

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/24/2686

Property: 11 PF Cathcart Place (GF), Edinburgh EH11 2HD ('The House')

Title reference: MID242984

The Parties: -

Mamataz Begum Rashid, 5/11 Westfield Court, Edinburgh EH11 2RL ('the landlord')

Habibul Alam Kazi and Shafreen Akhtar 11 PF Cathcart place (GF), Edinburgh EH11 2HD ("the tenants")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Background

1. By application accepted on 13 August 2024, the tenants applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *the house is wind and watertight and in all other respects reasonably fit for human habitation*
 - *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 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.*
3. The application contained correspondence between the tenant and the landlord's letting agents sent on 4 July 2024 which specified that the said failure was established as the following work needed to be carried out:
 - *The kitchen counter around the sink is sinking and the cupboards are deteriorating, Additionally, the interior of the cupboards beneath the sink is severely water-damaged and rotten.*
 - *The flooring under the cupboard sink is very broken you can see rats and mice running.*
 - *Heating system not working properly: pressure consistently drops and Scottish gas has recommended replacing it due to its age.*
 - *Some of the heaters are too small to properly warm the home.*

4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 18 December 2024.

Hearing and Inspection

5. The Tribunal inspected the house on the morning of 28 January 2025. Both tenants were present at the inspection.
6. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
7. A hearing took place at 11.45am on 28 January 2025. Mr Kazi attended on behalf of both tenants. The landlord was in also in attendance with her letting agent, Ms Singh from APM Lettings.
8. The property is a 2 bedroom ground floor tenement flat accessed through a common stairwell.
9. Mr Kazi confirmed that he resides in the property with Ms Akthar and their 3 children aged 20, 16 and 5. He confirmed that they had moved into the property on 30 May 2016. The current monthly rent is £927.
10. At the inspection and hearing the Tribunal considered each of the issues specified in the application in turn: -
11. The kitchen counter, kitchen cupboards and flooring under the sink: At the inspection the Tribunal noted the following issues:
 - extensive damage to the work top around the kitchen sink.
 - the kitchen cupboard below the sink was extensively damaged. The base was broken, dampness and rot was noted and there was a hole in the floor.
 - Some of the doors to the base cupboards were missing or did not open properly.
 - The base cupboard adjacent to the exterior wall had been filled with a large amount of foam sealant and had no door.
 - The tiles behind the gas hob were cracked and damage with the appearance that this has been caused by flames/heat from the close proximity of the gas burner.

At the hearing, Mr Kazi stated that he had tried to fill in the large gap around the sink area with sealant however the area remained in a poor state of repair.

The landlord did not dispute that a repair to the kitchen counter was required. Mr Kazi stated that he had been complaining about the kitchen for a number of years. He stated that a previous application to the Tribunal had resulted in some repairs being carried out however due to the overall condition and age of the kitchen further issues had arisen. Mr Kazi stated that the condition of the kitchen had impacted on his family's enjoyment of the property. Ms Rashid did not dispute that repairs were required to the kitchen units. She stated that she had started the process of instructing works to repair and replace parts of the kitchen. She stated that her intention was to replace the worktop and the carcass of the cupboard below the sink as well as upgrading the cupboard doors throughout the kitchen.

12. Mice and rats entering the property through the kitchen units: The Tribunal did not observe any evidence of infestation during the inspection however it was noted that the opening into the void below the kitchen floor could allow access by vermin into the property. Mr Kazi stated that he had observed mice and rats entering the kitchen through the gap at the bottom of the sink base unit. He stated that the tenants used traps to capture mice and rats.
13. Issues with the gas boiler: Mr Kazi stated that there had been ongoing issues with the boiler. He stated that the boiler lost pressure on a daily basis which caused the heating to stop working. He then had to manually increase the pressure following instructions given to him by a gas engineer who had inspected the boiler. Mrs Rashid stated that she paid monthly for home cover for the boiler which meant that a gas engineer was always available to fix any problems. She stated that she was aware that Mr Kazi had called the engineer out however the engineer had not made her aware of any problems that would require repairs to be carried out to the boiler. She stated that the home cover in place was separate from the annual gas safety check which is carried out on the boiler.
14. Mr Kazi stated that he intended to move out of the property in the near future as he had found new accommodation. He confirmed that he would update the Tribunal if he moved out with his family. Ms Rashid confirmed that it was her intention to re-let the property once Mr Kazi moved out. She had previously intended that her son would live in the property but that was no longer the

case. She stated that it may be easier to carry out the repairs to the kitchen when the property was vacant.

Summary of the issues

15. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(a) (c) and (d) of the Act.

Findings in fact: -

16. The tribunal find the following facts to be established: -

- a. Parties entered into a short assured tenancy agreement with a commencement date of 30 May 2016.
- b. The property is a ground floor tenement flat.
- c. The base kitchen units in the property are in a poor condition and not in a reasonable state of repair or in proper working order.
- d. The kitchen worktop in the property is in a poor condition and not in a reasonable state of repair or in proper working order.
- e. The base unit below the kitchen sink has no flooring.
- f. The floorboards below the kitchen sink are exposed and damaged with a visible hole to the void below.
- g. The wall tiles behind the gas hob in the kitchen are cracked and damaged.
- h. The interior is not wind and watertight and is not reasonable fit for human habitation.
- i. The tenant has requested a gas engineer inspect the boiler on a number of occasions due to loss of pressure.
- j. The tenant intends to move to alternative accommodation.
- k. The landlord intends to relet the property.

Reasons for the Decision

17. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.

18. The Tribunal was only able to consider those items which formed part of the intimated application.
19. The Tribunal gave significant weight to the fact that the landlord and their agent accepted that the kitchen worktop and cupboard below the kitchen sink were in a poor condition and required to be repaired. The Tribunal noted that the landlord planned to carry out works to the kitchen including replacing the worktop, replacing the cupboard beneath the sink and upgrading the cupboard doors. Taking into account their findings at the inspection the Tribunal determined that the steps proposed by the landlord would not address all of the issues identified. The Tribunal determined that it was necessary to replace all the base units in the kitchen due to their poor condition. The Tribunal also determined that in order to address the issue with the floorboards all the base cupboards in the kitchen would require to be removed and repairs carried out to the flooring underneath to ensure that it was wind and watertight and did not allow vermin to access the property.
20. The Tribunal accepted the tenant's evidence in relation to the issues he had experienced with the gas boiler and noting that an annual gas safety inspection was due determined to request that an up to date gas safety certificate be produced.
21. The Tribunal saw no evidence of rat or mice infestation during the inspection. The Tribunal determined that the risk of vermin entering the property via the hole beneath the kitchen sink would be addressed by the works required in relation to the repairs to the kitchen cabinets and floorboards.
22. The Tribunal found the radiators within the property to be a reasonable size and determined that there was no breach of the repairing standard in respect of this item in the application.

Observations

23. While not forming part of the application the Tribunal observed the following repairs issues:
 - the smoke detector in the living room is missing
 - the carbon monoxide alarm adjacent to the gas boiler looks dated and in need of replacement

- the sticker on the fuse box indicates that an updated Electrical Installation Condition Report may be required.

Decision

The Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

Right of Appeal

A landlord, tenant or third-party applicant 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 finally 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 so determined.

Mary-Claire Kelly

Chairperson:

Date: 28 January 2024