypark, 30 Dundee Road, Broughty Ferry, Dundee DD5 1LX (“Tenant”)

Douglas McLennan and Linda McLennan, 44 Hamilton Street, Broughty Ferry, Dundee (“Landlord”)

Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“Landlord’s Representative”)

Tribunal Members :

J Devine (Legal Member); D Godfrey (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(a), (b) and (c) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 24 October 2023, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that she believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a), (b), (c), (d), (e) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:

- The Property is wind and watertight and in all other respects reasonably fit for human habitation.
 - The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - 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
 - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
 - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
- Legionella assessment not carried out
 - Boiler pressure constantly drops
 - Gas leak in boiler
 - Living room radiators do not heat up and thermostat valve heads are missing
 - All radiators need replaced
 - Living room gas fire needs replaced
 - Living room window handle is loose and window difficult to open
 - All window handles are stiff and do not close properly
 - Kitchen cupboards and kick plates need repaired
 - Hole in kitchen wall
 - Gas hob does not work
 - Loose and sagging floorboards in kitchen
 - Loose handle on kitchen window which cannot be fully closed
 - Hot water from bath tap runs cold after a short time
 - Bathroom toilet flushing handle has a sharp edge
 - Water in shower drains away slowly
 - Bathroom floor covering needs repaired
 - Bathroom sink needs to be repaired
 - Bedroom carpet needs to be replaced
 - Bedroom window handles do not close fully
 - Ensuite bathroom floor covering needs repaired
 - Balcony flooring needs repaired
 - Balcony railing needs repaired
 - Electric garage door does not work
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 21 February 2024.
5. On 25 January 2024 the Tenant advised the Tribunal that some works had been carried out and the following works remained outstanding :

- Living room gas fire needs replaced
- Window handles are stiff
- Kitchen kick plates need repaired
- Hole in kitchen wall
- Loose and sagging floorboards in kitchen
- Housing around pipes in bathroom to be replaced
- Ensuite bathroom floor covering needs repaired
- Electric garage door does not work

The Inspection

6. The Tribunal inspected the Property on the morning of 21 February 2024. The weather conditions at the time of the inspection were overcast and dry. The Tenant was present at the Property during the inspection along with Katie McKenzie. Douglas McLennan was in attendance along with Laura Wheelan from the Landlord's Representative. The Property is a 2nd floor flat with 2 bedrooms. At the inspection the Tenant told the Tribunal that the kitchen kick plates had been repaired as had the flooring in the ensuite bathroom. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

7. The Hearing took place on 21 February 2024 at Endeavour House, Dundee. The Tenant was in attendance along with Katie McKenzie. Douglas McLennan was in attendance along with Laura Wheelan from the Landlord's Representative. The Tenant told the Tribunal that she had lived in the Property since 15 October 2019.
7. The Tribunal considered the issues raised in the Application on a room by room basis.
8. As regards the hole in the kitchen wall the Tenant said that it existed at the date of entry. She said there was no appliance in place next to the hole. She said she had a condenser dryer and did not require a hole in order to vent the dryer. She said that the problem with the hole was that a draft came through the hole. Mr McLellan said that the kitchen was installed by Howden who designed the kitchen and had made the hole in the wall to facilitate an appliance. He said the issue was brought to his attention in April 2023 when a cover was put over the hole. The Tribunal noted that the cover was slatted and therefore was not wind tight. Mr McLennan said there was a second cover which seemed to be missing. The Tribunal noted a second cover on the floor beside the hole which was also slatted.

9. As regards the floor in the kitchen the Tenant said it had been in that condition since the date of entry. She said that when she viewed the Property the linoleum was not fitted. She said she could see the floor was uneven. Since the linoleum had been fitted the floor remained uneven. She said the floor covering was also torn. She said she could trip over the tear. Mr McLennan said that the kitchen had been refurbished before the Tenant took entry. He said that new plyboards had been put down. He said the flooring may have moved over the period of the tenancy and he accepted it was now uneven but in his view not dangerous.
10. As regards the windows the Tenant said that all of the window handles were stiff. She said the window in the living room does not open at all. She said the Landlord's Representative had told her a new mechanism was required. She said that after a period of bad weather Jack Ramsay of the Landlord's previous Representative attended the Property and managed to close the living room window using a hammer. She said that was about 1 year ago. As regards windows in the other rooms, she said that if they had been shut for a while they became more difficult to open. She said the windows had been painted externally the previous week. Mr McLennan said he was surprised that the living room window was locked as the Factor for the Property had sent him pictures which suggested boxes had been thrown out of that window. The Tenant said that the boxes had been thrown out of the bedroom window.
11. As regards the gas fire in the living room the Tenant said that when she viewed the Property she was told the gas fire would be functioning as new pipes were being installed but when she took entry the fire was not working. She said that at entry the fire was a black, coal effect fire. She said that she told the Landlord's Representative that she would clear out the fire and paint silver the grate which had been black. She said she replaced the black coals with grey pebbles. She said that the Landlord's Representative told her that the Landlord would not be happy to pay for a new fire. She said she was told that the gas pipe had been capped. She said that Jack Ramsay of the Landlord's Representative told her the gas fire was "defunct". He gave her options for a replacement including an electric option which would have a cable running along the front of the fireplace. The other option was a gas fire but Jack Ramsay told her the Landlord would not pay for that. She said she asked Jack Ramsay if the flue was still working and he told her to stuff old pillows into the flue which she did. Mr McLennan told the Tribunal that the gas fire had been disconnected. He thought it was not required for the living room. He said the Property was marketed on the basis that was the case although the marketing materials would not have specifically referred to the gas fire not functioning. He said that to reconnect the gas would be easy but the problem was that the Tenant had painted the fire. He said he had no knowledge of Jack Ramsay saying the fire would be replaced. He also pointed out that the Tenant had previously expressed the view that replacement of the fire was not necessary.
12. As regards the housing around the pipes in the bathroom the Tenant said that the housing was in place when she took entry to the Property. She said it had been removed in June 2023 to investigate a leak. She said she had been contacted by a contractor to arrange to replace the housing and she had arranged for him to attend the Property on 28 February at 4pm. Mr McLellan said

that the bath had been replaced by the Tenant without his consent. He said that since then there had been issues with the pipes. He said he had replaced the ensuite bathroom in full in the middle of 2023. He said the housing in the main bathroom had been left off to allow the monitoring of leaks. Laura Wheelan said she had attended an inspection of the Property in November 2023 and noted the need to replace the housing but other more pressing matters were dealt with first. She noted the contractor had now arranged a date to carry out the necessary works.

13. As regards the garage door the Tenant told the Tribunal that it was not working at the date of entry. She said that Jack Ramsay told her the “arm” that facilitated electronic opening could be replaced but it would cost £800 and the Landlord would not pay for that. She said that the door can be operated manually but has been known to fall. She said that when she viewed the Property the door was not capable of opening electronically and she was told it would be fixed. Mr McLennan said that he had no record of him, as landlord, refusing to pay for any repairs. He said that the Tenant has asked for a discount of £800 on her rent because of the issue with the garage door. He said that the Property was not advertised as having an electric garage door. He said that 50% of the garages at the development did not have an electric garage door. The Tenant said that all of the garages at the development have an electric door.

The Evidence

14. The evidence before the Tribunal consisted of:
 - 14.1 The Application completed by the Tenant
 - 14.2 Land Register report relating to the Property
 - 14.3 Emails received from the Parties since the Application was lodged with the Tribunal.
 - 14.4 The Tribunal's inspection of the Property
 - 14.5 The oral representations of the Tenant and the Landlord.

Summary of the Issues

15. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on him by Section 14(1)(b).

Findings in Fact

16. Tribunal made the following findings in fact:
 - 16.1 The Tenant has lived in the Property since 15 October 2019.

- 16.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 16.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
- 16.3.1 There is a vent to the southern exterior kitchen wall.
 - 16.3.2 The flooring in the kitchen is uneven and the linoleum is damaged.
 - 16.3.3 The windows in the kitchen and bedroom 1 are functioning.
 - 16.3.4 The living room east window does not open.
 - 16.3.5 The gas fire in the living room does not work.
 - 16.3.6 The pipework in the bathroom is exposed.
 - 16.3.7 The garage door does not open electronically but can be opened and closed manually.

Reasons for Decision

17. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (a), (b) and (c) of the Act. The Tribunal determined that the Property does meet the tolerable standard as required by Section 13(1)(h) of the Act.
18. The Property is not wind and watertight as there is a vent in the kitchen wall which allows a draft in the kitchen. It was also noted that the cavity wall behind the vent cover is exposed and has not been lined.
19. The structure of the Property is not in a reasonable state of repair as the flooring in the kitchen is uneven, the window in the living room does not open and the pipework in the bathroom is exposed.
20. The installations in the house for the supply of space heating are not in a reasonable state of repair as the gas fire in the living room is not functioning. The Landlord told the Tribunal that he did not think the gas fire was required in the living room and that the Tenant had stated she was not insisting on the gas fire being replaced. The Act requires a property to comply with the repairing standard at the beginning of a tenancy and during the tenancy. The Tribunal took the view that if there is an installation in the Property for the supply of space heating it must comply with the repairing standard. The Tenant has painted the fire grate pale grey and replaced the coals with pale grey pebbles. She has also added a decorative feature around the fireplace. The Tribunal note that in order to make

the gas fire operational some or all of these features may require to be removed or replaced.

21. The Property does meet the tolerable standard. Although the electric opening function of the garage door is not operational, the door can be opened and closed manually. The Tenant does have satisfactory access to all external doors and outbuildings.
22. In the course of the Hearing it was apparent that the Landlord was willing to undertake certain of the repairs highlighted. The Tribunal encourages the Tenant to allow access for the necessary works to be carried out.

Decision

24. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in respect of Section 13(1)(a), (b) and (c) of the Act.
25. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
23 February 2024**