

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property: 16/3 Magdalene Gardens, Edinburgh EH15 3DQ ("the Property")

Chamber Reference: FTS/HPC/RP/17/0154

Ms Symone Flanagan, sometime residing at 16/3 Magdalene Gardens, Edinburgh EH15 3DQ ("the Tenant")

Ms Tamala Mhura, 41 Granton Mill Drive, Edinburgh EH4 4UD ("the Landlord")

Tribunal Members – George Clark (Legal Member/Chair) and Greig Adams (Ordinary Member/Surveyor)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw 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"), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application received on 21 April 2017, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard.

In particular, the Tenant stated that the Landlord had failed to ensure that:

(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(b) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,

(c) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and

(d) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. In her application, the Tenant had referred the tribunal to a letter, dated 8 February 2017, sent on her behalf by Edinburgh Housing Advice Partnership to the Landlord, setting out the following matters requiring repairs in order to meet the repairing standard:-

- The gas boiler had only been serviced once during the four years of the tenancy
- The Property did not have a carbon monoxide detector
- The electric shower produced only cold water
- The gas shower produced only a trickle of water and screeched when used
- The bathroom taps produced only trickles of water
- The bath was not properly sealed and a rusty in some areas where the enamel coating had worn away
- When the family showered or bathed, there was a leak which affected the neighbouring property directly beneath
- The sink and bath panels had never been re-attached after the plumbing had been checked
- There were cracks in the bathroom wall between the wall and the bathroom ceiling
- The bathroom wall forming part of the exterior of the building had a series of brown dots which were also present in two corners of the wall
- The shower curtain pole had fallen off and had never been re-attached
- The kitchen units were water damaged making them difficult to open and close
- The kitchen linoleum lifted when the kitchen door was opened and closed and as a result was now ripped
- The kitchen taps screeched when used
- The windows did not open or close properly which allowed draughts to enter the Property
- The window latch in the bedroom used by one of the Tenant's young sons was faulty
- There was a smell of dampness throughout the Property
- The linen cupboard smelled of dampness

- The laminate flooring had missing sections at doorways and had gaps between the flooring panels
 - The laminate flooring underlay was protruding above the flooring
 - The living room door was missing, but the hinges were still attached to the door frame
 - The electrical fuse box had wires protruding and it was unknown whether these wires were live and dangerous
 - The front door Yale lock had a part missing and could not be used
 - The Tenant had requested copies of the Gas Safety Certificate and the Landlord's PAT (portable appliance test) certificate, but these had not been provided by the Landlord.
4. On 25 May 2017, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
 5. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties.
 6. An inspection and hearing were arranged for 29 June 2017, but, on 1 June 2017, the Landlord's daughter advised the tribunal that the Landlord was out of the country on family business and the hearing and inspection were rescheduled to 27 July 2017. The Landlord's daughter then advised the tribunal by email on 18 July 2017 that the Landlord was still out of the country and requested a further postponement of the inspection and hearing. The tribunal agreed to this postponement and the inspection and hearing were rescheduled for 8 August 2017.
 7. The tribunal arrived to inspect the Property on the morning of 8 August 2017, but was unable to gain entry after giving 3 audible rings on the entry intercom system. The Landlord's son arrived at the Property, but, whilst he had keys for the Property, he did not have a note of the security entry system code required to enter the building. The Landlord's son advised the tribunal that the Tenant had vacated the Property.
 8. The tribunal comprised George Clark (Legal Member) and Greig Adams (Ordinary Member)(surveyor).
 9. Following the failed attempt to inspect the Property, the tribunal held a hearing at George House, 126 George Street, Edinburgh. Neither party was present or represented at the hearing.
 10. At the hearing, the tribunal determined that the issues raised in the application included a number of matters which, if established, would present a potentially significant health and safety risk to the Tenant. The tribunal therefore determined that the inspection and hearing should be rescheduled to a date to be intimated to the Parties. The tribunal also noted that the application included complaints regarding the gas central heating system and the electric shower and determined that, prior to the date of the rescheduled inspection and hearing, the Landlord should be

required to produce a current Gas Safety Certificate and an Electrical Installation Condition Report, prepared by suitably qualified persons.

11. The Decision of the tribunal was intimated to the Parties and a Direction was issued to the Landlord to produce the current Gas Safety Certificate and the Electrical Installation Condition Report.
12. The tribunal arrived to inspect the Property on the morning of 7 November 2017, but was unable to gain entry after giving 3 audible rings on the entry intercom system.
13. Following the unsuccessful attempt to inspect the Property, the tribunal held a hearing at George House, 126 George Street, Edinburgh. Neither party was present or represented at the hearing.
14. At the hearing, the tribunal determined that there were matters in the Tenant's application which, if established, had potentially serious health and safety implications for any tenant of the Property and that, accordingly, determination of the application must go ahead, in order to ensure the Property met the repairing standard.
15. The tribunal also noted that the Landlord had not complied with the Direction to produce the current Gas Safety Certificate and the Electrical Installation Condition Report required by the Direction issued following the hearing held on 8 August 2017.
16. Further, as the Landlord had failed, after due notice had been given, to provide access to the Tribunal, the tribunal was of the view that an application to the Sheriff or a Justice of the Peace should be made for a Warrant authorising entry to the Property in terms of Sections 181(2) and 182 of the Act.
17. On the day of the hearing, the tribunal received notification that the Tenant had vacated the Property and was, therefore, deemed to have withdrawn the application. The tribunal had, therefore, to consider whether to abandon its consideration of the application or to continue to determine it in terms of Schedule 2, paragraph 7(3) of the Act. The tribunal issued a Minute of Continuation, also dated 7 November 2017, as the matters complained of, if established, had potentially serious health and safety implications for any future tenant of the Property.
18. The tribunal intimated to the Landlord one further date for inspection of the Property, namely 17 January 2018. The tribunal arrived to inspect the Property at the appointed time. The tribunal members were able to enter the common stair, but, despite giving three audible knocks on the door of the Property, were unable to gain entry. The Landlord was neither present nor represented at the inspection or the subsequent hearing.
19. Following the unsuccessful attempt to inspect the Property, the tribunal held a hearing at George House, 126 George Street, Edinburgh.

20. The tribunal noted that the Landlord had still not complied with the Direction to produce the current Gas Safety Certificate and the Electrical Installation Condition Report and had also, for the third time, failed, after due notice had been given, to provide access to the tribunal. For these reasons, the tribunal confirmed its decision of 7 November 2017, namely that an application to the Sheriff or a Justice of the Peace should be made for a Warrant authorising entry to the Property in terms of Sections 181(2) and 182 of the Act.
21. The decision of the tribunal was intimated to the parties and, thereafter, the Landlord contacted the tribunal to offer access to the Property. Accordingly, it was not necessary to implement the decision to apply for a Warrant.
22. The tribunal inspected the Property on the morning of 3 April 2018. The landlord's daughter, Wezi Mhura, was present at the inspection.
23. A schedule of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

24. Following the inspection, the tribunal held a hearing at George House, 126 George Street, Edinburgh. The Landlord and her daughter were both present at the hearing. The Tenant, having vacated the Property, was not present or represented at the hearing.

Findings of fact

25. The tribunal makes the following findings of fact:
- The gas central heating boiler appears to be in working order, but the tribunal has not had sight of a current Gas Safety Certificate.
 - The Property has a carbon monoxide detector, located in the kitchen, adjacent to the cupboard housing the gas central heating boiler.
 - The electric shower was tested and appears to produce only cold water
 - There is a second shower above the bath. It is powered by the gas boiler and gas shower produces an adequate supply of hot and cold water. It does not screech when used.
 - The water produced by the bathroom taps is at an adequate pressure.

- The bath is sealed with a proprietary seal and there is no evidence that the seal is not effective. The enamel surface of the bath is worn in two small areas, but not to such an extent as to cause concern to the tribunal.
- There is no evidence of a leak from the bath which might affect the neighbouring property directly beneath. The tribunal found no evidence of moisture in the floor area of the bath.
- The bath panel is attached, but the door of the vanity unit beneath the wash hand basin in the bathroom is not attached.
- There is a gap in the bathroom wall between the wall and the bathroom ceiling. This appears to the tribunal to have resulted from the polystyrene coving having slipped. There is no evidence of structural cracking in this area.
- There is evidence of very minor mould on the bathroom wall forming part of the exterior of the building, but all readings taken at the inspection were above the dew point, as measured using an infrared thermometer and a thermal imaging camera. A thermal imaging moisture meter was also used at the inspection to double check the moisture content in the wall.
- There is no shower curtain, but the curtain pole is attached.
- The kitchen units are in poor condition and the kickplate is detached. There is evidence of past water damage, but the drawers and unit doors are functioning.
- The section of vinyl flooring closest to the kitchen door has been cut out.
- The kitchen taps do not screech when used
- The tilt and turn mechanism of bathroom window is impaired and the windows in the two rear bedrooms cannot be opened or closed.
- There is no smell or other evidence of dampness in any part of the Property, including the linen cupboard.
- There is a missing section of laminate flooring at one of the bedroom doorways and a loose section of laminate flooring at the doorway of the front bedroom. There are gaps between some of the flooring panels in the living room, where it appears that the tongue and groove of the laminate panels has snapped, causing the panels to open up.
- The living room door is properly attached.
- There is an open cable entry on top of the electrical consumer unit, the spare circuits in the unit do not incorporate blanking plates or MCBs and the hatch of the unit is broken, resulting in a clear risk of electrocution.
- The front door Yale lock appears to be functioning properly.
- The Tribunal has not seen a Gas Safety Certificate, an Electrical Installation Condition Report or the Landlord's PAT (portable appliance test) certificate.

Reasons for the decision

26. A number of the complaints in the Tenant's application were not upheld by the tribunal and the tribunal heard from the Landlord at the hearing that she had experienced considerable difficulty in obtaining access to the Property before the keys were handed back. A Gas Safety Certificate had been obtained, but the contractors had been unable to get access to carry out the electrical inspection. The tribunal also accepted the evidence of the Landlord that she had a good relationship with the neighbours beneath and would have been contacted by them if there had been problems with water leaking from the Property into their flat. The Landlord told the tribunal that there had been one such leak, about two years ago, but no subsequent issues. The polystyrene coving in the bathroom is a decorative item, which the Landlord may wish to attend to, but it is not a matter which merits inclusion in a Repairing Standard Enforcement Order. The wallpaper on the right hand wall on entry to the bathroom has been taken down and the Landlord will also want to attend to this prior to reletting, but it also is a decorative item and did not form part of the application to the Tribunal.
27. The tribunal held, however, that the Property did not meet the repairing standard and that a Repairing Standard Enforcement Order ("the Order") should be made. The tribunal was particularly concerned that the consumer unit presented a clear risk of electrocution. The Landlord was strongly advised at the hearing to ensure that a suitably qualified electrical contractor was instructed to deal with this as a matter of urgency and, as a result, the tribunal will require to see an Electrical Installation Condition Report, dated after the date of the inspection of 3 April 2018, issued by an electrical contractor who is registered with SELECT or NICEIC and confirming the installation is satisfactory, with no C1 or C2 items requiring attention.
28. The tribunal will require to see a current Gas Safety Certificate. At the hearing, the Landlord advised the tribunal that there was a current Certificate and undertook to send it to the tribunal for inspection, but, as it was not available at the hearing, the tribunal decided to include in the Order a requirement to produce it.
29. The kitchen units are in poor condition and require to be replaced or restored to good working order. The vinyl flooring in the kitchen cannot be repaired, so should be replaced and the laminate flooring requires attention to ensure it can be used safely and does not present a tripping hazard. The windows in the bathroom and the two rear bedrooms require repairs in order to be able to be safely cleaned from the inside and to provide a means of emergency escape from the Property.
30. The decision of the tribunal was unanimous.

Right of Appeal

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.

George Clark

Signed

Date: 3 April 2018

..... Legal Member/Chairperson

Schedule of Photographs
referred to in the
Foggy Statement of
Deeds dated 3/4/15
George Clark

(Legal: F. M. / Clark)

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SCHEDULE OF PHOTOGRAPHS



1 Front Elevation of The Property.



2 Open joints to laminate flooring within Living Room.



3 Water damage to kitchen base units.



4 Water damage to kitchen drawer units.



5 Carbon Monoxide detector present within Kitchen.



6 Boiler.



7 Consumer Unit – open to wiring.



8 Defective vinyl flooring within Kitchen.



9 Hardwired smoke detector.



10 Living Room – general view.



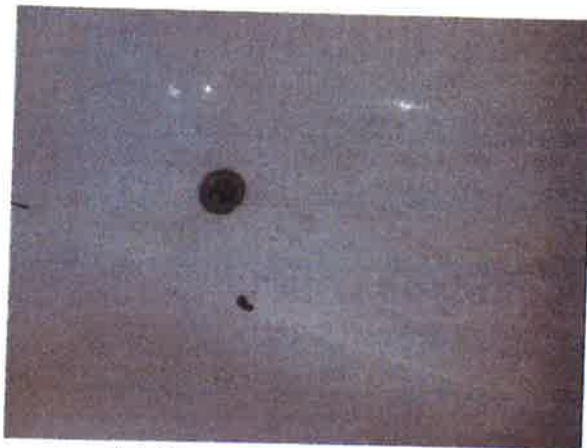
11 Further example of open joint to laminate floor.



12 Bedroom.



13 Loose and unfixed door to vanity.



14 Minor damage to steel enameled bath.



15 Further minor damage to enamel and seals intact.



16 View of showers.



17 General view of Bathroom.



18 Tape to wall ventilation.



19 Rear bedroom – window operation impaired.



20 Loose laminate at threshold.