



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/22/0462

Property: 37 Eskdale Terrace, Bonnyrigg EH19 2BN (“the Property”)

Parties: Mr Farukh Gondal, 37 Eskdale Terrace, Bonnyrigg EH19 2BN (“the Applicant”)

Mr Nassir Ellahi, Mrs Sajda Ellahi, 10 Sandstone Crescent, Duddingston, Edinburgh EH15 3FE (“the Respondent”)

Tribunal Members:

Mr Mark Thorley (Legal)

Mr Greig Adams (Ordinary)

Decision

The tribunal having made such enquiries as is fit for the purpose of determining whether the respondent complied with the duties imposed upon them by section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property concerned, and taking account of the evidence presented in written and oral representations and following upon the inspection, determined that the respondent failed to comply with the duties imposed by section 14(1)(b) of the Act.

Background

1. An application was received by the tribunal on 8 February 2022 from the applicant. The application was accompanied by a copy of the Private Residential Tenancy Agreement entered into between the parties (undated) but with a commencement date of the tenancy of 8 March 2019). In addition there were copy Whatsapp messages from the applicant to the respondent (undated). In summary the documentation stated –
 - (i) There was a leaking shower with water seeping under the laminate flooring which was lifting and a foul odour from sitting water.
 - (ii) The livingroom window was broken and does not open and close.
 - (iii) The cooker hob does not function adequately to remove the cooking smells/the light is not working.
 - (iv) There is damp/mould growing under the staircase.

- (v) Carbon/heat/fire alarms are not interlinked.
 - (vi) The garden fence has fallen in a recent storm and has not been repaired.
 - (vii) The upstairs bedroom radiator is leaking, the flooring is bubbling and starting to lift.
 - (viii) The driveway slabs are unbalanced and dangerous.
2. The application was acknowledged on 18 February 2022 and a determination was made to accept the application on 4 March 2022.
 3. Intimation of the inspection and conference call was sent to parties on 22 March 2022.
 4. The inspection took place on Tuesday 24 May 2022 at 10.30 am and the hearing on 31 May 2022 at 10 am.

The inspection

The tribunal inspected the property on Tuesday 24 May 2022 at 10.30 am. The weather was dry and sunny.

1. Downstairs bathroom –
 - (a) There was evidence of water damage located within the shower tray void with swollen floor timbers noted adjacent to the drainage pipework.
2. Livingroom window –
 - (a) The top hopper serving the livingroom window on the lefthand side unit was physically checked.
 - (b) The hopper was noted to have dropped resulting in impairment of operation making the unit difficult to operate due to the binding/catching of the opening section against the window frame.
3. Kitchen –
 - (a) The extractor canopy hood was inspected using an anemometer by which the air movement was measured. Minimal airflow was detected at the canopy.
4. Cupboard under stairs –
 - (a) There was evidence of minor mould growth at low level to the gable wall area at the under stair store.
 - (b) There was evidence of minor condensation affecting the base of the wall, where the temperature of the wall was dropping below dewpoint.
5. Downstairs –

- (a) Carbon monoxide detection and separate heat detection was noted within the kitchen, whilst a further smoke detection is noted within the hallway and livingroom.
 - (b) The interlinking function between the smoke detectors did not appear to be operational.
6. Upstairs bedroom –
- (a) The heating installation and radiator had not been turned on by the tenant to determine whether the lockshield valve was leaking or otherwise.
 - (b) There was isolated distortion and swelling at the laminate flooring joint however no excess surface water was apparent at the time of the inspection.
7. Externally –
- (a) The lower level garden fence located towards the front of the garden appears to have been removed.
 - (b) The timber (high level) boundary fence extending round the garden shed was not structurally stable and slight hand pressure revealed considerable movement of the timber posts.
8. Driveway slabs –
- (a) The concrete paving slabs were noticeably and visually uneven creating tripping hazards across the hard standing. Uneven slabs were also noted underfoot.

The hearing

On the teleconference the following persons attended:

1. Mr Farukh Gondal (the applicant)
2. Mr Nassir Ellahi (the respondent)

The ordinary member narrated the findings of the inspection. Thereafter the parties were provided with an opportunity to provide their comments in relation to the findings.

1. Downstairs bathroom –

- (b) There was evidence of water damage located within the shower tray void with swollen floor timbers noted adjacent to the drainage pipework.

The applicant indicated that the leak underneath the shower tray had been ongoing since the commencement of the tenancy. There was still an ongoing leak. The respondent indicated that

this was a newly fitted bathroom/shower and that three plumber had looked at the issue. There was a leak somewhere which was acknowledged but there was a significant cost in attempting to repair it.

2. Livingroom window –

- (a) The top hopper serving the livingroom window on the lefthand side unit was physically checked.
- (b) The hopper was noted to have dropped resulting in impairment of operation making the unit difficult to operate due to the binding/catching of the opening section against the window frame.

The applicant confirmed that there had been an issue with the lefthand side unit from the commencement of the tenancy. The respondent's position was that the righthand side unit opened.

3. Kitchen –

- (a) The extractor canopy hood was inspected using an anemometer by which the air movement was measured. Minimal airflow was detected at the canopy.

The respondent's position was that the filter needed to be changed in order for it to work. This was a matter for the applicant.

4. Cupboard under stairs –

- (a) There was evidence of minor mould growth at low level to the gable wall area at the under stair store.
- (b) There was evidence of minor condensation affecting the base of the wall, where the temperature of the wall was dropping below dewpoint.

The respondent's position as that this was due to a lack of ventilation. The applicant confirmed that the mould kept returning.

5. Downstairs –

- (a) Carbon monoxide detection and separate heat detection was noted within the kitchen, whilst a further smoke detection is noted within the hallway and livingroom.
- (b) The interlinking function between the smoke detectors did not appear to be operational.

The respondent disputed that the fire alarms required to be interlinked. He indicated that they were fitted three months ago.

6. Upstairs bedroom –

- (a) The heating installation and radiator had not been turned on by the tenant to determine whether the lockshield valve was leaking or otherwise.
- (b) There was isolated distortion and swelling at the laminate flooring joint however no excess surface water was apparent at the time of the inspection.

This appears to have been resolved.

7. Externally –

- (a) The lower level garden fence located towards the front of the garden appears to have been removed.
- (b) The timber (high level) boundary fence extending round the garden shed was not structurally stable and slight hand pressure revealed considerable movement of the timber posts.

The respondent indicated that the fence belonged to the neighbour and were not the property of the respondent.

8. Driveway slabs –

- (a) The concrete paving slabs were noticeably visually uneven creating tripping hazards across the hard standing. Uneven slabs were also noted underfoot.

The respondent indicated that the slabs were broken because of excessive use including the applicant using the driveway for commercial vehicles.

Findings in fact

The tribunal made the following findings in fact:

1. The applicants entered into a lease with the respondent which commenced on 8 March 2019.
2. The property comprises an end terraced house extending over ground and first floors and incorporating three bedrooms.
3. There was evidence of water damage located within the shower tray void which coincides with the area of leaking with swollen floor timbers noted adjacent to the drainage pipework.

4. The top hopper serving the livingroom window (lefthand side unit) has dropped resulting in impairment of operation making the unit difficult to operate due to the binding and the catching of the open section against the window frame.
5. The extract canopy hood provides minimal airflow.
6. There is minor mould growth in the understairs cupboard to the gable wall area and minor condensation affecting the base of the wall.
7. There is carbon monoxide detention and separate heat detection in the kitchen. There is further smoke detention in the hallway and livingroom. The smoke detection are not interlinked.
8. There is no low level garden fence and the high level boundary fence is structurally unsafe.
9. The radiator in the upstairs bedroom appears to be working.
10. The concrete paving slabs were noticeably visually uneven creating tripping hazards.

Reasons for decision

1. In considering the Repairing Standard the tribunal carried out an internal and external inspection of the building. In addition the tribunal considered the written documentation from the applicant and had the benefit of representations made by the respondent.
2. It was acknowledged that the radiator in the upstairs bedroom was now working.
3. It was also acknowledged that the leak under the shower tray did exist.
4. It was further acknowledged that the slabs outside in the garden were uneven.

Decision

The tribunal considered the terms of section 13(3) of the Act, determined that the respondent has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act. The decision of the tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Legal Member/Chair:

Date: