

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Statement of Decision under section 24(1) of the Housing (Scotland) Act 2006

Chamber Reference: FTS/HPC/RP/22/0806

Title Number: Subjects registered in the Land Register of Scotland under Title Number MOR3566

The Parties

Miss Rossana Elisiario, 34 South Guildry Street, Elgin, IV30 1QN (“The Tenant”)

Mr Tom Cameron, 58 James Street, Lossiemouth, IV31 6BY (“The Landlord”)

Subjects: 34 South Guildry Street, Elgin, IV30 1QN (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr M Andrew (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) 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 Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b).

Background

1. By application dated 15th March and received in the period between 17th March and 16th May 2022 made under section 22 of the Act, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The Tenant considered that the Landlord has failed to comply with their duty to ensure that the House meets the repairing standard, in that the House is not wind and watertight and in all other respects reasonably fit for human

habitation; the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order; and the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. The Tenant listed the issues as follows:

- 3.1. Defective roof*
- 3.2. Glass front door needs to be replaced*
- 3.3. Unsafe cooker*
- 3.4. Bathroom cabinet needs to be repaired*
- 3.5. Outer walls are defective*
- 3.6. Ventilation in the kitchen is defective*
- 3.7. No access to shed/garden*
- 3.8. Replace window in master bedroom*

4. The Tenant notified the Landlord of the defects by letter on 30th March 2022. As part of the Application, the Tenant enclosed a copy short assured tenancy agreement that commenced on 26th February 2017, correspondence between the parties, a health visitor letter, and copy Notice to Quit

The Inspection

- 5. An inspection of the Property took place on 16th August 2022. Both Tribunal members were in attendance. Mrs Sara Hesp was also in attendance for review purposes. The Tenant was in attendance. The Landlord was not in attendance.**
- 6. The Property is a two-bedroomed upper maisonette above 30 Guildry St. Access to the property is by way of a rear staircase shared with 36 Guidry St.**
- 7. Photographs were taken during the inspection and are attached as a schedule to this report.**

The Hearing

- 8. A hearing took place by telephone conference on 16th August 2022. The Tenant was in attendance. The Landlord was not in attendance.**

Defective roof

- 9. The Tribunal Members had noted at inspection that the roof over the communal stair requires attention. There is damage to the internal wall from water ingress. Although the roof is intact, there are defects in the timber rafters affecting the slate covering which lies beneath the gutter discharge point from the roof above.**

10. The Tenant said the problem had been ongoing for a couple of years, and there is water ingress to the communal stair during heavy rain, which affects access to and from the Property. The flooding can be very heavy and the Tenant said she has fallen several times. Her Health Visitor was very concerned and contacted the local authority. Environmental Health have been involved. They are unable to force the Landlord to remedy the problem, so they recommended the Citizens Advice Bureau, who recommended the current application.

Glass front door

11. The Tribunal Members noted at inspection that the front door is a fully glazed door which provides no privacy for the occupants of the Property. The door is in proper working order.
12. The Tenant said the Landlord had agreed to remedy this problem. As well as the lack of privacy, she is concerned that her young child may throw something against the door and break it. The door is in proper working order, although there have been problems with being locked out due to the type of lock. A key safe was provided, but there was no code to access it.

Unsafe cooker

13. The Tribunal observed an incomplete and ineffective seal around the oven door and discolouration below the cooker controls.
14. The Tenant said the cooker was new. On one occasion, a fire started in the oven. This damaged the seal. A contractor attended to replace the seal. He stated that the Tenant should be careful as it was a cheap cooker. The Tenant said she now only uses the oven if it cannot be avoided.

Bathroom cabinet

15. The Tribunal Members noted that the glass doors are missing from the shelved cabinet above the bath.
16. The Tenant said the glass shattered and fell into the bath while her child was bathing. The child had glass on his back. The Tenant immediately informed the Landlord, who said he would attend shortly to fix it, but he did not attend.

Outer walls

17. The Tribunal noted that the stonework on the exterior stair wall is spalling. It is clear that some spalled stone have fallen to the ground.
18. The Tenant said she first noticed a problem in 2019, and had pointed this out to the Landlord quite some time ago.

Kitchen ventilation

19. The Tribunal noted that the cooker hood is not vented externally.

20. The Tenant said a new window in the kitchen had helped with the problem of ventilation. She purchased the cooker hood and decorative splash-back. The Tenant said the wall behind the cooker gets sticky and greasy, but it had been cleaned prior to the inspection.

No access to shed/garden

21. The Tribunal Members had noted that there is a building in the communal garden with three doors. One door was locked, and the other two doors were open and both led into a double shed full of various items. There was dog faeces and broken glass in the garden.

22. The Tenant said the advert for the Property had included a shed, but she had never been given access, despite requesting this. She is unable to use the garden due to anti-social behaviour by other tenants which includes dog fouling, discarded drug paraphernalia, broken glass and damage to toys, garden furniture and bikes. This has been reported to the Landlord who said he could do little about it.

Bedroom window

23. The Tribunal Members had noted that the main bedroom window is a single glazed top opening casement with internal secondary glazing which is split. The top half of the secondary glazing will not stay in position and the vertical panes cannot be closed. The right hand hinge of the top window is slightly defective and not wind tight.

24. The Tenant said all the windows were like this when they moved in, and all but this window had been replaced. The Landlord has been notified and has acknowledged this. The Tenant said she will have to use a blanket in the winter to prevent wind ingress.

Fire alarms

25. The Tribunal Members had noted that the Property appeared to have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

26. The Tenant said the Property was without alarms for four years. The local authority and the police were involved in trying to get the Landlord to fit alarms, which he eventually did.

Tribunal discussion

27. The Tribunal determined that:

(a) The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006)

The Property is not wind and watertight due to the water ingress in the common stairwell and the wind ingress in the main bedroom window.

(b) The structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.

The external wall of the communal stairwell requires attention.

The roof above the communal stairwell requires attention.

The window in the main bedroom is not 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 not in a reasonable state of repair and in proper working order.

The cooker is not in proper working order and requires to be inspected for safety and repaired or replaced.

The bathroom cabinet requires to be repaired or replaced.

(d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

Observations

28. The Tribunal observed that it would be preferable if the cooker hood was vented externally, however, it did not consider this to be a failure of the repairing standard, particularly as the window in the kitchen allows essential ventilation.
29. The Tribunal observed that it would be preferable if the front door was replaced to allow privacy, however, as it is in proper working order, it does not constitute a repairing standard failure.
30. The Tribunal observed that the Tenant ought to have access to a shed as advertised for the Property, however, this is not a repairing standard matter.
31. The Tribunal observed that access to the garden is not a repairing standard matter, and that there are other avenues by which the Tenant and Landlord can report and address anti-social behaviour.

Decision

32. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal

proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

33. The decision of the Tribunal was unanimous.

Right of Appeal

34. 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 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member and Chairperson
Date: 25th August 2022