

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RT/23/4690

Title no: ANGUS 6804

G/1 10 Isla Street, Dundee DD3 7HT (“The Property”)

The Parties:-

- **Dundee City Council - Private Sector Services, 5 City Square, Floor 3, Dundee DD1 3BA (“The Third Party Applicant”)**
- **Mr Surinder Sidhu, 6 Muirfield Place, Dundee DD3 8PR (Owner of the Property “the Landlord”)**
- **Mr Raju Ahmed, G/1 10 Isla Street, Dundee DD3 7HT (“the Tenant”)**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr Greig Adams - Ordinary Member (Surveyor)

Background

1. By application received which was dated 19th December 2024, the Third Party Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the Third Party Applicant stated that it was considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard. In the application the Third Party Applicant stated that the following were not being met: -
 - a) The House is wind and watertight and in all other respects reasonably fit for human habitation;

- b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - c) The installations in the Property for the supply of the water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order;
 - d) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order;
 - e) The House does not meet the tolerable standard.
3. In particular, the complaints consisted of the following issues: -
- a) The central heating system does not work. The system needs investigated and the repairs undertaken;
 - b) The kitchen window is not wind and watertight. This needs to be repaired or replaced.
 - c) There is evidence of water ingress around the kitchen window and ceiling. Repairs need to be undertaken;
 - d) The kitchen window requires maintenance and painting;
 - e) The front bedroom window is not considered to be wind and watertight. The repair needs to be undertaken;
 - f) The rear bedroom window is not considered to be wind and watertight. The repair needs to be undertaken;
 - g) The front door is not considered to be wind and watertight. The necessary repair needs to be undertaken;
 - h) The thermostatic radiator control operating heads are missing. These need to be replaced.
 - i) There is no carbon monoxide detector within the vicinity of the gas appliances. This must be located and placed near the gas appliances;
 - j) There has been no sight of the current Electrical Installation Condition Report;
 - k) There has been no sight of a current Gas Safety Certificate;
 - l) There has been no sight of a current Portable Appliance Test Certificate;
 - m) There has been no sight of a current Landlord Insurance certificate;
 - n) There has not been sight of any evidence that there has been a Legionella Risk Assessment.
4. On 15th November 2023, the Third Party Applicant wrote to the Landlord with the list of the complaints. A copy of this letter has been provided to the Property and Housing Chamber. The correspondence related to the matters within the application. The Third Party Applicant sent the letter by recorded delivery.

The Inspection

5. The Tribunal attended the House on the morning of 17th April 2024. It was a clear bright day. The Third Party Applicant and the Tenant were present.
6. The inspection was undertaken by the Ordinary Member (Surveyor Member) and the Legal Member.

7. The Property comprises a four-storey traditional tenement block of flats constructed of brick with a stone facade. The Property has a pitched slate roof. The House was furnished and there were floor coverings in place.
8. Each point on the list submitted by the Third Part Applicant was inspected in turn.
9. The electricity was on during the inspection. The radiators had been on but were cooling down.
10. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

The Hearing

11. The hearing took place on 17th April 2024 at 11.45am by teleconferencing. Mr Stuart Cuthill was present for the Third Party Applicant. The Tenant was present.
12. The Ordinary Member discussed the points raised in the application.

Dampness complaints

13. Infra-red images were 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 which 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. Such an inspection allows thermal anomalies to be investigated and also allows active condensation to be assessed in real time to show any areas falling below dewpoint.
14. As part of a review of the dampness complaint to the Property and to the thermal anomalies recorded, qualitative moisture 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.
15. Elevated readings were recorded within the Front and Rear Bedrooms to areas where airflow is impeded such as at low levels to corners and behind furniture whilst within the Front Bedroom there were further areas recorded such as to an area of vertical banding to the return walls towards the front corners. Visually, significant mould contamination was evident to the Bedrooms and Kitchen affecting both ceilings and walls whilst predominantly noted to be positioned to and adjacent to the colder external wall areas (and window reveals). The kitchen sill internally was noted to be stained and in poor decorative order.

16. The vast majority of the mould contamination affecting the Kitchen and Bedrooms was considered to be resultant from a combination of Condensation and/or elevated Relative Humidity. Mould growth can occur where the Relative Humidity of the boundary layer of air exceeds 70% over a period of time whilst condensation occurs where the surface temperature of the building fabric falls below dewpoint. At the time of the Tribunal's inspection there was not any "active" condensation, i.e., wall and ceiling surface temperatures were all above dewpoint however, environmental conditions are constantly changing and the inspection was only a "snapshot" in time. No environmental data records have been submitted to the Tribunal for consideration.
17. There was also considered to be evidence of minor and localised water ingress at perimeters of windows serving the Kitchen and Bedrooms. Externally, there was noted to be various defects in the weatherproofing of these areas with voids, splits and failure of perimeter sealant at windows noted whilst there was also noted to be various areas of cracking and deterioration of render finishes affecting the walls and window reveals.

Boiler/Central Heating System

18. The central heating system was found to be operational at the time of the Tribunal's inspection and heat output was evident to radiators.
19. The gas fired boiler was noted to be located within a store accessed directly from the common circulation areas. At the time of the Tribunal's inspection, the casing to the boiler was noted to be removed although remained within the Store. There was noted to be an electrical wire (white sheathed) serving the boiler and the penetration into the flat has not been adequately sealed to retain fire separation and compartmentalisation. In addition, the electrical wire is not fully supported or clipped. Of most concern, is that there was an inadequate basic connector block joining the cable where this has been extended. Such a method of jointing fails to fully enclose the connections, fails to provide a clamping method for the cable sheath and fails to have a suitable fully enclosed junction box mechanically fixed to prevent mechanical strain on the terminations of the conductors. The electrical issues noted provide an "unsatisfactory" installation.
20. There was noted to be missing thermostatic radiator valves at radiators.

Entrance Door

21. Utilising a thermal camera, there was noted to be unacceptable air infiltration (draughts) and obvious cold areas around the perimeter of the

entrance door. The existing draughtproofing to the entrance door was not considered to be adequate.

Detection

22. There was no obvious carbon monoxide detector present in the vicinity of any gas appliances. The battery within the living room smoke detector had been replaced by the Tenant prior to the Tribunal inspection.
23. The Tenant told the Tribunal that the ventilation in the Property was not working and he had tried to tell that to the Landlord. He said that when it is raining there is water ingress. Mr Cuthill said that he was not able to provide any evidence of whether it was water coming into the Property or if it was water ingress. He was also not able to determine if there were damp issues or condensation issues. Mr Cuthill said that he agreed with the findings of the Tribunal.
24. There has been no sight of a current Gas Safety Certificate.
25. There has been no sight of a current Portable Appliance Test Certificate.
26. There has been no sight of a current Landlord Insurance certificate. There has been no further evidence of this provided to either the Third Party Applicant or the Tribunal.
27. There has not been sight of any evidence that there has been a Legionella Risk Assessment. There has been no further evidence of this provided to either the Third Party Applicant or the Tribunal.
28. It was explained to the Tenant that the Tribunal had the option of making a RSEO should they believe that there was merit to do so.

Summary of the issues

29. The issues to be determined are: -
 - a) Whether the central heating system does not work and needs repaired.
 - b) Whether the kitchen window is not wind and watertight and needs to be repaired or replaced.
 - c) Whether there is evidence of water ingress around the kitchen window and ceiling and if repairs need to be undertaken;
 - d) Whether the kitchen window requires maintenance and painting;
 - e) Whether the front bedroom window is not considered to be wind and watertight and if repairs need to be undertaken;
 - f) Whether the rear bedroom window is not considered to be wind and watertight and if the repair needs to be undertaken;
 - g) Whether the front door is not considered to be wind and watertight and if the necessary repair needs to be undertaken;
 - h) Whether the thermostatic radiator control operating heads are missing. These need to be replaced.

- i) Whether there is no carbon monoxide detector within the vicinity of the gas appliances. This must be located and placed near the gas appliances;
- j) The has been no sight of the current Electrical Installation Condition Report;
- k) The has been no sight of a current Gas Safety Certificate.
- l) Whether there is no Electrical Installation and Condition Report (“EICR”);
- m) Whether there is no Portable Appliance Test certificate (“PAT”);
- n) Whether there is no evidence of the Legionella Risk Assessment.
- o) Whether the Repairing Standard has been met.

Findings of fact

30. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is a Private Rented Tenancy between the Landlord and the Tenant. The tenancy commenced on 2nd March 2020.
- b) There was water ingress or condensation in the two bedrooms.
- c) The front door is not draught proof.
- d) The surrounds to the kitchen and bedroom windows need to be repaired or replaced.
- e) The thermostatic radiator control operating heads are missing.
- f) There was no evidence of an up to date EICR by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT.
- g) There has been no gas safety certificate provided.
- h) There was no evidence of a Portable Appliance Test certificate for the electrical appliances provided by the Landlord, completed by a suitably competent person.
- i) There is no Legionella Risk Assessment prepared by a suitably qualified person needs to be undertaken.
- j) The Repairing Standard has not been met.

Reasons for the decision

31. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Third Party Applicant and the Tenant at the hearing.

32. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

33. The Tribunal was in no doubt, from its inspection, that the Property did not meet the Repairing Standard as detailed above.

34. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.

35. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.

36. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to Tribunal members in relation to any future proceedings on unresolved issues.

G Miller, Chair

22nd May 2024