

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/19/3806

Flat1, 27 South Street, Dalkeith, Midlothian EH22 1AH

("The Property")

The Parties:-

Peter Henderson, residing at Flat 1, 27 South Street, Dalkeith, Midlothian EH22 1AH

("the Tenant")

Ms L Cortellessa, 3a Jordan Lane, Edinburgh EH10 4RB

("the Landlord")

Tribunal Members

Paul Doyle	Legal Member
Nick Allan	Ordinary (Surveyor) 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 evidence led by both the Landlord and the Tenants 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 26 November 2019 the Tenant 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 Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets

the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) 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, in terms of Section 13(1)(c) of the 2006 Act; and
- (b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act; and
- (c) The house does not meet the tolerable standard in terms of in terms of Section 13(1)(h) of the 2006 Act.

3. By letter dated 6 January 2020 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (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 and the Tenants.

5. Following service of the Notice of Referral the Landlord made detailed written submissions in a letter dated 21 January 2020. The applicant made further representations on 28 January 2020.

6. Tribunal members inspected the Property on the morning of 10 February 2020. The Tenant was present, but was not represented. The landlord was neither present nor represented.

7. Following the inspection of the Property the Tribunal held a hearing at Riverside House, Gorgie Road, Edinburgh. The Tenant was present but was not represented. The landlord was present and was represented by her property administrator, Rhona Ferguson.

Summary of the issues

8. The issues to be determined are whether the house meets the repairing standard set out in s.13 of the Housing (Scotland) Act 2006.

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) On 20 September 2006, the landlord let the property to the tenant. The tenancy was initially from 20/09/2006 to 19/03/2007 and from month to month thereafter.

(b) The property is a one bedroomed first floor flat entering by a common passage and stair forming part of a stone-built tenement of flatted dwellinghouses above ground floor retail units. The property has one bedroom, a living room, a kitchen and a bathroom. The front door to the property opens onto a central hallway which provides access to each of the rooms.

(c) The ceiling in the hallway is marked by water staining around the light fitting. The water staining is old, it was caused by a leak from the flat upstairs, which was fixed years ago and has clearly dried out.

(d) Just above the skirting board in the hallway, adjacent to the bathroom door, there is a double electrical socket. The socket works, but the casing has come loose and hangs away from the wall.

(e) The bathroom has a central ceiling light. That light fitting needs a replacement light bulb. The light in the bathroom would work if the light bulb was replaced. The Tribunal noted however that the ceiling light is of an inappropriate design for such an environment.

(f) The Kitchen has a fluorescent strip light fitting. The fitting and the fluorescent tube are darkened by corrosion. The light in the kitchen has not worked for more than a decade. The kitchen is cluttered and dirty. Amongst the kitchen fittings provide by the landlord, there is an electric oven and a gas hob. The oven door is broken and does not close properly. The hob and oven are far past their serviceable days. The oven unit does not work and is beyond repair. The tenant confirmed that the hob partially works but has not been in use for several years. The hob is also considered to be beyond economic repair. When the respondent offered to repair the hob and oven in 2015, the tenant said that he did not use either fitting and did not want them to be repaired.

(g) There is no provision for heat detection anywhere in the property. There is a CO2 detector fixed to the ceiling of the living room in the property, and there is one defunct smoke detector on the ceiling in the hall way.

(h) The Living room has a cupboard which houses the central heating boiler. The handle to the boiler cupboard door is broken. It is very likely that the central heating boiler is inadequately ventilated. The property is littered with electrical adaptors and extension cables.

(i) The common stair is adequately ventilated and is not tainted by unpleasant odours. Entry to the common stair is through a main stair door, which was ajar when Tribunal members visited the property.

(j) The installations in the house for the supply of gas and electricity, space heating and heating water are not in a reasonable state of repair nor are they in proper working order, in terms of Section 13(1)(c) of the 2006 Act; and

(l) The fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act;

(m) Despite those failings, the house meets the tolerable standard. The tolerable standard is the minimum standard for all housing, and a house which is below this standard is considered to be unfit for human habitation. The electrical and gas installations in this property require attention and some fittings and fixtures fall short of the repairing standard, but the property is fit for human habitation.

(n) During the inspection of this property on 10 February 2020, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 10 February 2020. It was a blustery, damp, morning. The landlord was neither present nor represented. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property

(b) Tribunal members gathered in the hall of the property and could immediately see that a double electrical socket on the wall (just above skirting board level) adjacent to the bathroom was hanging off the wall. The socket was in use. An extension cable was plugged into the socket. That extension cable snaked into the bathroom to provide an electricity outlet lying behind the WC pedestal. The Tribunal observed that a garage/workshop style space heater was plugged into the extension cable to provide heating in the bathroom as an alternative to the radiator which no longer worked. The Tribunal further observed the close proximity of the extension cable and multi point socket to the bath and shower unit, and considered this to be unsuitable and dangerous.

(c) Tribunal members noted the inappropriate light fitting located above the bath unit. The tenant told tribunal members that the light fitting worked, but the bulb needs to be replaced.

(d) On the kitchen ceiling there is a fluorescent light fitting and fluorescent tube. Both the light fitting and the tube are brown with corrosion. Brown crystals have formed on the fluorescent light tube. It was not a surprise to find that the light in the kitchen does not work.

(e) The kitchen has fitted units which house an electric oven and gas hob. Both are filthy and past their useful life. The electric oven does not work. The

door of the oven is faulty. The oven and hob were so demonstrative of neglect that tribunal members are concerned about the state of the electrical and gas connections (which could not be viewed) behind the oven. There is still a supply of gas to the hob. In 2015 the applicant refused the respondent's offer to replace the oven and hob.

(f) The light pendant in the hall is loose and the wiring exposed. The ceiling surrounding the light pendant is still water stained because there was a leak from the property upstairs some time ago. The water damage has dried completely, so that only staining is left.

(g) The living room is cluttered with the tenants possessions. There are extension cables and seemingly over used power points throughout the living room leaving a tangle of wires throughout.

(h) In 2018 the respondent instructed contractors to carry out remedial works to the electrical system. The respondent paid for the works to be carried out, and did not know that the property has fallen into such a poor state of repair. The most up to date EICR report the respondent has is dated June 2018 and highlights the faults the tribunal members saw at inspection, and specifically identifies several C2 issues that required urgent attention at that time. The respondent has paid for those faults to be rectified, but the work has not been carried out.

(i) There is no heat detector in the property There is a smoke alarm in the hallway, but it does not work. There is a CO2 detector in the Livingroom only, but it wasn't possible to test it. It wasn't possible to locate a CO2 detector in the kitchen.

(j) The central heating boiler is located in a cupboard off the Livingroom. The door handle to that cupboard is broken,. The venting for the central heating boiler may be inadequate. The respondent believes that she has a current gas safety certificate.

(k) The respondent has made repeated offers to inspect the property and carry out any necessary repairs, but the applicant refused access because he was waiting for this inspection and hearing. The applicant told us clearly that he will cooperate with the respondent to facilitate the necessary works.

(l) A hearing took place at 11:30 am within Riverside House, Gorgie Road, Edinburgh. The landlord was present and was represented by Rhona Ferguson, her property manager. The tenant was present. The respondent and Ms Ferguson accepted tribunal members observations drawn from the inspection. They were clearly disappointed that work they had paid for had not been carried out. They expressed a clear and credible will to carry out all remedial works without delay.

(m) The tenant wanted to discuss his health and problems he has had with neighbours and with the delivery of his mail. The tribunal told the applicant

that this tribunal has no jurisdiction to consider such matters (even though he finds them distressing).

(n) The Tribunal therefore make a repairing standard enforcement order requiring the landlord to

(a) Repair and replace light fittings in the bathroom, kitchen and hall

(b) Carry out all remedial works to the electrical system and then instruct an Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation of the property and all electrical appliances and equipment supplied by the landlord to be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor. Carry out works to rectify any identified issues in these reports and provide the First-tier Tribunal for Scotland (HPC) with an unqualified report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming the works are completed.

(c) Remove and replace the hob and oven and then provide the First-tier Tribunal for Scotland (HPC) with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

All within 6 weeks

and

(d) Ensure adequate provision of interconnected Smoke, heat and CO2 detectors within 7 days

Decision

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

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

13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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.

P Doyle

Signed

.Date

20/02/2020

Chairperson



Photograph Schedule

Flat 1, 27 South Street, Dalkeith, EH22 1AH

Case Reference: FTS/HPC/RP/19/3806

Date of inspection: 10/02/2020

Time of re-inspection: 10.00 am

Weather conditions: Torrential rain and overcast

In attendance: Mr Paul Doyle – Legal Member
Mr Nick Allan - Ordinary Member
Mr Peter Henderson -Tenant



Photo 1 – Front elevation



Photo 2 – Ground floor access at rear + side



Photo 3 – Exposed wires + water staining in hall



Photo 4 – Damaged double socket in hallway



Photo 5 – Ceiling light fitting in bathroom

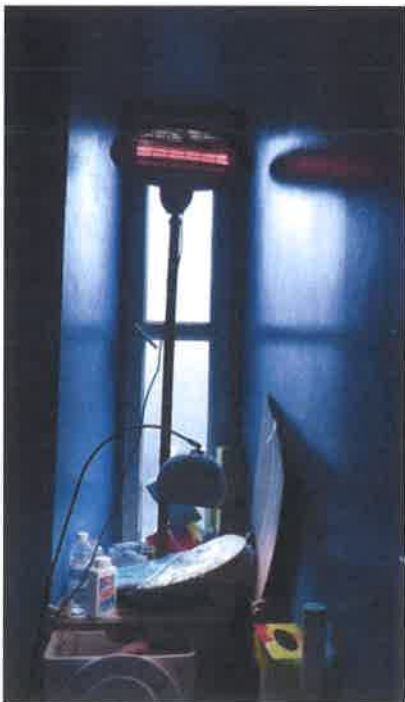


Photo 6 – Bathroom heater + temporary lighting



Photo 7 – Long defunct kitchen strip light



Photo 8 – Defunct oven in kitchen



Photo 9 – Non serviceable gas hob above oven



Photo 10 – CO2 monitor on living room ceiling



Photo 11 – Defunct smoke detector in hall way



Photo 12 – Gas boiler in living room cupboard



Photo 13 – Door handle into boiler cupboard



Photo 14 – Tangle of wiring, leads and extension cables



Photo 15 – Kitchen socket



Photo 16 – Inappropriate power supply to bathroom



Photo 17 – Living room arrangements



Photo 18 – Living room arrangements



Photo 19 – Access route to flat door

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal (Housing and Property Chamber)
18th February 2020