



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/21/2262

Property: 1 Hill Square, Dundee DD3 6RT (“the property/house”)

The Parties:-

**Dundee City Council, 3 City Square, Dundee DD1 3BA (“the Third Party
Applicant”)**

Mr Rahman Safiu, 1 Hill Square, Dundee DD3 6RT (“the Tenant”)

**Mr Robert Pitkethly, 5/6 Saunders Street, Edinburgh EH3 6TT (“the
Landlord”)**

Tribunal Members:

**George Clark (Legal Member/Chairman) and Robert Buchan (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 20 September 2021, 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 summarised as follows:

1. The current level of smoke and heat detectors within the Property does not meet current regulations.
2. No Electrical Installation Condition Report (“EICR”) was available.
3. No Gas Safety Certificate (“GSC”) was available
4. The carbon monoxide monitor may not be in the correct position, given the location of the gas boiler.
5. All windows in the Property are not wind proof.
6. The front and back doors are not wind proof.
7. There is a problem with the locking mechanism on the front door.
8. The back door lower glass panel is broken.
9. There is an issue with mould/damp throughout the Property.
10. The ground floor hall ceiling is showing signs of a water leak.
11. There is a hole in the hall ground floor left cupboard.
12. A number of floorboards in the living room are damaged.
13. A glass tile is missing from the upper floor hall.
14. The window latch in the front bedroom is broken.
15. There are signs of water damage on the bathroom wall where the tiles end.
16. The sealant around the bath requires to be removed and re-applied.

17. There are gaps between the bath panel and the wall.
18. A number of kitchen units are broken.
19. The laminate on the edging of the worktops is missing
20. The cooker hob only has one operating heating ring.
21. The Property requires to be redecorated.
22. Due to wear and tear, floor coverings in the Property should be replaced, especially the stair carpet and the kitchen floorcovering.

The Inspection

The Tribunal inspected the Property on the morning of 3 February 2022. The Tenant was present, the Third Party Applicant was represented by Mr Stuart Cuthill, Enforcement Officer, Private Sector Services Unit, and the Landlord, Mr Robert Pitkethly, was present, as was his letting agent, Mr Michael Anderson of Northwood, Dundee. A Schedule of Photographs, taken by the Tribunal at the inspection, was subsequently circulated to the Parties.

The Hearing

A Hearing was held by means of a telephone conference call on the morning of 10 February 2022. With the exception of the Tenant, all the Parties who had attended the Inspection also attended the Hearing.

The Parties agreed that Items 1, 2, 3, 7, 10, 11, 12, 14, 15, 16, 17 and 20 did not require to be considered by the Tribunal, as, since the date of the application, relevant documentation had been provided or remedial work carried out. In particular, the bathroom has been completely refurbished and the cooker replaced.

Mr Anderson, for the Landlord, told the Tribunal that he understood that the location of the carbon monoxide monitor, whilst not in the same room as the gas boiler (the bathroom), but on the landing outside the bathroom door, complied with regulatory requirements as it was within 3 metres of the boiler. Mr Cuthill was content to leave it to the Tribunal to decide whether the location of the monitor was adequate.

Mr Anderson expressed the view that the windows, front and back doors (including the lower glazed panel of the back door) all presently meet the Repairing Standard. Mr Cuthill said that the Tenant had reported to him that the windows and doors were not windproof, and that, as it had not been a windy day on the day that he inspected the Property, he had had to take the Tenant at his word.

Mr Anderson's opinion was that the mould evident in the bedrooms was a consequence of the Tenant's lifestyle. The Tenant did not open windows to allow proper ventilation, despite having received from the letting agents verbal and written advice, based on guidance issued by the Scottish Association of Landlords, regarding heating and ventilation of properties. For the Third Party Applicant, Mr Cuthill accepted that there was little that could be done if the mould resulted from the Tenant's lifestyle choice, but added that he had not been certain whether the mould was the result of condensation or emanated from some other cause.

Mr Anderson stated that the Tenant had indicated to the Landlord that he would prefer the wall tiles at the top of the stairs to be left with one missing, rather than having them removed and the wall redecorated.

Mr Anderson did not dispute the fact that the window latch in the front bedroom was broken, but said that it could still be fully closed so was wind and water tight and that the location of the bed made access to the window difficult.

Mr Anderson and the Landlord contended that the crack in the glazing of the back door and the damage to the kitchen units must have been caused by the Tenant or his family and that the Tenant should be responsible for paying for any repairs that the Tribunal considered necessary. Mr Cuthill said that, irrespective of the cause, the kitchen units did not meet the Repairing Standard.

The Landlord told the Tribunal that the Tenant had asked if he could carry out some redecoration of the Property and the Landlord had indicated that he was happy for this to happen. The Landlord believed that the Tenant had since redecorated part of the living room.

Mr Anderson told the Tribunal that the carpets and floorcoverings had been new when the tenant moved into the Property. His view was that the Tenant or his family had been responsible for the damage to the kitchen floorcovering and that the carpets still had some life left in them. Mr Cuthill did not agree with that view and stated that he thought the carpets were at the point at which they needed to be replaced.

Having concluded giving evidence, the Parties and representatives 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 is satisfied that the location of the carbon monoxide monitor, just outside the door of the bathroom, in which the central heating boiler is located, is compliant with relevant safety guidelines. The Tribunal noted that it is not in a bedroom or living room. (Item 4)

The Tribunal noted that the windows of the Property are single glazed and in poor decorative order, but they appear to be completely windproof, so do not fail to meet the Repairing Standard. The Tribunal would, however, encourage the Landlord to give serious consideration to replacing them with modern double-glazed units, particularly given the anticipated increases in energy costs. (Item 5)

The front and back doors have draught-proof strips, and the doors appear to be a tight fit, so they do not fail to meet the Repairing Standard. (Item 6)

There is a crack in the lower glass pane of the back door, but it is not cracked through, appears to be wind and water tight and does not presently raise a safety issue. (Item 8)

There is evidence of mould around the bedroom windows, but the Tribunal agreed with the view of the letting agents that this appeared to result from a failure to heat and ventilate the Property properly and from the fact that in one of the bedrooms, the bed is sited hard against the window wall. There was no evidence at the time of the Tribunal's inspection, of mould or damp elsewhere in the Property. (Item 9)

One of the glass tiles which are attached to the wall facing the top of the stairs is missing. The Tribunal noted that the remaining tiles appeared to be securely fixed and that the Tenant had indicated to the Landlord that he was content to leave the situation as it stands. The absence of the tile did not warrant inclusion in an RSEO. (Item 13)

The window latch in the front bedroom requires to be repaired or replaced. The view of the Tribunal was that it would be a relatively simple job to move the bed a short distance away from the window to allow the repair work to be carried out. (Item 14)

The Tribunal noted that the kitchen units are not in a reasonable state of repair or in proper working order. A number of drawer fronts are missing and there are missing sections of laminate edging on the worktops. The letting agents had indicated at the Hearing that this was damage caused during the tenancy, not wear and tear, but it is the duty of landlords to ensure that their

properties meet the Repairing Standard, and it is not the function of the Tribunal to decide whether the cost of the necessary remedial work in the kitchen should be borne to any extent by the Tenant. Any such liability to contribute to the cost is a matter of contract between the Landlord and the Tenant. (Items 18 and 19)

Decorative condition is not included in the Repairing Standard, so the Tribunal made no finding in relation to any need to redecorate the Property. There is, however, loose ceiling paper in the kitchen, which the Tribunal would expect the Landlord to remedy when carrying out the works to the kitchen units that the Tribunal regards as necessary. (Item 21)

The carpets and floorcoverings in the Property are worn in places. This is particularly evident on the edges of the treads of the stairs, but the Tribunal did not consider that, at present, the carpets failed to meet the Repairing Standard. The floorcovering in the kitchen, however, is torn in places and should be replaced. The letting agents had, as with the damage to the kitchen units, stated that the tears in the floorcovering had been caused by the Tenant, but The Tribunal is clear that the responsibility for ensuring the Property meets the Repairing Standard rests with the Landlord. (Item 22)

The Tribunal consider 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.

G Clark

Signed: 
Date: 10 February 2022
George Clark (Legal Member/Chairman)