

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/RP/22/1601

98 Maxwell Drive, Glasgow, G41 5PR (“the Property”)

Parties:

Sazia Amin, 98 Maxwell Drive, Glasgow, G41 5PR (“the Tenant”)

**Mohammed Saeed, Razia Saeed, 3 Rowan Gardens, Glasgow, G41 5BT
 (“the Landlord”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

Andrew Taylor (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 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) of the Act.

Background

- 1. The Tenant lodged an application in terms of Section 22 of the Act claiming that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the application states that the windows are not wind and watertight, the property is affected by dampness and mould, there are cracked tiles and a defective extractor fan in the bathroom, the kitchen units are insecure, there is no heating or ventilation in the kitchen, there are incomplete repairs following leaks**

at the property, an unsuitable electrical supply to the cooker, defective sockets in the second bedroom and defective CO detectors. The Tenant lodged a copy of a letter to the landlord, notifying them of the complaints, with the application. An email response from the Landlord was also submitted which states that repairs have been carried out at the property, but further repairs are required which will be carried out once the Tenant vacates the property.

2. The parties were notified that the Tribunal would carry out an inspection of the property at 10am on 16 August 2022 and that a hearing would take place by telephone conference call on 16 August 2022 at 2pm. They were provided with the telephone number and passcode. Prior to the inspection and hearing the Tenant's solicitor lodged written representations and an email from the PRS Property Condition Officer of Glasgow City Council.
3. The Tribunal inspected the property on 16 August 2022 at 10am. The Tenant provided access and Mr Saeed was present. Thereafter a hearing took place by telephone conference call at 2pm. The Tenant, her solicitor Ms Cochrane, and both Landlords participated.

The Inspection

4. The Tribunal noted the following during the inspection:- a number of defective windows, tape covering a gap at the front living room window and no keys available to open the rear living room windows; water damage to the ceiling at the rear living room window and in the kitchen; mould on rear external wall in the living room, kitchen wall, bathroom ceiling and wall in the small bedroom; kitchen units appear insecure and the support bracket for the units is twisted; cracked and missing tiles on the bathroom floor; overloaded kitchen socket and extension cable supplying power to gas cooker; leaking gutter. The Tribunal noted and tested the smoke detectors which did not appear to be in full working order or interlinked. A new boiler has been recently installed but no CO detector fitted. An inspection report, with photographs, is attached to this decision.

The Hearing

5. Ms Amin told the Tribunal that she has resided at the property since 2015. She said that she has not been given a gas safety certificate or electrical installation condition report (EICR) for the property. Ms Saeed advised the Tribunal that the property was previously managed by a letting agent. She has contacted them and asked for copies of the gas safety certificate and EICR. The Landlords took back the management of the property in 2020.

The windows

6. Ms Cochrane told the Tribunal that the windows at the property are not wind and watertight and let in draughts. As a result, the property is cold in winter and affected by condensation.
7. Ms Amin said that she was not provided with keys for the windows to the rear of the living room and these cannot be opened. She said that the condensation complained of is on the inside of the windows, not inside the double glazed units.
8. Ms Saeed said that window repairs were arranged by the letting agent in November 2020. They were re-sealed with a mastic sealant. She noticed this but took no action. She stated that they are willing to do all required repairs but can't do them until the property is empty.

Condensation/Mould

9. Ms Cochrane advised the Tribunal that the small bedroom at the property cannot be used because of the mould. This has resulted in the property becoming overcrowded. She said that dampness in the bathroom has been covered up with wet wall.
10. Ms Saeed said that there have been many leaks at the property. These were not reported immediately which led to problems. When it became apparent that there was an issue with condensation, a dehumidifier was provided. The Tenant was told that the property needed to be heated and ventilated. Ms Saeed also stated that the Landlords resided at the property for 28 years with no mould or condensation issues. When asked about the cause of the leaks, she said that she is not sure but that radiators had been moved and bath seals had failed. However, she also said that the Tenant had left a valve open on the top of the new boiler which led to a leak.
11. In response Ms Amin said that the small bedroom is covered in mould and has never been affected by leaks. She said that she does open windows at the property and uses heating in the winter. She added that the Landlords have been aware of the issue for years and only suggested that she clean off the mould. She told the Tribunal that the engineer who installed the boiler told her that that the valve should be opened if she needed to increase the pressure. She did so and may have left it open which led to the leak, but if it had been correctly installed this should not have been required. She also advised the Tribunal that the property has always been affected by dampness and its nothing to do with leaks.

12. In response to questions from the Tribunal about leaks, Ms Amin said that the leak from the bathroom into the kitchen is ongoing. The living room leak occurred in December 2020, when the Landlord took over the management of the property. It has been fixed.

Bathroom repairs

13. The Tribunal advised parties that damaged floor tiles had been noted during the inspection but that the extractor fan appeared to activate when the light was switched on. Ms Amin said that the extractor is not connected, it just makes the noise. Ms Saeed advised the Tribunal that she accepted the position regarding the tiles but that the contractor was supposed to attend to the extractor when the panels were put in and Ms Amin had not reported that this had not happened. In response, Ms Amin said that the joiner had informed her that the extractor needed to be vented out but then did not return to do this.

Kitchen

14. Ms Saeed told the Tribunal that there has never been any heating in the kitchen. They had a fan heater when they lived there but didn't need it. She said that an extractor is not required because there are two sets of windows.

15. Ms Amin told the Tribunal that she has concerns about the kitchen units as these appear to be hanging off. Ms Saeed said that if this was the case, they would be repaired.

CO detector.

16. Ms Amin told the Tribunal that she thought there was a CO detector and had assumed it was there. Ms Saeed said that she thought that the letting agent would have ensured one was provided, or that the contractor who installed the boiler would have arranged this.

Electrical supply to the cooker/Sockets in the bedroom

17. Ms Cochrane advised the Tribunal that the current arrangement in the kitchen is of concern and that there are safety issues. Ms Amin says that she worries about it because the socket and extension cable are above the sink. There are 2 other sockets, but they can't be used for the cooker. She also told the Tribunal that the electrician who fitted the sockets in the bedroom said that they cannot plug in an iron. They don't use the sockets because they crackle.

18. Ms Saeed said that an electrician has advised them that the house needs to be re-wired. She confirmed that she could obtain a written report from the electrician. She has not yet arranged for the property to be re-wired.
19. At the conclusion of the hearing Ms Saeed advised the Tribunal that she had relied on the Letting agent to deal with matters. She also said that they had given notice to the Tenant and had plan to attend to repairs when the property became vacant. She added that the Tenant had not looked after the property and neighbours had complained about the condition of the exterior. She concluded by saying that they fully intend to carry out required repairs.
20. Ms Cochrane referred the Tribunal to her written representations and invited the Tribunal to conclude that the property does not meet the repairing standard. She said that it was clear from the evidence that the Landlord was aware of the issues. She said that it had been alleged that Ms Amin did not provide access. This is denied as Ms Amin always provides access even when she gets no advance notice. She concluded by stating that the Landlord has made a conscious decision not to carry out repairs and that no formal or legal notice to end the tenancy has been given.

Findings in Fact

21. Windows at the property are defective.
22. The property is affected by condensation, dampness, and mould.
23. Floor tiles in the bathroom are damaged.
24. Wall units in the kitchen units are insecure and the bracket attaching them to the wall is twisted.
25. There is no carbon monoxide detector in the property.
26. Incomplete repairs have been carried out to address leaks which caused damage to the hall, kitchen and living room at the property.
27. There is a leak from the bathroom into the kitchen.
28. The Tenant has not been provided with a current gas safety certificate or electrical condition installation report ("EICR") for the property.

Reason for decision

29. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the parties.
30. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the Tenant notified the Landlord of the repairs issues at the property prior to lodging the application.
31. Ms Saeed advised the Tribunal that she has not been at the property recently although Mr Saeed has been there. She said they had relied on their former letting agent to deal with repairs and ensure that gas and electrical inspections were arranged. However, the Landlords have been managing the property themselves since the end of 2020. They have not arranged a gas safety inspection during this period and stated during the hearing that the electrician who fitted new sockets in the second bedroom told them that the whole house requires to be re-wired. Ms Saeed also stated that they decided that they would not carry out any further repairs until the property was vacated. However, it appears that they have not issued the Tenant with a Notice to Leave or lodged an application with the Tribunal for an eviction order.
32. The Tribunal considered the complaints detailed in the application; -
- (a) The Tribunal is satisfied that the windows at the property are defective. This was evident at the inspection and not disputed by the Landlord.
 - (b) Although damp meter readings were within normal levels, the property is extensively affected by mould. This is particularly evident in the kitchen, living room and small upstairs bedroom. It was suggested by the Landlord that the mould has been caused by leaks which were not reported timeously or that the Tenant is failing to heat and ventilate the property. The Tribunal is not persuaded by this explanation as the mould affects most rooms, including those unaffected by leaks, and the Tribunal found no evidence that lifestyle is a factor. The Tribunal is satisfied that proper investigation and remedial action is required to eradicate the mould at the property.
 - (c) The Tribunal is satisfied that floor tiles under the sink in the bathroom are broken and require to be replaced. From the evidence given by the Tenant, it also appears that the extractor fan has not been correctly installed, and this requires to be addressed.

- (d) Based on the evidence of the Tenant, and the inspection by the Tribunal, it was established that the kitchen units are not secure and the bracket which attaches them to the wall is twisted.
 - (e) The Tribunal inspected the boiler which is located in a cupboard on the landing at the property. The parties told the Tribunal that this was installed in early 2022. The Tribunal noted the absence of a CO detector either inside or outside the cupboard. This was not disputed by the Landlord.
 - (f) During the inspection the Tribunal noted that the ceilings in the kitchen, hall and living room show evidence of water damage. The parties confirmed that there have been several leaks at the property. The Tenant's evidence established that the leak from the bathroom into the kitchen is unresolved. Furthermore, although some action has been taken to repair the ceilings, these have not been reinstated to their previous condition.
33. During the inspection, it was observed that the provision for fire detection is not in accordance with current standards. And that there was a leak from the gutter at the corner of the rear elevation. As these matters are not part of the application, the Tribunal makes no determination in relation to same. However, it is recommended that the Landlord should repair the gutter provide and install smoke detection and alarm equipment in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 and the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Order 2019.
34. The Tribunal is therefore satisfied that the Landlord has failed to comply with sections 13(a), (c), (d) and (h) of the 2006 Act in relation to the defective windows, the mould and dampness, the damaged floor tiles and defective extractor fan in the bathroom, insecure kitchen units, lack of a CO detector, leak from the bathroom, incomplete ceiling repairs, and failure to provide a satisfactory EICR and gas safety certificate.

Decision

- (g) The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (h) The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-party applicant 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.

In terms of Section 63 of the Act, 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.

Josephine Bonnar, Legal Member

3 September 2022