



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/21/1969

Property at 16/6 Moncrieff Terrace, Edinburgh, EH9 1NA

**Sasine Description: ALL and WHOLE the third house on the first floor, 16 Moncrieff Terrace, Edinburgh described in Disposition to Nora Carragher recorded in the General Register of Sasines for the County of Midlothian on 10 June 1955
("The Property")**

The Parties:-

**Mr Toby Humphries and Ms Amy Taylor, 16/6 Moncrieff Terrace, Edinburgh, EH9 1NA
("the Tenants")**

**Mrs Rhona Dick, DJ Alexander Lettings Limited, 1-3 Wemyss Place, Edinburgh, EH3 6DH ("the Landlord")
(Represented by Mr Alan Dick and DJ Alexander Lettings Limited)**

**Tribunal Members: Gillian Buchanan (Legal Member)
Mark Andrew (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) in relation to the Property, and taking account of the evidence given by the parties at a hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received between 16 August 2021 and 15 October 2021 the Tenants applied to the tribunal 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 stated that the Tenants considered that the Landlord had failed to comply with her 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 fit for human habitation.

- (b) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - (c) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
 - (d) The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
 - (e) The Property meets the tolerable standard.
3. By letter dated 25 October 2021 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
 4. On 3 November 2021 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenants and on the Landlord at Lynedoch Place, Edinburgh, EH3 7PX.

Case Management Discussion ("CMD")

5. On 15 December 2021 a CMD took place before the tribunal. The Tenants were in attendance. The Landlord was not in attendance nor was she represented.
6. Under Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), if a party or party's representative does not appear at a hearing, the tribunal, on being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.
7. Rule 24(1) requires that the tribunal must give each party reasonable notice of the date, time and place of a hearing.
8. The tribunal was not satisfied that the requirements of Rule 24(1) had been complied with and was not therefore able to proceed with the application in terms of Rule 29.
9. Separately and in any event, the tribunal determined that given the terms of the Application and the extent of the complaints articulated by the Tenants, no progress in determining the Application could be made without the Property first being inspected by the tribunal.
10. The tribunal therefore determined that an inspection of the Property should be scheduled and notice of the date and time of the inspection should be intimated to the Landlord at both the following addresses:-
 - i. Edinburgh Property Management, 1 Lynedoch Place, Edinburgh, EH3 7PX; and
 - ii. DJ Alexander Lettings Limited, 1-3 Wemyss Place, Edinburgh, EH3 6DH.

Representations pre-Inspection

11. By email dated 25 January 2022 the tribunal received written representations from DJ Alexander Lettings Limited on behalf of the Landlord.

12. The tribunal also received written representations from the Tenants by email dated 31 January 2022.

Inspection

13. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Mark Andrew, Ordinary Member, inspected the Property on the morning of 15 February 2022. The Tenants attended the inspection along with the Landlord's husband, Mr Alan Dick and Mr Martin Urquhart of DJ Alexander Lettings Limited. Photographs were taken and are contained in the attached Schedule of Photographs dated 19 February 2022.
14. At the time of the inspection it was fair and dry.

Hearing

15. Following the inspection of the Property the tribunal held a hearing by telephone conference on 22 February 2022. The Tenants attended the hearing along with the Landlord's representatives, being her husband, Mr Alan Dick, and Ms Claire Macrae of DJ Alexander Lettings Limited. All those attending made oral representations.
16. The parties submitted as follows by reference to the undernoted headings:-

Windows

17. At the inspection the Tenants acknowledged that the windows in the lounge and bedroom had been replaced by a contractor employed by the Landlord on 8 February 2022 and they were content that any complaint relative to the windows had been resolved.

Kitchen – Worktop opposite sink

18. The tribunal referred to the loose worktop opposite the cooker. Ms Macrae stated that any work needed to make the worktop secure would be undertaken by the Landlord.

Kitchen – Cupboard beneath sink

19. The tribunal referred to water leaking through the upstand behind the taps which is admitting water. The cupboard beneath was found to be reasonably dry and moisture readings in the close beneath confirmed the area to be dry therefore giving no cause for concern in that location.

20. Tenants' Submissions -

At the hearing the Tenants stated that there used to be a hole in the floor which had been filled but the washing machine had been replaced and a contractor had told them that the floor was soft to the touch indicating signs of damp in the past that needed to be addressed.

21. Landlord's Submissions -

On behalf of the Landlord it was indicated that she would arrange to reseal around the sink and upstand to ensure no further water ingress and any holes could be filled but nothing more was needed and there was nothing to stop the kitchen being used. Mr Dick referred to the common close beneath the kitchen being dry indicating that any leak had stopped in the distant past and any dampness was therefore residual. He said the soft wood of the floor was

not a hazard, would involve major work to replace and that he would consider whether any reinforcement could be provided.

Kitchen - Wall inset to side of boiler

22. The Tenants indicated that the dampness was drying due to the adjacent window having been replaced and they were content with that. The Landlord's representatives agreed this matter was resolved.

Kitchen – To rear of oven/beside washing machine and unsupported sink draining board

23. Tenants' Submissions -

At the inspection the tenants stated they catch one mouse every week in the Property. The Tenants referred to there being a hole behind the wire and another hole under the adjacent desk which admit vermin into the Property.

24. Landlord's Submissions -

On behalf of the Landlord it was stated that the washing machine had been replaced in the past and the sink draining board was secured to the wall. The worktop over the washing machine had been supported by the previous washing machine but was not supported by the replacement machine. Mr Dick stated that he already had a leg support to fit to the front corner of the sink draining unit which would be dealt with and that the holes identified would be filled with foam.

Kitchen- Flooring

25. Tenants' Submissions –

The Tenants stated that the vinyl was not fixed to the floor and is a trip hazard

26. Landlord's Submissions –

On behalf of the Landlord, it was stated that whilst the flooring was tired it was fit for purpose. Work to the kitchen would be undertaken the next time the Property was empty unless the tribunal determined otherwise.

Doors from Bedroom to Hall and from Kitchen/Living Room to Hall

27. During the hearing it became apparent that Photograph 10 in the Schedule of Photographs was an image of the threshold between the bedroom and hall not the kitchen/living room and hall as stated.

28. Tenant's Submissions -

The Tenants complained that the door shown in photograph 10 does not close properly. The Tenants referred to the cable running over the floor of the threshold as pre-existing and referred to the cable being pinned to the wall.

29. Landlord's Submissions -

On behalf of the Landlord, Mr Dick stated that if he had installed the cable it would have been buried under the floor or tacked under the carpet. He suggested it might have been installed by a previous tenant.

The tribunal indicated that at the thresholds of both the kitchen/living room and bedroom doorways into the hall the cable on the floor causes an obstruction but the doors are also very

tight into the frames due to a build-up of paint and they needed the paint sanded off and touched up sufficiently to allow the doors to close correctly which Mr Dick stated he was happy to do.

Living Room – Wall to side of sofa

30. The tribunal intimated that on inspection the wall was found to be dry. The issue causing the dampness was likely associated with the previous window and only decoration was now required. The Tenants and Landlord's representatives accepted the position to be as stated by the tribunal.

Holes around central heating pipes

31. The tribunal intimated that on inspection gaps could be seen around the central heating pipes through which vermin could get access in the bedroom. On behalf of the Landlord Mr Dick stated that he would be happy to fill these gaps which the Tenants confirmed was acceptable.

Gap at corner of skirting board by doorway

32. The tribunal intimated that vermin could get access through the gap in the bedroom. On behalf of the Landlord Mr Dick stated that he would be happy to fill this gap which the Tenants confirmed was acceptable

Bedroom Door – loose panel

33. On behalf of the Landlord, Mr Dick stated that the door had likely been vandalised by a previous tenant but he was happy to attend to the necessary repair and the Tenants were content to accept that position.

Bedroom – Damp wall to side of window

34. The tribunal intimated that upon inspection the dampness was now very minor and drying out due to the window having been replaced. Decoration only was required. On behalf of the Landlord, Mr Dick intimated that he was happy to attend to the required decoration which the Tenants accepted.

Mechanical Vent from Bathroom to outlet above exterior side of bedroom window

35. The tribunal intimated that on inspection the general arrangement of the vent was reasonable. However, in the space above the hallway the connection between the flexible pipe and hard pipe was loose and requires sealed. When switched on the fan from the bathroom has no suction which suggests the present arrangement is ineffective.

36. Tenant's Submissions –

The Tenants stated that they had sent a letter to DJ Alexander Lettings Limited in November 2020 stating that the connections in the space above the hallway were loose and needed to be secured. A contractor had stated that the existing extraction fan was not strong enough and an increase in fan power was needed due to the length and number of angles in the pipework to ensure the moist air from the bathroom is properly removed.

37. Landlord's Submissions –

On behalf of the Landlord, Mr Dick stated that he had previously undertaken a smoke test and passage of the smoke from the fan to the vent illustrated that the arrangement operated as it should. He had put the connections back together after the test and will rectify any connection

that is loose. He speculated that there may have been a blockage at the window previously stopping the moisture from the bathroom venting outside but he will strip the trunking off and do further testing, the findings of which will determine what requires to be done thereafter. He referred to a contractor having given advice and that the arrangement was robust enough for the distance the moisture would need to travel.

Bathroom Door Lock

38. On behalf of the Landlord Mr Dick stated that he would undertake the necessary repair to allow the bolt to meet the keeper to allow the door to lock as it should.

Sofa

39. Tenants' Submissions –
The Tenants stated that the sofa needs replaced. At the inspection they said the sofa was painful to sit in.
40. Landlord's Submissions –
Notwithstanding the terms of the Landlord's written submissions contained in the email from DJ Alexander Lettings Limited to the tribunal dated 25 January 2022 in which it is stated that "a replacement sofa is being arranged by our landlord and will be completed by 15 February 2022" Mr Dick stated that the sofa will be replaced "at some point" but could not give any time frame for doing so nor would he describe the "chain of events" as he referred to them that would see that happen. He said that he "would rather not to go into that". He said the sofa is fit for purpose.

Chairs

41. The Tenants accepted that their complaint with regard to the chairs had been resolved by two replacement chairs having been provided. At the inspection the replacement chairs were in a cupboard and were not in use, the Tenants having supplied their own chairs in the interim.

Flooring

42. Tenants' Submissions -
The Tenants stated that they get complaints from their elderly downstairs neighbour who hears their footsteps. They said there are loose floorboards and that there is no cushioning beneath the carpet and flooring generally. The Tenants said the issue was more prevalent in the living room than the bedroom
43. Landlord's Submissions –
On behalf of the Landlord Ms Macrae stated that they had received no complaints directly from neighbours of the Property. Ms Macrae stated she had not personally looked at the underlay beneath the carpet but regarded what was there as fit for purpose. Mr Dick said the carpet had been fitted in October 2018. It had been replaced for the previous tenant. Underlay was fitted and he did not consider there to be an issue.
44. The tribunal referred to the outline of the floorboards showing through the carpet in the living room in front of the sofa and stated that the floorboards would be felt if walking barefoot.

Carbon Monoxide Detectors

45. The Tenants confirmed that carbon monoxide monitors had now been supplied.

Insulation

46. The Tenants confirmed that there were no longer any issues with regard to insulation following the replacement of the two windows.

Summary of the issues

47. The issues to be determined are:-

- a. Whether the worktop opposite the sink within the kitchen is in a reasonable state of repair and in proper working order.
- b. Whether there is dampness in the cupboard beneath the kitchen sink and at the flooring in that location.
- c. Whether, to the rear of the oven there are holes our liable to admit to vermin into the Property.
- d. Whether the worktop incorporating the sink and draining board requires additional support and sealing.
- e. Whether the vinyl flooring within the kitchen area is in a reasonable state of repair and in proper working order.
- f. Whether the doors from the bedroom to the hall and from the kitchen/living room to the hall are in a reasonable state of repair and in proper working order such that they open and close correctly.
- g. Whether gaps around the central heating pipes of the bedroom and at the corner of the skirting board by the doorway of the bedroom are such that vermin could obtain access into the Property.
- h. Whether the arrangement of the mechanical vent from the bathroom to the outlet above the exterior side of the bedroom window is in a reasonable state of repair and in proper working order.
- i. Whether the bathroom door is in a reasonable state of repair and in proper working order such that it opens, closes and locks correctly.
- j. Whether the sofa is capable of being used safely for the purpose for which it is designed.
- k. Whether the flooring within the Property and particularly within the living room is in a reasonable state of repair.
- l. Whether the property meets the tolerable standard.

Findings of fact

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

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the parties entered into a Private Residential Tenancy Agreement in respect of the Property in October 2019 ("the Tenancy Agreement") which commenced on 4 November 2019.
- (c) That the Property is a first floor flat leased by the Landlord to the Tenants in terms of the Tenancy Agreement and is comprised of a living room/kitchen, bedroom, bathroom and cupboard all leading off a hallway and accessed from Moncrieff Terrace by means of a common close and stairwell.
- (d) That the windows within the Property were replaced on 8 February 2022 and are now in a reasonable state of repair and in proper working order. They meet the Repairing Standard.
- (e) That the worktop opposite the sink in the kitchen is loose and can be slid back and forth. The worktop is not sealed against the adjacent wall.
- (f) That the up-stand behind the taps within the kitchen is not sealed and allows water from the sink and draining board to run down the walls.
- (g) That the wooden flooring to the rear of the oven and the washing machine is in a reasonable state of repair and in proper working order.
- (h) That the wall inset to the side of the boiler is drying out as a consequence of the nearby window having been replaced.
- (i) That in the kitchen the holes around the wire and under the desk are liable to admit vermin into the property.
- (j) That the sink draining board is not in a reasonable state of repair and in proper working order in that there is no leg to the front corner of the sink draining unit or decor end panel providing support. The draining board does not therefore slope towards the sink as it should. The arrangement does not presently meet the Repairing Standard.
- (k) That the vinyl flooring within the kitchen is in a reasonable state of repair and in proper working order.
- (l) That at the threshold of both the kitchen/living room and bedroom doorways into the hall the internet cable over the threshold causes an obstruction. Separately, a build-up of paint causes the doors to be very tight into the frames such that they do not close correctly. In addition, the internal panel of the bedroom door is loose. The doors do not meet the Repairing Standard.
- (m) That in the living room the wall to the side of the sofa near the new window is dry. Decoration is required.
- (n) That the gaps around the central heating pipes are such that vermin can get access to the Property.
- (o) That the gap at the corner of the skirting board by the doorway is such that vermin can get access to the Property.

- (p) That in the bedroom, the wall to the right hand side of the new window is drying out and decoration only is now required.
- (q) That in the space above the hallway the connection between the flexible pipe and hard type serving the mechanical vent from the bathroom to the outlet above the bedroom window is loose and requires connected and sealed. The suction from the fan in the bathroom is not effective. The mechanical vent arrangement does not meet the Repairing Standard.
- (r) The bathroom door does not lock internally as the lock is not aligned to meet the keeper as it should.
- (s) That in the living room the sofa is capable of being used safely for the purpose of which it is required.
- (t) That the Landlord has provided to replacement chairs.
- (u) That the flooring within the living room and bedroom are in a reasonable state of repair and in proper working order.
- (v) That a carbon monoxide detector has been supplied and fitted in the kitchen.

Reasons for the decision

49. On the day of the inspection of the Property by the tribunal the Tenants took the tribunal around the Property identifying various issues of complaint. The Landlord's husband, Mr Alan Dick, also attended the inspection along with Mr Martin Urquhart of DJ Alexander Lettings Limited who both made remarks in response to the Tenants' complaints all of which are summarised within the parties' submissions outlined above.
50. At the outset of the inspection the Tenants confirmed the two windows within the property to have been replaced on 8 February 2022 and their complaints with regard to the windows were therefore resolved. During the inspection they also confirmed that a carbon monoxide detector had been supplied and fitted in the kitchen and that two new chairs had been supplied. These complaints were therefore resolved. The tribunal saw the carbon monoxide detector and the chairs albeit the latter were not being used and were being stored in a cupboard, the Tenants having supplied their own chairs in the interim.
51. On inspection, the kitchen was generally found to be tired with repairs being required (i) to the worktop opposite the sink which was loose and could be moved backwards and forwards, (ii) the up-stand behind the taps within the kitchen which was not sealed allowing water to run from the sink and adjacent draining board down the wall, (iii) to the sink draining board which is unsupported such that the water does not run towards the sink as it should and (iv) to fill holes behind the oven and desk of a size that would allow mice into the Property as is happening. Otherwise, the wooden flooring and vinyl thereon was found to be in a reasonable state of repair and in proper working order and any previous dampness in the walls had been resolved by the recent replacement of the window.
52. Within the living room, the sofa was found to be safe to use which is the test required by the Repairing Standard although, at the hearing, the Landlord's husband, Mr Alan Dick, somewhat departed from the written representations previously made by DJ Alexander Lettings Ltd on

behalf of the Landlord indicating that the sofa would be replaced by 15 February 2020. Given that the Landlord had two representatives who in the course of the proceedings, gave entirely conflicting accounts as to the position, the tribunal considered the position unsatisfactory.

53. Within the Property the kitchen/living room and bedroom doors into the hallway are not in a reasonable state of repair and proper working order. The doors do not close correctly due, in part, to an obstruction caused by the internet cable which runs across both threshold and also due to the doors having been overpainted meaning that the doors are very tight in the frames preventing them from closing properly. The internal panel of the bedroom door was also found to be loose. The bathroom door does not lock properly internally as the bolt does not meet the keeper.
54. In the bedroom the wall to the right-hand side of the new window was found to be drying out and decoration only is now required there and also behind the sofa in the lounge where evidence of prior dampness is still apparent.
55. With regard to the mechanical vent above the shower which is intended to take moisture out the Property through a vent above the bedroom window, the tribunal found the connection between the flexible pipe and the hard pipe in the space above the hallway to be loose and the suction from the fan to the vent is presently compromised. The mechanical vent arrangement does not therefore presently meet the Repairing Standard.
56. During the hearing, the Landlord's representatives gave certain commitments on behalf of the Landlord to carry out certain repairs as detailed elsewhere in this decision.

Decision

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

Observations

60. Whilst the vinyl flooring in the kitchen is not a trip hazard and does not presently breach the Repairing Standard it will be in need of replacement shortly.
61. With regard to the sofa, it is very clear from the written representations made by DJ Alexander Letting Limited by email to the tribunal dated 25 January 2022 that the Landlord's intention was to replace the sofa by 15 February 2022 and a commitment to that effect was given. Mr Dick somewhat backtracked on that commitment at the hearing and his submissions were contradictory, vague and evasive. Having given a commitment to replace the sofa the tribunal invites the Landlord to honour that commitment.
62. With regard to the neighbour complaints about the flooring, the Tenants should direct the neighbour(s) in question to raise any such complaints directly with DJ Alexander Lettings Limited or the Landlord. The underlay, on any view, is thin and another surface beneath the underlay – such as hardboard - would be beneficial to smooth out the rough edges of the original floorboards.

Right of Appeal

63. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Effect of section 63

64. 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

Legal member

Date : 6 March 2022

Legal Member and Chairperson