

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(1)

Chamber Ref: FTS/HPC/RT/17/0385

**Property at 27 Ardinn Road, Turriff, AB53 4PG
("the Property")**

The Parties:-

**MS CATHERINE COSGROVE, 27 Ardinn Road, Turriff, AB53 4PG
("the Tenant")**

**MR DAVID MCLEOD AND MS CAROLYN MCQUAT, The Glass House, Back Street,
Fordyce, Banff, AB45 2SU
("the Landlords")**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie,
Aberdeenshire, AB51 3WA
("the Third Party Applicant")**

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 Landlords have complied with the duty imposed by Section 14(1)(b) in relation to the Property determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received on 12 October 2017 ("the Application"), the Third Party Applicant applied to the Housing and Property Chamber 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 the Third Party Applicant considered that the Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.

- (b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (c) The installations in the house for the supply of water, gas and electricity, and for sanitation, space heating, and heating water are in a reasonable state of repair and in proper working order.
 - (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 17th October 2017 the Convenor of the Housing and Property Chamber intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
 4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords, the Tenant and the Third Party Applicant.
 5. Following service of the Notice of Referral neither the Tenant nor the Landlords made written representations to the tribunal. The only written representation received from the Third Party Applicant was dated 9th November 2017 and indicated the Third Party Applicant's intention to be represented at the forthcoming hearing.
 6. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Mr Angus Anderson, Ordinary Member inspected the Property on the morning of 15th January 2018 accompanied by the tribunal Clerk, Mr Alan Kerr. The Tenant was present at the inspection along with her daughter, Bella Dorsett. The Landlords were neither present nor represented. The Third Party Applicant was represented by Ms Julia Leonard, Housing Officer. Photographs were taken and are attached.
 7. It was cold, but dry and bright during the inspection. Weather conditions in the week preceding the inspection had been mainly cold and damp.
 8. Following the inspection of the Property the tribunal held a hearing at Victoria Hall, Station Road, Ellon, AB41 9AY. The Tenant was neither present nor represented at the hearing. The Landlords were neither present nor represented at the hearing. The Third Party Applicant was represented by Ms Julia Leonard.
 9. The Tenant is a participating party in the application. The Tenant has suffered recent ill health and is in a wheelchair. As a consequence of the Tenant being unable to attend the hearing and in the interests of fairness, at the inspection of the Property the tribunal asked the Tenant to make any representations that she wished the tribunal to take into account. The Tenant submitted as follows:-
 - (a) That around 1am on 12 April 2016 the Tenant suffered a fall in the Property. The doors to the Property were locked and in order for paramedics to reach and treat the Tenant and transfer her to hospital the fire brigade were called by the paramedics and the front door was forced open.

- (b) That on the same day as she fell, the Tenant called the Landlords to advise that the Property was not secure. The Landlords arranged for a joiner to attend at the Property but no repair has been effected to the door or to the glass side panel.
- (c) That at the outset of the tenancy, the Landlords advised the Tenant that all necessary repairs would be carried out but the shower in the first floor bathroom has never been repaired and the temperature of the shower cannot be regulated using the shower control.
- (d) That the Tenant has been unable to get upstairs in the Property for around 2 years and now sleeps on a bed in the lounge. The Tenant has offered to install a stair lift at her own expense but is not prepared to do so if the shower cannot be used.

Summary of the issues

10. The issues to be determined are:-

- (a) Whether the front door is in a reasonable state of repair and in proper working order.
- (b) Whether the wash hand basin in the first floor bathroom and the pipework thereto is in a reasonable state of repair and in proper working order.
- (c) Whether the shower in the first floor bathroom is in a reasonable state of repair and in proper working order.
- (d) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (e) Whether an Electrical Installation Condition Report has been produced and, if not, whether the tribunal requires to order production thereof.

Findings of fact

11. The tribunal finds the following facts to be established:-

- (a) That the Landlords are the heritable proprietor of the Property.
- (b) That the Tenant is the tenant of the Property in terms of a Lease dated 17 April 2014.
- (c) That clause 19 of the Lease states:-

"The Landlord will make the following improvements to the Property: Shower to be replaced and taps in both bathrooms to have washers inserted. Plumber to inspect system throughout."

- (d) That with regard to the required repairs intimated by the Third Party Applicant:-

- (i) The front door and the glass panel adjacent thereto are not in a reasonable state of repair and in proper working order.
- (ii) The wash hand basin in the first floor bathroom and the pipework thereto are not in a reasonable state of repair and in proper working order. Evidence of water leaking from the waste fitting attached to the porcelain underside of the basin was clearly observed on the floor covering in the bathroom and on the ceiling in the ground floor hall directly beneath the wash hand basin.
- (iii) The shower in the first floor bathroom is not in a reasonable state of repair and in proper working order in that the temperature cannot be properly regulated.
- (iv) The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (v) An Electrical Installation Condition Report has not been produced.

Reasons for the decision

12. The Property is part of a modern residential development, around half a mile east of Turriff town centre. The Property is a two storey, semi-detached house and was built around 2001. The walls are of blockwork, roughcast externally and the roof is pitched and tiled. Accommodation comprises:-

Ground floor: entrance vestibule, hall, lounge, kitchen, and cloakroom with WC.
First floor: landing, two bedrooms, bathroom with WC.

The Property has double glazed windows and a gas fired central heating system with radiators throughout. There is a front door and side door. The Property was occupied and furnished, with floor coverings in place.

13. The tribunal checked for provision of smoke and heat detectors. There are mains powered smoke alarms fitted to the ceiling of the ground floor hall and first floor landing. When tested using the test button, both were found to operate and sound together. Both smoke alarms were discoloured with age and exposure to cigarette smoke and both appeared, by their design and style, to date from the time of construction of the house. There was no heat detector in the kitchen or smoke alarm in the lounge. The fire detection equipment did not meet the Repairing Standard.

Whilst in the kitchen, the tribunal noted that there was a carbon monoxide detector fitted to the ceiling. The detector was discoloured and due to its design and style, had the appearance of an alarm fitted at the time of construction of the Property.

14. The front door was inspected. Internally, it could be seen that the fairly substantial, metal faced composite door was damaged, with the lower section bent inwards. A long piece of cardboard had been stapled over the glazed side panel, but the cardboard had

become loose. Externally, the face of the door was deformed with impact damage from being forced open. The side glazing panel has been boarded over with a strip of plywood, but it could be seen that the glass was smashed. The door was locked shut and the Tenant stated that the key had been missing since the time of the damage to the door. The condition of the front door and side glazing panel did not meet the Repairing Standard.

15. The wash hand basin within the first floor bathroom was inspected. After running the taps for a few minutes, water was seen to be dripping from beneath the basin, where the waste fitting attaches to the porcelain underside. There was staining to the floorcovering of the bathroom, beneath the basin. There was staining from water leakage to the ceiling of the ground floor hallway, directly below the location of the wash hand basin. The installation of the wash hand basin did not meet the Repairing Standard.
16. Within the first floor bathroom, there is a "Mira" mixer shower. The shower was tested for between five and ten minutes. It was found to be difficult to regulate the temperature. The changes in temperature from hot to cold and vice versa, were not linear and did not correspond to relative movement of the temperature control. The water was mostly cold, but at one point, quickly became very hot. The shower did not meet the Repairing Standard.
17. The electrical installation was inspected generally. The consumer unit is located in the kitchen cupboard. It has a label indicating that it was inspected on 31/05/2001. The hot water cylinder was also inspected. The electrical fittings that were seen during the inspection did not exhibit any obvious visual defects, such as impact or heat damage.

Decision

18. The tribunal accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
19. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
20. The decision of the tribunal was unanimous.

Observations

21. Whilst the tribunal was not able to make an order for production of an Electrical Installation Condition Report, no such Report has been provided to the Tenant and the tribunal expects the Landlords to exhibit such a Report within the period allowed for compliance with the Repairing Standards Enforcement Order.
22. That given the age and condition of the carbon monoxide detector, the tribunal expects the Landlords to replace the detector in conjunction with the installation of suitable fire detection equipment as required in terms of the Repairing Standard Enforcement Order.

Right of Appeal

23. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

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

G Buchanan

Signed...

..... Chairperson & Legal Member

Date 5 February 2018

Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

27 Ardinn Road, Turriff AB53 4PG

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Initial Inspection : Schedule of Photographs

Inspection Date: 15/01/2018



Figure 1 Front Elevation

Dated 5/2/18

This is the Schedule referred to in the foregoing Decision

A handwritten signature in blue ink, appearing to be 'Andrew'.

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Figure 2 Ground floor hall smoke alarm.



Figure 3 First floor landing smoke alarm.



Figure 4 Front door external



Figure 5 Front door external.



Figure 6 Front door internal.



Figure 7- Bathroom.



Figure 8 Basin - leak at pipe/basin junction.



Figure 9 Bathroom - shower.



Figure 10 Bathroom - shower.



Figure 11 Consumer unit.



Figure 12 Hot water cylinder.