



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Reference number: FTS/HPC/RT/23/4512

Re: Property at Flat 2, 43 Erskine Street, Dundee DD4 6RJ (“the Property”)

Title No: ANG15600

The Parties:

Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA (“the Third-Party Applicants”)

Mr Garry Mortimer, 11 Victoria Street, Newport on Tay, Fife DD6 8DJ (“the Landlord”)

**Tribunal Members: George Clark, Legal Member
Greig Adams, Ordinary (Surveyor) Member**

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber, 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) of the Housing (Scotland) Act 2006 determined that the Landlords have failed to comply with that duty. The Tribunal made a Repairing Standard Enforcement Order in respect of the Property.

Background

1. By application, dated 14 December 2023, the Third-Party Applicants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) for a determination of whether the Landlords 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 the electrical socket in the hall is broken, the bathroom tap is not working, there is damp in the shower room, the floor in the

shower room is rotting, the living room radiator is leaking and the carpet is damp, the kitchen sink unit is not secured to the wall, the kitchen light fitting is not secure, the boiler is leaking, the cooker is not working, the bathroom light is not working and the Tenants have not been provided with copies of the current Electrical Installation Condition Report (“EICR”) or Gas Safety Certificate. In addition, the Third-Party Applicants stated that the Property fails to meet the Tolerable Standard. The front door main lock does not work as the door frame is burst, the bathroom floor and joists below are rotten, with one wall covered in mould, there is no extractor fan in the toilet, just ducting protruding from the ceiling, the kitchen is in disrepair, with the worktop not fixed down and doors hanging off the units, the boiler has no safety certificate, two doors are missing between the living room and the hallway and between the kitchen and the hallway, and there is an area of damp at the window in the second bedroom.

3. On 7 April 2024, the Landlord provided the Tribunal with a copy of a Gas Safety Certificate dated 28 February 2024. It was issued by a Gas Safe registered engineer and assessed the installation as Satisfactory. The Landlord advised that the entrance door had been kicked in and, when it was reported to him, his joiner fitted a 5-lever mortice lock to ensure the door could be locked. The main lock was burst and requires a new door post, but the Landlord’s view was that the Tenants should pay for this repair. They had never asked him to carry it out.
4. The Landlord stated that the extractor fan in the bathroom is working, that the mould has been treated and that his joiner is fixing the bathroom floor. The toilet has been fixed. The kitchen units and worktop were new in 2022, but the kitchen was now a mess. He had fitted a new unit and cooker earlier in 2024 and has asked his joiner to fix the worktop. There was a leak of water from the flat above in January 2024. A hole was cut to allow the ceiling to dry out. It has now dried and the hole will be repaired. A new boiler was installed in January 2024. The missing doors were removed by the Tenants without the Landlord being informed, The Landlord had been unaware of damp in the area of the window of the second bedroom but has now asked his joiner to look at it. Both radiators have been replaced.

The Inspection

5. The Tribunal inspected the Property on the morning of 15 April 2024 and were admitted by the Tenants. The Third-Party Applicants were represented by Mr Byron Young. The Landlord was not present or represented. A Schedule of Photographs, taken at the inspection, is appended to and forms part of this Statement of Decision.

The Hearing

6. A Hearing was held by way of a telephone conference call on the afternoon of 15 April 2023. Neither Party was present or represented. The Tribunal Members considered the application and the evidence obtained at the Inspection.

Findings of Fact

- The Property comprises a ground floor flat entering from the common passage of a traditional stone-built tenement. The accommodation comprises living room, two bedrooms, kitchen, shower room and toilet.
- The entrance door is not secure. There is a metal restraining strip, but it is not designed to secure a door.
- The electrical power socket in the hallway is broken.
- The cold water tap in the toilet is not working.
- The light fitting in the toilet is not working.
- There is clear evidence of timber decay across the floor of the shower room, extending on to the wall. This appears to have been caused by water escaping from the shower cabinet, the wall panels of which are not watertight.
- The extractor fan in the shower room is inadequate and appears to comprise open-ended plastic ducting.
- The Tenants advised that the shower room had been repainted in the previous few days.
- The radiator in the living room has been replaced and there is no evidence that it is leaking at present, but the carpet adjacent to it is wet.
- The sink base and worktop unit are not secured to the wall.
- The kitchen light fitting appears to be secure.
- A hole in the kitchen ceiling has not as yet been repaired. The area surrounding it was found to be dry.
- The Tenants confirmed that the boiler and the cooker have both been replaced.
- There are no missing doors in the Property.
- Infra-red images were also recorded, utilising a Thermal Camera. Such Infra-red Images contain an array of colours. The Thermal Imaging System deployed on site detects Infra-red Radiation, which in basic terms means that heat is being observed instead of light. The Thermal Imaging System then automatically allocates a colour palette to the different temperatures which are detected. Various thermal anomalies were recorded to the following areas: (i) shower room adjacent to the enclosure affecting the floor and walls adjacent to the shower enclosure, (ii) at the Rear Bedroom window reveal at lower levels and iii) within the Living Room to an area positioned adjacent to the radiator.
- As part of a review of the dampness complaint to the Property and to the thermal anomalies recorded, both qualitative and quantitative assessments were undertaken. The LED display of the moisture meter provides a traffic light colour dependant on the reading obtained with readings of most concern provided with a red coloured backscreen colour.
- Elevated readings were recorded to (i) various areas abutting the shower room enclosure and extending further to the floor affected by water escape, (ii) at the window reveal of the Rear Bedroom affecting the window reveal where various eruption of finishes was noted and (iii) to the Living Room carpet and underlying floorboards adjacent to the radiator. Obvious and significant timber decay was noted affecting the shower room floor on uplifting the additional timber overlaid panel which has compromised the safety and structural integrity of the shower room floor.
- The Tribunal has not seen a current EICR in respect for the Property.

- As an observation, the Tribunal noted that one of the smoke detectors in the Property is “bleeping” repeatedly, suggesting that the battery in the unit is at the end of its life.

Reasons for Decision

7. The Tribunal accepted that a number of items complained about in the application have now been attended to, principally, the replacement of the boiler, cooker and the living room radiator, but there are serious issues of rot and damp in the shower room, which will require extensive and disruptive investigation and treatment, and dampness in the area of the rear bedroom window. The living room carpet is very wet. There are a number of electrical issues, the cold water tap in the toilet requires to be repaired or replaced, the extraction system in the shower room is inadequate, there is a hole in the kitchen ceiling and the sink unit is not securely attached to the wall. The entrance door is not secure. The Tribunal has seen a Gas Safety Certificate but, given the issues regarding the power socket in the hall, the light fitting in the toilet and the inadequate extraction system in the shower room, the Tribunal will require to see an EICR dated after the date of completion of these repair and remedial works.

Decision

8. Having considered carefully all the evidence before it, the Tribunal made a finding that the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act and decided to make a Repairing Standard Enforcement Order.
9. The Tribunal’s Decision was unanimous.

_____ **G.Clark** _____
_____ **Legal Member**

15 April 2024
Date