

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/RP/19/2973

**3 North Burnside, Cupar, Fife KY15 4BQ
("The Property")**

The Parties:-

**Mr Harry Moffat, formerly residing at 3 North Burnside, Cupar, Fife KY15
4BQ
("the Tenant")**

**Dalglen (No 1008) limited and Mr David Headen, Harvest Moon,
Burnside, Tayport, Fife DD6 9PB
("the Landlord")**

Tribunal Members

**Graham Harding (Legal Member)
Robert Buchan (Ordinary Member)**

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 house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 23 September 2019 the Tenant's representative Ms Lesley Morgan applied to the 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 Tenant's representative 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 Landlords had failed to ensure that:-

(a) The house met the tolerable standard.

Specifically the Tenant's representative complained that:-

The electrical box was 30+ years old

There were no smoke or heat detectors in the property;

No carbon monoxide detectors in the property;

No electric or gas safety certificates;

Electric sockets were broken and heating up;

The oven and hob were not in proper working condition;

Kitchen and bathroom fans not working due to ventilation holes being too small;

Front door and windows not locking leaving property insecure;

Holes in ceiling and ceiling leaking;

Light fittings flickering and loose;

Holes in walls throughout property;

Walls damp;

Floors have sunk in places leaving large holes between skirting boards;

Pests/mice in property;

Back door sealed with a stone wall;

Toilet and bath out of use as toilet not fixed to floor and bath rusted and not draining.

3. By email dated 12 November 2019 the Tenant's representative advised the Housing and Property Chamber that the Tenant had terminated his lease on 6 November 2019.
4. By Minute of Continuation dated 3 December 2019 a Convenor of the Housing and Property Chamber with delegated powers intimated a decision to continue to determine the application on health and safety grounds and referred the application under Section 23 (1) of the Act to a Tribunal.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 12 December 2019.
6. Following service of the Notice of Referral. The Landlord's representatives by email dated 17 January 2020, made written representations to the Tribunal.
7. The Tribunal inspected the Property on the morning of 22 January 2020. The Landlord and Mr Kenneth Gray, of Williams Gray Williams, Solicitors, Cupar on behalf of the Landlord were present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
8. Following the inspection of the Property the Tribunal held a hearing at The Lomond Centre, Glenrothes and heard from both the Landlord and his representative.

The Hearing

9. Mr Headen suggested that the former tenant had no real complaint about the property and that he had not wished to leave. The problem had been caused by Ms Morgan who he considered to be an SNP activist who had become involved without any real authority. He said that during Mr Moffat's tenancy there had been landlord's inspections and work had been carried out at the property as best they could.
10. Mr Gray confirmed there had been an issue with the property opposite being flooded but was uncertain if the property itself had been affected however the Landlord confirmed the property had been flooded some years ago.
11. Mr Gray submitted that the property was not subject to penetrating or rising damp and was structurally stable. There was no subsidence and apart from the rotten ceiling joists in the second bedroom was structurally sound. Mr Gray submitted the property was well insulated and had adequate ventilation. It had a fresh water supply, indoor toilet, wash hand basin and bath with hot and cold water. He said there were no issues with drainage and sewage. The electrical installations were safe and there was a current Electrical Installation Condition Report (EICR). He went on to say that the tenant had been provided with adequate cooking facilities and any issues with the property had been as a result of the tenant's lifestyle.
12. The Landlord confirmed there had been an issue with an upstairs neighbour who when carrying out repairs to his property had removed a downpipe resulting in water ingress to the property. There had also been a long-standing leak from the upstairs bathroom that had led to the ceiling joist in the second bedroom rotting and a small part of the ceiling collapsing. There had been an issue with the front door but it would have required major repairs involving the former tenant moving out of the property to have remedied the problem and the Landlord explained the former tenant had not wished to do this.
13. The Landlord accepted that although he had previously supplied smoke alarms which he said had been disabled by the former tenant who was a heavy smoker they had not been hard wired. That had now been attended to and a carbon monoxide detector had also been installed.
14. The Landlord explained that since the tenant had vacated the property, he was carrying out a complete renovation of the property and that whilst he did not accept the complaints as set out in the application and Ms Morgan's letter to him of 7 October 2019 he was addressing any issues that had arisen.
15. The Landlord commented that the former tenant who was completely blind had lived in considerable squalor. He did not do any cleaning of the

property. He said the former tenant had been aware that the back door had been bricked over but had not minded.

16. The Landlord and Mr Gray submitted that there was no need for any enforcement order as steps were being taken to fully renovate the property. It was anticipated that the remedial works would be completed within about three months.

Summary of the issues

17. The issue to be determined is whether the property meets the repairing standard.

Findings of fact

18. The property is currently unoccupied and in the process of being renovated.
19. The floors have been removed throughout the property and are in the process of being replaced.
20. Areas of plaster and plasterboard throughout the property have been removed.
21. The skirting boards had been removed throughout the property.
22. Hard wired smoke and heat detectors have been partially installed in the property.
23. The ceiling has been removed in the second bedroom and a rotten ceiling joist exposed.
24. A new downpipe has been fitted at the rear of the property but it discharges above ground level
25. There has been water ingress to the rear of the property.
26. There is open pointing in the stonework at the rear and the ground level is higher than the floor level
27. The front door is in need of repair.
28. There was evidence of rot to the joist ends of the joists that had been removed and placed to the rear of the property.
29. The bath has been removed

30. The French window to the side of the property has been sealed off by a wall along the adjoining pend.

Reasons for the decision

31. As the property was under renovation at the time of the inspection it was difficult for the Tribunal to properly assess its condition at the date of the application. It did appear to the Tribunal however that notwithstanding the assertions made by the Landlord and his representative the property did have significant issues that appeared to be relatively long standing.

32. The Tribunal was pleased to note that the Landlord had in advance of the hearing decided to carry out substantial renovations to the property and it was apparent that he intended to address many of the issues raised in the application during the renovations.

33. The options open to the Tribunal were either to accept that the landlord was carrying out renovation of the property and to abandon the application, in effect, walk away from the situation, leaving it to the landlord to complete the work as he thought fit, or to impose a repairing standard enforcement order requiring the property to be brought up to an acceptable standard. The Tribunal was of the view that the second option was necessary. The sheer scale of the renovation being undertaken weds testimony as to how poor the condition of the property was in. The landlord accepts that the property did not have hard wired smoke and heat detectors, a requirement that has been in place for over a decade. The French window has simply been blocked over leaving the occupant to look at a concrete block wall. The ceiling joist was almost rotted completely through. It was stretching the credibility of the Tribunal to believe that there were no surface indications of this but even if there were not, the Tenant's application suggested that there were indications of rot to the floor joists, something that would not have just occurred overnight.

Decision

34. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

35. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

36. The decision of the Tribunal was unanimous.

Right of Appeal

37. 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

38. 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 Harding

~~Graham Harding~~ Chairperson

Date 12 February 2020