

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RP/17/0167**

**Title no: ABN63239**

**144 Osborne Place, Aberdeen AB25 2DU ("The House")**

**The Parties:-**

**Mr Luis De Basto, 144 Osborne Place, Aberdeen AB25 2UD ("the  
Tenant" and "the Applicant")**

**Ms Claire Dewick or Magnus, Gilston House, Elgin IV30 5PT or 24 Gairn  
Terrace, Aberdeen AB10 6BB ("the Landlord")**

**Mr Duncan Kerr, AM PM Leasing Property, 441 Union Street, Aberdeen  
AB11 6DA ("the Landlord's Agent")**

**The Tribunal comprised:-**

Ms Gabrielle Miller	-	Legal Member
Mr Angus Anderson	-	Ordinary Member

### **Decision**

1. 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) in relation to the Property, and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act. The tribunal also determined that the Landlord had failed to comply with the Direction issued on 10th June, 2017.

### **Background**

2. By application received 27<sup>th</sup> April 2017, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has

failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Tenant stated that it considered that the Landlord had failed to comply with her duty to ensure that the House met the repairing standard, in that the house was not wind and watertight and in all other respects reasonably fit for human habitation; and that the structure of the exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and any furnishings provide by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed. In particular the complaints consisted of :-
  - a) The property had not been professionally cleaned within 5 days of the Tenant's check as per the lease.
  - b) The light switch in the master bedroom did not work properly.
  - c) There was a leak in the bedroom next to the living room on the 1<sup>st</sup> floor of the property.
  - d) There was a leak in the living room.
  - e) There was a leak in the kitchen.
  - f) There was a leak in the master bedroom.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Landlord's Agent and the Tenant dated 16<sup>th</sup> May 2017.
5. A direction was issued to the landlord on 10<sup>th</sup> June 2017. It stipulated that a Gas Safety Certificate for the house from a Gas Safe Registered Engineer addressing the working order, condition and safety of the gas installation and the Boiler and issued within the last six months, also addressing whether there is a carbon monoxide alarm which complies with the statutory guidance in the house should be provided to the Tribunal and lodged with the Tribunal no later than at the hearing on Monday 26<sup>th</sup> June 2017 at 12.30pm. It also stipulated that an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported should be provided and lodged also no later than at the hearing on Monday 26<sup>th</sup> June 2017 at 12.30pm.
6. Prior to the Hearing, the Tenant and the Landlord's agent had corresponded by email regarding the Tenant complaints. The emails date from 10<sup>th</sup> November 2013 to 4<sup>th</sup> April 2017. The emails were predominately initiated by the Tenant regarding repairs that he considered need to be completed. The Tenant included photos of work needing done to the Landlord's Agent. In addition to those items mentioned at paragraph 2 above, the tenant stated the WCs were defective and that there were problems with the central heating radiators. The Landlord's Agent submitted various inspection reports which appeared to have been prepared by an independent inventory company.
7. The Tenant acted for himself. The Landlord has an Agent.

## The Inspection

8. The Tribunal attended the property on the morning of 26th June 2017. The Tenant was present and allowed access. Neither the Landlord nor her agent were present. It was mild, dry and bright during the inspection. Weather conditions in the week preceding the inspection had been mainly mild and dry.
9. The property is located in an urban setting, in the West End of the city of Aberdeen. It is an upper flat occupying the first and attic floors of a two storey and attic end terraced property. Originally built as a single house around 1900, it was converted to two flats approximately 30 years ago. The walls are of solid granite and the main roof is pitched and slated. Internal walls are mainly dry lined with a lath and plaster finish. There is a small area of lead covered flat roof over the front bay window. On the ground floor there is an entrance vestibule shared with the ground floor and an entrance hallway with stairs to the first floor. There is a bathroom off the first half landing. At first floor level there is a landing, lounge to the front (with bay window), play room to the front, and kitchen with a door to the rear. There is a small bedroom or box room off the second half landing. At attic level, there is a landing, small bedroom with Velux window to the front, master bedroom with Velux window to the front and en-suite shower room to the rear. The flat has modern double glazed windows and a gas fired central heating system with radiators in all habitable rooms.
10. The house was not occupied but partially furnished, with floor coverings were in place. The heating was not operating but the property was not cold.
11. The lounge was inspected first with particular attention to the front elevation. Evidence of previous damp penetration was seen in the form of cracks to paintwork to the cornice and ceiling across the bay window, efflorescence to the plasterwork of the cornice and water marks to the timber window sill. Moisture meter readings were taken to the outer wall surfaces at various heights and locations. Generally, the readings were consistently around 15 - 18%, a normal or acceptable level.
12. The play room was inspected with particular attention to the front elevation. Evidence of previous damp penetration was seen in the form of cracks to paintwork to the window lintel and water marks to the timber window sill. Moisture meter readings were taken to the outer wall surfaces at various heights and locations. Generally, the readings were consistently around 15 - 18% but at the left side of the window into, readings were above 90% (indicating abnormally high moisture) to a small area extending from the skirting board to a height of about 400mm.
13. The kitchen was then inspected, in particular the ceiling next to the door to the landing. There were several small holes about 5mm across, the tenant

stated that water dripped out of the holes when the shower was in use. The laminate flooring in this area had gaps at the joints, indicating movement or swelling from water ingress. Bedroom was inspected. The Tribunal asked the Tenant to switch on the shower in the master bedroom. After approximately 45 seconds, water could be heard dripping on to the ceiling of the kitchen. At this point, the tenant was asked to turn off the shower and the Tribunal followed upstairs and confirmed that the shower was being used in an appropriate manner. Immediately, the Tribunal returned to the kitchen to see water dropping from the ceiling to the kitchen floor.

14. The master bedroom was inspected. The Tenant confirmed that there were no longer any issues with the Velux windows but drew to the Tribunal's attention marks to the gable wall and stated that there had been damp issues previously. Moisture meter readings were taken to the gable wall surfaces at various heights and locations. Generally, the readings were consistently around 15 - 20%. There were no obvious water marks or other visible indications of water ingress.
15. The Tenant explained that there had been problems with the light switch or light fitting, in that the light didn't come on when required or came on of its own accord. The light switch was unusual in that it seems to incorporate a timer function. When tested, the light could not be made to illuminate.
16. From the Velux window, the Tribunal was able to inspect the rear of the stone parapet and surface of the flat roof over the bay window. It was noted that the stonework appeared to have been repointed in recent times. Also, the design of the roof was such that water flowed back from the front elevation, discharging by outlet pipes at either side of the bay, into the adjacent eaves gutter. It was noted that the outlet pipes were narrow, perhaps 30 or 40mm and could quickly block with debris during a heavy shower or over a longer period.
17. The en-suite shower was inspected. The silicon sealant was found to be perished and discoloured. On closer inspection, the shower tray was seen to be cracked and crazed. Moisture meter readings to the "aquapanel" linings indicated dampness with readings of 100% along the base of the walls, adjacent to the tray. Meter readings taken to the floor adjacent indicated slightly above average readings and it could be felt that the timbers were soft beneath the carpet. There was clear evidence of water escape at this location.
18. The consumer unit, located in the first-floor landing cupboard was inspected. It was found to be a relatively modern, with miniature circuit breakers for each circuit, but no RCD protection. There was a label indicating that it was tested on 22/9/16.
19. There are smoke alarms fitted to the ceiling of the first and attic floor landings and a heat detector fitted to the wall of the kitchen.

20. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

21. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

### **The Hearing**

22. The hearing took place at The Credo Centre, 14-20 John Street, Aberdeen. The Tenant was present. Neither the Landlord nor her Agent were present.

23. The Tenant advised that he and his family had moved out of the house but that he was still the tenant and would continue to be so until the end of his tenancy in September 2017. The Tenant left the property on 4<sup>th</sup> June 2017.

24. The Tenant advised that he felt that his communications were not fully responded to by the Landlord or her Agent.

25. The Tenant advised that the Landlord had

- a) now fixed the toilet and the central heating radiators and the tenant confirmed that these matters are withdrawn from the application.
- b) not addressed the matter of the master bedroom which had a leak which had not been repaired and was present one week before he moved out.
- c) had not fixed the shower. It continued to leak and the Tenant and his family had not used it since December 2017.
- d) had not fixed the bedroom light switch. He had stopped using it after six months of moving into the house.

26. The Tenant advised that he has never seen the EICR. He believes that it was last done in September 2016.

27. The Tenant normally gets notification of the requirement to complete a gas safety inspection around May or June. He has not had this notification this year. He has never received copies of the certificates.

28. The Tenant was still aggrieved that the house was not fully cleaned prior to this occupation of it. This was as per the lease.

29. The Tenant advised that there have been several inspections carried out in the house. A total of 13 inspections have been carried out since September 2013. He was particularly aggrieved that the Agent was entering without prior notification or consent to undertake the inspections.

### **Summary of the issues**

30. The issues to be determined are:-
- a) Whether the property required cleaning at the outset of the lease.
  - b) Whether the master bedroom light was in proper working order and if an electrical safety check is required.
  - c) Whether the property was wind and watertight.
  - d) Whether the central heating system is defective and if a Gas Safety Certificate is required.
  - e) Whether the toilets are defective.

### **Findings of fact**

31. Having considered all the evidence the Tribunal found the following facts to be established:-
- a) The tenancy is a short-assured tenancy between the Landlord and the Tenant. The tenancy commenced on 20<sup>th</sup> September 2013 and was on going with the lease due to end on 19<sup>th</sup> September 2017.
  - b) There is a leak from the en-suite shower in the master bedroom down to the kitchen.
  - c) There is no clear evidence that the water ingress at the front elevation affecting the Lounge and playroom has been rectified.
  - d) The master bedroom light switch had not been fixed.
  - e) The documents asked for in the Direction of 10<sup>th</sup> June 2017 were not provided
  - f) From the Tenant's evidence and from the inspection, there were no longer any defects with the WCs or central heating radiators, no water ingress at the master bedroom wall or window.

### **Reasons for the decision**

32. The Tribunal determined the application having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the evidence of the Tenant.
33. Whilst the Tribunal had regard to the evidence submitted by the Tenant in regards to the state of the cleanliness of the property and the ongoing issues with access, these were not matters the Tribunal could consider in terms of the Act and in particular the Repairing Standard.
34. 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.

35. The Tribunal was in no doubt, from its inspection that the property did not meet the Repairing Standard. There was clear evidence of a leak from the en-suite shower to the kitchen, high levels of dampness in the property and the master bedroom light did not work. There was no clear evidence, such as invoices from contractors, that the water ingress affecting the Lounge and playroom had been rectified. There was no evidence in the form of an up to date electrical installation condition report or gas safety certificate to confirm that the electrical and gas installations were safe.
36. Accordingly, in view of its findings the Tribunal had no option but to conclude that the landlord was in breach of the duty to comply with the Repairing Standard.
37. The Act states that where a Tribunal decides 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".
38. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.
39. The Tribunal found that information required in terms of the Direction issued on 10<sup>th</sup> June 2017 had not been provided and accordingly the Landlord had failed to comply with the said Direction.
40. As comment, the Tribunal would wish to point out that presently the house does not have smoke alarms within the living room and at ground floor hallway level and is therefore not compliant with statutory guidance. The Landlord is advised to seek further guidance in this regard to ensure the house is compliant.

#### **41. Decision**

- (a) The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

**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.

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G Miller, Chair

26th September 2017