

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0334

**Property at Flat G/R, 4B Duncarse Road, Dundee, DD2 4SA
("The House")**

The Parties:-

Miss Danielle Perrie and Mr Silvanus Thomson, residing at Flat G/R, 4B Duncarse Road, Dundee, DD2 4SA ("the Tenant")

Mr Michael Johnston and Mrs Theresa Johnston both residing at 45 Mains Loan, Dundee, DD4 7AF ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Angus Anderson	-	Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 30 August 2017 the Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) 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. In summary, the Tenant submitted in her application that there were issues with the bath taps and shower screen, badly fitted plug sockets throughout the property, the kitchen window didn't close properly, the kitchen cupboards and worktop were in disrepair, the bedroom and bathroom doors did not close properly, light fittings required to be replaced and the wardrobe in the bedroom was in disrepair.
4. By Minute dated 10 October 2017 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, intimated his decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
5. Following service of the Notices of Referral the Tribunal received written representations from the Tenant. The Tenant advised that tradesmen had been out to the property to carry out repairs however these were not complete. Further internal decoration had been damaged in the process. The Tenant raised a further issue with the extractor fan which had not been noted in the application. The fan was not working and the Landlord appeared to have instructed a tradesmen not to remove it. Furthermore repairs to a plug socket were unsatisfactory. The Tenant also made a complaint in her representation regarding the present arrangements for payment of rent which was by cash payment as opposed to bank transfer.
6. The Tribunal attended the Property on the morning of 13 December 2017. The weather was cold and damp. Weather conditions in the week preceding the inspection had been similar. The Tenants were present and allowed access. The Landlords were also present. The Tribunal proceeded to inspect the property.

The Inspection

7. The property is located in an urban setting, around three miles north west of Dundee city centre. It is a self contained, ground floor flat within a two storey purpose built block which contains four flats. The property was originally built on behalf of the local authority around 55 years ago. The walls are of blockwork, roughcast externally and the roof is pitched and tiled. Accommodation comprises entrance hall, lounge with kitchen off, bedroom and bathroom. The flat has older double glazed windows and a gas fired central heating system with radiators in all habitable rooms.
8. The flat was occupied and furnished, with floor coverings in place.
9. The lounge was inspected first. The tenant confirmed that works had been undertaken to the hole in the wall, light switch and fitting and that these elements were all now satisfactory. The Tenant confirmed that the socket behind the TV functioned correctly, but the issue was that it was fitted at an angle to the wall finish, which was confirmed by the Tribunal's inspection.

10. The kitchen was then inspected. The left hand casement of window was found to be stiff in operation and required a firm pull to close. Once closed, it appeared correctly seated and sealed. Various kitchen cabinets showed signs of wear and tear. The decorative plastic film finish had peeled off several doors, revealing the mdf sub structure. The right hand sink cupboard door had dropped and didn't close properly. The knob was missing from the left hand door. The lower shelf of the right hand wall cabinet was sagging. The worktop to the left of the sink had sagged slightly, but did not deflect unduly when weight tested. The Tenant stated that the light fitting was tatty looking. The light fitting is an older style of fitting. It operated properly and was slightly dirty. The extract fan was found to be inoperative when tested.
11. The entrance hall was next inspected. The Tenant confirmed that the socket next to the bedroom door functioned correctly, but the issue was that it was fitted at an angle to the wall finish, which was confirmed by the Tribunal's inspection.
12. The bedroom was inspected. The built-in wardrobe spans the full length of the room. There were no doors. The right hand facing had been patch repaired. An area of deformed timber remained, apparently the result of pet damage occurring before the current tenancy began. A small section of the window trim was missing. The Tenant confirmed works had been undertaken to the bedroom door and it now functioned properly.
13. The bathroom was inspected. The Tenant stated that the gap behind the bath taps is too small to allow fingers grasping the tap head to fit. Both Tribunal members tested the function of the taps and were able to operate these. The Tenant confirmed repairs had been undertaken to the shower screen and that it was now satisfactory. The bathroom door did not close properly. The door catch was missing and the privacy lock had been removed and was lying on the bathroom floor.
14. The electrical apparatus, located in the entrance hall cupboard was inspected. The Tenant advised that the right hand consumer unit was redundant. The left hand consumer unit appeared relatively modern with miniature circuit breakers. It had a test label, dated 22/7/17.
15. There are smoke alarms fitted to the ceilings of the lounge and hallway and a heat detector fitted to the ceiling of the kitchen. These were found to operate, when tested. There is a carbon monoxide alarm adjacent to the central heating boiler.
16. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
17. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

18. The hearing took place in Caledonian House, Dundee. The Tenant Danielle Perrie was present. The Landlords were both present.

19. The verbal submissions of the parties can be summarised as follows:-

(i) The living room

With regard to the items in the living room, the Tenant confirmed that the hole in the wall and the light fitting had been repaired. The representative from Dundee City Council who had inspected the property had advised that the plug socket did not meet the Repairing Standard.

The Landlord submitted that the plug socket was in proper working order. The electrics had been inspected in July and were confirmed as safe.

(ii) The kitchen

With regard to the items in the kitchen, the Tenant submitted that the cabinet on the wall had a dip on it, there was a gap in one of the cupboard doors, the wood effect was peeling off the cupboard door and the window was stiff and required force to open and close. She was concerned that the window could break.

The Landlord advised that the kitchen was in a useable condition and a reasonable state of repair. The representative from Dundee City Council had confirmed this. It was their intention to carry out minor works however gaining access to the property was difficult. The kitchen was in the same condition as it had been when the Tenant had moved in. She had accepted the condition of the property.

In response to the Landlord's comments regarding access, the Tenant advised that she did her best to cooperate with requests from contractors for access however it was difficult with a three way conversation between herself, the Landlords and the contractors. She worked shifts and couldn't sit in the house waiting for contractors. Mr Thomson works as well.

(iii) The bedroom

With regard to the items in the bedroom, the Tenant had advised that some work required to the wardrobe had been half done. A contractor had attended and had put a small plank of wood on one side, but not the other. The bedroom door had been fixed. However when the contractor had taken the door off, he had damaged wallpaper that had been put up by the Tenant's partner.

The Landlord advised that the Tenant had asked if she could move the cupboard out the wardrobe which the Landlord had verbally consented to. The

Tenant had never come back to discuss the issue therefore the Landlord had assumed she had gone ahead and done this. It was the Landlord's position that the wardrobe was in a reasonable condition and there was no requirement for doors. The wardrobe was in the same condition as it was when the property was let to the Tenant.

(iv) The bathroom

With regard to the items in the bathroom, the Tenant confirmed that the shower screen had been fixed. With regard to the bathroom door, a contractor had took it off and sanded it down, taking the lock off at the same time. He hadn't put the lock back on. The Tenant advised that the bathroom door had never closed properly during her time in the tenancy.

The Landlord questioned why the Tenant was not arranging for minor repairs to be carried out. It was her home. She and her partner could arrange for these. The Tenant in response queried why the repairs were her responsibility.

(v) The hallway

With regard to the items in the hallway, the Tenant confirmed that work had been done to the socket however the representative from Dundee City Council had given the view that it did not meet the Repairing Standard. The Tenant confirmed that she has seen the current electrical installation condition report.

The Landlord advised again that the electrics had been inspected and were confirmed to be safe.

Findings in fact

20. Having considered all the evidence the Tribunal found the following facts to be established:-

- The tenancy is a short assured tenancy which commenced on 15 May 2017.
- The Property consists of a ground floor flatted dwellinghouse. The accommodation comprises a hallway, bathroom, bedroom and living room with adjacent kitchen.
- In the living room the light fitting and plug socket cited in the application are in proper working order. The hole in the wall has been repaired and is in reasonable condition.
- In the bathroom the shower screen and bath taps are in a reasonable state of repair and in proper working order. The bathroom door is not in a reasonable state of repair.
- In the kitchen, the cabinets are not in a reasonable state of repair. The worktop, light fitting and window in the kitchen are in a reasonable state of

repair. The extractor fan is not in proper working order but does not form part of the Tenant's application.

- In the bedroom the wardrobe is in a reasonable state of repair. There is minor damage to the window trim however it is in a reasonable state of repair.
- There is satisfactory provision for the detection of smoke and fire within the property through hard wired smoke and heat detectors.

Reasons for the decision

21. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and written representations from the parties.
22. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application. For the avoidance of doubt, the Tribunal noted both parties had attributed comments to the representative from Dundee City Council regarding items which he considered may or may not meet the Repairing Standard. Whilst the Tribunal respected the view of the Council representative, it was conscious that it had to make its own determination of the application.
23. The Tribunal therefore concluded that the light fittings throughout the property, the living room wall, the plug sockets, the bedroom wardrobe, the kitchen window, the shower screen and bath taps were all compliant with the Repairing Standard. Whilst there was some wear and tear in part, there was nothing to cause the Tribunal concern. Further the property had hard wired smoke and heat detectors that had been tested as operational. Where works had been carried out by the Landlord these were to a satisfactory standard.
24. However there were two matters in respect of which the Tribunal considered the Landlord's duty had been breached. It was apparent from the Tribunal's inspection that the kitchen cupboards were not in a reasonable state of repair. Several had sharp edges arising from the decorative film peeling away which rendered them difficult to clean as well as posing a possible safety risk. Further doors had knobs missing and were out of adjustment, rendering them unable to close properly. Particular notice was given by the Tribunal to the kitchen cupboard on the right hand side of the wall which was bowed and sagging. The Tribunal therefore considered the Landlord would require to carry out such works as necessary to address the various issues of disrepair apparent with the kitchen cupboards. It was noted that the Landlords in their submissions had conceded that work was required to the kitchen, albeit they considered it to be of a minor nature.
25. The Tribunal also concluded, primarily from its inspection of the property, that the bathroom door was not capable of closing properly. Accordingly it could not be said to be in a reasonable state of repair and therefore its condition would amount to a breach of the Repairing Standard.

26. Whilst the Landlords had expressed the view that the Tenant should be carrying out minor repairs at the property and took the tenancy on knowing its condition, the Tribunal was clear that it is ultimately the Landlord's responsibility to ensure the property meets the Repairing Standard at the start of the tenancy and during its term. Accordingly where the Tribunal had found items that did not comply with the Repairing Standard it was the Landlord's responsibility to effect the repairs required to remedy the breach.
27. The Tribunal further noted that there were matters raised in the Tenant's written representations and during the inspection that did not form part of the application including the extractor fan in the kitchen, the damage to the window frame in the bedroom and the damage to the internal decoration in the bedroom. The Tribunal was therefore unable to consider these matters. However, it was clear that the kitchen extractor fan was not in proper working order and would require repair.
28. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
29. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.
30. The Tribunal would wish to stress going forward the importance of cooperation between the parties in making the necessary arrangements to ensure repairs are carried out in respect of any items of disrepair within the property including those required by the Repairing Standard Enforcement Order.

Decision

31. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not presently wind, watertight and in all respects reasonably fit for human habitation.
32. In respect of section 13(1)(d) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
33. The decision of the Tribunal was unanimous.

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.

R O'Hare

Signed

Ruth O'Hare
Chairperson

4 January 2018

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0334

Title: Subjects being the southmost house on the ground floor of the tenement 4 Duncarse Road, Dundee, DD2 4SA registered under Title Number ANG4746 ("The House")

The Parties:-

Miss Danielle Perrie and Mr Silvanus Thomson, residing at Flat G/R, 4B Duncarse Road, Dundee, DD2 4SA ("the Tenant")

Mr Michael Johnston and Mrs Theresa Johnston both residing at 45 Mains Loan, Dundee, DD4 7AF ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Angus Anderson	-	Ordinary Member

Whereas in terms of their decision dated 4 January 2018, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all respects reasonably fit for human habitation; and
- (b) The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the landlord to:-

- (a) Carry out such works as are necessary to the kitchen cupboards to address the defects identified in the decision of the Tribunal and ensure they are in a reasonable state of repair; and
- (b) Repair or replace the bathroom door to ensure it can close properly and is in a reasonable state of repair.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of six weeks from the date of service of this Notice.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39 2GH, chairperson of the Tribunal at Aberdeen on 4 January 2018 before this witness:-
L Dibble
R O'Hare

_____ witness

_____ chairperson

Lorna Dibble, c/o Aberdeenshire Council,
Woodhill House, Westburn Road, Aberdeen

Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

Flat G/R, 4B Duncarse Road, Dundee DD2 4SA

Chamber Reference : FTS/HPC/RP/17/0334

Initial Inspection : Schedule of Photographs

Inspection Date: 13/12/2017



Figure 1 Front Elevation



Figure 2 Lounge socket.



Figure 3 Kitchen overview.



Figure 4 Kitchen - sink unit and worktop



Figure 5 Kitchen .- right hand wall unit.



Figure 6 Kitchen - right hand base units.



Figure 7- Entrance hall - socket.



Figure 8 Bedroom - wardrobes overview.



Figure 9 Bedroom - pet damage to facing.



Figure 10 Bedroom - window trim.



Figure 11 Bathroom overview.



Figure 12 Bath taps.

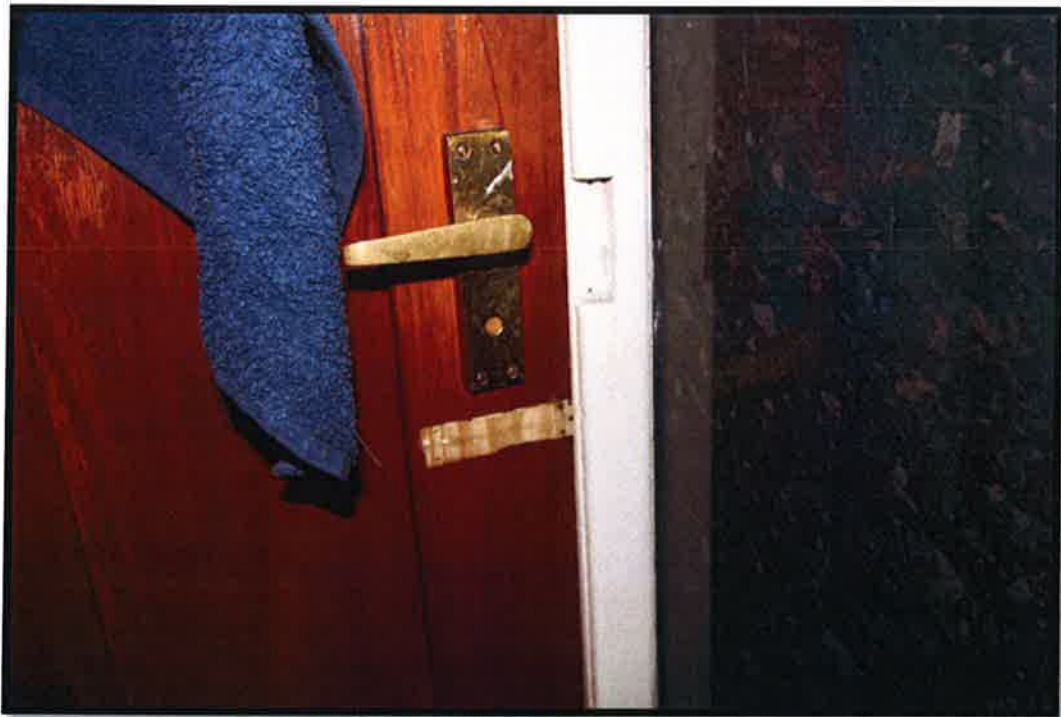


Figure 13 Bathroom door



Figure 13 Bathroom door



Figure 14 Electrical switchgear - right hand consumer unit no longer in use.

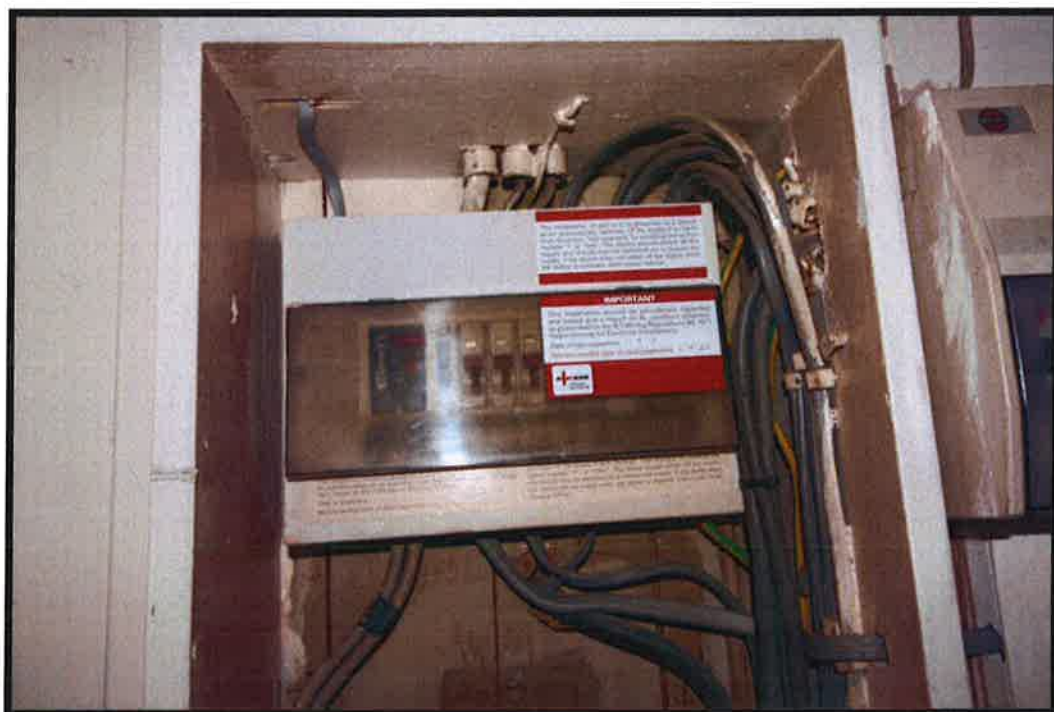


Figure 15 Left hand consumer unit - test label dated 22/7/17.