

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/18/0348

Property at 35C Kemnay Gardens, Dundee, DD4 7TT
("the Property")

The Parties:-

Ms Samantha Scott, formerly residing at 35C Kemnay Gardens, Dundee, DD4 7TT
("The Tenant")

Mr Stuart Whyte, 10 Lochalsh Street, Broughty Ferry, Dundee DD5 3HY
("The Landlord")

Per his agent, Mr Steven Gold, 1 Somerville Place, Dundee DD3 6JJ
("The Landlord's Agent ")

Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee DD1 3BA
("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 Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (the Act ") in relation to the Property, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Tribunal consisted of-

Morag Leck (Legal Member and Chair)
Robert Buchan (Ordinary member)

Background

1. By application received on 16th February 2018, the Third Party Applicant applied to the First-tier Tribunal for Scotland (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 ("the Act").
2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular 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 (as required by section 13(1)(a) of the Act);
 - (b) 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:
 - (c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order:
 - (d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed: and
 - (e) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
3. The Third Party Applicant attached details of the following complaints to the application :-
 - (a) No Gas Safety Certificate
 - (b) No Electrical Installation Condition Report (EICR)
 - (c) Windows do not close properly at hinge side and draughty
 - (d) Radiators do not turn off at TVR
 - (e) CO detector in kitchen does not work. If CO detector in cupboard beside boiler this is the wrong position
 - (f) Living room skirting and window fascia loose from the wall and draughty
 - (g) Tenant unaware of deposit being paid into TDS
4. By Minute dated 19th February 2018, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.

5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Third Party Applicant on 12th March 2018. An inspection of the house and a hearing were fixed for 18th April 2018.
6. Following service of the Notice of Referral, a letter dated 10th April 2018 was submitted by the Landlord's solicitor, Alan E Masterton, enclosing copies of a Gas Safety Certificate, an EICR and a copy of a TDS (Tenancy Deposit Scheme) receipt together with copy photographs showing repairs to a window fascia and skirting. The letter also set out why the Landlord considered that all the repairs identified had been completed and advised that the Tenant had vacated the property.

The Inspection

7. The Tribunal inspected the Property on the morning of 18th April 2018. The Tenant was not present having vacated the Property. The Landlord was present and confirmed that the tenant had left some weeks before. Mr Lyndsey Watson from Dundee City Council was also in attendance. Photographs were taken and are attached as a Schedule to this decision.
8. The Property is a first floor flat in a refurbished three storey block of six flats dating from around 1960. It is located in the residential Douglas district of Dundee and is situated around two miles from the city centre. The accommodation comprises two bedrooms, living room, kitchen and bathroom.
9. The Tribunal observed the following at the inspection:-
 - i) Copies of a Gas Safety Certificate and an EICR had been produced
 - ii) The living room window was functioning satisfactorily. The Landlord explained that the Tenant had worked a TV cable behind the window fascia allowing a draught from the cable hole drilled in the outer wall to blow directly into the room as the fascia had been lifted away from the wall by the thickness of the cable. Since the tenant had vacated the Property, the cable had been removed and the fascia replaced.

The windows in the two bedrooms and bathroom of the Property were also inspected and found to be functioning satisfactorily with possibly minor adjustments required to the hinges of the bedroom windows. The kitchen window was found to have a noticeable gap in the window frame although no draught was noted at the time of inspection.

- iii) The Landlord pointed out a radiator in the front bedroom where the valve pin had been replaced. All other radiators were also in working order.
- iv) The carbon monoxide detector in the kitchen was operational and in the correct position. There was also a further new carbon monoxide detector installed in the hall.
- v) There was no loose skirting identified in the living room. The landlord explained that some skirting in the living room had been replaced after the tenant vacated the property as this had not been the original skirting. The window fascia had been fixed at the same time due to the damage caused by the unauthorised routing of the TV cable by the Tenant.

The Hearing

10. Following the inspection of the Property the Tribunal held a hearing at Kirkton Community Centre, Derwent Avenue, and Dundee. The Third Party Applicant was not represented as Mr Watson had advised that he did not intend to attend the hearing at the end of the inspection. The Landlord attended together with his business partner and agent Mr Steven Gold.
11. As a preliminary issue, the Tribunal noted that the Tenant who had been included in the application as a party had left the property on or around 10th March. The Tribunal confirmed that the application could proceed as Dundee City Council continued to be the Third Party Applicant.
12. It was agreed in respect of the procedure to be adopted at the hearing that the Tribunal would look at each repair issue set out in the application in turn.
13. The Landlord's agent Mr Gold explained by way of background that the Tenant had simply vacated the flat leaving her keys behind. She had advised Housing Benefits Team of her departure but not her Landlord. There had been a problem with the flat above and water leakage which had caused a crack in the bathroom ceiling and the Landlord had required to put a board up as a temporary measure as they were having difficulty contacting the owner of the flat above to gain access. Mr Gold submitted that the Tenant had found this stressful which may have been the cause of her departure. The Landlord had pointed out the issues with the bathroom to the Tribunal during the inspection and whilst not forming part of the application, the Tribunal had noted that the ceiling had been repaired.

14. Thereafter the Tribunal considered the issues in the following order:-

No Gas Safety Certificate

Copies of Gas Safety certificates dated 20th May 2016 and 7th June 2017 were provided to the Tribunal. Mr Gold also provided a copy of the Gas Safety Record from Scottish Gas dated 9th February 2018. He explained that they had also arranged a Maintenance Plan with Scottish Gas to cover the Property so the next tenant would be able to obtain immediate assistance if required for the central heating and boiler.

Mr Watson had accepted at the inspection that this issue had been addressed.

No EICR

Mr Gold explained that a copy of this along with the Gas Safety Certificate would have been provided to the tenant at the start of the tenancy. A further copy of the EICR dated 12th February 2018 was provided to the Tribunal.

Mr Watson had accepted at the inspection that this issue had been addressed.

Windows do not close at hinge side and draughty

Mr Whyte advised the Tribunal that he had explained the position at the inspection about the living room window and that the window fascia had been repaired along with the skirting.

Mr Buchan, the Ordinary Member of the Tribunal pointed out that, during the inspection, he had noted one or two of the windows could do with minor adjustments but were still in working order. He also pointed out that a gap had been noted in the kitchen window frame although there was no draught at the time.

Mr Whyte accepted that gap in the kitchen window frame could be repaired and advised the Tribunal that this repair would be carried out within the next few days.

The Tribunal suggested it would be helpful if he could notify the Tribunal when this had been done and provide a photograph of the repair.

Mr Watson had agreed with this approach at the inspection and had no other issues in relation to the windows.

Radiators do not turn off at TRV

Mr Whyte advised that this had also been explained at the inspection and the valve pin replaced in the radiator in the front bedroom,

Mr Watson had agreed that the issue with the radiators had been addressed at the inspection.

CO Detector in kitchen does not work

Mr Whyte submitted there was a working carbon monoxide detector in the kitchen placed correctly as identified at the inspection. Mr Gold added there was a new carbon monoxide detector placed in the hall.

Mr Watson had indicated at the inspection that he was satisfied that this issue had also been addressed

Living room skirting and window fascia loose from wall and draughty

Mr Gold referred again to the position in relation to the unauthorised placing of the TV cable.

Both parties had agreed that the necessary repairs had been carried out as identified during the inspection.

Tenant unaware of deposit being put in TDS

The Tribunal pointed out that this was not an issue to be considered in terms of the repairing standard. Notwithstanding, the Tribunal acknowledged that a copy of the Tenancy Deposit Receipt had been provided by Mr Whyte's solicitor.

Mr Whyte and Mr Gold both submitted that they took their responsibilities as landlords very seriously. They would ensure that the remaining issue of the minor window repair which was the only matter outstanding was dealt with as soon as possible.

Summary of the issues

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

Findings of fact

16. The Tribunal finds the following facts to be established:-

- a) The Tenant entered into a Short Assured tenancy agreement with the Landlord per the Landlord's Agent with a start date of 4th January 2017
- b) The Landlord is recorded on the lease as Stuart Whyte.
- c) Stuart Whyte is the registered owner of the Property.
- d) The Tenant ceased to occupy the Property on or around 10th March 2018.
- e) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- g) The Third Party Applicant notified the Landlord by letter dated 10th January 2018 of all the repair issues detailed in the application.
- h) That with regard to the repairs issues required by the Third Party Applicant, the Landlord has fully addressed these.

Reasons for the decision

17. The Third Party Applicant had complained that there was no Gas Safety Certificate or EICR. These were both produced to the Tribunal.

The Third Party Applicant had also complained that the windows of the Property did not close properly at the hinge side and were draughty. The Tribunal noted from the inspection on 18th May that the windows did close properly other than a gap identified at the kitchen window and there were no draughts. The Landlord undertook to fix the kitchen window. Confirmation of this repair together with photographs were submitted to the Tribunal on 23rd April 2018.

The radiators were in working order and the Tribunal noted during their inspection that a valve pin had been replaced on the bedroom radiator.

The Carbon Monoxide Detector located in the kitchen was found to be in working order and in the correct location. A new Carbon Monoxide Detector had been installed in the hall

The Tribunal noted at the inspection that both the window fascia and skirting had been replaced. There was no draught from the window.

Whilst it did not fall to be determined as part of the application, the Landlord had also provided a copy of the Tenancy Deposit Receipt.

Given all the circumstances as set out above, the Tribunal is satisfied that:-

- a) The house is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act) ;
- b) 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
- c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order
- d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed
- e) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

Decision

18. The Tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

19. The decision of the Tribunal was unanimous.

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.

M Leck

Signed

Date 11/5/18

Chair and Legal Member

This is the schedule
referred to in the
assessing decision
11/5/18

M Leck

Schedule of photographs taken during the inspection of
35C Kemnay Gardens, Dundee, DD4 7TT



Front - 1F



Street

Schedule of photographs taken during the inspection of
35C Kemnay Gardens, Dundee, DD4 7TT



Living-room



Living-room window

Schedule of photographs taken during the inspection of
35C Kemnay Gardens, Dundee, DD4 7TT



Kitchen window