

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/RT/19/0609

Title no: ANG50782

**38 Arthurstone Terrace, Dundee DD4 6QT
("The Property")**

The Parties:-

**Dundee City Council Private Sector Services Unit, 5 City Square, Dundee DD1
3BA
("the Third Party Applicant")**

**Mrs Wendy McHale, formerly residing at 38 Arthurstone Terrace, Dundee DD4
6QT
("the Tenant")**

**Mrs Elaine Bradley, 34 Strips of Craigie Road, Dundee DD4 7QG
("the Landlord")**

Whereas in terms of their decision dated 18 July 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) ("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:-

- (a) 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
- (b) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (d) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

- (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (f) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House concerned 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 repair and/or replace the defective sanitary ware and associated fittings in the two shower-rooms and the bathroom to ensure that the installations are in a reasonable state of repair and in proper working order.
- (b) To carry out such remedial work to the ground floor hall and living room floor occasioned by the leaking sanitary ware to ensure that the floor and flooring is in a reasonable state of repair.
- (c) To replace the missing door handle on the ground floor bathroom door.
- (d) To repair any damage to the ground floor hall ceiling and re-decorate as necessary.
- (e) To install linked hard-wired smoke detectors in the ground floor, upper floor landings and living room and a linked hard-wired heat detector in the kitchen.
- (f) To exhibit to the Tribunal an Electrical Installation Condition Report prepared by a registered member of SELECT or NICEIC and dated after the date of this Decision.
- (g) To exhibit to the Tribunal a current Gas Safety Certificate prepared by a Gas Safe registered engineer.
- (h) To install a carbon monoxide detector within an approved distance from any gas appliance.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of three months 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.

In terms of Section 63 of the Act, 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 type written on this and the two preceding page(s) are executed by Graham Harding, legal member of the Tribunal, at Perth on 18 July 2019 in the presence of the undernoted witness,

G Harding

S D Hunter

witness

Legal Member

STUART DAVID HUNTER name in full

10 BAROSSA PLACE Address

PERTH,

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/RT/19/0609

**38 Arthurstone Terrace, Dundee DD4 6QT
("The Property")**

The Parties:-

**Dundee City Council Private Sector Services Unit, 5 City Square, Dundee
DD1 3BA
("the Third Party Applicant")**

**Mrs Wendy McHale, formerly residing at 38 Arthurstone Terrace, Dundee
DD4 6QT
("the Tenant")**

**Mrs Elaine Bradley, 34 Strips of Craigie Road, Dundee DD4 7QG
("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 Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the written submissions submitted on behalf of the Landlord and on behalf of the Third Party and the evidence on behalf of the Third Party 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 15 February 2019 the Third Party 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 by the Third Party stated that the Tenant considered that the Landlords 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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order
- (b) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (d) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
- (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (f) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Specifically the Third Party complained that:-

Ground floor bathroom drains blocked.
Ground floor bathroom inner door handle missing.
Ground floor bathroom and ground floor hall ceiling damp damaged and mouldy.
Smoke detectors on all hall levels removed by Scottish Fire and Rescue. Temporary battery units fitted.
Not all sockets work.
Light bulbs blow.
Bedroom handle falls off.
First floor en-suite shower leaks.
First floor en-suite toilet constantly runs.
Upper floor bathroom toilet leaks.
Upper floor bathroom bath leaks into adjacent bedroom.
No smoke detector fitted in living room.
No heat detector fitted in kitchen.
No carbon monoxide detector fitted near gas appliance.
Tenant did not have copy of the Gas Safety Certificate or Electrical Installation Condition Report.

3. By Minute of Decision dated 4 March 2019 a Convenor of the Housing and Property Chamber with delegated powers intimated a decision to refer the application under Section 23 (1) of the Act to a Tribunal.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, the Third Party and the Tenant.
5. Following service of the Notice of Referral on the Tenant (by letter dated 21 March 2019), she made no written representation to the Tribunal. The Landlord (by email dated 23 April 2019), made written representations to the Tribunal. The Third Party made further written representations to the Tribunal by email dated 24 April 2019.
6. The Tribunal attempted to inspect the Property on the morning of 29 April 2019. Mr Lindsay Watson on behalf of the Third Party and Mr Bradley on behalf of the Landlord were in attendance but access to the property could not be obtained and the inspection and hearing was adjourned to take place on 5 July 2019.
7. The Tribunal inspected the Property on the morning of 5 July 2019. Mr Lindsay Watson on behalf of the Third Party and Mr Bradley on behalf of the the Landlords were present during the inspection. The Tenant had vacated the property prior to 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 Dundee Carers Centre, 132-134 Seagate, Dundee and heard from Mr Watson on behalf of the Third Party. The Landlord did not attend and was not represented. As the Tenant had vacated the Property, she was no longer a party and did not attend.
9. For the Third Party Mr Watson confirmed that the Tenant had vacated the property within the previous week. He explained that he had become involved following a complaint made by the tenant in mid-January. The Tenant had said that somebody had been up to inspect the Property but had said there was nothing wrong with it. He felt that as the Landlord was a director of a letting agency, she ought to have been aware of her responsibilities as a landlord. Mr Watson spoke of noting that the carpets were being soaked as a result of the leaks from the showers and also spoke to the leaks from the upper floor bathroom. Mr Watson confirmed that the Tenant had not been the easiest to get hold off but he had not been aware of any access requests being made by the landlord. He was not aware of the Landlord's representative being in contact much with the Third Party with regards to the Property. Mr Watson confirmed that the Landlord had now registered as a Landlord. He said that he had not been provided with a Gas Safety Certificate or Electrical Installation Condition

Report. Mr Watson said that believed the Fire and Rescue Service had removed the hard-wired smoke detectors as they had been going off as a result of the flooding from the leaking bathrooms. He felt that as the Landlord had known since January of the issues raised that the repairs could have been carried out.

Summary of the issues

10. The issues to be determined are as stated at paragraph 2 above.

Findings of fact

11. The Tribunal finds the following facts to be established:-

- The tenancy was a short assured tenancy that ended when the Tenant vacated the property in the week commencing 1 July 2019.
- There is no heat detector in the kitchen.
- There is no Carbon Monoxide detector.
- There is dampness in the floor of the living room.
- The inner door handle of the ground floor bathroom is missing.
- The floor of the hall is sodden.
- The hard-wired smoke detectors throughout the property have been removed.
- There are many stains on the hall ceiling.
- The ground floor shower-room has stains on the ceiling and the fuse has been removed from the extractor fan. The shower itself has been left in a dirty and stained condition.
- The first floor en-suite shower tray is of plastic and it and the enclosure are clearly not water-tight.
- There is water on the floor of the upper bathroom.
- There is a pan collecting water from the leaking toilet in the upper bathroom.
- There is no evidence of a valid Gas Safety Report or Electrical Installation Condition Report in existence.
- The living room/kitchen was full of filled plastic bags and it could be seen that the kitchen fittings were missing and/or damaged. However this was not a subject of complaint and therefore was not addressed by the Tribunal.

Reasons for the decision

12. Although the Landlord had submitted in her email of 23 April that the Tenant had vacated the property and that it was then under renovation that statement was clearly untrue. The Tenant had remained in the property until shortly before the inspection on 5 July and there was no sign of any remedial work taking place at that time. The Landlord's representative indicated at the inspection that it was the Landlord's intention to commence renovations the following week and the Tribunal accepts that substantial renovations will be required before the property can be re-let or sold. The Tribunal thought it was unfortunate that neither

the Landlord nor her representative chose to attend the hearing to give evidence. Whilst it is certainly possible that the Landlord may have had some difficulty in obtaining access to the property the Tribunal were unable to conclude that this was indeed the case in the absence of any written submissions or verbal evidence at the Hearing in that regard. The Tribunal was satisfied from its inspection of the property that the specific complaints made by the Third Party both in their letter to the Landlord dated 11 January 2019 and re-iterated at the hearing were justified. The Tribunal noted the contents of the undated letter from the Landlord to the Third Party (Label 4 in the Applicants Submissions) but it was clear from the inspection that despite the Landlord's assertions that all necessary repairs would be carried out this had not been done. The Tribunal was unable to ascertain whether or not all the electric sockets were working as the electricity was cut off but considered it significant that the Landlord had not provided the Tribunal with an EICR or Gas Safety Certificate. Whilst the Tenant had undoubtedly left the property in a dirty and untidy condition with a lot of debris lying about it was clear to the Tribunal that the underlying problems with regards to the shower-rooms and bathroom and other complaints were entirely justified and accordingly the Tribunal had no hesitation in finding that the Property did not meet the Repairing Standard.

Decision

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

17. 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

Signed

Date

18 July 2009

Chairperson

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Front - End terraced house



Rear

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Kitchen



No heat detector in the kitchen

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Dampness in the floor of the living-room



Door handle missing

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Dampness in the floor of the hall



Hard wired smoke detector removed

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Various stains on the hall ceiling



Ground floor shower

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Fuse removed from extractor fan



En-suite shower-room

Photographs taken during the inspection of
38 Arthurstone Terrace, Dundee, DD4 6QT



Water on the floor of the top floor bathroom



Pan collecting water from leak