

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/17/0365

40b Landsdowne Square, Dundee, DD2 3HW (“the Property”)

The Parties:-

Miss Daryl Bradford, residing at 40b Landsdowne Square, Dundee, DD2 3HW (represented by her agent, Mr Peter Kinghorne of Dundee North Law Centre and Ms Deborah Barron of Shelter) (“the Tenant”)

Ronald and Elizabeth Evans, residing at 31 Cupar Road, Newport on Tay, Fife (represented by their agents, Ms Joanna Leek and Mr David Wilkie of The Property Management Company, 19 Castle Street, Tayport (“the Landlords”)

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) in relation to the Property, and taking account of the evidence led by both the Landlords and the Tenant at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application dated 26 September 2017 the Tenants applied to the Housing and Property Chamber 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”).**
- 2. The application by the Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-**
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation**

- (b) The installations in the Property 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
3. By letter dated 23 October 2017 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to the Tribunal.
 4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
 5. Following service of the Notice of Referral the Landlords made written representations to the tribunal. These representations originally sent to the tribunal office were in written format dated 6th November 2018 and also by email dated 8th November 2017.
 6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr A Murray, Ordinary Member) inspected the Property on the morning of 21 November 2017. The Tenant and her representatives were present during the inspection. The Landlords were neither present nor represented.
 7. Following the inspection of the Property the Tribunal held a hearing at Greenmarket, Dundee and heard from both the Tenant, the Landlords and their respective representatives. The Landlords were represented by Ms Joanna Leek and Mr David Wilkie of The Property Management Company, Tayport. Mrs Evans from the Landlords was present. The Tenant was present and was represented by Mr Peter Kinghorn of Dundee North Law Centre and Ms Deborah Barron of Shelter Housing.
 8. The Tenant, through her agent, Mr Kinghorne, submitted that there was a problem with condensation in the Property. Mr Kinghorne made particular reference to a report from Alba Building Sciences Limited. This report was set out of the details of an assessment of the moisture and humidity levels within the Property and which also assessed the cavity wall insulation within the larger building. The report had noted that there were higher levels of humidity and moisture than was the norm. It also highlighted that through various boroscope readings that the cavity wall insulation was defective. There were various gaps within the insulation that allowed cold spots to form and allowed the transfer of moisture.

Mr Kinghorne accepted that there was condensation within the Property and that this came from the use of the Property by the Tenant and her children. It was, however, his submission that the condensation that was arising was more as a result of the poor construction of the building and the defective insulation rather than the Tenant living in a manner that was conducive to high levels of condensation. Mr Kinghorne highlighted that in terms of Section 16B of the Housing (Scotland) Act 2006 the Tenant could be liable for any works required arising where the Tenant did not use the

house in a proper manner. His submission was, however, that the Tenant did use the house in a proper manner.

9. The Landlords' submission was that the condensation was caused by the Tenant rather than the building. They alleged that there had been a period when the boiler at the Property had not been used. They had been at the Property on one occasion when the Property had appeared to be damp. They felt the Tenant did not air the Property correctly.

Summary of the issues

10. The issue to be determined was, firstly, whether the Property was suffering from mould and dampness/condensation and failed to meet the repairing standard. A subsidiary but key point, was whether that damp was caused by the Tenant's living style or was due to the construction of the Property. Secondly, whether there was an infestation of insects within the Property.

Findings of fact

11. The tribunal finds the following facts to be established:-

- The Property was suffering from an excessive level of mould and dampness caused by condensation.
- The Tribunal was satisfied, on balance, that the dampness in the Property was due to (a) the age of construction of the building (b) a poor level of insulation and (c) defects in the installed insulation rather than any excessive condensation caused by the Tenant outwith ordinary everyday use.
- The extractor fan in the bathroom was not working.
- There was no sign of any evidence of insect infestation in the Property at the date of inspection and accordingly there was no breach of the repairing standard in this regard.

Reasons for the decision

12. The Tribunal based its decision primarily on the evidence seen during the course of the inspection. The Tribunal inspected all the rooms within the Property. In most rooms there was evidence of mould and damp spotting occurring, consistent with this arising from condensation. There was no particular evidence of water ingress.

The problem was particularly bad in the bathroom where there was excessive damp and mould caused by condensation. The Tribunal noted that whilst there was an extractor fan installed in the bathroom, this was not working at the date of the inspection. There was no evidence of any tampering or damage caused by the Tenant and it simply appeared to be defective.

The principal issue for the Tribunal to determine was whether the condensation damage that was occurring to the Property was arising out of an inappropriate use of the Property by the Tenant or whether it was caused by poor insulation and ventilation within the Property. This was a difficult issue for the Tribunal to determine based on a single inspection.

However, on balance, the Tribunal was satisfied that any condensation being produced was not being caused an inappropriate use of the Property by the Tenant. The Tenant did not appear to be carrying out any activities beyond ordinary everyday living. The Tenant was very conscious of minimising damp within the Property as her younger son suffered from a respiratory illness. Accordingly, she did not dry any clothes in the Property but rather took these to a grandparent to dry. The Property was not suffering from an excessive amount of possessions within it or from several household pets living in the Property, both of which can often contribute to excessive condensation.

The Tenant did reside in the Property with her three children and this would, of course, produce a certain level of condensation. However, on balance, the Tribunal was satisfied that the Tenant was aware of the importance of maintaining a balance between heating and ventilating the Property and was doing her best to avoid any excessive condensation occurring.

The Tribunal placed reliance on the terms of the report from Alba Building Sciences Limited. This highlighted that there was excessive condensation in the Property and highlighted that the construction of the building was dated and was relatively poor from an insulation perspective. The report also highlighted that the cavity wall insulation within the Property had failed in numerous locations. This would exacerbate the problem.

On that basis, the Tribunal was satisfied that the exception to the Landlords' repairing duty contained in Section 16B of the Housing (Scotland) Act 2006 did not apply. It was the responsibility of the Landlords to ensure that there was a reasonable level of ventilation or better thermal insulation within the Property or a combination of the above, sufficient to minimise the level of condensation.

The Tribunal noted that the extractor fan within the bathroom was not working at the date of inspection. The Landlords would require to repair this. Because of the level of damp and mould already present in the bathroom, the Landlords would require to have this removed insofar as possible, and an inhibitor then applied and have the bathroom repainted.

The Tribunal was also satisfied that it was appropriate for the Landlords to carry out some works to either reduce the level of moisture within the Property or improve the thermal insulation. It was for the Landlords to carry out their own investigations in this regard to ensure that they chose a method that meant condensation and mould levels were reduced to an

appropriate level. The Landlord may wish to consider the installation of a dehumidification system or some internal lining with thermal plasterboard of the Property. In any event, it was for the Landlord to determine this and to carry out appropriate works.

The Tribunal also noted during the course of its inspection that a number of the windows did not operate properly and were not capable of being closed and locked. It would be possible for any person to open some of the windows from the exterior of the Property and to gain access to the Property. Whilst not a part of the Repairing Standard Enforcement Order, the Tribunal was of the view that it was appropriate for the Landlord to attend to this work at the same point.

The Landlords had accepted the terms of the Alba Building Services Report during the course of the hearing and a discussion was therefore had as to an appropriate timescale for the works to be carried out. All parties agreed that 3 months would be an appropriate period.

During the course of the inspection the Tribunal also inspected the floor coverings within the Property. These appeared to be in reasonable order and there was no evidence of any infestation occurring. On that basis the Tribunal was satisfied that there had been no breach in this regard by the Landlord.

Accordingly, whilst this was a narrow and difficult decision for the Tribunal to make, the Tribunal was satisfied, on balance, that the responsibility to address the issues within the Property lay with the Landlords rather than the Tenant.

A copy of the relevant photographs taken during the course of the inspection is annexed to this decision for information purposes.

Decision

13. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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.

Effect of section 63

17. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed ..

Date

.....13/2/18.....

Chairperson

This is the Schedule of Photographs referred to in the foregoing decision E Miller 13/2/16

Photograph Schedule – 40b Lansdowne Square Dundee

Case reference: FTS/HPC/RP/17/0365

Date of Inspection: 21 November 2017



Front elevation of 40b Lansdowne square



1 The mould growth in the bathroom at the rear wall and the inoperative extract fan



2 The insecure window in the bathroom



3 The mould growth in the corner of the rear bedroom



4 The mould growth at the corner in the lounge



5 The inoperative window in the rear bedroom



6 The front bedroom (mould spots exist on the wall not visible in the photograph)