

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act 2006
section 24(2)**

Chamber Reference FTS/HPC/RP/17/0343

**Title number: Subjects registered in the Land Register of Scotland under title
number ANG13795**

House address: G/L, 44 Main Street, Dundee, DD3 7HN ('the House')

The Parties

**Mr Akhtar Mohammad, formerly residing at G/L, 44 Main Street, Dundee, DD3 7HN
("The Tenant")**

**Mr Ghulam Qadar and Mrs Zahida Qadar, 367 Clepington Road, Dundee, DD3 8ED
("The Landlords")**

NOTICE TO

Mr Ghulam Qadar and Mrs Zahida Qadar, 367 Clepington Road, Dundee, DD3 8ED

Whereas in terms of their decision dated 6th April 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that:

1. The House is wind and watertight and in all other respects reasonably fit for human habitation;
2. The structure and exterior of the House (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
3. Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order.

The Tribunal now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the House 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 Landlords to:-

1. Take reasonable steps to investigate the leak in the bathroom ceiling; and to have said leak repaired;

2. Investigate and resolve the situation in relation to the dampness within the walls adjacent to the mutual close, and the condensation dampness within the House;
3. Repair or replace the windows throughout the House to ensure that they are in a reasonable state of repair and in proper working order, ensuring that:
 - (a) all windows open and close in a proper manner;
 - (b) all double-glazing units are effective;
 - (c) all weathered timber components are in a reasonable state of repair;
4. Repair or replace the washing machine to ensure that it is in a reasonable state of repair and in proper working order;
5. Produce a satisfactory gas safety certificate from a Gas Safe Registered Engineer.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of twelve 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 typewritten on this and the preceding page are executed by Helen Forbes, solicitor, chairperson of the tribunal at Inverness on Thirteenth April Two Thousand and Eighteen before this witness:-

M Forbes

H Forbes

— witness —

chairperson

Margaret Forbes, 67B Glenurquhart Road, Inverness, IV3 5PB

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 Reference FTS/HPC/RP/17/0343

Title number: Subjects registered in the Land Register of Scotland under title number ANG13795

House address: G/L, 44 Main Street, Dundee, DD3 7HN ('the House')

The Parties

Mr Akhtar Mohammad, formerly residing at G/L, 44 Main Street, Dundee, DD3 7HN ("The Tenant")

Mr Ghulam Qadar and Mrs Zahida Qadar, 367 Clepington Road, Dundee, DD3 8ED ("The Landlords")

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr David Godfrey (Ordinary Member)

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, determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received between 6th September 2017 and 26th January 2018, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

The Tenant considered that the Landlords have failed to comply with their duty to ensure that the House meets the repairing standard, in that the House is not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the House (including drains, gutters

and external pipes) are not in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order; any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed; and the House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. In particular, he stated:-

- “1. Carpet in the flat is very dirty and its got damp in it;*
- 2. Toilet selling is leaking water from upstairs flat;*
- 3. There are holes in the flat walls and its been fix by duck tape;*
- 4. There is damp and mold in the flat;*
- 5. Windows are not up to standard they are all single glazing and when its raining the water comes in the room;*
- 6. The house is meant to be furnish but there is nothing works NO washing machine, no hoover*
- 7. There are rats in the flat*
- 8. There is no shower”*

The Applicant stated that the work required to be done was:

*“Walls need to be repaired
Rats are coming in to the property and destroying my food
Washing machine needs to be working and hoover needed
Landlord don't bother at all and only concerned for the rent
Carpet needs changing”*

2. The Applicant notified the Landlord of the defects on 7th November 2017. As part of the Application, the Applicant enclosed a tenancy agreement, and correspondence between himself and Ghulam Qadar.
3. On 2nd February 2018, a Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal.
4. The Tribunal members were Ms Helen Forbes (Legal Member) and Mr David Godfrey (Ordinary Member).
5. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 28th February 2018.
6. On 12th March 2018, the Landlord, Mr Ghulam Qadar emailed the Tribunal to inform them that the Tenant had abandoned the property some weeks previously. He had entered the property on 26th February 2018 and found the property empty. The lease had expired at the end of February 2018.

7. On 16th March 2018, the Tenant confirmed by telephone call to the Tribunal that he had left the property and the lease had ended.
8. Having received confirmation from both parties that the tenancy had been lawfully terminated and the application, therefore, treated as having been withdrawn in terms of Schedule 2 Paragraph 7(1) of the Act, the Tribunal considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the said Act. The Tribunal decided to continue to determine the application given the serious nature of the matters complained of by the Tenant, including matters raising health and safety implications for future tenants.

Inspection

9. The Tribunal attended at the House on 6th April 2018. The weather was dull, calm and dry. The House is a one-bedroom ground floor flat in a traditional tenement building built around 1900. There is gas central heating. The windows are double-glazed and timber-framed. The Landlord, Mr Ghulam Qadar, was present. The Tribunal inspected the alleged defects and found as follows:-

9.1 Carpets

The carpets within the House were stained and dirty. The Landlord stated that the carpets had been clean at the start of the tenancy.

9.2 Toilet ceiling leaking water from upstairs flat

The wood cladding on the bathroom ceiling was bowed and wet. The Ordinary Member tested the ceiling with a damp meter. The meter readings were high, indicating damp in the ceiling.

9.3 Holes in the flat walls fixed by duct tape

There were holes in the lower wall in the kitchen to allow pipes to pass through for kitchen appliances. The holes had been covered up with clear cellophane tape.

9.4 Damp and mould in the flat

The Ordinary Member tested each room in the House with the damp meter. High damp meter readings were observed when applied to the walls in the kitchen and living room that adjoin the mutual close, indicating rising damp on that wall. There were signs of condensation dampness on the back wall in the bedroom, where some of the wall paper was missing.

The gas fired central heating boiler in the kitchen was leaking. There was a pool of water on the kitchen worktop directly below the boiler.

9.5 Windows not up to standard – single glazed

The windows were double glazed. There was no sign of water ingress. The bedroom window was faulty in that it would not stay open, and a catch was missing. There was misting between the glazing on the living room window, indicating that the double glazing had failed.

On external inspection, the paint on the window frames was in poor condition and required painting. The external kitchen window frame was rotting.

9.6 Furnishings/Washing machine

The House was furnished with white goods and a wooden television unit. The Landlord said that the House was not let on a furnished basis, other than the white goods.

The Landlord plugged in the washing machine and attempted to operate it, but it was clear that it was not in working order.

9.7 Rats

There was no evidence of rats in the House.

9.8 No shower

There was no shower in the House, and no evidence of one ever having been fitted.

9.9 Carbon Monoxide Detector

There was a carbon monoxide detector fitted in the kitchen. There was no heat detector in the kitchen. There was one battery-operated smoke detector in the hall.

Photographs were taken during the inspection and are attached as a schedule to this report.

Discussion on the application

10. Following the inspection the Tribunal held a hearing at the Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX. The Landlord was in attendance. The Tribunal discussed the matters raised by the Tenant.

10.1 Carpets

The Landlord reiterated that the carpets had been clean at the start of the tenancy. He said it was the responsibility of the Tenant to keep the carpets clean. The previous tenant had cleaned the carpets.

10.2 Toilet ceiling leaking water from upstairs flat

The Landlord said he was previously unaware of the leak from above, and the Tenant had not mentioned it. The Tenant had not been in communication for around 9 months. He felt this was because the Tenant owed him rent. He said he would speak to the owner of the property above, in connection with the leak.

10.3 Holes in the flat walls fixed by duct tape

The Landlord said that the holes in the lower wall in the kitchen were there to allow pipes for kitchen appliances and the boiler. He had applied the clear cellophane tape before the tenancy commenced.

10.4 Damp and mould in the flat

The Landlord said that there had been no heating in the flat since the Tenant left, and it may be the case that the Tenant wasn't heating the flat during the tenancy. No other tenant had mentioned problems with damp. Responding to a question from the Ordinary Member, the Landlord said the wallpaper in the bedroom was intact when the tenancy commenced.

10.5 Windows not up to standard – single glazed

The Landlord said it had been several years since the window frames had been painted, but the windows were wind and watertight. He said he was unaware that the bedroom window did not stay open.

10.6 Furnishings

The Landlord said that the House was not let on a furnished basis, other than the white goods. The washing machine had been working at the start of the tenancy. The Tenant had not told him the washing machine wasn't working. There had never been a Hoover provided as part of the furnishings. No previous tenant had asked for a Hoover.

10.7 Rats

The Landlord said there was no evidence of rats in the House and no one else had ever complained of this.

10.8 No shower

The Landlord said there had never been a shower in the House. He said the Tenant could have fitted a shower himself.

10.9 Carbon Monoxide detector

The Landlord confirmed that the carbon monoxide detector and the smoke alarm in the hall had both been there during the Tenant's occupation of the House.

The Landlord was keen to point out, despite being informed by the Tribunal that this was not something they could consider, that the Tenant owed him rent. The Landlord had succeeded in having the Tenant's Housing Benefit paid directly to him for about 6 weeks, and then it stopped. It was after this that the Tenant made his application to the Tribunal. The lack of rent caused the Landlord problems, as the mortgage had to be paid.

The Landlord also said that old houses are prone to damp. That was why he had central heating installed.

Summary of the issues

11. The issues to be determined are:

11.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006).

Whether there is water ingress to the House through the windows and the bathroom ceiling. Whether the existence of rats renders the House unfit for human habitation. Whether the presence of damp within the House renders the House unfit for human habitation.

11.2 The structure and exterior of the House (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

Whether the windows are in a reasonable state of repair and in proper working order. Whether the walls are in a reasonable state of repair.

11.3 Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order; (Section 13(1)(d) of the Housing (Scotland) Act 2006).

Whether the washing machine is in a reasonable state of repair and in proper working order. Whether a Hoover ought to have been provided by the Landlords. Whether a shower ought to have been provided by the Landlords.

11.4 Any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed; (Section 13(1)(e) of the Housing (Scotland) Act 2006).

Whether the carpets are capable of being used safely for the purpose for which they are designed.

11.5 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(g) of the Housing (Scotland) Act 2006).

Whether there is a fitted carbon monoxide detector.

Findings of fact

12. (i) The tenancy between the parties commenced on 27th February 2017, continuing on a year to year basis thereafter
- (ii) The written tenancy agreement refers to the tenancy as a Short Assured Tenancy.
- (iii) The House was let unfurnished, with the exception of white goods, comprising a fridge freezer, a washing machine/dryer and a microwave.
- (iv) The tenancy ended at the end of February 2018 when the Tenant abandoned the House.
- (v) The House is a one bedroomed ground floor flat within a traditional stone tenement building.
- (vi) The Landlords are the heritable proprietors of the House which is registered under title number ANG13795. The House was registered in the Land Register on 13th June 2001.
- (vii) On 7th November 2017 the Tenant notified the Landlords of concerns in relation to the state of the House.
- (viii) The carpeting throughout the House was stained and dirty. The carpeting was clean at the start of the tenancy. It was the Tenant's responsibility to clean the carpets
- (ix) The windows were wind and watertight. The double glazing units in the living room had failed. There was a missing catch on the bedroom window and it would not stay open. The window frames required painting.
- (x) The gas fired central heating boiler was leaking.
- (xi) The washing machine was not in working order.
- (xii) The holes in the wall in the kitchen were necessary to allow for pipes to the boiler and kitchen appliances.

- (xiii) There was evidence of rising damp in the kitchen and living room, on the wall adjacent to the common close.
- (xiv) There was evidence of damp caused by condensation in the bedroom. This was due to lack of heating and lack of ventilation.
- (xv) There was evidence of a leak from the property above, causing bowing and the collection of water on the wood cladding on the bathroom ceiling.
- (xvi) There was no evidence of rats within the House.
- (xvii) There was no shower in the bathroom.

13. The Tribunal determined that:

13.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).

There is water ingress to the House through the bathroom ceiling. The presence of damp within the House renders it unfit for human habitation. The damp may have been exacerbated by the malfunctioning boiler, which is leaking.

There is no water ingress through the windows. There is no evidence of rats within the House.

13.2 The structure and exterior of the House (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

The windows are not in a reasonable state of repair and in proper working order.

The walls are in a reasonable state of repair.

13.3 Any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order (Section 13(1)(d) of the Housing (Scotland) Act 2006)

The washing machine is not in a reasonable state of repair or in proper working order.

There was no Hoover provided by the Landlords; this was a responsibility of the Tenant. There was no shower provided by the Landlords.

13.4 Any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed; (Section 13(1)(e) of the Housing (Scotland) Act 2006).

The carpets are not capable of being used safely for the purpose for which they are designed; however, the Tribunal considered that keeping the carpets clean was the responsibility of the Tenant, therefore, this is excluded from the Landlords' repairing duty in terms of s16(1)(b)(i) of the Act.

13.5 The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(g) of the Housing (Scotland) Act 2006).

There is a carbon monoxide detector fitted in the kitchen, which is the only room with a combustible appliance.

The Tribunal observed that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1)(e) of the Housing (Scotland) Act 2006). This had not been notified by the Tenant to the Landlord, therefore, no Order was made in this regard; however, the Landlords would be advised to install smoke detectors and a heat detector in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.

Decision

14. The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

15. The decision of the Tribunal was unanimous.

Right of Appeal

16. 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 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

decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

H Forbes

Legal Member and Chairperson

Date: 6th April 2018

Housing and Property Chamber First-tier Tribunal for Scotland



PHOTOSHEET



Property: FLAT G/1 44 MAIN STREET, DUNDEE DD3 7HN

Ref no: FTS/HPC/RP/17/0343

Tribunal: Helen Forbes and David Godfrey

Inspection: The property was inspected at 10.00 am Friday 6th April 2018.

Access: The property is presently unoccupied however Mr Qadar (Landlord) provided access.

Photographs

1. Staining to Lounge carpet
2. Staining to Bedroom carpet
3. Bow in Bathroom ceiling
4. Damp meter reading at Bathroom ceiling
5. Taped over opening in Kitchen wall lining
6. High damp meter readings in close wall of Kitchen
7. Condensation affecting Bedroom wall (1)
8. Condensation affecting Bedroom wall (2)
9. High damp meter readings in close wall of Lounge
10. Missing catch to Bedroom window

*This is the Schedule
of photographs referred to in the
Proposing Statement of Decision
dated 6th April
2018 at Dundee*
H Forbes

*Legal Member and
Chairperson*

- 11. Defective seal to Lounge window (misting between panes of glass)
- 12. Typical weathering to external woodwork
- 13. Washer/Dryer



Staining to Lounge Carpet



Staining to Bedroom Carpet



Bow in Bathroom Ceiling



Damp meter reading at Bathroom ceiling



Taped over opening in Kitchen wall lining



High damp meter readings in close wall of Kitchen



Condensation affecting Bedroom wall (1)



Condensation affecting Bedroom wall (2)



High damp meter readings in close wall of Kitchen



Missing catch to Bedroom window



Defective seal to Lounge window (misting between panes of glass)



Typical weathering to external woodwork



Washer/Dryer

David Godfrey, MRICS
6th April 2018