



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

Chamber Ref: FTS/HPC/RP/24/2889

Re: Property at 56 Hazlehead Gardens, Aberdeen, AB15 8EA (“the Property”)

Parties:

Steven Geddes, 54 Gordon Street, Aberdeen, AB11 6EW (“the Landlord”)

Rebeckah McCandless, 56 Hazlehead Gardens, Aberdeen, AB15 8EA (“the Tenant”)

Tribunal Members:

Ruth O'Hare (Legal Member) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order (“RSEO”) as required by Section 24(2) of the Act.

Background

- 1 This is an application under Rule 48 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) in terms of which the Tenant sought a determination that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. In particular the Tenant alleged that there was mould on the bathroom walls, the seal of the bathroom window and the lock on the kitchen window required to be replaced, the electrical sockets required to be fixed, the internal wiring required to be checked and a bedroom ceiling had caved in.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the

Landlord under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for the 23 December 2024 with a hearing to take place later that day by teleconference. Notification was given to the parties and both were invited to make written representations. Said notification was served upon the Landlord by both recorded delivery mail and Sheriff Officers.

- 3 On 18 December 2024 the Tribunal received an email from the Landlord with an update on the repairs. The Landlord advised that he had instructed plasterers to carry out repairs to the bedroom ceiling, and to paint the bathroom and repair the living room. They were liaising with the Tenant in this regard. The Landlord had also arranged for an electrician to check the wiring and to repair the missing screws in the electric sockets, which was due to take place after Christmas and New Year as per the Tenant's request.
- 4 In response to the Landlord's update the Tenant emailed the Tribunal to explain that a contractor had been out to the property to look at the bedroom ceiling and had advised that they would have to provide a quote to the Landlord for the work. The Tenant had heard nothing further from them. With regard to the electrical work, the Tenant explained that the electrician would be switching off the power for approximately five hours in order to carry out the inspection. She had therefore rearranged this work for January in order to make alternative arrangements for her children and her dogs.

The Inspection

- 5 The Tribunal inspected the property at 10.00am on 23 December 2024. The Tenant attended and permitted access. Her husband was also present. The Landlord was not present nor represented. The weather was drizzly and overcast.
- 6 The property is on three floors. On the ground floor is an entrance hallway, lounge and kitchen. On the second floor is a landing, two bedrooms and a bathroom. The third floor solely consists of an attic bedroom.
- 7 The Tenant confirmed that the Landlord had replaced both the seal on the bathroom window and the lock on the kitchen window. She was no longer insisting on these items as part of the present application. The Tenant further advised that there was damp in the lounge behind the couch, although she had not specifically referenced this in the application.
- 8 The inspection commenced on the ground floor. The Tribunal noted that there was a condensing tumble dryer in a cupboard at the bottom of the stairs and evidence of damp on the walls near the front door of the property.
- 9 The Tribunal inspected the bathroom on the first floor. Black mould was prevalent on the walls indicating high levels of moisture. The bathroom had a window with trickle vents, an extractor fan and a wall mounted electric heater. The Tenant advised that the Landlord had installed the fan and the heater in an attempt to address the condensation issues.

- 10 The Tribunal inspected the defective socket in the attic bedroom. The socket was missing screws and was insecure as a result.
- 11 With regard to the internal electric wiring, the Tenant advised that the contractor who had fitted the bathroom fan and heater had told her that the wiring did not look right and should be checked. The Tenant produced an electrical installation condition report ("EICR") which had been provided to her at the commencement of the tenancy in 2020. The report was dated 2018 and did not identify any defects in the electrical installations in the property at that time. The Tribunal noted that there was no smoke detector on the first floor landing. The Tenant advised that this had malfunctioned and the Landlord had not replaced it.
- 12 The Tribunal inspected the rear bedroom on the first floor. There was a large hole in the ceiling exposing the ceiling joists and the roof, with crumbling plaster.
- 13 Photographs were taken during the inspection and are appended to this decision.

The Hearing

- 14 The hearing took place following the inspection at 11.45am by teleconference. The Tenant took part and was supported by her husband. The Landlord was not present nor represented. The Tribunal noted that he had been served with notification of the hearing by both recorded delivery mail and Sheriff Officers. He had submitted written representations in response therefore the Tribunal could reasonably assume that he was aware of the proceedings. The Tribunal therefore determined to proceed in his absence.
- 15 The Tribunal explained the purpose of the hearing and proceeded to discuss the various items of disrepair with the Tenant.
- 16 With regard to the mould on the bathroom walls, the Tenant advised that this had been ongoing for around two years. Multiple contractors had provided quotes for the work to be done however nothing had gone ahead. It was affecting the health of her children. The only work completed by the Landlord to try to address the problem was the installation of both the extractor fan and the wall mounted electric heater. That had not resolved the issue. The Tenant confirmed that the problems had started approximately two years after the tenancy commenced. There had been no significant changes that would explain the excess moisture with the exception of the arrival of her two children. The Tenant and her family would open the window and put on both the extractor fan and the wall mounted electric heater when using the bathroom. Nothing they had done appeared to resolve the problem.
- 17 The Tenant confirmed that the Landlord had fixed both the seal of the bathroom window and the kitchen window lock. With regard to the electric

socket in the attic bedroom she confirmed that this had been an issue since the commencement of the tenancy. The Landlord had never looked at it.

- 18 With regard to the internal wiring, the Tenant was unsure as to the exact nature of the issue. The contractor who installed the bathroom fan and heater had told her that the wiring did not look great and required to be checked. The contractor had said that he would advise the Landlord of this. The Tenant had no evidence that he had done so. The Tenant herself had told the landlord about the contractor's comments. The Tenant confirmed that an electrician was due to attend the property on 3rd January 2025 to check the wiring.
- 19 With regard to the hole in the bedroom ceiling the Tenant explained that there were initially problems with damp on the bedroom wall which led to plastering falling off. The Landlord had fixed this following an intervention from the local authority's private rented sector team. The Tenant had then noticed a crack in the ceiling. The area was particularly wet. She had reported this to the Landlord who had asked her to find someone to fix it. The Landlord had said he was abroad and could not contact anyone. The Tenant had engaged a couple of roofing companies to provide quotes. Before any repairs could be completed, the bedroom roof had caved in. The Landlord had finally said he would arrange for a plumber to attend the property. He had also said that he would be better off selling the property because it was a money pit. The plumber had completed the repair and had noted some issues with some of the other piping in the room. The plumber had said he would advise the Landlord that this would need to be checked to prevent any further leaks. The Tenant confirmed that a plasterer had recently attended the property to inspect the damage, and had said that he would provide the Landlord with a quote. The Tenant had heard nothing further from the Landlord nor the plasterer. The Tenant confirmed that the crack had appeared on 13th November 2024 and the ceiling had caved in on 28th November 2024.
- 20 In response to questions from the Tribunal, the Tenant advised that she and her husband paid £675 per month in rent. The Landlord had served notice seeking to increase this by 12%. The Tenant had advised him that she would not pay the increased rent until the repairs were completed. The Tenant confirmed that she had withheld two months rent, which was being held in her savings account. The Landlord had advised the Tenant and her husband that he would accept a 10% reduction on the rent following the situation with the bedroom. Neither the Tenant nor her husband felt that was sufficient as a response.
- 21 The Tribunal gave the Tenant the opportunity to make any closing statements. She advised that her family was unable to use the bedroom on the first floor as a result of the situation with the ceiling. It was unsafe. Her two children had to sleep with her and her husband on the floor in the attic bedroom. It was not good for their development. The Tenant felt she was frequently waiting for the Landlord to respond to repairs. She wanted to ensure that things were done promptly.

22 The hearing concluded and the Tribunal determined to issue its decision in writing.

23 **Findings in Fact**

The Tribunal found the following facts to be established:-

24 The Landlord and the Tenant entered into a tenancy agreement for the property which commenced on 1 September 2020.

25 There is evidence of significant mould in the bathroom of the property. The bathroom has an extractor fan and a wall mounted electric heater.

26 An electric socket in the attic bedroom has missing screws and is insecure. The socket is not in a reasonable state of repair.

27 The last known electrical installation condition report for the property was carried out in 2018.

28 Concerns have been expressed by a contractor about the condition of the electrical wiring in the property.

29 There is no smoke detector on the first floor landing of the property.

30 The ceiling in the rear bedroom on the first floor of the property is not in a reasonable state of repair. The ceiling has caved in following a water leak and has not been repaired, nor redecorated.

Reasons for Decision

31 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, the submissions at the hearing, and the findings of the Tribunal's inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.

32 Section 24(1) of the Act provides that where an application is received from a Tenant under section 22(1), the Tribunal must consider whether the landlord has complied with the repairing standard duty as outlined in section 13 of the Act. If the Tribunal finds that a landlord has not complied it must make an RSEO.

33 Based on its findings in fact the Tribunal concluded that the property does not presently meet the repairing standard. Whilst the Landlord had indicated that matters are in hand through the instruction of contractors, the Tribunal has to make its determination based on the condition of the property as it stands at the time of the Tribunal's inspection.

- 34 The Landlord had not participated in the hearing. The Tribunal was therefore unable to obtain any further information from him other than what he had said in his written representations. In contrast, the Tenant had attended both the inspection and the hearing. She had given evidence to the Tribunal regarding the items of disrepair in her application. The Tribunal found the Tenant to be credible in her submissions. She put her evidence forward in a straightforward and calm manner. The Tribunal therefore accepted her account of events and considered it could make relevant findings in fact based on both her evidence and the Tribunal's findings from the inspection.
- 35 The Tribunal was satisfied that there is extensive black mould in the bathroom of the property. This was clear from findings of the inspection. The Tenant had outlined the measures she had put in place to try and combat this, to no avail. The Tribunal also noted that the Tenant had indicated there was damp in the lounge and the Tribunal had found evidence of damp staining on the wall near the front door of the property during the inspection. Whilst these had not been specifically referenced in the application, the Tribunal was of the view that it could consider these issues on the basis that they also pertained to the overall problem of water ingress. The Tribunal could not therefore satisfy itself based on the evidence before it that the property was wind and watertight and found this to be a breach of the Repairing Standard. It will be necessary for a damp and condensation specialist to undertake further investigations in order to identify and address the cause of the issues identified.
- 36 The Tribunal also accepted based on its findings in fact that the electric socket in the attic bedroom is not in a reasonable state of repair. With regard to the overall electrical installations in the property, the Tribunal accepted that a contractor had raised concerns regarding the condition of the wiring in the property. The Landlord appeared to have acknowledged this, having instructed an electrician to attend the property. Whilst the EICR provided to the Tenant at the commencement of the tenancy had not yet expired, based on the concerns expressed regarding the wiring, the Tribunal could not satisfy itself that the electrical installations in the property were safe. This was of particular concern given the presence of the Tenant's two young children. The Tribunal therefore found both of these items to be a breach of the Repairing Standard. Furthermore, due to the lack of a smoke detector on the first floor landing of the property, the Tribunal would expect the Landlord to ask the electrician to address this in the EICR when he attends the property in January.
- 37 Finally, it was clear that the bedroom ceiling had not been repaired. Again, the Landlord appeared to have accepted this in his written submissions. The Tribunal therefore found this to be a breach of the Repairing Standard in that the rear bedroom ceiling is not presently in a reasonable state of repair.
- 38 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:

- (i) In respect of 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) In respect of 13(1)(b), the structure and exterior of the housing is not in a reasonable state of repair and in proper working order.
- (iii) In respect of 13(1)(c) the installations in the house for the supply of water, gas, electricity, and any other type of fuel, and for sanitation, space heating by a fixed heating system and heating water are not in a reasonable state of repair and in proper working order.
- (iv) In respect of 13(1)(h), the house does not meet the tolerable standard. In particular the house does not presently have a sufficiently interlinked system of fire and smoke alarms.

39 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal “must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard”. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is four weeks. The Tribunal determined this to be a reasonable timescale taking into account the length of time these matters have been outstanding, and the fact that the Landlord is already in the process of arranging for contractors to attend the property.

40 The decision of the Tribunal was unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or determined.

Ruth O'Hare

31 December 2024

 Legal Member/Chair

Date