

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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 Ref: FTS/HPC/RT/0942

Property: 50 (2F1) Northfield Broadway, Edinburgh EH8 7PH (“the property/house”)

The Parties:-

City of Edinburgh Council, Waverley Court, 4 East market Street, Edinburgh EH8 8BG (“the Third Party Applicant”)

Mr Viorel Otvos, 50 (2F1) Northfield Broadway, Edinburgh EH8 7PH (“the Tenant”)

Mr Mohammed Razaq, 248 Lasswade Road, Edinburgh EH17 8HZ (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Greig Adams (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”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

By application, received by the Tribunal on 1 April 2022, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to

comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

The application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlord had failed to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, that any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The specific items of complaint are (using the wording in the application) as follows:

1. Two broken windows in the lounge.
2. One broken window in a bedroom.
3. Broken glass from windows left in front garden.
4. All window frames in poor condition.
5. No interlinked smoke/heat detection.
6. No fixed heating.
7. Concern that no hot water.
8. Damaged electrical socket in hallway.
9. Missing light fitting in kitchen.
- 10.No evidence that electrical safety certificates have been carried out (EICR/PAT).
- 11.Bathroom in very poor condition, damaged seals, broken shower and cistern is constantly running.
- 12.Kitchen floor in poor condition.
- 13.Kitchen units in poor condition.
- 14.Washing machine broken and disconnected.
- 15.Evidence of water leak on kitchen floor, resulted in damage to neighbour below.
- 16.Property insurance details should be provided to neighbour.
- 17.Evidence of water leak in living room ceiling.
- 18.Damaged living room door.
- 19.Damaged bedroom door handle.
- 20.Damaged front door handle.
- 21.Appears to be a gas supply to the property, but no working gas appliances, confirmation required that gas has been capped by an authorised gas engineer.

22. Over occupancy 5 beds in property and lounge being used as an extra bedroom.

The Inspection

The Tribunal inspected the Property on the morning of 14 September 2022. The Landlord was present. The Tenant, having vacated the Property at some time prior to the Inspection and having been replaced by a new tenant was not present, the Third Party Applicant was not present or represented. A Schedule of Photographs, taken by the Tribunal at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

The Inspection was followed by a Hearing, held by means of a telephone conference call on the afternoon of 14 September 2022. The Third Party Applicant was not present or represented. The Landlord attended the Hearing.

The Landlord told the Tribunal that the new tenant had moved in about one month ago. The former Tenant had, he said, sub-let to other people without the Landlord's consent. The Landlord had found out early in 2021 and had had to establish whom they were and to whom they were paying their rent in cash. The Tenant had moved out of the Property and the landlord had let it to the present Tenant. There was £4,500 outstanding in unpaid rent from the former Tenant and the Landlord now had mortgage arrears. He was unable to afford to pay for any repairs at present. The Landlord contended that the windows of the Property are wind and watertight.

Having concluded giving evidence, the Landlord left the Hearing, and the Tribunal Members considered all the evidence written and oral, that had been presented to them, together with the evidence the Tribunal had seen at its Inspection.

Reasons for Decision

The Tribunal noted the following at the Inspection and has used the same numbering as is used above for the specific items of complaint set out in the application:

1. The bottom glazed panel of the left-hand window (looking outwards) in the lounge is cracked. Both sash cords are snapped and the sashes are impaired.
2. A new UPVC window has been installed to replace the previous broken window in the rear left bedroom.
3. There is no evidence of broken glass in the front garden.

4. New UPVC windows have been installed in the rear left bedroom and bathroom. The timber bipartite sash and casements serving the lounge and rear right bedroom are in poor condition, as are glazing putties and perimeter sealants. Isolated areas of minor timber decay were also noted. Various internal sash fasteners are defective.
5. Smoke detectors were noted in the hallway and the lounge, and a heat detector in the kitchen, but when tested by the Tribunal at the Inspection, were found not to be interlinked.
6. There are redundant metal pressed panel radiators throughout the Property. There is an electric fire in the lounge.
7. Testing at the Inspection established that hot water was present at the taps in both the kitchen and bathroom.
8. There is no evidence from visual inspection that the electrical socket in the hallway is damaged.
9. A new pendant light fitting has been fitted in the kitchen, but a gap was noted around the pendant cover rose to the ceiling.
10. No evidence has been provided that up-to-date electrical certificates (EICR/PAT) have been obtained.
11. A cracked tile within the shower area was noted. High moisture readings were obtained to the shower wall where moisture is penetrating behind the tiles. There is heavy mould to the grouting and seals. Tape has been provided to the shower head rail and the shower screen has been removed. The bath panel is loose and the plug and chain to the wash hand basin are missing.
12. The laminate floor covering in the kitchen is water damaged and in poor condition. The underlying timber floor has been affected by a water leak from the area of the washing machine. High moisture readings were recorded in the flooring.
13. Localised timber decay was noted below the kitchen sink and to the kickplates. The veneer on the door fronts and carcasses is damaged and there is general deterioration to the exposed timber below the veneer.
14. The washing machine was not plugged in during the inspection and was not tested by the Tribunal. The new tenant confirmed that it is operational. Water saturation was noted in front of the washing machine.
15. There is evidence of water damage to the kitchen floor and high moisture readings were evident.
16. The question of property insurance arrangements was not considered to be a matter for the Tribunal.
17. The use by the Tribunal of thermography did not produce evidence of any abnormal thermal image of the lounge ceiling and a moisture meter did not record any elevated readings to the adjoining wall at high level.
18. A panel within the lounge door is split and damaged.

19. The bedroom door knob handle is loose.
20. There is a door knob handle to the external face and a lever to the internal face of the front door. The door is operational and secure. The mortice lock remains, but the cylinder lock (a secondary lock) has been partly removed.
21. There appears to be no gas supply to the Property.
22. The complaint relates to the previous letting or sub-letting issue and the present occupancy level as advised by the new tenant is suitable.

The Tribunal did not uphold items of complaint numbered 2, 3, 6, 7, 8, 14, 16, 17, 20, 21 or 22. The Tribunal also did not uphold item of complaint numbered 15, as it related to a water leak on the kitchen floor, which was covered under item 12, and the issue of water damage to the flat beneath was not a matter for the Tribunal to consider. The Tribunal upheld items of complaint numbered 1, 4, 5, 9, 10, 11, 12, 13, 18 and 19 and decided to make a Repairing Standard Enforcement Order covering all of these items. Accordingly, the Tribunal determined that the Landlord has failed to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation (Items 1 and 4), that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order (Item 10), that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order (Items 9-13, 18 and 19), and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Item 5).

The Tribunal noted that the landlord had stated that there were considerable arrears of rent from the previous tenancy, that his mortgage was in arrears and that he could not afford to carry out any repairs. The Tribunal cannot, however, take such circumstances into account. Landlords are under a legal obligation to ensure their let property meets the Repairing Standard at all times throughout the tenancy the role of the Tribunal is to

The Tribunal considered that a period of three months should be allowed for the Landlord to carry out all the works required by the Order it has decided to make.

The decision of the Tribunal was unanimous.

Right of Appeal

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 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.

Signed

Date: 30 September 2022

George Clark (Legal Member/Chairman)



**50 2F1 Northfield Broadway,
Edinburgh, EH8 7PH
“the Property”/ “the House”)**

Chamber Reference: FTS/HPC/RT/22/0942

SCHEDULE OF PHOTOGRAPHS



1 Front elevation.



2 Lounge window (external).



3 Kitchen window (external).



4 Bathroom window (external)



5 Snapped sash cord to Lounge window.



6 Cracked glass to Lounge window.



7 Replacement UPVC window to Bedroom.



8 Defective sash cords to Bedroom sash and casement window.



9 Poor condition of external timberwork at Bedroom window.



10 Defective perimeter seals to sash and casement window.



11 Redundant pressed panel radiator.



12 Fire within lounge.



13 Hot water to wash basin.



14 Hot water to kitchen sink.



15 Socket to hall.



16 Pendant light fitting to Kitchen.



17 General view of Bathroom.



18 Cracked tile.



19 High moisture meter readings within Bathroom.



20 Damaged kitchen components.



21 Damaged kitchen components.



22 Water damaged laminate floor covering in Kitchen.



23 Area of timber decay below sink.



24 Loose ceiling paper and minor water staining to ceiling of Lounge.



25 Lounge – damage to door.



16 Loose door handle to Bedroom.



27 Entrance door – internal face.



28 Entrance door – external face.

Item	Issues Noted	Suggestion
1	<p>2 No. broken windows in Lounge</p> <p>Notes:</p> <ul style="list-style-type: none"> • Lounge, left hand window (looking out) bottom glazed pane cracked. • Both sash cords snapped and sashes impaired. • Glazing putties, perimeter sealants, decoration in poor condition – covered within Item 4. 	To replace all cracked glazing, re-balance sashes, replace snapped sash cords and broken sash fasteners, overhaul and adjusting the sashes to leave fully operational and free from impairment.
2	<p>1 No. broken window in a bedroom.</p> <p>Tenant progressed works – UPVC window now installed.</p>	N/A
3	<p>Broken glass in front garden.</p> <p>Tenant progressed works.</p>	N/A
4	<p>All window frames in poor condition.</p> <p>Notes:</p> <ul style="list-style-type: none"> • New windows installed in rear left bedroom and bathroom (UPVC). • Timber bipartite sash and casements serving i) Lounge and ii) Rear Right Bedroom are in poor condition. • Glazing putties, perimeter sealants and decoration in poor condition. Isolated areas of minor timber decay noted. • Various internal sash fasteners defective. 	To cut out and repair all localised timber decay to the timber sash and casement window units and sills, raking out and replacing all cracked and defective glazing putties (around perimeters of glazing) and perimeter sealant (at perimeter of timber frame to external wall junctions) and redecorate externally all timberwork to windows.
5	<p>No interlinked smoke/heat detection.</p> <p>Detectors noted within the Property (1 in Lounge, 1 Hall, 1 Kitchen), however not interlinked during testing.</p>	To install interlinked smoke detectors within the Lounge and Hallway, in addition to a interlinked heat detector within the Kitchen; all ceiling mounted.
6	<p>No fixed heating.</p> <p>Redundant metal pressed panel radiators throughout. Fire in Lounge.</p>	N/A Not considered a breach.
7	<p>Concern that no hot water.</p> <p>Testing undertaken on-site – hot water present in Bathroom and Kitchen at taps.</p>	N/A
8	<p>Damaged electrical socket in Hallway.</p> <p>Tenant progressed works.</p>	N/A
9	<p>Missing light fitting in kitchen.</p> <p>New pendant light fitting provided by Landlord however, gap noted around pendant cover rose to</p>	To adjust the pendant rose installation, installing a cover plate if required to ensure that

	ceiling. Concern over IP rating and exposure to live cables.	no gap is present leading into the ceiling rose or ceiling.
10	<p>No evidence that electrical safety certificates have been carried out (EICR/PAT).</p> <p>Tenant to provide.</p>	<p>To provide to the Tribunal an up-to-date Electrical Installation Condition Report (EICR) pertaining to the fixed wiring of the Property. In addition to provide Portable Appliance Testing (PAT) certificate for all appliances provided by the Landlord under the Tenancy. All dated within the last 12 months.</p> <p>Any C1 or C2 items evidenced within EICR to be attended to.</p>
11	<p>Bathroom in very poor condition, damaged seals, broken shower and cistern is constantly running.</p> <p>Notes: Cracked wall tile noted within shower area. High moisture readings obtained to shower wall where moisture is penetrating behind tiles. Heavy mould to grouting and seals. Tape provided to shower head rail. Shower screen removed. Loose bath panel. Missing plug and chain to wash basin.</p>	<p>To replace any cracked wall tiles, rake out and re-seal bath and wash basin, rake out and replace grout where cracked and resulting in water ingress to shower wall, clean mould and discolouration from grout, and repair or replace shower head support bar fixture.</p>
12	<p>Kitchen floor in poor condition.</p> <p>Notes: Laminate floor covering water damaged and in poor condition. Underlying timber floor affected by water leak from washing machine area. High moisture meter readings recorded.</p>	<p>To appoint a recognised damp contractor or consultant to uplift the laminate floor covering, and expose the underlying substrate, including cutting open an area of flooring around the washing machine area to investigate the floor void below, providing a report with their recommendations for attending to any water damage and thereafter progress with all stated recommended remedial works, including replacement of the laminate floor covering.</p>
13	<p>Kitchen units in poor condition.</p> <p>Notes:</p>	<p>To remove and replace kitchen unit carcasses, door fronts, haffits, kickplates and worktop</p>

	<p>Localised timber decay noted below sink and to kickplates. Veneer damaged to door fronts, carcasses etc. General deterioration to timber below veneer where exposed.</p>	<p>to leave all fixtures, fittings and appliances in reasonable and good working order.</p>
14	<p>Washing machine broken and disconnected.</p> <p>Notes: Washing machine not plugged in during inspection. Tenant confirmed washing machine was operational. Water saturation noted directly in front of washing machine.</p>	N/A
15	<p>Evidence of water leak on kitchen floor, resulting in damage to neighbours below.</p> <p>Notes: Linked to item 11. Agreed – evidence of water damage evident to floor. High moisture meter readings evident.</p>	N/A (covered under item 11)
16	<p>Property insurance details to be provided to neighbour.</p> <p>Not considered to be a Tribunal matter.</p>	N/A
17	<p>Evidence of water leak to Lounge ceiling.</p> <p>Notes: No evidence of any abnormal thermal image when using thermography. Moisture meter did not record any elevated readings to adjoining high level wall. Appears historic in nature.</p>	N/A
18	<p>Damaged Lounge door.</p> <p>Agreed. Panel within door split and damaged.</p>	To replace the damaged panels set within the Lounge door.
20	<p>Damaged bedroom door handle.</p> <p>Agreed – knob handle loose.</p>	To secure or replace the door knob ironmongery to leave this fully operational.
21	<p>Damaged front door handle</p> <p>Notes: Knob handle to external face, lever to internal face. Door operational and secure. Cylinder lock has been partly removed (secondary lock). Mortice lock remains.</p>	N/A
22	<p>Gas supply etc.</p>	N/A

	Redundant and not in use.	
23	<p>Over occupancy.</p> <p>Discussed with Tenant – suitable occupancy based on discussion. Complaint relates to previous letting or sub-letting issue.</p>	N/A
24	<p>ADDITIONAL NON-REPORTED ITEMS</p> <p>Sash cords are broken – agreed.</p> <p>Water ingress into property below. Outside of tribunal function.</p> <p>Smoke detection – already covered item 5.</p>	N/A