

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/17/0045

G/L, 87 Dens Road, Dundee, DD3 7HU being the subjects registered in the Land Register of Scotland under Title No. ANG31339 ("The Property")

The Parties:-

MISS DANIELLE McKAY, residing at the Property
(hereinafter referred to as "the Tenant")

MR PAUL PATTERSON, residing at 51 Park Avenue, Enfield, EN1 2HH
(hereinafter referred to as "the Landlord")

GRAHAM HARDING (Legal Member) and GERALDINE WOOLEY (Ordinary Member)
(hereinafter referred to as "the Tribunal")

Notice to the said Mr Paul Patterson

Whereas in terms of their decision dated 18 April 2017, 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 the property is:-

- (a) Wind and water tight and in all other respects reasonably fit for human habitation;
- (b) The structure and exterior of the property (including drains, gutters and external pipes) are 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 insuring that the property 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:-

- (a) To carry out such repointing to the brick work at the rear of the property as may be required to put it in a reasonable state of repair;
- (b) To repair or replace the plaster work in the kitchen;
- (c) To monitor the damp levels in the kitchen and rear bedroom, and when they reach an acceptable level, redecorate to remove signs of damp;

- (d) To carry out such further works as may be required to prevent as far as possible access to the property by rodents;
- (e) To repair or replace the rear bedroom window so that it operates properly and is wind and water tight and to inspect the other windows in the property to ensure that they are in reasonable condition and carry out any necessary repairs or replace if required.

The Tribunal orders that the works specified in this Order must be carried out and completed by 31 May 2017.

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 an 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 an 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 pages are executed by Graham Harding, Solicitor, 17 – 21 George Street, Perth, PH1 5JY Chair Person of the Tribunal at Perth on 25 April 2017 before this witness:-

G Harding

witness

chairperson

KARA MARINA CONIE name in full

17-21 GEORGE ST. Address

Perth. PH1 5JY

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT of DECISION of the Housing & Property Tribunal under Section 24 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0045

G/L, 87 Dens Road, Dundee, DD3 7HU
("The Property")

The Parties:-

MISS DANIELLE McKAY, residing at the Property
(hereinafter referred to as "the Tenant")

MR PAUL PATTERSON, c/o A & S Properties (Dundee), East Haddon Road, Dundee, DD4 7LT; 51 Park Avenue, Enfield, EN1 2HH
(hereinafter referred to as "the Landlord")

Decision

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 on behalf of the Tenant and the Landlords 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 6 February 2017, the Tenant applied to the First-tier Tribunal (Housing & 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 by the Tenant stated that the Tenant 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 the Property was wind and water tight and in all other respects reasonably fit for human habitation. The Applicant stated:-

That she had mice in the property and that steps should be taken to have this problem resolved. That there was damp in the second bedroom which required to be eradicated. That the wall in the kitchen was peeling and crumbling and should be

repaired and made safe. That all windows needed overhauled and rectified to ensure that they are wind and water tight and that they meet the repairing standard.

3. The Tenant's representative, Peter Kinghorn, of Dundee North Law Centre, 101 Whitfield Drive, Whitfield, Dundee, intimated the alleged defects to A & S Properties (Dundee), East Haddon Road, Dundee, by letter dated 18 January 2017. By Minute dated 23 February 2017 the President of the First-tier Tribunal (Housing & Property Chamber) intimated a decision to refer the application to the Housing & Property Tribunal.
4. By letter dated 23 February 2017 the Landlord was given Notice of Referral, Inspection and Hearing in terms of Section 23 (1) of the Act.
5. By correspondence dated 8 March 2017 the Landlord issued written representations to the Tribunal. The Landlord stated that the flat was fully managed by his Agents, A & S Properties. The Landlord stated that every time he visited the property he looked out for any defects that may require to be repaired. He stated that prior to the Tenant moving in the place was immaculate, had been recently decorated with new carpets and a new front door. The Landlord went on to state that there had been repairs carried out to the back gutters in 2016. The Landlord also stated that he previously cut down a bush and sprayed for weeds and was in the process of installing a door entry system. The Landlord said that the Tenant had never contacted him asking for repairs. The Landlord stated that the issue of mice could be easily remedied by poison or mouse-traps. He said that there was never any damp in the property and that the problem may have been caused by condensation if the windows were not opened over Winter. He felt that the peeling crumbling walls in the kitchen sounded like cosmetic work and that this would be picked up when the Tenant moved house. The Landlord went on to state that all the windows were operational with the exception of the kitchen window handle which had been in good condition when the Tenant moved in. The Landlord was of the view that his Letting Agent would have rectified any defective areas.
6. The Tribunal consisted of Graham Harding, Legal Member and Geraldine Woolley (Ordinary Member).
7. The Tribunal inspected the property on the morning of 5 April 2017. The Tenant, her partner, Mr Neil Kettles and the Landlord's representative, Mr Afzal Mohammed were present during the inspection. The weather conditions on the day of the inspection were sunny and dry. The property comprises a ground floor flat dwelling in a tenement block of four storeys built in the 1930s. The internal accommodation extends to a sitting-room, two bedrooms, kitchen and bathroom. There was evidence of damp in the rear bedroom ceiling. There was cracking of the plasterwork in the kitchen due to damp. There was evidence of damp in the kitchen ceiling. There was a high damp meter reading on the plasterwork on the kitchen wall. Externally it was noted that the guttering to the tenement building had been

repaired. There was vegetation growing from the wall at first floor level. There was defective pointing of the brickwork at the rear of the property at the kitchen and bedroom wall. The rear bedroom window closing mechanism was broken and the window was held closed by duct tape. The window could not be properly closed. The Tenant had obtained two cats to control the infestation of mice and some work had been carried out to block up holes where the mice had entered and some rodent control treatment had been carried out. On the morning of the inspection a gas engineer had carried out a gas safety check and issued a Gas Safety Certificate. The Landlord's Agent brought a carbon monoxide alarm to the property at the time of the inspection but after the gas engineer had certified that there was a carbon monoxide alarm in the property and that it had been tested and was operating properly.

The Hearing

Following inspection of the property the Tribunal held a Hearing at Caledonia House, Dundee and heard from the Tenant and the Landlord's representative.

8. The Tenant stated that the rear bedroom window had not been secure since she moved into the property in December 2014. The defective mechanism had been intimated to the Landlord's Agent at that time and because it had not been repaired, the Tenant had secured the window as far as possible by sealing it up with duct tape. The Tenant explained that following representations being made about the infestation of mice that she had been visited by pest control who had put down poison. It had been pointed out to her that there was a hole under the bath where rodents could be obtaining access and the Landlord's representatives had arranged for this to be boarded up. At the beginning of this year the Tenant said that she had obtained two cats and since that time the mice problem had been resolved. The Tenant confirmed that work had been done on the outside of the building in 2016 but that she thought that there was still damp in the kitchen and second bedroom. She thought that the defective plaster in the kitchen should be fixed. She was of the view that there was still an ongoing problem with damp but did not think that it had been getting any worse. There was an occasional damp smell in the kitchen but not in the rear bedroom.
9. The Landlord's representative, Mr Mohammed, explained that he had arranged for pest control Officers to carry out treatment to the property and that there had been at least two visits and that following advice the hole under the bath had been patched. He explained that although pets were not allowed in the property in terms of the Lease he had agreed with the Tenant that she could have cats to control the infestation of mice. Mr Mohammed thought that the problem with damp had been caused by the gutters leaking and water running down the side of the building. Because this had been a communal repair it had taken time for the gutters to be fixed but this work had been completed in January 2016. Mr Mohammed thought that it would take some time for the walls to dry out. The alternative would be to

remove the lathe and plaster and reinstate the wall. Mr Mohammed confirmed that it had not been possible to source a way of repairing the mechanism on the rear bedroom window and that the window would need to be replaced. Mr Mohammed thought that all the windows could do with being replaced.

10. The Tenant confirmed that she was due to vacate the property on 28 April and the Landlord's representative advised the Tribunal that his Company would not be continuing to manage the property as it did not meet their criteria in terms of the condition of the property. The Landlord's representative was not aware of what the Landlord intended to do with the property once the Tenant had moved out.
11. The Landlord's representative advised that he had instructed Fairplumb to carry out the gas safety inspection and believed that they had sub-contracted the work to a Gas Engineer, Mr David Alan. In response to the Tribunal's concern that the Gas Engineer had issued a Gas Safety Certificate which indicated that the property had a working carbon monoxide alarm when it appeared it did not Mr Mohammed said that he had tried to contact the Engineer to ascertain the position but had been unable to speak to him.

Summary of the issues

12. The issue to be determined is whether the Repairing Standard has been met in light of what the Tribunal observed at the inspection together with the submissions on behalf of the Landlords and the Tenant and whether or not the property is wind and water tight and in all other respects, reasonably fit for human habitation in terms of Section 13 (1) (a) of the Housing (Scotland) Act 2006.

Findings of Fact

13. The Tribunal finds the following facts to be established:-
 - The Tenancy Agreement has existed since December 2014. The property comprised a ground floor stone and brick built three apartment flat located in a four storey tenement in Dundee. The property comprises a hallway, kitchen, bathroom, living-room and two bedrooms. New gutters had been installed to the rear elevation of the property. There remain signs of damp penetration at the ceiling of the rear bedroom and the ceiling and kitchen wall. There was vegetation growth at first floor level on the rear wall above the kitchen and rear bedroom. The pointing to the brick-work on the rear external wall around the rear bedroom and kitchen was in poor condition and required repair. The window in the rear bedroom did not close properly allowing draughts to enter the property. The mechanism was broken and the window was insecure. The plaster in the kitchen was in need of repair and continued to show signs of damp. The kitchen and rear bedroom would require redecoration to remove the staining caused by previous water ingress. The steps taken by the Landlord to

eradicate the infestation of mice together with the Tenant obtaining two cats had for the time being resolved the issue with mice.

Reasons for the Decision

14. At the inspection the Tribunal noted that there were defects with the rear bedroom window and high damp readings in the kitchen and defective pointing to the brickwork at the rear that was likely to cause further water ingress to the property and was satisfied that the property did not meet the repairing standard. The Ordinary Member of the Tribunal took several photographs which form the Schedule attached to this Decision.
15. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.
16. The Decision of the Tribunal was unanimous.
17. Whilst the Tribunal were unable to make an Order with respect to the Gas Safety Certificate the Tribunal were extremely concerned to note that it appeared that a qualified Gas Engineer had certified that he had inspected and tested the carbon monoxide alarm in the property when no such alarm was present at the time the inspection was carried out. In the Tribunal's opinion, the fact that there was now an operative carbon monoxide alarm in the property did not validate the Gas Safety Certificate.

Right of Appeal

18. 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 of 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 and where the appeal is abandoned or finally determined by upholding 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.

Signed ..

Date 18 April 2017

Graham Harding
(Legal Member)

Housing and Property Chamber
First-tier Tribunal for Scotland



G/L 87 Dens Rd Dundee DD3 7HU

Inspection and Hearing 5 April 2017

Damp in
bedroom ceiling



Plasterwork in kitchen
wall cracking due to
damp



Damp in
kitchen
ceiling



External causes of damp – repaired guttering



External causes of damp: Pointing to kitchen/bedroom wall



Windows (internal): rear bedroom closing mechanism broken



Windows (external): rear bedroom upper and lower lights cannot be closed



Fire detection system



Carbon monoxide alarm in kitchen

