

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/19/0583

**Flat 1/2 , 25 Benvie Road, Dundee DD2 2PD
("The Property")**

The Parties:-

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

**Miss Elaine Clark, Flat 1/2 , 25 Benvie Road, Dundee DD2 2PD
("the Tenant")**

**Matthew Properties, Mr Melville Matthew and Mrs Margaret Matthew,
Quarry Cottage, Inchtute PH14 9RN
("the Landlords")**

Tribunal Members

**Graham Harding (Legal Member)
Mike Links (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 Landlords have 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 Third Party at the hearing, 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 15 February 2019 the Third Party 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 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 house is wind and watertight and in all other respects reasonably fit for human habitation.
- (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) 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:-

Living room window pane cracked across.

Tenant report windows draughty.

Oven beeps constantly when in use. Timer button does not always latch to allow oven to work.

Fridge area freezes items at back.

Radiator leaking in bedroom.

No CO detector beside boiler.

Bath hot tap will not turn on.

Shower trips fuse when in use.

Tenant did not have a copy of the EICR.

Tenant did not have a copy of the Landlords Gas Safety Certificate.

3. By Minute of Decision dated 28 February 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 Tenants.
5. Following service of the Notice of Referral the Tenants (by letter dated 21 March 2019), made no written representation to the Tribunal. The Landlords (by letter dated 26 April 2019), made written representations to the tribunal. The Third Party made further written representations to the Tribunal by email dated 1 May 2019.
6. The Landlords in their representations requested that the inspection and hearing assigned for 7 May 2019 be cancelled or suspended pending the

Third Party inspecting the works carried out by the Landlords. Following an inspection by the Third Party and receipt of its further written representations the Tribunal refused the Landlords' request for a postponement of the inspection and the hearing by letter dated 2 May 2019.

7. The Tribunal inspected the Property on the morning of 7 May 2019 the Tenant, Mr Lindsay Watson on behalf of the Third Party and Mr Melville Matthew on behalf of the the Landlords were present during 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 both the Third Party and the Landlords. The Tenant did not attend.
9. For the Landlords, Mr Matthew confirmed that the cooker had been replaced. The Tenant had been provided with a new fridge freezer which was currently located in the living room as the Tenant had wished to alter the layout of the kitchen but had not yet done so. The original fridge freezer was still in use. Mr Matthew said that if the Tenant decided not to reorganise the kitchen the Landlords would provide a new smaller fridge freezer the same size as the existing one if requested. Although the Tenant had indicated that the new shower in the bathroom had caused a fuse to trip, Mr Matthew pointed out that at the inspection the shower had run for a lengthy period without it causing the fuse to trip. He did not think there was a problem. The new shower had been in place since early March and the Tenant had not made any complaints other than at the inspection when she had said it had tripped on one occasion Mr Matthew confirmed as had been evident from the inspection that the leaking radiator in the bedroom had been fixed. A new CO detector had been installed although it had transpired that there had been one in place previously but it had been covered by a curtain. The bath hot tap had been fixed. Mr Matthew provided the Tribunal with a copy of the EICR. Mr Matthew disputed that the windows were draughty but accepted that the lounge window required to be replaced. He had hoped this would have been done prior to the inspection but due to a delay in the window being delivered this was not the case. He anticipated the window being replaced in the very near future. With regards to the rear bedroom window, it was pointed out by the Ordinary Member that window frame was rotten. Mr Matthew said he had been unaware that this was the case. He explained that there had been an issue over rent with a co-tenant and he had been reluctant to spend money on repairs in these circumstances but that he would be happy to repair or replace the window.
10. For the Third Party Mr Watson confirmed that many of the issues complained about had been dealt with other than the lounge and bedroom windows. Mr Watson had provided the Tribunal with a copy of the Landlords Gas Safety Certificate. The Tribunal indicated to Mr Matthew that it would check the Gas Safe register to confirm that the engineer, Mr

Ross McMaster was registered. Mr Matthew advised the Tribunal that Mr McMaster had been self employed but was now employed by WRB Gas Contracts Limited, Dundee. Mr Matthew advised the Tribunal that the Landlords had numerous properties and Mr McMaster carried out annual gas safety inspections for all their properties.

Summary of the issues

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

Findings of fact

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

- The tenancy is a private residential tenancy that commenced on 20 August 2018.
- Looking from the inside there is a crack in the left living room window pane. The wooden window frame itself is in poor condition.
- The rear bedroom wooden window frame is also in poor condition.
- The cooker in the kitchen has been replaced and is in reasonable working order.
- The landlords have provided the Tenant with a new fridge freezer.
- The leaking radiator in the rear bedroom has been repaired.
- There is a CO detector located by the gas boiler.
- The bath hot water tap has been replaced and is in reasonable working order.
- The electric shower in the bathroom has been replaced and is in reasonable working order.
- The Tenant has been supplied with a copy of a valid EICR.
- The Engineer employed by the Landlords to carry out a gas safety inspection at the property is only registered on the Gas Safe Register to do so in the course of his employment with WRB Gas Contracts Limited, Dundee.

Reasons for the decision

13. It was apparent from the inspection that the Landlords had addressed a number of the Tenant's and Third Party's concerns in advance of the hearing. The only major outstanding issues were the concerns regarding the lounge and bedroom windows. The other matters with the exception of the Gas Safety Certificate which is considered below had been resolved.

14. At the time of the inspection there was little or no wind and the Tribunal was unable to ascertain whether or not the windows were draughty as was suggested by the Tenant. However, the Tribunal did note that the Lounge and rear bedroom wooden window frames were rotten and in generally poor condition.

15. Although the Landlords had intended to replace the lounge windows with new UPVC double glazed windows in advance of the inspection and hearing this had not proved to be possible. The Tribunal was therefore of the view that given the poor condition of the windows with the wooden frames being rotten as well as one pane having a crack that they did not meet the repairing standard and should be replaced as proposed by the Landlords.
16. The rear bedroom wooden window frame was also rotten and it too did not meet the repairing standard. It would therefore require to be repaired or replaced.
17. The Gas Safety Certificate provided by the Landlords was signed by Mr Ross McMaster who claimed to be on the Gas Safe Register under Registration Number 418845. However, the Tribunal made enquiries with Gas Safe who advised that Mr Mc Master was no longer registered as an individual under that number. He is only registered as an employee of WRB Gas Contracts Ltd under Registration Number 4503427. The Tribunal have therefore concluded that the Gas Safety Certificate provided by the Landlord is not valid as the Engineer is not registered as an individual and the Registration number on the certificate is no longer in use. The Tribunal is therefore of the view that the Landlords must obtain a new gas safety certificate from a registered Gas Safe engineer.

Decision

18. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
19. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
20. The decision of the tribunal was unanimous.

Right of Appeal

21. **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

22. 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

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Chairperson

Date

17 May 2019 *U*

Housing and Property Chamber First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: Flat 1/2, 25 Benvie Road, Dundee DD2 2PD

DATE: 7th May 2019

REFERENCE: FTS/HPC/RT/19/0583



FRONT ELEVATION



REAR ELEVATION



LR WINDOW



CRACKED PANE IN LR WINDOW

G Harding



NEW COOKER



NEW FRIDGE/FREEZER



DECAY IN REAR BED WINDOW FRAME



REAR BED WINDOW



CO ALARM IN REAR BED



NEW VALVE – REAR BED RADIATOR



NEW TAP AT BATH



NEW SHOWER UNIT ABOVE BATH

MIKE LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE: 8TH MAY 2019