

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: FDS/HPC/RP/17/0061

Title No: ANG32479

Ground Floor Right, 81 Dens Road, Dundee, DD3 7HW ("The Property")

The Parties:-

JOHN SMITH, residing at 81 Dens Road, Dundee, DD3 7HW (represented by their agent, Dundee North Law Centre) ("the Tenant")

ASRAR UN-NABI and DAVID WILLIAM ADAMSON as Partners of and Trustees for the Firm of Ace Property Lettings (represented by their agent, Colin Campbell of CMC Lettings, Unit 1-2, New Mart Road, Edinburgh, EH14 1RL) ("the Landlords")

Whereas in terms of their decision dated 2 May 2017, 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property 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;

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 carry out such works of repair or replacement to the living room and second bedroom windows to ensure they are capable of being opened and closed properly and otherwise are compliant with the repairing standard;

(b) to exhibit to the tribunal a clear Electrical Installation Condition Report with no items marked C1 or C2.

(c) To carry out such works of repair or replacement to the bathroom and kitchen ceilings to repair all damage caused by a leak from the flat above.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

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.

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 preceding page(s) are executed by Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 2 May 2017 before this witness:-

E MILLER

Chairperson

L Johnston

(witness)

Lindsay Johnston
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

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: FDS/HPC/RP/17/0061

Ground Floor Right, 81 Dens Road, Dundee, DD3 7HW ("The Property")

The Parties:-

JOHN SMITH, residing at 81 Dens Road, Dundee, DD3 7HW (represented by their agent, Dundee North Law Centre) ("the Tenant")

ASRAR UN-NABI and DAVID WILLIAM ADAMSON as Partners of and Trustees for the Firm of Ace Property Lettings (represented by their agent, Colin Campbell of CMC Lettings, Unit 1-2, New Mart Road, Edinburgh, EH14 1RL) ("the Landlords")

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 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 Landlords and the Tenant at the hearing/inspection, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 13 February 2017 the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlords 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 Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The installations in the Property 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order.
3. By letter dated 3 March 2017 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 Landlords and the Tenant.
 5. Following service of the Notice of Referral no material written representations to the Tribunal were made by either party.
 6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member, and Mrs G Wooley, Ordinary Member) inspected the Property on the morning of 19 April 2017. The Tenant was present. Mr Un-Nabi of the Landlords was present as was Mr Campbell of CMC Lettings.
 7. Following the inspection of the Property the Tribunal held a hearing at Caledonian House, Greenmarket, Dundee, DD1 4QX and heard from the Landlords. The Landlords were represented by Mr Un-Nabi and also Mr Campbell of the letting agents. The Tenant was not represented.
 8. The Tenant had submitted that there was damp and mould in the bathroom and leaks into the bathroom from the ceiling. Some of the water was going into the light in the bathroom. He also alleged that there was a leak in the kitchen under the sink. He alleged that there had been a leak to the radiator in the living room although this, he acknowledged, had now been dealt with. He alleged that the cooker head was not fit for purpose and also that a number of the windows within the Property were defective.
 9. The Landlords submitted that they had carried out works at the Property and that the leak in the kitchen under the sink had been dealt with and that the radiator in the living room no longer leaked. They submitted that the cooker head was fit for purpose. They accepted during the course of the Hearing that some repairs were required to the living room and front bedroom windows and that it was clear that there had been a leak from the property above into the bathroom. They submitted that the mould within the Property was not caused by water penetration into the Property however but was condensation caused by lifestyle living of the Tenant.

Summary of the issues

10. The issues to be determined are:-

- (1) Whether there is damp and mould in the bathroom that is a breach of the repairing standard.

- (2) Whether there was a leak in the kitchen under the sink.
- (3) Whether the radiator in the living room was leaking.
- (4) Whether the cooker head met the repairing standard.
- (5) Whether the windows within the Property met the repairing standard.

Findings of fact

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

- There was minor damp and mould within the bathroom but the Tribunal was satisfied that this was primarily caused by the Tenant's lifestyle. There had been a leak in the bathroom however that had damaged the ceiling and this was a breach of the repairing standard.
- There was no leak in the kitchen under the sink.
- The radiator in the living room did not leak and was fit for purpose.
- The cooker head met the repairing standard.
- The living room and second bedroom windows did not meet the repairing standard.

Reasons for the decision

12. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection. The Tribunal first inspected the windows within the Property. In the living room neither of the upper opening areas of the windows met the repairing standard as they did not shut properly. On the lefthand opening the base of the metal handle had snapped. It appeared as if some fittings had been removed. The Landlords would require to carry out such works as were necessary to ensure that the two opening areas of the window were properly wind and watertight and capable of being closed properly. In the second bedroom the upper opening section of the window was jammed shut and this would require to be attended to by the Landlords as it did not currently meet the repairing standard. The other windows in the Property were, the Tenant acknowledged, in working order and met the repairing standard.

The parties accepted during the course of the inspection that the leak in the kitchen under the sink had been attended to as had the leak from the radiator in the living room. The Tenant did raise a new complaint regarding a leak from the washing machine but as this had not been notified to the Landlords the Tribunal did not have jurisdiction and this would require to be dealt with between the parties.

The Tribunal inspected the cooker hood above the cooker. This was somewhat unusual in that it was primarily decorative as it did not vent to the exterior of the building. It did act as a filter and light but would not remove any moist air. However there was an opening window within the kitchen and accordingly this meant that although the cooker hood was primarily decorative it did nonetheless meet the repairing standard.

Lastly the Tribunal inspected the bathroom. There was a crack in the bath which may allow water to penetrate under the bath. The Tenant openly acknowledged that he had caused the crack in the bath as he had collapsed with an anxiety attack whilst having a shower. He indicated he would repair this. However during the course of the Hearing the Landlords indicated they would attend to this as the cost was minimal.

It was apparent to the Tribunal that there had been a leak in to the bathroom from the flat above. The ceiling above the bath was bowed and it appeared that the lathes and/or plaster keys had come away to a certain degree. The Tribunal was of the view that this could, at some point, collapse and would be dangerous. The Landlords would require to replace all this part of the ceiling in to ensure the Property was compliant with the repairing standard. The Tribunal also noted that some water penetration had appeared to occur in the corner of the kitchen, in all likelihood from the same leak from the flat above. This would require to be investigated and attended to if appropriate. The Tribunal also noted that a light fitting was in the area where the water penetration had occurred. It would therefore be prudent to ensure that no damage to the electrical fitting had occurred. Accordingly the Landlords would require to produce an Electrical Installation Condition Report with no items marked C1 or C2.

Lastly the Tribunal consider the damp and mould within the Property. In the bathroom there was a small area of mould on the ceiling. The Tribunal was satisfied that this was a relatively minor issue and was simply caused by condensation. There was also some mould along the wall of the second bedroom. The Tribunal however noted that the second bedroom was full with a number of child's items along the relevant wall. This would prevent air circulation and encourage mould growth. The Tribunal also noted that the Tenant was using an unvented tumble dryer within the Property and this would increase moisture levels and encourage mould growth. Overall the Tribunal was satisfied that other than the damage caused by the historic leak, there was no current water penetration within the Property and that the damp and mould was caused by the lifestyle of the Tenant.

At the Hearing, the Tribunal discussed with the Landlords' agent a period of time to carry out the required works. A period of 8 weeks was suggested and accepted by the Tribunal.

Annexed to this decision are photographs taken during the inspection for information purposes

Decision

13. The Tribunal accordingly determined that the Landlords 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. 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 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.

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.

E Miller

Signed

Chairperson

Date

..... 2/5/17

This is the schedule of photographs referred to in the foregoing decision of the Hearing and Property Charge for 81 Dens Road, Dundee taken on 19th April 2017 and the decision ~~was~~ dated 28/4/17

Chamber



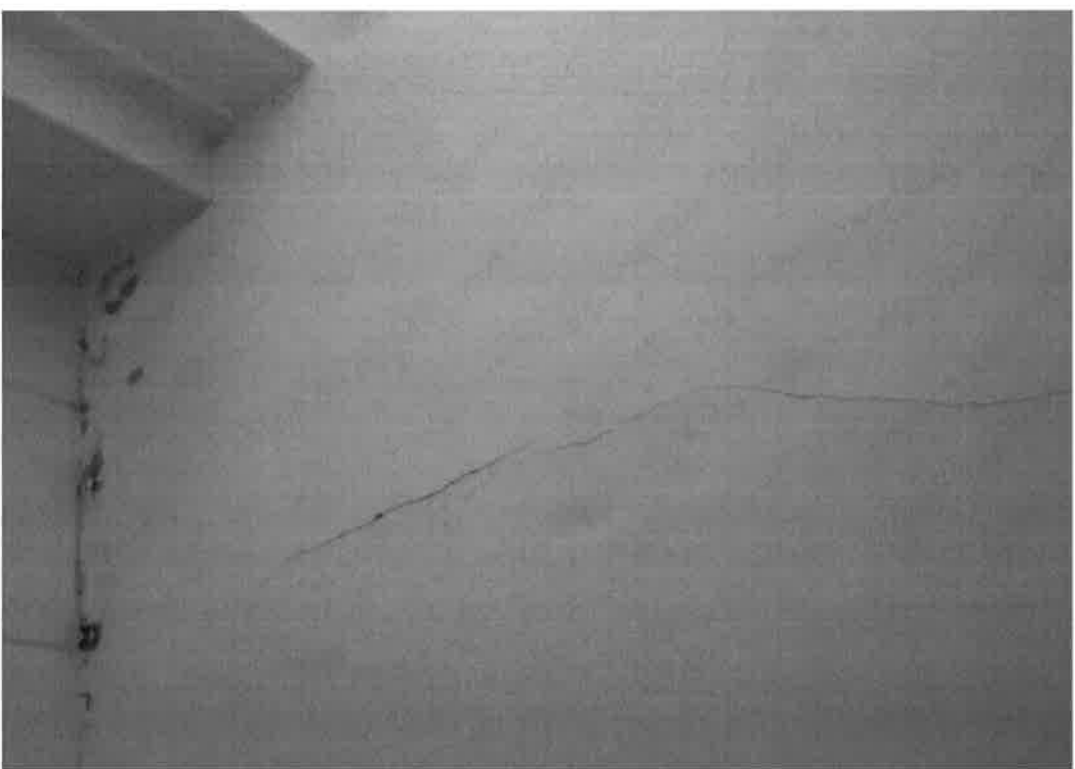
Housing and Property Chamber
First-tier Tribunal for Scotland



G/R 81 Dens Rd Dundee
DD3 7HW

Inspection and Hearing 19 April 2017

Damp and crack in bathroom ceiling



Crack in bath



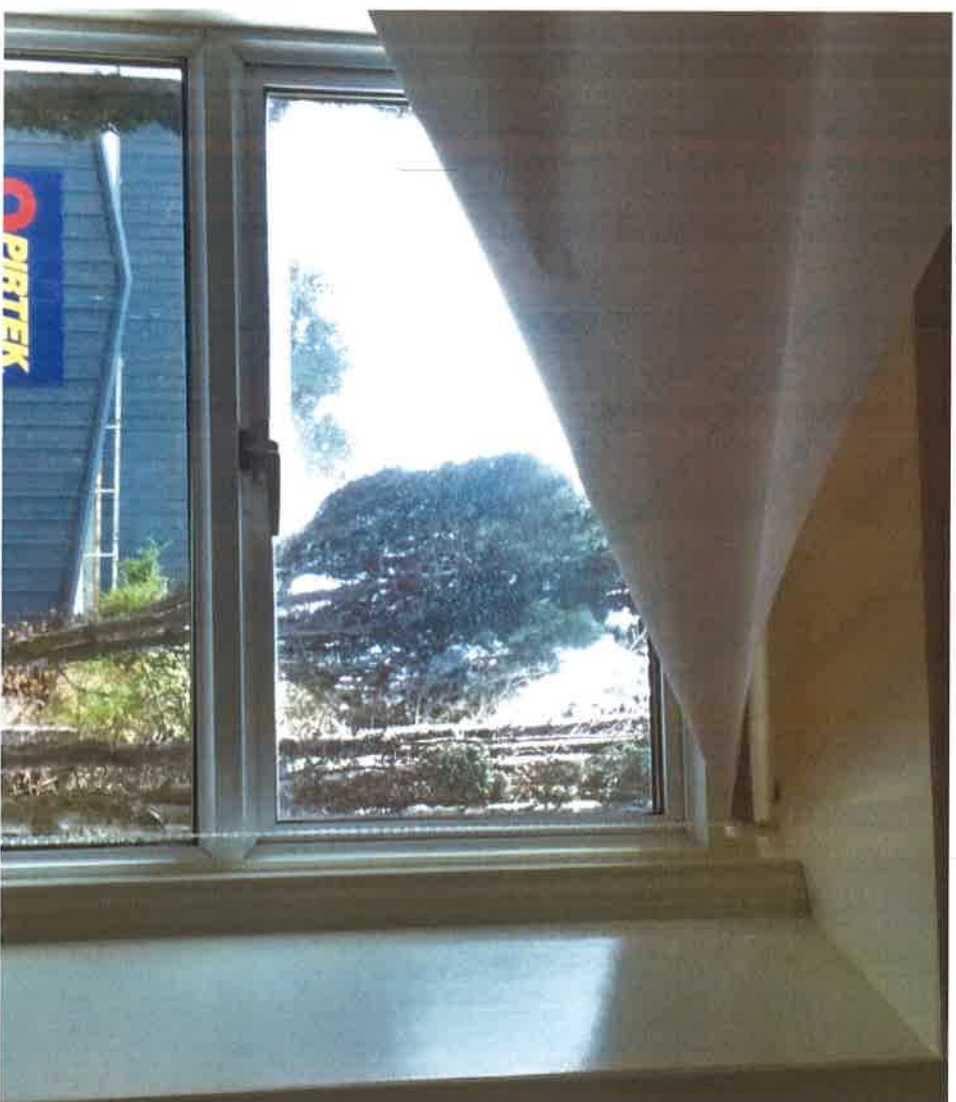
Damp in kitchen ceiling



Windows in sitting
room – not wind tight
as catches to opening
lights are loose



Window in
second
bedroom -
upper light
cannot be
opened



Cooker hood in working order but not ventilated.
(Window in kitchen in working order).

