



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/RP/24/1156

Re: Property at 71 Clermiston Road, Edinburgh EH12 6UY (“the Property”)

Title No: MID84957

The Parties:

Ms Victoria Ruthven. 71 Clermiston Road, Edinburgh EH12 6UY (“the Tenant”)

Mr Geoffrey Dorrat Bain, 71 Clermiston Road, Edinburgh EH12 6UY (“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 Tribunal has jurisdiction to consider the application, and that the Landlord has failed to comply with that duty. The Tribunal made a Repairing Standard Enforcement Order in respect of the Property.

Background

1. By application, dated 8 March 2024, the Tenant 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 there were issues with the supply of electricity to the Property. She contended that the landlord had tampered with the wiring, such that she was paying for the Landlord’s electrical usage in the portion of the Property that he occupies, that ceiling lights had been removed and that there was a burning smell when the shower in the Property is used. She

wished the Tribunal to order the Landlord to produce an Electrical Installation Condition Report.

3. In her application, the Tenant stated that she had originally had a tenancy of the Property which commenced on 2 July 2020. She provided a copy of a Private Residential Tenancy Agreement, commencing on that date, at a monthly rent of £2,000. The Property forms part of the ground floor of a large Victorian house, with the Landlord occupying the remainder of the building apart from a further annexe flat. On 9 August 2023, the Tenant moved to another property in East Craigs, Edinburgh, but it was only a short term let and she had to move out again in October 2023. The Landlord allowed the Tenant and her children to move back into the Property in early November 2023, paying £100 per week in cash and a further £250-£350 per month. She provided bank statements showing payments to the Landlord of £250 on 16 December 2023 and £350 on 18 January 2024.
4. On 2 May 2024, the landlord's sister made written submissions to the Tribunal on his behalf, in which she stated that the Landlord has Alzheimer's disease, and has difficulty in remembering dates, and that he had been manipulated by the Tenant, who had moved back into the Property after an Eviction Order was enforced against her. The contention on behalf of the Landlord was that the Tenant did not obtain permission to move herself and her family back into the Property. He had, however, allowed the Tenant herself to stay in an upstairs room as she told him that alternative accommodation had fallen through.

The Inspection

5. The Tribunal Members inspected the Property on the morning of 31 July 2024 and were admitted by the Tenant. The Landlord was not present. A Schedule of Photographs, taken at the Inspection, and an Inspection Report, are attached to and form part of this Statement of Decision.

The Hearing

6. Following the Inspection, a Hearing was held at The Church of Scotland, 121 George Street, Edinburgh, with both Parties in attendance. The Landlord was supported by Ms Leanne Coltart, a social worker.
7. The Tribunal told the Parties that it was aware that there are serious issues between them, which have involved extensive police involvement, but, if the Tribunal decided that a tenancy was in place, its sole function was to determine whether the Property meets the Repairing Standard and there were significant concerns about the electrical installation. The absence of smoke and heat detectors was also a visible safety issue.
8. The Ordinary Member of the Tribunal explained to the Landlord the findings of the Inspection, namely that there were issues regarding the safety of the electrical installation within the Property and failure to ensure the Property complies with the Repairing Standard and meets the Tolerable Standard. In order to make a Repairing Standard Enforcement Order, however, the Tribunal had to be satisfied that there was a tenancy in place between the

Parties as, if there was no tenancy, the Tribunal did not have jurisdiction to hear the application. There was clearly no written tenancy agreement.

9. The Landlord's contention was that there was no tenancy agreement between the Parties and that the Tenant and her family were, in effect, "squatters". Understanding the Tenant to be homeless, he had allowed her to occupy a room in the part of the house retained by him, but he was trying to sell the whole house.
10. The Tenant told the Tribunal that the Landlord had told her she could move back in with her family and had given her the keys and they took meter readings. She was also registered as the person liable to pay Council Tax for the Property. Since then, she had been paying rent. The Landlord said that this was for the upstairs flat, but he accepted that those premises are, in fact, occupied by someone else.

Reasons for Decision

11. The Tribunal considered carefully all the evidence before it and decided that there is a tenancy of the Property in place between the Parties. There was no evidence that the Landlord had been manipulated into allowing the Tenant and her family to re-occupy the Property. The rent may seem low for the accommodation provided, compared to the amount the Tenant was paying under her original tenancy agreement, but the Landlord accepted that he is receiving £700 per month from the Tenant and that the portion of the house that he claimed this was for is in fact occupied by someone else. The view of the Tribunal was that the payments being made are for the Property, which is the only or principal residence of the Tenant and her family. Accordingly, there is a Private Residential Tenancy in operation, albeit not one reduced to writing. Accordingly, the Tribunal has jurisdiction to determine the application.
12. Having decided that the Tenant occupies the Property under a Private Residential Tenancy, the Tribunal decided that, as it has serious concerns about the electrical installation, the smoke and heat detection provisions and the absence of fixed lighting in some of the rooms, it will require the Landlord to obtain and produce a satisfactory Electrical Installation Report.

Decision

13. Having considered carefully all the evidence before it, the Tribunal made a finding that the Landlord 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.
14. The Tribunal's Decision was unanimous.

George Clark

Legal Member

21 August 2024
Date



**Ground Floor Flat, 71 Clermiston
Road, Edinburgh, EH12 6UY
“the Property”/ “the House”)**

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SCHEDULE OF PHOTOGRAPHS



1 View of retrofit push-button MCBs to consumer unit.



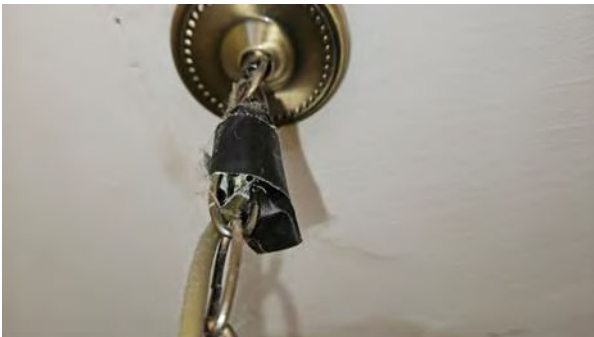
2 Incoming electrical supply, meter and switchgear.



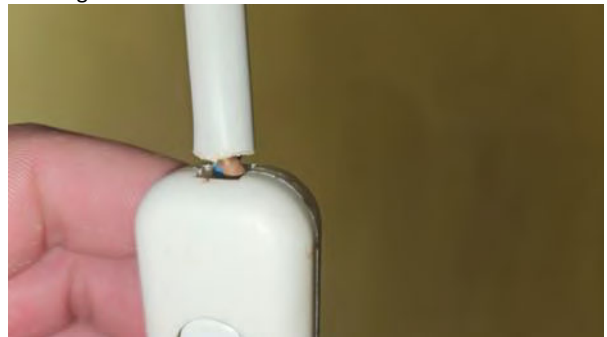
3 Basement Floor.



4 Dining Room



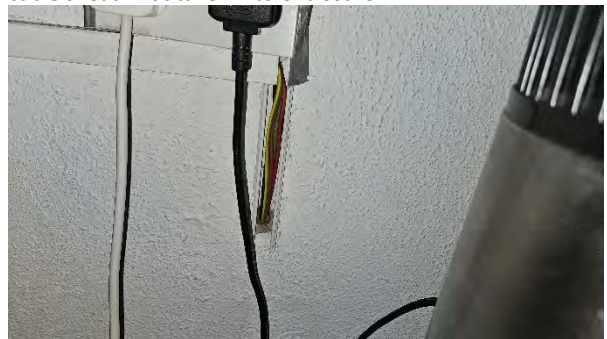
5 Apparent connector block and tape to Dining Room pendant.



6 Hanging light switch and cable from Dining Room pendant, cable sheath not taken into enclosure.



7 Damaged surface mounted backbox within Utility Room.



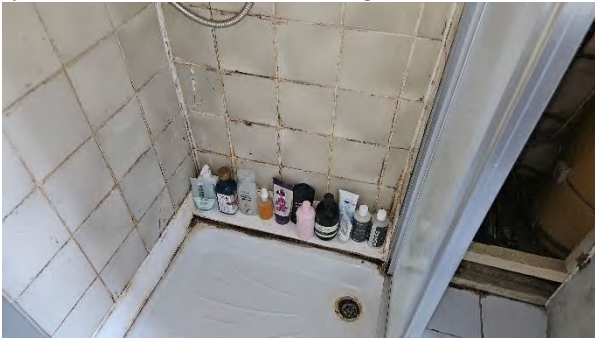
8 Cable sheath removed from cable within Utility Room exposing conductor wires, missing cover plate.



9 Water damage from adjacent shower enclosure into Hall in sphere of influence of electrical fittings.



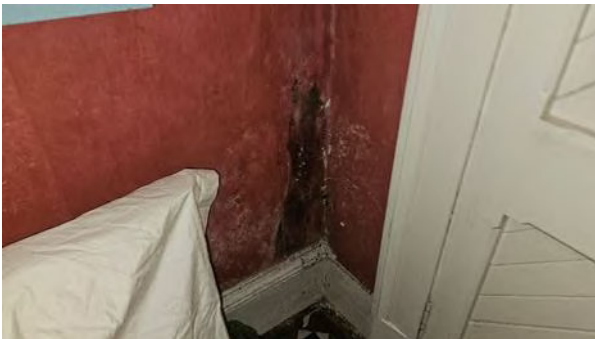
10 Water damage from adjacent shower enclosure into Hall in sphere of influence of electrical fittings.



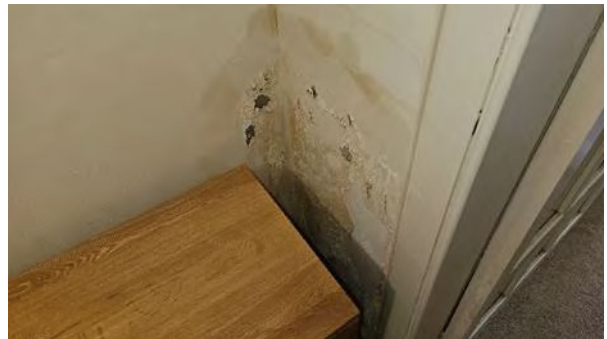
11 Shower enclosure.



12 Shower enclosure.



13 Area of Tenant dampness concern.



14 Further area of Tenant dampness concern.



15 Plug shown to Tribunal within Kitchen stated to have been dishwasher plug.



16 Bedroom 2



17 Bedroom 2 – reliance on desk lamp for artificial light (ceiling lights removed).



18 Lounge - reliance on floor lamp for artificial light (ceiling lights removed).



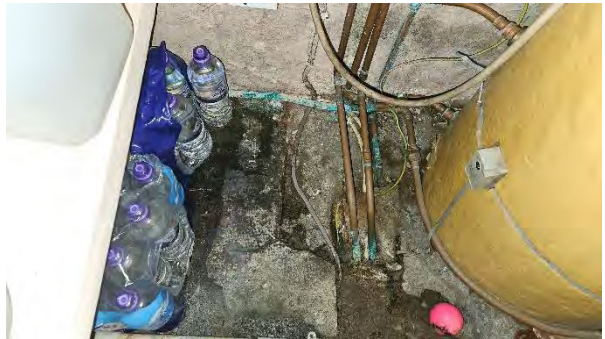
19 Bedroom 1 – reliance on floor lamp (ceiling lights removed).



20 Example of redundant light switch



21 Redundant electrical fitting to ceiling.



22 Moisture evident at floor within Shower Room Store, loose unclipped and unprotected electrical cable run across floor.



23 Boiler.



24 Smoke detector (not tested).



25 Detector in Kitchen (not tested).

Various points of electrical concern were noted during the Tribunal's inspection within the Ground Floor flat, such as:

- The 12-way distribution board serving the Ground Floor was noted to comprise of an aged consumer unit formerly comprising of BS3036 semi-enclosed rewirable fuses and subsequently altered and upgraded to now incorporate push button MCBs. The MCB's were noted to be rated at imperial sizing such as 5A etc instead of metric sizing such as 6A, evidencing that the push-button MCBs date from prior to the mid 1970's although there was evidence of wiring much older than this from our inspection also.
- There was no labelling positioned on the consumer unit to identify that any Electrical Installation Condition Report (EICR) had been previously undertaken, there was also a lack of appropriate circuit labelling etc.
- There was no obvious Residual Current Device. Combined with this there appeared to be cables installed at a depth of less than 50 mm from a surface of a wall or partition where the cables do not appear to incorporate an earthed metallic covering, are not enclosed in earthed metalwork, or are not mechanically protected against penetration by nails and the like.
- The protective lid to the consumer unit had been altered/cut as part of the retrofit installation of the push-button MCBs.
- There were noted to be 2 No. circuits where the removable push-button MCBs have been removed whilst there was also 1 No. 45A lever MCB of differing width with a larger gap present to the adjoining push-button MCB. Consumer Units would be expected to benefit from IP2XC rating which requires that hazardous parts within the enclosure cannot be contacted by a wire probe 2.5mm in diameter and it appears that there are gaps present exceeding this requirement.
- Within the Dining Room to the pendant light fitting, an informal on/off switch has been provided which is hanging directly from the pendant light fitting. The outer cable sheath has not been taken into the light switch and as a result the conductors are able to be viewed, the outer cable sheath is not secured by cable clamps within the light switch enclosure and connections are as a result subject to mechanical strain during normal operation and by the self-weight of the cable and light switch. The light switch is not mechanically secured to any surface and is hanging via the lighting cable. At high level to the pendant there is noted to be electrical tape wrapped around the electrical cable and it appears that there is an underlying connector block present below without a proper enclosure (any joint and termination in a live conductor requires a suitable fully enclosed connection box).
- Within the hallway there are various switches serving the bathroom light, immersion heater and electric shower and there was noted to be dampness within the sphere of influence of such electrical fittings.
- There was noted to be an electrical cable within the Shower Room Store running across the floor and not benefitting from any mechanical protection such as conduit, in an area where mechanical damage probability was considered to be relatively high whilst there were no cable clips etc to such runs. Earth wiring within this area is also not suitably clipped and hanging loose.
- The Utility Room surface mounted double socket outlet is provided with protective tape and the backbox was noted to be damaged and in poor condition. Added to this, the surface run vertical conduit is missing a cover plate whilst the cable outer sheath has been stripped back

leaving conductors visible. The grey outer sheath would normally be expected to be taken into the outlet and it appears that there is insufficient protection as a consequence.

The Tribunal were also shown for instance a burnt out plug which we understand previously served the dishwasher whilst the Tenant made various further electrical complaints including concern raised over hissing at various electrical fittings during use. Given due regards to the nature of the complaints combined with concern pertaining to the electrical installations noted during the Tribunal's inspection whilst noting that there was no apparent Electrical Installation Condition Report was sufficient to evidence safety concerns of the electrical installations within the Property.

It was also noted during the inspection that the Lounge and Bedrooms did not benefit from a fixed artificial lighting installation. On closer examination there was noted to be light switches present adjacent to doorways however, the former pendant light fittings had been removed completely. Reference is given to the publication "Implementing the Housing (Scotland) Act 2006, Parts 1 and 2: Advisory and Statutory Guidance for Local Authorities: Volume 4 Tolerable Standard", which details the following:

Is there satisfactory provision for artificial lighting?

6.18. Every apartment in a house, plus a bathroom, toilet, kitchen, utility, and all circulation areas, should have provision for permanently-fixed artificial lighting to allow the occupants to carry out normal domestic activities in safety and comfort. This will usually take the form of a wall light switch which controls an electric light on the ceiling or wall. A very small number of houses are not connected to the mains electric supply, or have a private generator, and may have alternative fittings, such as gas mantle type artificial lighting (where light is produced by heating an oxide-based compound with a flame).

6.19. An assessor does not need to measure the amount of light that the system is capable of delivering, rather that the occupants are able to use this to light their home should they choose. Occupants may opt to use alternative light sources, such as table lamps or candles, but the house should nonetheless have provision for fixed and permanent artificial lighting. An assessor should use his/her judgement to decide on each case if the provision for artificial lighting is satisfactory.

The absence of fixed artificial lighting installations within the Lounge and Bedrooms was considered to result in a breach of the Tolerable Standards.