

Housing and Property Chamber First-tier Tribunal for Scotland



Under the Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/21/1978

Property Address: Flat 1/0, 2 Sibbald Street, Dundee DD3 7JA (“the property”)

The Parties: Mr Stuart Cuthill, Private Sector Services Unit, 3 City Square, Dundee DD1 3BA (“third party applicant”)

Mrs Faiza Sami Ullah, Flat 1/0, 2 Sibbald Street, Dundee DD3 7JA (“the applicant”)

Mr Javid Alam, Ms Asma Nahid, 4 Fonstane Crescent, Monfieth, Angus DD5 4JZ (“the respondent”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

Decision:

The tribunal, having made such inquiries as is fit for the purpose of determining whether the respondent has complied with the duties imposed upon them at Section 14 (1)(b) of the act in relation to the property concerned, and taking account of the evidence presented in the written and oral representations and following upon the inspection, determined that the respondent has failed to comply with the duties imposed by section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:

An application was received by the tribunal on 18th August 2021 from the third party applicant. The application was accompanied by a copy of the private residential tenancy agreement entered into between the parties (undated but with a commencement date of the tenancy of 1st September 2020). In addition, there was correspondence from the third party applicant to the respondent dated 29th July 2021 setting out the issues in connection with the property and in addition an ‘inspection report’ dated 12th August 2021.

In summary, the documentation stated:

1. There is water ingress to the hall ceiling
2. The living room, bedroom 1, kitchen, bathroom, bedroom 2, windows are not wind and watertight
3. There is water ingress to the living room
4. Bedroom 1 is affected by water damage

5. There are loose, broken, squeaky or uneven floorboards to the hall, living room, bedroom 1, kitchen, bathroom, bedroom 2 and bedroom 3
6. The heating pipe in bedroom 1 requires attention and there is a leak
7. There is a water leak at the kitchen window
8. There are concerns regarding the central heating pipes adjacent to the boiler
9. The cooker is too low and the worktops are damaged
10. There is wear and tear to the kitchen cabinets
11. The kick boards in the kitchen are damaged
12. There is a water leak and damage at the bathroom window
13. There is a water leak at the bath
14. There is damp and mould at bedroom 2 window
15. The heating does not emit enough heat and there is no Gas Safety Certificate
16. There is no electrical installation condition report
17. There is no CO alarm
18. The front door is draughty
19. A loose cable adjacent to the front door requires to be secured
20. The communal entrance and stair decorations require attention
21. The communal stair windows and rear door require attention
22. There is staining to the external stonework and the rainwater goods require attention
23. Attention is required to external stonework to walls and chimneys

The application was acknowledged on 18th August 2021 and a determination was made to accept the application on 24th August 2021.

Intimation of a case management discussion to be held on 13th October 2021 was sent to parties on 8th September 2021.

On 13th October 2021 at the case management discussion, the respondent was represented by Ms Royle, Solicitor. Mr Cuthill (third party applicant) was in attendance as was the applicant together with interpreter. The case management discussion determined that there will require to be an inspection of the property and subsequent hearing.

The inspection took place on Wednesday 17th November at 11:30 and the hearing on 22nd November at 10am.

Tribunal Members:

Mr Mark Thorley (Legal)
Angus Anderson (Ordinary)

The Inspection:

The tribunal inspected the property on Wednesday 17 November at 11.30a.m. The weather was dry and sunny.

Hall

- (a) The flooring has been overlaid with plywood. When weight tested, squeaky floorboards were noted in one location and there is a slight depression.
- (b) A cable at the side of the entrance door has been enclosed in trunking.
- (c) Staining to the ceiling from previous water leakage was found to be dry when tested with a moisture meter
- (d) The front door is a replacement solid core unit with draught strips around its edge. There is a gap at the door frame, around and below the lock area. The letterplate draught excluder is broken.

Living room

- (a) There is evidence of a water leak at the juncture of the ceiling and wall in the living room. There was evidence of staining but the damp reading was within reasonable parameters.
- (b) The windows are PVC and double glazed, The permanent vent was closed. The windows were opened and closed, the mechanism was functional and external sound was suppressed with the windows closed.
- (c) The flooring was covered with carpet. When weight tested, squeaky floorboards were noted in one location and there are some uneven areas.

Bedroom 1

- (a) Staining, loose wallpaper and plaster efflorescence was present to the window soffit, adjacent wall and window ingo. Moisture meter readings were extremely high, up to 98%.
- (b) The flooring was covered with carpet. When weight tested, squeaky floorboards were noted in one location and there are some uneven areas.
- (c) The window is PVC and double glazed, The permanent vent was closed. The window was opened and closed, the mechanism was functional and external sound was subdued with the windows
- (d) The valve on the heater pipe appeared to be broken off. The pipe underneath the radiator did move.

Kitchen

- (a) The flooring was covered with vinyl. Loose floorboards were noted in two locations and the vinyl was cracked in two locations, along raised or uneven joints.
- (b) The window is PVC and double glazed, The permanent vent was closed. The window was opened and closed, the mechanism was functional and external sound was subdued with the windows closed.

- (c) Staining and loose wallpaper was noted to the window soffit. The area was dry when tested with a moisture meter.
- (d) The heating pipes to the boiler have been boxed in with a makeshift plywood covering.
- (e) The gas cooker has been replaced recently, the new cooker hob is level with the adjacent worktop, whose edges have been protected by new trims.
- (f) The kickboard beneath the sink and adjacent base units was loose and did come off.
- (g) There is a CO detector mounted on the wall above the cooker. It was heavily contaminated with grease.

Bathroom

- (a) The window is PVC and double glazed, The permanent vent was closed. The window was found to be open and was closed and opened. The mechanism was stiff in operation but functional, external sound was subdued with the windows closed
- (b) Staining, loose wallpaper and plaster efflorescence was present to the window soffit. Moisture meter readings were extremely high, up to 99%.
- (c) The water leak from beneath was reported by the Landlord's representative as having been rectified. The tenant agreed that this was the case.
- (d) The flooring was covered with vinyl. Loose floorboards were noted in some locations and the vinyl was cracked, along raised or uneven joints.

Bedroom 2

- (a) The window is PVC and double glazed, The permanent vent was closed. The window was opened and closed, the mechanism was functional and external sound was subdued with the windows closed.
- (b) Mould growth was seen inside the cupboard below the window. Slight mould growth was noted to the window ingoes. Where tested, these areas showed normal moisture meter readings.
- (c) The flooring was covered with carpet. When weight tested, squeaky floorboards were noted in one location and there are some uneven areas.

Bedroom 3

- (a) The flooring was covered with carpet. When weight tested, squeaky floorboards were noted in one location.

Heating system

The heating system was operating at the time of the inspection, the radiators were warm to touch and the flat was relatively warm. The thermostat on the central heating boiler was set at the minimum setting. The tenant stated that instructions for the boiler were not present.

External

- (a) There is green staining to the rear elevation behind the downpipe adjacent to the kitchen and bathroom windows. Vegetation was present in the gutters.
- (b) There is green staining to the front elevation, behind the downpipe at the left side of the building, adjacent to the lounge window/gable wall.
- (c) The first half landing stairwell window glass is cracked.
- (d) There is decay to the lower edge of the communal rear door.
- (e) There is graffiti and other marks to the staircase decorations.

The Hearing:

On the teleconference, the following persons attended.

- 1. Mrs Faiza Sami Ula (the applicant)
- 2. Ms Butt (interpreter for the applicant)
- 3. Mr Stuart Cuthill (third party applicant)
- 4. Ms Royle (solicitor for respondent)
- 5. Mr Nasir (respondent's agent)

The ordinary member narrated the findings of the inspection. Thereafter parties were provided with an opportunity to provide their comment in relation to the findings.

Electrical installation condition report, gas safety certificate and CO alarm

- 1. The EICR and gas safety certificate had been provided by the respondent prior to the inspection. The third party applicant acknowledged and accepted these. In relation to the CO alarm, the third party applicant said it was up to the landlord to ensure it was working. Mr Nasir said it was checked by the gas engineer but acknowledged it was old and agreed to its replacement.

Hall.

- 2. The third party applicant acknowledged that the leak stain into the ceiling was now dry and that the cable at the side of the entrance to the door had been

enclosed in trunking. The third party applicant still believed that there was work needed to be done to the front door and to the floorboards.

3. Ms Royle and Mr Nasir confirmed that the flooring in the hall was to be replaced and that the front door would be repaired.

Living room.

4. The third party applicant confirmed that he was satisfied in relation to the dampness and the windows, but the flooring requires repair.
5. Ms Royle indicated that the brown staining in the living room was to be redecorated.

Bedroom 1.

6. The third party applicant noted that the issue now remaining within bedroom 1 was the damp, but the radiator also requires repair. Mr Nasir indicated that the green staining on the outside of the building would be looked at and a contractor would then redecorate the whole of the room.

Kitchen

7. It was noted by the third party applicant that there was still an issue with the floor covering. Ms Royle indicated that there had been a quote to replace the whole of the flooring but that also included units. The cooker was already a brand new cooker. Mr Nasir said the central heating boiler had been serviced recently and Ms Royale said the landlord will be replacing the radiators.

Bathroom

8. The third party applicant again indicated that the primary concern here was the dampness around the window.
9. This was acknowledged by Ms Royle who accepted that there was dampness but indicated that the landlord had put in place a replacement of the whole bathroom suite.

Bedroom 2

10. The third party applicant was satisfied with the findings that had been made. Ms Royle again indicated that this bedroom was going to be redecorated and re-floored.

Bedroom 3.

11. There were no comments made in relation to this.

12. Ms Royle did indicate that the works would require six months to be undertaken and it was being anticipated that these works would be taken after the applicants were no longer in the property.

Findings in Fact

The tribunal made the following findings in fact:-

1. The applicants entered into a lease with the respondent which lease commenced on 1st September 2020.
2. The property is a flat in a four story tenement and is on the first-floor of that tenement.
3. The property consists of a living room, kitchen, bathroom, and three bedrooms.
4. The property is accessed from a front communal stair. There is an electrical installation condition report and gas safety certificate for the property.
5. There's a carbon monoxide detector located in the kitchen but it was heavily contaminated with grease. The CO alarm does not meet the repairing standard
6. There is no significant dampness present within the hall. The loose cable has been affixed.
7. Considering the building's age and type, the flooring generally is in a reasonable state of repair. However, the defective floorboards and damaged floor coverings to the kitchen and bathroom do not meet the repairing standard.
8. Throughout the flat, the windows are PVC framed and double glazed, and were found to be in a reasonable state of repair.
9. There was no significant dampness to the living room.
10. The front door has a gap around the doorframe and is without draft exclusion in the letter plate. This does not meet the repairing standard.
11. There was no significant dampness to the kitchen. The complaint in relation to the cooker had been rectified. The kitchen units were of some age and showed signs of wear and tear, but generally were found to be in a reasonable state of repair. However, the plinths or kick boards were loose, with broken fixings and were not in a reasonable state of repair.
12. There is significant dampness to bedroom 1 and to the bathroom. The source of the dampness requires to be investigated and remedied, the damp affected areas repaired and redecorated.
13. The complaint in relation to the bath leak had been rectified.

14. In bedroom 1, the loose radiator pipe is not in a reasonable state of repair.
15. Although there was no significant dampness within bedroom 2, there are mould growths around the window area. Mould growths are hazardous to health and the affected areas require cleaning with fungicide followed by redecoration.
16. The stair window glass is cracked and is not in a reasonable state of repair. The decorations are marked, but decoration on its own, is not a repairing standard issue
17. The heating system is operational and although the plywood screen around the boiler pipes is rather flimsy, the system (except the bedroom 1 radiator) appears to be in reasonable state of repair.
18. Externally to the rear of the property there is green staining to the rear elevation behind the drainpipe adjacent to the kitchen and bathroom windows. The rainwater goods are choked with vegetation and are not in a reasonable state of repair.
19. There's also green staining to the front elevation behind the downpipe at the left side of the building adjacent to the lounge window / gable wall. There is vegetation present to the rainwater goods, which are not in a reasonable state of repair
20. Although there is evidence of some weathering to stonework and pointing to the front elevation and chimneys, this did not appear to be directly linked to defects within the flat and we make no finding in relation to this part of the application.

Reasons for decision

In considering the repairing standard, the tribunal carried out an internal and external inspection of the building. In addition, the tribunal considered the written documentation for the tenant and had the benefit of the representations made by the applicant, third party applicant, and the respondent.

The respondents through both agent and solicitor acknowledged that there was work to be undertaken to the property. It was indicated that the whole property was to be redecorated and that there would be new flooring laid down. It was acknowledged that there was an issue with dampness in the bathroom and in bedroom 1 and that it was understood that part of the problem may have been externally from the downpipe.

It was also acknowledged that the carbon monoxide detector in the kitchen was of some age.

On behalf of the respondent it was also indicated that the kitchen units were going to be replaced.

Otherwise, the third party applicant accepted that some works had been done and that indeed as well some of the issues regarding dampness that had been suggested did

meet the repairing standard. In addition, some of the dampness that had been reported was elderly and within reasonable parameters. It is also acknowledged by the third party applicant the windows were working.

Decision

The tribunal, considering the terms of Section 13 (3) of the act, determined that the respondents have failed to comply with the duty imposed by Section 14 (1)(b) of the act.

The tribunal proceeding to make a repairing standard enforcement order as required by Section 24 (2) of the act. The decision of the tribunal was unanimous.

Right of appeal

A landlord or tenant or third party applicant aggrieved by the decision of the tribunal may apply 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 in 30 days from the date the decision was sent to them. Where such an appeal is made, the effect of the decision will be treated as having effect from the date of which the appeal is abandoned or so determined.

M Thorley

Signed:

Date: 8 December 2021 \

Chairperson