

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Housing (Scotland) Act 2006 ("the Act") Section 24 (1)

Chamber Ref: FTS/HPC/RP/20/1988

Title number: ELN7306

Re: 16 Robertson Avenue, Prestonpans, EH32 9AL ("the property")

The Parties:

Miss Elaine Winters, 16 Robertson Avenue, Prestonpans, EH32 9AL ("the tenant")

Ms Jurgita Friis-Jorgensen, 921-k Estrada Municipal, U 537 Faro, 8600-210, Praia Da Lagos, Portugal; 6 Caraben Brae, Dolphinton, West Linton, EH46 7HF ("the landlord")

Represented by Stuart Miller, Northwood, 13 Comely Bank Road, Edinburgh, EH4 1DR ("the landlord's representative")

Tribunal Members: - Simone Sweeney (Legal Chair) and Sara Hesp (Ordinary member)

Decision

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) of the Act to ensure that the property meets the repairing standard under section 13, determined that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act.

The Tribunal proceed to make a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

The decision of the Tribunal was unanimous

Background

1. By application of 4th September 2020 the tenant sought a determination of whether the landlord has complied with the duties imposed by section 14 (1) (b) of the Act.
2. The application contended that the landlord has failed to comply with her duty to ensure that the property meets the repairing standard of section 13 (1) of the Act that the landlord has failed to ensure, at all times during the tenancy, that:-

Section 13 (1):-

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation

(d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order."

3. The tenant specified the nature of the work to be done in the following terms:-

"Windows fixed, leak fixed and floor damage, cooker fixed/replaced so can be used, damp issue resolved, front door fixed, smoke alarms moved, broken units fixed."

4. By Notice of Acceptance of Application dated 5th October 2020, a Convenor having delegated powers under section 23 A of the Act determined that the application be referred to the Tribunal, in terms of section 23 (1) (a). The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and tenant by letters dated, 7th December 2020.
5. An inspection of the property and a hearing of evidence would have been fixed at this time in normal circumstances. However, as a result of the national lockdown imposed by the U.K Government, an inspection could not proceed. Rather, the application was continued to a case management discussion ("CMD") on 15th January 2021.
6. Various pieces of evidence, documentation and copy invoices showing repairs had been undertaken at the property together with written representations were lodged by the landlord's representative by email dated, 13th January 2021.
7. The CMD took place on 15th January 2021. Reference is made to the terms of the Tribunal's CMD note of 15th January 2021.
8. An inspection of the property was arranged to take place on 25th June 2021 with a hearing fixed

to take place by telephone on 2nd July 2021. The inspection and hearing were discharged to allow the tenant to instruct a new representative. Reference is made to the terms of the Tribunal's direction dated 1st July 2021.

9. A fresh inspection was arranged for 5th August 2021. A hearing was arranged to take place by telephone conference on 16th April 2021.

Inspection of the property on 5th August 2021

10. The inspection proceeded as planned on 5th August 2021 at 11.30am. The weather was warm and dry and followed a week of particularly warm, dry weather.
11. In attendance was the tenant, her partner Stuart Thompson and the tenant's two adult sons. The tenant was supported by Mr Burrows, a support worker from East Lothian Council. Mr Burrows explained that his role was to provide support, only. He was not representing the tenant in the application. On behalf of the landlord was Mr Logan, a Director of the letting agent.
12. To ensure social distancing was observed and everyone in attendance was kept as safe as possible, the Tribunal requested that the tenant, her family and support worker and the landlord's representative, Mr Logan, remained outside the property whilst the Tribunal inspected the issues on the tenant's application form. All in attendance complied with the Tribunal's request.
13. Thereafter the Tribunal accompanied the tenant into the property and indicated which areas had been inspected. The same process was then repeated with Mr Logan. This ensured that both parties had sight of how the property presented to the Tribunal at the time of the inspection in a safe manner.

Windows fixed

14. In the living room at the front of the property was a bay window frame with relatively new, UPVC double glazed, windows fitted into it. Three smaller panes were positioned above three larger windows. All opened by turning a handle and pushing forwards. At the time of the inspection, the three smaller windows were fully open. The large, centre window was also in an open position. There was no sign of any damage to the glass of any of the window panes. The windows appeared to be in full working order.
15. The windows in each of the front facing bedrooms on the upper floor of the property were open and in full working order at the time of the inspection.

Leak fixed and floor damage

16. There was evidence of water damage to the flooring of the kitchen. This was particularly bad in front of the sink where the tenant had reported a leak. A linoleum had been applied to the floor. This was aged. There were areas where the covering had worn away and become damaged. In the centre of the kitchen, immediately in front of the cooker, the floor was raised creating a potential trip hazard.
17. The worktop behind the sink had collapsed and fell below the sink. A cupboard was positioned underneath the sink. Inside the cupboard the Tribunal observed the effects of water damage around the waste unit. The tenant confirmed that there is no longer a leak from the sink in the kitchen.
18. A window was positioned behind the kitchen sink. This was similar to the windows in the living room. It was in a wide, open position at the time of the inspection.

Cooker fixed/replaced so can be used

19. An electric cooker was fitted in the kitchen. The tenant confirmed the cooker was in full, working order. Wall tiles were fitted to the area behind the cooker. Three of the tiles and an electrical socket had been removed and replaced with a new fitting attached to enable the cooker to be used. The socket which had been removed had been repositioned at the bottom of the wall to the left of the cooker to allow the washing machine to be connected.

Damp issue resolved

20. By use of a moisture meter, the ordinary member undertook investigations to the area underneath the living room window, to the walls in each of the front facing upstairs bedrooms and in the area of wall above the front entrance door to the side of the property (at which the Tribunal noted a water stain). The moisture meter revealed readings in "green" indicating is no evidence of below surface dampness in these areas of the property.

Front door fixed

21. The front door was relatively new. The door was fully operational and in working order. The ordinary member opened and closed the door. The tenant's partner, Mr Thompson explained that to operate the locking mechanism, the handle requires to be lifted upwards before the key is turned clockwise in the lock. It was noted that the handle was loose but the lock was in full working order at the time of the inspection when tested by the ordinary member.

Smoke alarms moved

22. Smoke detectors were positioned to the ceilings of the lower and upper hallways.
23. The Tribunal identified a smoke detector positioned on the window sill in the living room. A smoke detector base was fixed to the ceiling of the living room but it was clear that the central part of the device had been removed from its position on the ceiling thus rendering the device, inoperable.
24. No tests were undertaken to establish if the smoke detectors were in full working order.
25. A heat detector was identified to be fitted to the ceiling in the kitchen. No tests were undertaken to establish if the heat detector was in full working order.
26. A gas boiler was positioned in a cupboard in the kitchen.
27. The Tribunal did not identify any evidence of provision for detection of carbon monoxide within the property.

Broken units fixed

28. The Tribunal observed that a number of the doors to the kitchen units had been damaged. Holes appeared in the centre of several of the doors. Some had missing handles or were not hanging correctly. A dismantled full length kitchen unit was resting against the wall at the entrance to the kitchen.

Observations of the Tribunal

29. Whilst not part of the application, the Tribunal observed that, the banister leading up the staircase had very few of the spindles remaining, though the handrail was in place. Moreover the internal door of the ground floor bedroom was detached from its position and resting against a wall. Essentially this meant that the ground floor bedroom was without a door. In the kitchen, on the opposite wall to the window, tiles had been removed and electrical wiring fitted connecting with a socket on the wall. The electrical wiring was exposed (see photograph 26 on the ordinary member's schedule of photographs, attached). The Tribunal identified no evidence of a carbon monoxide detector. The Tribunal observed a bracket attached to the doorframe of the cupboard in which the boiler was positioned but there was no device within the bracket (see photograph 23 of the schedule of photographs, attached). Also, the fence at the front garden was broken and in a state of disrepair.
30. Following the inspection, a pre-hearing summary and schedule of photographs (which are attached and incorporated herein) were prepared by the ordinary member and intimated to both parties by email in advance of the hearing on 16th August 2021.

Hearing of 16th August 2021

31. In attendance at the telephone hearing was the tenant, her representative from East Lothian Council, Ms Paton and advocacy worker, Mr Player. For the landlord, Mr Logan, Director and Mr Millar, general manager of the letting agents, were present.
32. The tenant advised that she was content to make submissions by herself but may look to Ms Paton and Mr Player for assistance.
33. Mr Logan submitted that photographs of the property and submissions had been lodged with the Tribunal on behalf of the landlord prior to the hearing. Due to a technical issue, the photographs had not been received. Mr Millar provided an undertaking to send the photographs again and did so during the course of the hearing.
34. The Tribunal took the parties through each of the issues on the application of 4th September 2020.

Evidence of the tenant

35. The tenant submitted that there is no longer a live issue before the Tribunal with the windows at the property. The tenant agreed that the windows are all in working order and can be opened and closed and were, in fact, open at the time of the inspection on 5th August 2021.
36. The tenant confirmed that there is no longer a leak under the sink in the kitchen. She explained that a repair had been carried out which had addressed the issue. The leak was no longer a live issue before the Tribunal.
37. The kitchen floor, however, does remain a live issue. The damage to the flooring continued to cause the tenant concern. The ordinary member referred to the area where the floor is raised and uneven creating a potential trip hazard. There was no evidence that the tenant nor any occupants or anyone coming onto the property had tripped or sustained any injury from the flooring.
38. The cooker was replaced in October 2020 and in full working order. The tenant confirmed that this was no longer a live issue for determination by the Tribunal.
39. With regards to the allegation of dampness, the tenant submitted that she believes there is dampness in each of the front facing bedrooms and above the front door in the lower hallway. The tenant can smell dampness in these areas and there is evidence of wallpaper coming off the wall. The tenant submitted that the living room had been painted which had addressed previous issues of dampness in that room.
40. In response to the ordinary member's findings from the moisture meter investigations, the tenant submitted that she believes water ingress may be the result of issues with the guttering at the front of the property.
41. The tenant agreed that the front door had been replaced in October 2020 and was in full working order. However she found the locking mechanism awkward and it was difficult for her to apply the locking mechanism, at times. The tenant confirmed that the door locks. Mr Player submitted that it would be helpful to the tenant if the landlord's representative could arrange for its contractor to provide the tenant with a demonstration on how to lock the door.
42. The tenant confirmed that the smoke alarms had been re-positioned on the ceiling of the property. Previously they were positioned on the walls. This is no longer a live issue for determination by the Tribunal.
43. In response to the Tribunal's enquiry of how the smoke detector came to be positioned on the window sill in the living room, the tenant explained that it had been hanging loose from its position on the ceiling. To avoid the risk of it falling and causing injury, the tenant removed the smoke detector from the ceiling.
44. The tenant confirmed the dismantled unit resting against the wall in the kitchen had previously housed a fridge freezer. The fridge freezer was removed some time ago but the kitchen unit into which it had been integrated, remained. The tenant was keen to have it removed from the property.

Response of the landlord's representative

45. In response, Mr Logan accepted that the handle on the front door was loose and provided an undertaking to the Tribunal to have the handle inspected by the landlord's contractors with a view to having the handle aligned. If the tenant could arrange to have all members of the

household present then a demonstration on how to operate the locking mechanism could be provided. Mr Logan submitted that a contractor would likely attend the property within two weeks.

46. Mr Logan denied that there was any dampness at the property. He explained that the water mark on the wall above the front entrance door was the result of a leak in the bathroom which is positioned above the front door. The leak had occurred sometime ago, had been repaired and there had been no further report of any issue. However the water mark remained. The front bedroom is in the north facing corner of the building and it is likely that any cold air will be evident in this area. Mr Logan confirmed that the landlord had undertaken no technical investigations about the dampness. He submitted that if the property is not ventilated properly, then condensation may occur.
47. Mr Logan referred to the smoke detector positioned on the window sill at the time of inspection. The evidence of the tenant was challenged. Mr Logan submitted that the section of the smoke detector on the window sill clicks into the part which is attached to the ceiling. Mr Logan was confident that the smoke detector had been removed by the tenant.
48. Mr Logan confirmed that he had the instructions of the landlord to remove the dismantled kitchen units. He intended to co-ordinate this with the contractor attending the property to investigate the loose door handle.
49. It was admitted by Mr Logan that the floor in the kitchen was not in a good condition. However he was without any instructions on repairs. It was submitted that the landlord is, "emotionally distressed" by the situation. Having seen the condition of the floor, Mr Logan was of the opinion that investigations were required before a new floor covering could be applied but these were comments which were being made, without instruction. Mr Logan did not dispute that the floor has been in this state for some time. He advised that he would highlight to the landlord the comments of the ordinary member that the state of the floor presented a tripping hazard.
50. Mr Logan confirmed to the ordinary member that he had received the pre-hearing inspection summary and schedule of photographs. The ordinary member referred to photograph number twenty six on the document which shows an electrical socket in the kitchen. The ordinary member suggested that Mr Logan highlight this to the landlord as something which should be addressed.

Findings in fact

The Tribunal finds the following facts to be established:-

51. That the property is a five apartment, two storey, semi-detached villa, comprising lower and upper hallways, kitchen, living room and separate reception room currently used as a ground floor bedroom and two bedrooms and bathroom on the first floor.
52. That the tenancy is occupied by the tenant, her partner and two adult children.
53. That the landlord is the owner of the property.
54. That the tenant and her partner, Stuart Thompson, are tenants.
55. That the parties entered into a private residential tenancy agreement on 4th May 2020.
56. That the private residential tenancy began on 1st April 2020.
57. That double glazed UPVC windows are fitted at the property and are in full working order in the living room, kitchen and front facing bedrooms on the first floor.
58. That the leak underneath the sink in the kitchen has been addressed.
59. That the kitchen flooring is damaged as a result of the leak from underneath the sink and requires repair or replacement.
60. That the kitchen flooring is a fixture which has been provided by the landlord under the tenancy.
61. That the kitchen flooring is not in a reasonable state of repair.
62. That the cooker was replaced in October 2020.
63. That the front door was replaced in October 2020 and is in full working order.
64. That the front door can be locked.
65. That there was no evidence of dampness at the property at the time of the Tribunal's inspection on 5th August 2021.
66. That the landlord positioned smoke alarms on the ceilings of the living room and upper and lower hallways.
67. That the tenant has removed part of the smoke alarm in the living room.
68. That the landlord intends to remove the dismantled kitchen units.
69. That there is no system in place to detect levels of carbon monoxide.

Reasons for decision

70. The Tribunal found no evidence to support the allegation that there is dampness at the property in the areas identified by the tenant. Accordingly, the Tribunal determines that there is no failure on the landlord to comply with the section 14 (1) (b) duty of the Act in this regard.
71. In evidence, it was a matter of agreement between the parties that the kitchen flooring is damaged as a result of the leak from underneath the sink. The Tribunal is not satisfied that the floor meets the repairing standard as it presents, currently. In terms of section 13 (1) (d) of the Act, a house meets the repairing standard if,

"any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order."

72. Section 14 (1) (b) places an obligation on the landlord to ensure that the house meets the

repairing standard at all times during the tenancy. The Tribunal determines that the landlord has failed in this obligation by not providing flooring which is in a reasonable state of repair. Notwithstanding his agreement that the floor was damaged, the landlord's representative advised that he was without instruction to address the damage. The landlord has had notice of this application since 7th December 2020. There have been two hearings and an inspection since then. Various repairs have been undertaken by the landlord at the tenancy since October 2020 (to replace the front door, address issues with the windows, replace the cooker, move the smoke alarms, amongst others). This has been against the difficulties presented by the Covid-19 pandemic. It was open to the landlord to address the flooring of the kitchen or at least have provided instructions to her representative on her intentions in advance of the hearing of 16th August 2021 but she has delayed or failed to do so.

73. In order to alert occupants to the presence of levels of carbon monoxide which may be harmful to a tenant's health, section 13 (1) (g) provides that the house meets the repairing standard only if it has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The Tribunal was unable to identify any such provision within the property in the course of the inspection on 5th August 2021. In the absence of same, the landlord has failed to meet the obligations incumbent upon her by section 14 (1) of the Act.

Decision

74. Given that the flooring is not in a reasonable standard of repair and does not meet the test of section 13 (1) (d) of the Act, the Tribunal determines that the landlord has failed to comply with the section 14 (1) (b) duty of the Act. Accordingly, the Tribunal determines that a Repairing Standard Enforcement Order ("RSEO") must be issued as required by section 24 of the Act, which Order is referred to for its terms.

Appeals

75. 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 within 30 days of the date the decision was sent to them.

76. 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.

S Sweeney

igow on 4th September 2021