

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision on an application under Section 24 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/18/3133

11 Ware Road, Peterhead, AB42 1NQ ("the Property")

The Parties:-

Miss Ashley Graham, residing at 11 Ware Road, Peterhead, AB42 1NQ ("the Tenant")

Aberdeenshire Council, Housing Strategy, Gordon House, Blackhall Road, Inverurie ("the Applicant")

Stuart John Badenoch McNally, residing at Kilmarnock Drive, Cruden Bay, Peterhead, AB42 0NG ("the Landlord")

Tribunal Members:

E K Miller (Legal Member)

A Anderson (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 had complied with the duty imposed by Section 14 (1)(b) in relation to the Property concerned, and taking account of the evidence obtained by the Tribunal at both the inspection of the Property and the subsequent 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 20 November 2018 the Applicant applied to the Tribunal 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 Applicant stated that they considered that the Landlord had failed to comply with his duty to ensure that the Property met the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

- (c) 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;
 - (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 15 January 2019 the President of the Tribunal intimated by way of letter incorporating a Notice of Referral that the matter was referred to a Tribunal for determination.
 4. Following service of the Notice of Referral neither party made any further written representations to the Tribunal.
 5. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr A Anderson, (Ordinary/Surveyor Member) inspected the Property on the morning of 18 April 2019. The Tenant was present and gave access to the Tribunal. Ms Emma Bain of the Applicant was present. The Landlord was neither present nor represented.
 6. Following the inspection of the Property the Tribunal held a hearing at Peterhead Sheriff Court, Queen Street, Peterhead, Aberdeenshire. The Tenant was again present and represented herself. She was accompanied by Ms Bain of the Applicant. Again, the Landlord was neither present nor represented.
 7. The Applicant had made submissions with their application form to the Tribunal that covered a variety of matters such as the downstairs windows and French doors being inadequate, the en-suite and main bathroom being inadequate, a lack of fire protection throughout the Property and a lack of Landlord's gas and electrical safety certificates. There was also a complaint from the Applicant that there was a lack of an Energy Performance Certificate. The Tenant submitted that whilst the Landlord was a pleasant enough individual and often made promises to address matters, it was very rare that any real action was forthcoming. She submitted that she had been living in the Property in a poor condition for some considerable time and had become frustrated at the lack of progress. There were no submissions or representations from the Landlord for the Tribunal to consider.
 8. The Tribunal was concerned to note that on the day prior to the inspection and hearing, the Tribunal Office had received a call from the Landlord. The Landlord had intimated to a member of the Tribunal Staff that he was a friend of the Tenant and was aware that she had had some personal issues due to a relationship break-up and was in Glasgow visiting a relative. He indicated to a member of the Tribunal Staff that the hearing would have to be cancelled as the Tenant would be unable to give access on the day. The Tribunal Staff then contacted the Tenant who advised that she was not in Glasgow and that she was fully expecting to give access the next day and that there were no issues in this regard. The Tribunal was concerned to note that the Landlord's behaviour appeared to be a direct attempt to subvert the Tribunal process and to postpone matters. The Tribunal would not expect any repetition of such behaviour during the remainder of the progress of this case.

Summary of the issues

9. The Tribunal noted that the following issues needed to be addressed:-
 - a. Whether the downstairs windows in the Property were faulty and could be opened from the outside, even when locked from the inside.
 - b. Whether the French doors in the living room were leaking and generally met the repairing standard.

- c. Whether the extractor fan in the en-suite bathroom was in proper working order and met the repairing standard.
- d. Whether the bath in the en-suite bathroom required to be sealed and whether there was insect infestation occurring.
- e. Whether the main bathroom for the Property met the repairing standard and was capable of everyday use;
- f. Whether the fire detection system within the Property complied with the repairing standard;
- g. Whether the gas system within the Property met the repairing standard and was otherwise compliant with the relevant regulations;
- h. Whether the electrical system within the Property met the repairing standard;
- i. Whether an Energy Performance Certificate required to be provided.

Findings of fact

10. The Tribunal found the following facts to be established:-
- The main bedroom window downstairs was not properly wind and watertight nor in proper working order.
 - The downstairs second bedroom window was not properly wind and watertight nor capable of being opened and closed correctly.
 - The doorframe and casement of the French windows in the living room were in poor order and there was evidence of joints opening. There was water ingress into the interior of the property, a misted pane of glass and window beading coming away.
 - The extractor fan in the en-suite bathroom was not working. There was mould growth and peeling paint present.
 - There was evidence of damp around the en-suite bath behind the tiles as well as evidence of insect infestation.
 - The main bathroom fell well short of meeting the repairing standard. There were no wall linings and the shower required to be reinstated.
 - The Property did not meet the required standard for fire detection as there was no smoke alarms in the upstairs landing and lounge.
 - The Tribunal found that there was insufficient evidence to establish that the gas installation system within the Property did meet the repairing standard.
 - The Tribunal found that there was insufficient evidence to show that the electrical installation within the Property did meet the repairing standard.
 - No Energy Performance Certificate was required for the Property to comply with the repairing standard.

Reasons for the decision

11. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection of the Property. The Tribunal first inspected the downstairs windows. The window in the main bedroom downstairs appeared to be ill-fitting. The Tenant had attempted to seal up the various gaps with tape and silicon. The Tribunal was able to feel the air coming through the window on the day and was therefore satisfied that the window was not properly wind and watertight and would require to either be repaired or replaced to render it compliant with the repairing standard.

The Tribunal inspected the window in the other downstairs bedroom. The handle of this was very loose and it was apparent that the internal fittings were broken. Once the window was opened it was extremely difficult to close the window and, in fact, required

one member of the Tribunal to push from the outside of the window and the other to pull from the inside to get the window shut again. It was clear that it was not properly wind and watertight and in proper working order and would require to be repaired or replaced.

The Tribunal inspected the French doors in the living room. These were dated and showing signs of wear and tear. There was evidence of water penetration into the internal lining of the door. The Tenant had placed a piece of flooring over a part of the bottom of the frame to try and stop wind and water coming in. An external inspection showed decay to both the frame and the casement. There was evidence of joints opening. There was also evidence of the window beading coming away internally and there was a misted pane of glass on the left hand side panel, as viewed internally. The Tribunal was satisfied that the French doors did not meet the repairing standard and that repair work would be required to ensure that they were properly wind and watertight.

The Tribunal then inspected the en-suite bathroom. The extractor fan did not appear to be in working order and it was not clear how this vented externally. The Landlord would require to ensure that the extractor fan was either repaired or replaced and put in proper working order. It would also require to be checked that it was venting properly. As a result of the fan not working combined with the lack of any other form of external ventilation, there was evidence of mould growth in the bathroom and peeling paintwork. This would require to be addressed by the Landlord when carrying out other works.

The Tribunal used a damp meter around the bath and this indicated that there was damp behind the tiles just above the bath. There were some small holes around the base of the bath, although the Tenant appeared to have partially sealed these up with silicon. There was some evidence of infestation by woodlice on the day and the Tribunal was satisfied that the Landlord would require to carry out further investigatory works to ascertain whether there was rot behind the bath (there was evidence from the inspection of the main bathroom, which backed on to the en-suite, that the joists beneath the en-suite bath may be rotten). Generally the Landlord would require to carry out such works as were necessary to make good the bath and to render it compliant with the repairing standard and to re-grout the area around the bath.

The Tribunal then inspected the main bathroom. The Tenant indicated that when she moved in to the Property the bathroom was in its current state. There had been a flood or leak in the bathroom previously and it had been badly damaged. The Landlord had begun to carry out further works to repair it and had promised the Tenant in 2016 that he would finish off the works shortly after she moved in. The Tribunal had no reason to doubt the evidence by the Tenant in this regard and no evidence to the contrary was produced by the Landlord. The Tenant was entitled to a proper bathroom. The Tenant and her children and any visitors to the Property all required to use the en-suite in the main bedroom. This was unsatisfactory and the Tenant was entitled to a working bathroom. The wall linings were exposed in the bathroom, there were no floor coverings and the shower had not yet been installed. The toilet and sink in the bathroom did appear to be in working order. However, overall the Landlord would require to reinstate the bathroom wall linings, carry out redecoration, install the shower and generally render the bathroom compliant with the repairing standard and to decorate accordingly.

The Tribunal inspected the Property for fire detection. There was a heat detector in the kitchen and smoke detectors in the two downstairs halls. These were hardwired and interlinked. However the regulations require a hardwired and interlinked smoke alarm in both the lounge and the upstairs landing and neither of these were present. Accordingly the Landlord would require to have these installed. Although present on the application form, this item was not part of the formal complaint notified to the Landlord, the Tribunal did note that there was no carbon monoxide alarms present and would expect these would be installed in the appropriate locations as contained in the statutory guidance.

The Tribunal considered the position in relation to gas safety. The boiler was located in the eaves roofspace. It was accessed by unscrewing a small hatch. It did not appear to the Tribunal to be a safe method of access and the Tribunal was not prepared to carry out

a detailed inspection by crawling over the eaves joists. However from a visual inspection there was evidence of rust and corrosion around the boiler. The Tenant indicated that she required to top up the pressure within the boiler on a weekly basis. No gas safety certificate had been produced recently. The Tenant had obtained a quote to get a new boiler installed but the Landlord had refused to pay for its replacement. The Tenant advised that a gas engineer had previously advised that the boiler be replaced as it was extremely dated. The Tribunal accepted the evidence of the Tenant that she required to top up the pressure on a weekly basis. This suggested to the Tribunal that the boiler was not in proper working order. There was also the visual evidence of rust and corrosion around the boiler. It is a requirement to let a private rented property that a current gas safety certificate is held at all times. The Landlord did not appear to have a gas safety certificate and the Tribunal would therefore require to have sight of a current gas safety certificate showing the gas system within the property was fully compliant.

The Tribunal considered the electrical safety within the Property. Again it was a statutory requirement to have an electrical installation condition report and the Landlord did not appear to have this. The Tribunal noted evidence from the Tenant that a large number of the bulbs blew on a regular basis. They also noted that the extractor fan was not working. In the upstairs hall and bedroom the Tribunal noted that there were halogen bulbs fitted and they were very close to being flush to the ceiling. It was normal for there to be a gap between the back of the bulb and the ceiling to ensure that there was heat dissipation. This did not appear to be the case. The Tribunal noted that the fuse box was dated and that there was no RCD present. In the circumstances the Tribunal was of the view that it was not possible to say with any confidence that the electrical system within the Property was safe and in proper working order. Accordingly the Landlord would require to obtain an electrical installation condition report from a suitably qualified electrician confirming that the electrical system within the Property was safe. The certificate should not have any items that are marked "C1" or "C2". Any such items falling in to this category would require to be rectified by the Landlord.

The Tribunal considered the request for an Energy Performance Certificate to be provided. Whilst it was the case that an Energy Performance Certificate was a legal requirement it was not a part of the repairing standard.

The Tribunal considered that a Repairing Standard Enforcement Order ("RSEO") would be required in the circumstances. Considering the amount of works that require to be carried out, the Tribunal was of the view that a period of two months would be sufficient for the Landlord to address the various points.

Photographs taken during the course of this inspection are annexed to this Decision for information.

Decision

12. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
13. The Tribunal proceeded to make an RSEO as required by section 24(1).
14. The decision of the Committee was unanimous.

Right of Appeal

15. **A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.**

Effect of section 63

16. 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 K Miller

Signed .
Chairperson

..... Date..... 16/5/19

Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

11 Ware Road, Peterhead, AB42 1NQ

Chamber Reference : FTS/HPC/RT/18/3133

Initial Inspection : Schedule of Photographs

Inspection Date: 18/04/2019



Figure 1 Front Elevation



Figure 2 Lining Room French Doors - External.



Figure 3 French Doors - decay and open joints.



Figure 4 Lining Room French Doors internal - frame patched, misting to left pane.



Figure 5 Main Bedroom window.



Figure 6 Main Bedroom window - gap at frame filled with silicon and duct tape



Figure 7- Main Bedroom and Kitchen windows, external.



Figure 8 Main Bedroom Bathroom - overview.



Figure 9 Main Bedroom Bathroom - bath/shower.



Figure 10 Main Bedroom bath - Moisture meter reading 81.9%/Red.



Figure 11 Main Bedroom bath - gaps sealed with silicon.



Figure 12 Main Bedroom Bathroom - extractor fan inoperative and cover removed.



Figure 13 Main Shower Room - Shower enclosure missing, bare walls exposed.



Figure 13 Main Shower Room - Overview of fittings.



Figure 14 Electrical switchgear (Right Hand).



Figure 15 Electrical Switchgear (Left Hand).



Figure 16 Central Heating boiler.



Figure 17 Inner Hall - Smoke alarm.



Figure 18 Kitchen Ceiling - Heat detector and lighting.