

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/RT/1745

**G/1 44 Main Street, Dundee DD3 7HN
("The Property")**

The Parties:-

**Private Sector Services Unit, Dundee City Council, 5 City Square Dundee DD1
3BA
("the Third Party Applicant")**

**Mr Ravi Lal, G1 44 Main Street, Dundee DD3 7HN
("the Tenant")**

**Mr Ghulam Qadar and Mrs Zahida Qadar, 367 Clepington Road Dundee DD3
8ED
("the Landlords")**

Tribunal Members:

**Graham Harding (Legal Member)
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") in relation to the property, determined that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By application dated 3 June 2022 the third party applicant applied to the tribunal for a determination as to whether the landlord has failed to comply with the duties imposed by section 14(1)(b) of the Act. 2. The third party applicant considered that the landlords had failed to comply with their duty to ensure that the house meets the repairing standard in respect of the following matters, namely:-

- (a) there was no current Gas Safety Certificate;
- (b) there was no current Electrical Installation Condition Report;
- (c) there was no CO detector;
- (d) the smoke detector in the living room was fitted to the wall instead of the ceiling;

- (e) the tenant had indicated that the living room carpet became wet during periods of rain;
- (f) the living room external cill was cracked and had holes in it;
- (g) the subfloor under the kitchen sink was leaking;
- (h) The boiler condensate pipe and washing machine pipe are connected against the run of the pipe at the outlet;
- (i) the kitchen overflow leaks;
- (k) the kitchen waste leaks externally;
- (l) there are large holes in the exterior of the property;
- (m) there appeared to be a leak at the rear bedroom;
- (n) the gable end had a number of open joist holes;
- (o) the bathroom light was inoperative;
- (p) the WC in the bathroom was loose;
- (q) the bathroom basin was blocked;
- (r) the bathroom basin pipework was leaking;
- (s) there was no u bend at the bathroom basin pipework; and
- (t) the bathroom pipework required to be checked for leaks.

3. Accordingly the third party applicant set down that the property was not wind and watertight and in all other respects fit for habitation; the structure and exterior of the property (including drains, gutters and external pipes) were not in a reasonable state of repair and in proper working order; the installations to the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and any fixtures, fixing and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order; and the house did not meet the tolerable standard.

4. The third party applicant provided the tribunal with copies of correspondence sent to the Landlords together with a copy of the tenancy agreement in support of the application.

5. By Notice of Acceptance dated 14 July 2022 a legal member of the Tribunal with delegated powers accepted the application and an inspection and hearing was assigned.

6. An inspection of the property took place on the morning of 15 September 2022. The tenant and his wife were in attendance as were Mr Byron Young and Ms Terri Kean from the third-party applicants. The landlords did not attend nor were they represented.

7. The ordinary member took photographs at the property and these are attached as a schedule to this decision.

8. A hearing was held by teleconference on the afternoon of 15 September 2022. It was attended by Mr Young from the third party applicant. Neither the tenant nor the landlords were in attendance. By way of a preliminary matter the Tribunal noted from the case papers that although the application had named Mrs Zahida Qadar as the landlord, the tenancy agreement stated that Mr Ghulam Qadar was the Landlord. The tribunal also noted that Mrs Qadar was the owner of the property. After some

discussion Mr Young agreed that Mr Qadar should be a party to the application and asked the tribunal to allow the application to be amended to add Ghulam Qadar as an additional Landlord. The tribunal allowed the amendment.

9. The tribunal noted that the tenant had confirmed that the leaks in the plumbing in the kitchen and bathroom had been repaired. The tribunal also noted that the smoke detector in the living room had been repositioned on the ceiling however there was still no carbon monoxide detector in the kitchen. The tribunal also noted that a lid had now been fitted to the cold-water tank.

The tribunal confirmed that the Ordinary Member had observed high damp meter readings in the living room, bathroom, bedroom and kitchen with evidence of mould growth throughout the property. It was apparent that measures were required to eradicate the dampness and mould in the property.

The tribunal noted from the case papers that the property did not appear to be registered on the Scottish Landlord Register and Mr Young after carrying out a search confirmed this to be the case and undertook to make further enquiries.

The tribunal noted that despite the third party applicants having requested sight of a current Gas Safety Certificate and Electrical Installation Condition Report from the landlords these had not been produced.

The tribunal indicated that it would issue Directions to the landlords to provide reports in advance of the next hearing and suggested that in the meantime the third-party applicants could liaise with the landlords to see what measures could be taken in the meantime to alleviate the tenant's living conditions.

10. Following the hearing the tribunal issued a note to the parties and directions dated 16 September 2022 to the landlords requiring them to provide the tribunal by 7 October 2022 with:-

1. A current Energy Performance Certificate in respect of the property.
2. A current Gas Safety Certificate produced by a suitably qualified gas engineer.
3. An Electrical Installation Condition Report by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT dated after the date of this order and confirming that the electrical installations in the property meet the current standards.
4. All survey reports and guarantees relating to the installation of a chemical damp-proof course installed at the property.
5. A report from an independent third party building preservation specialist commenting on the dampness throughout the property and its causes and the measures required to remedy it.

11. By email dated 10 October 2022 the landlords provided the tribunal with a gas safety certificate dated 21 February 2022 and an Energy Performance Certificate dated 23 February 2022. The Landlords failed to provide any further documentation required in terms of the directions issued by the tribunal on 16 September 2022.

12 The tribunal assigned a further hearing to take place on 7 March 2023.

The Hearing

13. A hearing took place by teleconference on 7 March 2023. The third party applicant was represented by Mr Stuart Cuthill. Neither the tenant nor the landlords attended nor were they represented.

14. Mr Cuthill advised the tribunal that he had attended at the property on 24 February. He confirmed that no further work had been carried out at the property which was still in the same condition if not worse with regards to the mould and dampness. He said that the floor in the bedroom was wet from water penetration.

15. In response to a query from the tribunal Mr Cuthill confirmed that the property still did not appear to be registered on the landlord register although both landlords were registered landlords and he undertook to follow this up.

16. Mr Cuthill advised the tribunal that the tenant had given notice and was to be moving out of the property by the end of March 2023. He submitted that given the failure on the part of the landlords to provide the tribunal with the documents requested and their failure to deal with the mould and dampness in the property that it was appropriate for the tribunal to issue a repairing standard enforcement order so that the property could not be let to a new tenant until all necessary work had been completed.

Findings in Fact

17. Mrs Zahida Qadar is the owner of the property.

18. Mr Ghulam Qadar is the landlord in terms of a private residential tenancy agreement with the tenant dated 1 February 2022.

19. The property is not registered on the Scottish Landlord Register.

20. The Landlords failed to comply with points 3, 4 and 5 of the directions issued by the tribunal on 16 September 2022.

21. There is evidence of damp in the property below the lounge window, the bedroom and the kitchen.

22. There is substantial mould growth in the lounge, bathroom, kitchen and bedroom.

23. There is no carbon monoxide detector.

24. The bathroom toilet seat is broken.

Reasons for Decision

25. The tribunal was very concerned that despite being given every opportunity to participate in the proceedings neither of the landlords chose to play any significant

role by attending at the inspection or either of the hearings. Of even greater concern was what appeared to the tribunal was the wilful disregard to comply with the reasonable requests contained in the tribunal's directions dated 16 September 2022. The dampness and mould are such that they can be expected to endanger the health of any occupant. The tribunal considers that this is a serious matter and that it has been left with no alternative other than to report the Landlords' failure to comply to the authorities for prosecution.

26. The tribunal was satisfied that the property was suffering from damp and water ingress and that the cause required to be properly investigated and that this should be carried out by a suitably qualified building surveyor in order to identify the cause or causes of the problem. Once the report has been obtained the tribunal will be in a position to consider what works will be necessary to bring the property to the repairing standard.

27. As the gas safety certificate previously provided by the landlords has now expired it is appropriate that a further certificate is provided along with the outstanding EICR.

Decision

28. The tribunal determined that the landlord has failed to comply with the duties imposed by section 14(1)(b) of the Act as stated. The tribunal proceeded to make a repairing standard enforcement order as required by section 24(1).

The Tribunal also determined to refer the landlords' failure to comply with the terms of its direction of 16 September 2022 for prosecution.

The decision of the tribunal was unanimous

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.