



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Reference number: FTS/HPC/RP/23/0001

Re: Property at Flat 4/1, 49 Meadowside, Dundee DD1 1EQ (“the Property”)

Title No: ANG37960

The Parties:

Ms Amy Dare and Ms Chenoa Beedie, both Flat 4/1, 49 Meadowside, Dundee DD1 1EQ (“the Tenants”)

Sean Gordon Lewis, t/a Sean Lewis Property, 21a Camperdown Street, Dundee DD1 3JA Property (“the Landlords”)

**Tribunal Members: George Clark, Legal Member
Robert Buchan, Ordinary (Surveyor) 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 Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 determined that the Landlords have failed to comply with that duty. The Tribunal made a Repairing Standard Enforcement Order in respect of the Property.

Background

1. By application, dated 30 December 2022, the Tenants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) 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 stated that the kitchen ceiling in the Property collapsed on 18 November 2022, with water ingress. Water continues to enter the kitchen with further collapse of the ceiling. There are physical signs of damp spreading

throughout the room. Emails to the letting agents were ignored for 6 weeks, with no action taken. The outer roof and ceiling need to be repaired and the kitchen returned to a useable state, the flat made structurally sound and wind and water-tight and returned to liveable temperatures for the winter period.

3. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 18 June 2021, at a rent of £675 per month and screenshots of messages and copies of email exchanges between the Tenant and the Landlords' letting agents, Belvoir Lettings, Dundee, which indicated that the Tenants had reported the issue on 18 November 2022.
4. On 23 February 2023, the Tenants made written submissions to the Tribunal. They stated that on Friday 18 November 2022, they noticed the kitchen ceiling bowing and dripping water. They reported it to the Landlords' letting agents, who sent out a roofer. He showed the Tenants photographs he had taken of a crack in the flat roof above the kitchen of the Property. He advised them to turn off the electrics in the room and to stay out of it in case the ceiling collapsed. The ceiling collapsed later that day and the Tenants telephoned the letting agents to report it. On 21 November, not having received a call back, they contacted the letting agents with photographs showing the situation worsening. The agents told them to clear up the debris and they would ask a joiner to call round to pin back the ceiling paper, but the joiner did not appear. On 21 November the letting agents told the Tenants that they had a different report from the roofer and that the roof of the Property "is indeed wind and water tight." The Tenants called the letting agents again on 30 November to complain about the lack of action. The agents then issued a work order to an electrician to assess the electrics in the kitchen. He called round later that day and told the Tenants that the electrics were working in the kitchen but that they should not use the room as the ceiling was unstable. The letting agents then sent round a joiner to "tidy up" the ceiling and board it up. They told the Tenants that this was temporary work to make the area safe until the roofing works were completed. The joiner removed a strip of the ceiling paper and the loose plaster. He said that he would tell the letting agents how serious the danger from the ceiling was, as he did not think they understood the gravity of the situation, but he never came back to board up or replaster the ceiling.
5. The Tenants sent further photographs to the letting agents on 6 December. On 15 December, due to the condition of the kitchen, they asked the agents not to implement the rent increase due to take place on 18 December, but did not receive a reply. They emailed the letting agents again on 30 December with more updated photographs, but received an automated reply stating that the person they had been dealing with no longer worked for the company. They did not receive a further response to that email. They sent further emails on 15 February and 5 March 2023. The Tenants stated in their written submissions that they have lost money due to additional heating costs, with the Property being constantly cold. They had been living in terrible conditions for 4 months, for 3 of which there had been no communication from the letting agents.

The Inspection

6. The Tribunal inspected the Property on the morning of 18 April 2023. The Tenants were in attendance and the Landlords were represented by Ms Sarah Adams of Belvoir Lettings, Dundee. A Schedule of Photographs, taken at the inspection, is appended to and forms part of this Statement of Decision.

The Hearing

7. A Hearing was held by way of a telephone conference call on the afternoon of 18 April 2023. The Tenants participated in the call and the Landlords were represented by Ms Aimi Lewis, Regional Manager of Belvoir Lettings, Dundee.
8. The Tenants told the Tribunal that they had not seen the roofer's report from November 2022, but he had shown them photographs which showed cracks in the roof felt. He had recommended that they did not use the room. This was contradictory to the response of the letting agents that the report they had received indicated that the roof was watertight. A plasterer had told them that he would be providing the letting agents with an estimate for replastering the ceiling. It was mid-March before they received an email from the letting agents, who told them that they were obtaining further roofers' estimates. The Tenants commented that they had been given information by the various contractors as to the condition of the Property, but nothing by the letting agents.
9. The Landlords' representative told the Tribunal that they empathised with the Tenants and agreed that communication with them had been "woeful". The agents now had estimates for rendering the flat roof above the kitchen with high-purpose mineral felt to make it watertight. They had sent the original and updated estimates to the Landlords but had not received authority to instruct the work. They confirmed that no offer to rehouse the Tenants or to partly refund rent had been made.

Findings of Fact

- The Property comprises the attic flat in a 4-storey and attic "B" Listed commercial building built for the Scottish Provident Institution in 1897 and now converted into flats.
- The kitchen ceiling is partially collapsed, with a large hole exposing the lath above, and other areas where further collapse appears likely.
- There is evidence, on the ceilings and upper portions of walls in the kitchen hallway and bathroom, of staining and paint flaking caused by water ingress.
- The wiring of the ceiling light in the kitchen is exposed, as is the (presumed metal) conduit situated above the ceiling plaster. Moisture is evident on an exposed joint in the conduit.

Reasons for Decision

10. The Tribunal was very concerned to note that the partial collapse of the kitchen ceiling had been reported by the Tenants almost six months ago but had not yet been repaired by the Landlord and no offer of a rebate of rent or alternative

accommodation had been made. The ceiling is in a very dangerous state and one portion in particular appears to be held up only by the ceiling paper, which could split at any time. The wiring of the ceiling light in the kitchen is exposed and there is a possibility that rainwater may enter the light fittings in the kitchen and bathroom via the surface of the conduit. It is completely unreasonable to expect the Tenants to continue to use the kitchen in such circumstances. The Tribunal would urge the Landlord to take immediate steps to make the kitchen and ceiling and electrics safe, even if this is a temporary measure pending a permanent repair to, or replacement of, the roofing felt.

Decision

11. Having considered carefully all the evidence before it, the Tribunal had no difficulty in finding that the Property is not wind and watertight or reasonably fit for human habitation, that the structure and exterior of the building is not in a reasonable state of repair, the electrical installation is not in a reasonable state of repair and in proper working order, and that the house does not meet the Tolerable Standard. Accordingly, the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act and the Tribunal decided to make a Repairing Standard Enforcement Order.

G Clark

Legal Member

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18 April 2023
Date

Photographs taken during the inspection of 4/1, 49 Meadowside, Dundee, DD1 1EQ
Chamber reference number RP/23/0001



Front – top floor flat



Kitchen ceiling

Photographs taken during the inspection of 4/1, 49 Meadowside, Dundee, DD1 1EQ
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Exposed wiring and assumed metal conduit



Kitchen floor

Photographs taken during the inspection of 4/1, 49 Meadowside, Dundee, DD1 1EQ
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Additional affected areas in the kitchen



Bathroom adjoining the kitchen