

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RP/23/0037

38 Ross Drive, Uddingston, G71 5NQ registered in the Land Register of Scotland under title number LAN84303 ("the Property")

The Parties:-

Miss Mandy Eskdale, 38 Ross Drive, Uddingston, G71 5NQ ("the Tenant")

Mr Jason Black ("the Tenant's Representative")

Ms Sana Akhtar, 62 Mount Lockhart, Uddingston, G71 7TQ ("the Landlord")

Ms Rosaleen Doyle, Solicitor, McEwan Fraser Legal, Solicitors, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB ("the Landlord's Representative")

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member)

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24(2) of The Housing (Scotland) Act 2006.

Background

1. By application dated 15th December 2022, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act ("the 2006 Act.")

2. The Applicant and Respondent are parties to a private residential tenancy in respect of the Property. It is dated 23rd March 2022.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the house for the supply of 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 and that the Property does not meet the tolerable standard. Specifically, the application states that the Landlord has failed to repair/replace a broken boiler, that the house is damp and freezing and damp with no running hot water and a gutter repair is required.
4. On 23rd January 2023, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.
5. On 3rd March 2023, the Tribunal issued a Direction requiring the Respondent to produce a current gas safety certificate in acceptable terms.

Submissions

6. The Landlord's Representative had submitted an electrical installation condition report dated 22nd March 2023 which had a number of "C2" classifications which are defined as "potentially dangerous" and a number of "C3" classifications which are defined as "improvement recommended." The report has been overstamped by the electrician as "Unsatisfactory."
7. The Landlord's Representative had submitted a gas safety certificate dated 12th June 2018 and an invoice from FH Gas dated 27th November 2022 in respect of diagnostic checks carried out. The invoice stated that the boiler had been checked and that there was no power/electricity to the boiler, control knobs were missing, no gas supply at the meter, the boiler flue was not sealed, that a central heating radiator had been removed from the wall and disconnected inadequately. The invoice states that smoke alarms had been disconnected unprofessionally leaving "live wires" hanging from the ceiling.
8. The Landlord's Representative had lodged a document showing that Farzand Ali of FH Gas Ltd was a Gas Safe registered engineer. (In oral representations, the Respondent's Representative said that Mr Ali is the brother of the Respondent).

9. The Landlord's Representative had lodged a copy of an invoice dated 28th January 2023 for a boiler from City Plumbing for the sum of £1,263.59.
10. The Tenant's Representative had lodged copies of various text messages with regard to him seeking copies of gas safety certificates from the Respondent and in relation to other matters concerning the Property.

The Inspection

11. The members of the tribunal inspected the Property at 10 am on 4th April 2023 and a copy of the Ordinary Member's schedule of photographs is attached to this Decision. The Tenant, the Landlord and the Landlord's Representative were present.
12. The Property is a two storey mid terraced house of traditional brick and tile construction, approximately 60 years old and originally built on behalf of the local authority. The accommodation, over two floors comprising entrance hall, living room, three bedrooms, kitchen and bathroom. The attic, accessed via a temporary stair leading from a bedroom cupboard, has been floored and lined and is currently used as ancillary storage.
13. Externally there is a defective/slipped ridge roof tile which has contributed to significant water ingress within the attic, resulting in a collapse of the ceiling plaster exposing fibreglass insulation quilt and a PVC lining. Much of the remaining plasterboard within the attic is saturated.
14. Throughout the property there is significant evidence of the effects of condensation with visible staining and mould growth.
15. At the kitchen ceiling there is significant mould and the corresponding high moisture readings confirmed localised saturation, which almost certainly stems from the first floor bathroom which is located immediately above.
16. There is a wall mounted gas fired combination boiler in the front bedroom cupboard. Following a recent gas safety inspection, it was classed as dangerous and a "Danger do not use" certificate attached. The gas supply was very recently capped at the meter although it is understood that the boiler had not been in use for a period of time prior to the gas safety check.
17. There is, within the property, currently no permanent means of heating, several defective radiators and no fixed or serviceable supply of hot water supply.

18. The electric shower fitting is broken as are the mixer taps and handheld shower at the bath.
19. On the external face of the front elevation, immediately below the expansion pipe leading from the boiler there is residual staining affecting the rendering, the mono pitched tile roof projection below and the associated lead flashing.

The Hearing

20. A Hearing was held by audioconference at 2 pm on 4th April 2023. The Tenant was not present and was represented by Mr Jason Eskdale Black. The Landlord was present and was represented by Ms Doyle, solicitor.
21. At the outset of the Hearing, Mr Eskdale Black advised that he was not pressing the reference in the application to defects in the gutters. He said that he had been mistaken and that the issue which he had noticed had been caused by a pipe leading from the boiler.

22. Findings in Fact

- 22.1 The Tenant and Landlord are parties to a tenancy for the Property.
- 22.2 The Landlord is required to have a satisfactory and current electrical installation condition report and a current and satisfactory gas safety certificate in respect of the Property.
- 22.3 There is no current gas safety certificate.
- 22.4 The central heating boiler is not functional and there is no heating or hot water in the Property.
- 22.5 There is an electrical installation condition report dated 22nd March 2023 which is unsatisfactory in its terms and identifies some issues described as potentially dangerous.
- 22.6 The electric shower does not work.
- 22.7 There is mould to the kitchen ceiling and high moisture readings indicating that the most probable source of the damp was water emanating from the bathroom which is immediately above the kitchen.
- 22.8 There is a defective/slipped ridge tile.
- 22.9 There is evidence of significant water ingress in the attic as a result of a defect in the roof covering and some ceiling plaster has collapsed with other areas of ceiling plaster being saturated.

Reasons

23. The tribunal had inspected the Property and the schedule of photographs is referred to.
24. The Landlord's Representative stated that the Landlord accepts that the Property does not meet the repairing standard. Her position was that the gas safety certificate could not be completed because there is no gas supply and that some unauthorised works had been undertaken to the electrical wiring. She said that it appeared that the boiler had also been tampered with.
25. The Tenant's Representative's position was that he had been asking for copies of previous gas safety certificates and that they have not been forthcoming. He also said that frequent reports had been made to the Landlord with regard to repairs issues. He also said that there was no reason for a new central heating boiler not to be fitted and that having made enquiries had been told that the boiler could be fitted without a gas supply. He said that, in any event, there is a pay as you go meter which would allow credit to be put on it and for gas to be available for the commissioning of a new boiler.
26. The Landlord's Representative said that, as far as she was concerned, the boiler could not be installed because there was no gas supply as a consequence of the Applicant having a considerable level of arrears due to the supplier.
27. The representative for each party made submissions that some failures had been due to the opposing party. The tribunal reminded the representatives that its responsibility was to determine if the Property met the repairing standard that day.
28. The Landlord said that the Tenant had prevented her getting access to the Property and that she was shocked by its condition when she eventually got to see it. She said that the Property had been in good order when she let it in 2018. She said that she had found it extremely difficult to even get the Tenant to speak to her.
29. It appeared that the Property had been let to the Ms Eskdale and other members of her family in 2018 and, although Mr Eskdale Black referred to "tenants", he accepted that the Tenant was the only tenant in terms of the 2022 tenancy agreement.
30. The Landlord's Representative referred to the invoice which she had lodged in respect of a boiler. She said that the Landlord wants to fit a new boiler and the Tenant's Representative said that he had been unaware until relatively recently

that a boiler had been purchased by the Landlord. He said that the Tenant would be happy for the installation to proceed.

31. The Landlord's Representative cast doubt on the practicality of the electrical work and gas installation work being undertaken because of what she described as the "chaotic" condition of the Property as a consequence of the amount of belongings of the Applicant and her family throughout the Property which would hamper access, particularly to the underfloor area. She suggested that such issues might require a "work around" to supply hot water such as having the shower repaired and a separate water heater in the kitchen.
32. The tribunal had sight of photographs lodged by the Respondent in respect of the condition of the Property in 2018. These showed a property in good condition. The Applicant's Representative took no issue with the photographs being accurate.
33. The tribunal determined that the Property did not meet the repairing standard and relied on what it had found at the inspection and the fact that the Respondent could not produce an electrical installation condition report and gas safety certificate in acceptable terms.
34. In arriving at its determination, the tribunal did not require to make a finding with regard to whether or not the Landlord had been denied access or if the Tenant had been responsible for any issues which had been found at inspection. Notwithstanding the foregoing, the tribunal did find inspecting the Property to be difficult because of its condition caused by the number of belongings within it and considered that any contractors will find it difficult to carry out work in such conditions. The tribunal advised Mr Eskdale Black that the Applicant should do everything possible to facilitate the work being done and to allow access to any parts of the Property which are required by contractors.

Disposal

35. The tribunal determined that a repairing standard enforcement order (RSEO) be made in the following terms;

The Landlord is required to:

1. produce to the Tribunal a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.
2. produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.
3. renew or replace the central heating boiler ensuring that it is in a reasonable state of repair and in proper working order and capable of supplying a permanent supply of hot water and a satisfactory system of space heating throughout the Property.
4. investigate and repair the defective roof covering ensuring that it is wind and watertight and in a reasonable state of repair.
5. repair and renew where necessary the plasterboard ceiling panels in the attic space.
6. investigate and repair the cause of the water ingress to the kitchen ceiling and thereafter repair the ceiling and make good the décor as required.
7. repair or renew the electric shower, bath taps and hand held shower attachment to ensure that they are in effective working order.

The Landlord is required to complete the works required by the RSEO and to produce to the Tribunal the gas safety certificate and electrical installation condition report before 23rd June 2023.

In terms of section 46 of the Tribunals (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 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.

M J McAllister

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
7th April 2023

Schedule of Photographs

38 Ross Drive Uddingston G71 5NQ

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Schedule of Photographs taken at the inspection on 4th April 2023



1. Front elevation



2. Rear roof pitch and ridge defective/slipped ridge tile



3. Front roof pitch and defective/slipped ridge tile.



4. Wall mounted gas boiler



5. Gas boiler front casing



6. Floored & “lined” attic



7. Floored and lined attic



8. Damp “ceiling plaster” in attic



9. Damp “ceiling plaster” in attic



10. Staining (dry) front bedroom ceiling



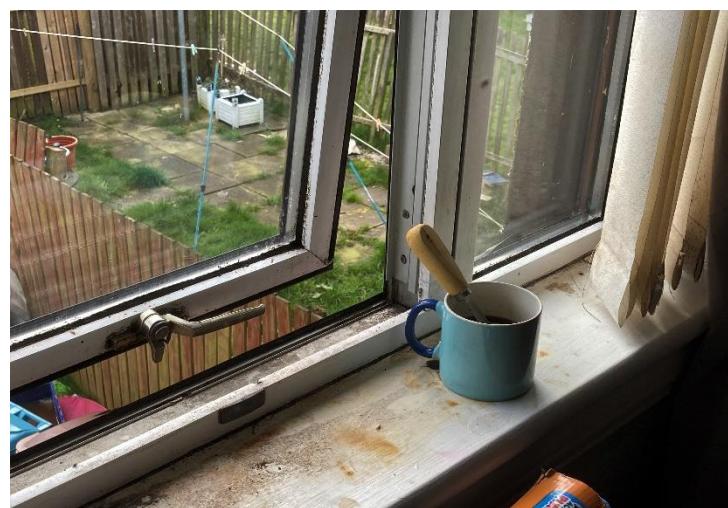
11. Damp wall plaster front bedroom



12. Condensation at front bedroom window



13. Condensation at front bedroom window



14. Condensation at rear bedroom window



15. "Amber" damp reading at condensation stain rear bedroom



16



17

Broken electric shower and shower head attachment



18. Broken mixer tap and “hand held” shower attachment



19. Condensation around wash hand basin and bathroom window



20. damp around base of wc and corroded radiator



21. Broken radiator panel and condensation staining in hall



22.

Condensation - livingroom window



23

Condensation - livingroom window



24 Condensation at skirting board and base of livingroom window



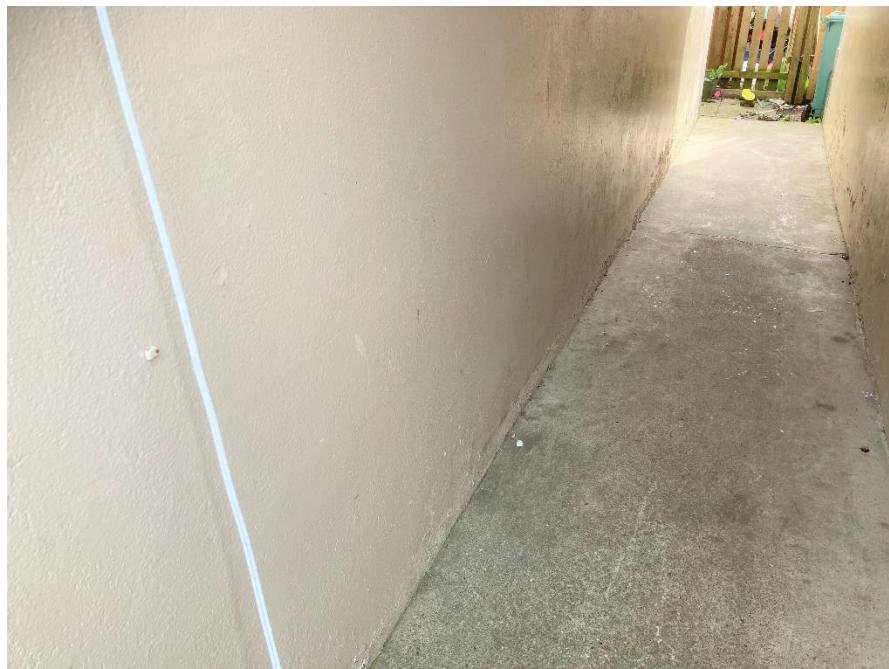
25. "Spillage staining" (DRY) in mutual living room/external pend wall



26. High damp readings in kitchen ceiling below bathroom



27. Damp staining kitchen ceiling below bathroom



28 Flaking paint and general staining pend wall – no significant defects evident



29 Residual staining below overflow pipe from boiler

Photographic summary

1

Front elevation street view

2&3

Defective ridge tile as viewed from front and rear- likely source of penetrating damp in attic.

4&5

Wall mounted gas boiler at base of stairs leading to floored attic with a fixed warning "Danger do not use notice" attached, following a gas safety inspection dated 8 March 2023.

6&7

Collapsed plasterboard "ceiling lining" exposing fibreglass insulation quilt and supporting PVC lining

8&9

Positive damp readings in remaining ceiling plaster within the attic confirming a high damp content arising from water ingress through the roof

10

Historic damp staining at front bedroom ceiling, dry at date of inspection. Original source not clear.

11-15

Condensation staining in walls and window sills in first floor bedrooms.

16-18

Broken and defective electric wall mounted shower above bath and broken/missing hand held shower attachment connected to broken mixer tap.

19&20

Condensation around window frame and wc in bathroom contributing to significant corrosion at radiator.

21

Condensation staining at skirting level at entrance hall and defective/broken panel at radiator.

22-24.

Condensation around and above front facing "picture window" in living room and at skirting level on internal wall.

25.

Staining on the inner face of the mutual wall with the external pend (see also photograph 28). No evidence of damp at this location and most likely cause appears to be a “spillage” accident.

26&27

Positive damp readings confirming high levels of moisture in the kitchen ceiling, directly below the first floor bathroom and the likely source.

28.

The inner walls of the pend access leading to the rear garden. No obvious defects noted other than minor wear, staining and some flaking paintwork.

29.

Staining on the rendering and ground floor overhang tiles, below the expansion pipe at the now disused and broken boiler.

This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Tuesday 4th April 2023 in connection with a Repairing Standard application under consideration.

Donald Wooley MRICS

5 April 2023