

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property: 25 Clerwood View, Edinburgh EH12 8PH (“the Property”/ “the house”)

Title No: MID58627

Chamber Reference: FTS/HPC/RP/19/3581

Parties:

Mrs Gillian Muir, 25 Clerwood View, Edinburgh EH12 8PH (“the Tenant”)

Miss Katherine Ogden, care of Braemore Sales and Lettings, Orchard Brae House, 30 Queensferry Road, Edinburgh EH4 2HS (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)

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

1. By application, received by the Tribunal on 7 November 2019, 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’).
2. The application stated that the Tenant 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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, 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 and that the house meets the tolerable standard. The Tenant stated in the application that the “water tank needs replaced urgently, front step needs new brickwork, electrics need rewiring, cistern in upstairs bathroom needs replacing, leak in en-suite toilet fixed, bath needs a new frame, water pump needs sound proofing, damp needs investigating”

3. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 17 January 2018, and by printouts from the Landlord's agents' online reporting system, acknowledging receipt on 23 September 2019 of reports relating to the bricks underneath the front step being loose, the requirement for repairs to the electrical system, the requirement to investigate the water tank overflow and an excessively noisy water pump and to replace the flush button in the bathroom toilet cistern, re-fit the bath panel, investigate a disgusting smell in the bathroom and attend to a leak in the flush pipe at its joint with the toilet pan. The notifications from the Tenant in relation to each of these items stated that the issue had been reported to the Landlord's agents before.
4. On 17 December 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
5. On 23 January 2020, the Landlord's agents, Braemore Sales and Lettings, Edinburgh, made written representations to the Tribunal. They stated that, in relation to all the items in the Tenant's reports of 23 September 2019, apart from those relating to the electrical system and the front door step, the items had been grouped together as one job to be attended to by their contractor, Lomond Maintenance Limited. They had reported that they had been unable to find the cause of a leak at the toilet in the bathroom, but that the floor was wet and would need to be further investigated. They had been unable to detect a smell in the bathroom and commented that it might be coming from a towel that the Tenant had placed under the leaking toilet. A new bath panel was needed or, alternatively, a frame would have to be built and the existing panel attached to it. The toilet would need a new push button siphon. They had replaced a washer in the water storage tank and the water was now shutting off around 7 inches below the overflow height. These reports and attendant quotes had been sent to the Landlord with a request to go ahead with the works, but no response had been received from the Landlord until she had been notified of the proceedings before the Tribunal. The quotes had now been approved and work orders had been raised.

6. In relation to the water pump, the Landlord's agents stated that the sub-contractor who had installed it on behalf of Lomond Maintenance Limited had been contacted on a regular basis, with a request to return to reassess the installation, but to date no return visit had taken place and the matter had been escalated to senior management to ensure it is dealt with at the earliest opportunity.
7. EICR remedials had been completed subsequent to an isolator switch being fitted by SP Energy Networks. The remedial work had been agreed but the isolator switch needed to be installed first. The reported issue had not been specific to a particular light fitting, but the kitchen lights had been replaced. No report had been received from the contractor regarding the error of the mistaken lights.
8. The issue of the front doorstep had been overlooked at the time of reporting, but a work order had now been raised for an assessment to be undertaken with recommendations for any necessary remedial works to be provided.
9. On 21 January, the Landlord's agents e-mailed to the Tribunal a copy of an Electrical Installation Condition Report dated 13 August 2018. The overall assessment was that the installation was "Unsatisfactory", and the Report contained three items of disrepair categorised as C2. The Landlord's agents also provided the Tribunal with a copy of a Minor Electrical Installation Works Certificate from Lomond Maintenance Limited dated 17 May 2019, confirming that five spotlights had been exchanged for "tire rated" lights, that a RCD operation test had been satisfactorily carried out and that the main protective bonding conduction to water and gas had been checked.
10. The Tribunal Members inspected the Property on the morning of 24 January 2020 and were admitted by the Tenant. The Landlord was represented at the inspection by Mr Derek Rowland, Property Manager, Braemore Sales and Lettings.
11. The Tribunal comprised George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/surveyor).
12. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

13. Following the inspection, the Tribunal held a Hearing at George House, 126 George Street, Edinburgh. Centre.
14. The Tenant explained to the Tribunal that it is the living room lights that constantly "blow", not the kitchen lights. The leak from the toilet was intermittent. She was particularly concerned about the water tank overflow,

as she had been told in May 2019 that it required urgent attention. She complained that matters had dragged on and on, with nothing being done.

15. The Landlord's agents told the Tribunal that there was not a funding issue, but they were having trouble obtaining their client's authorisation to have works carried out. It was, however, hoped that the works covered by the quotes would be carried out in early February.

16. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

17. The Tribunal makes the following findings of fact:

- The Property comprises a semi-detached villa on two floors. The accommodation comprises three public rooms, kitchen, toilet and utility room downstairs and four bedrooms (one en-suite) and a bathroom at first floor level.
- There was no evidence at the time of the inspection of a leak at the toilet flush pipe in the en-suite bathroom.
- There is a smell of stagnant water in the en-suite bathroom. It is worst in the area of the bath, although there is no evidence of present water staining beneath the bath.
- The bath panel is cracked and is not attached.
- The cistern in the toilet in the bathroom is not functioning. There are parts missing from the cistern flushing system.
- Plasterboard has been placed around the water pump to encase it to reduce noise, but no boarding has been installed against the party wall with the adjoining house.
- The Tribunal found no evidence of a leak from the cold water tank, which is in the loft space, or between it and the water pump which is located in a cupboard in the bedroom immediately below it.
- There are smoke detectors in the hall and upstairs landing. There is a carbon monoxide monitor in the upstairs landing adjacent to the central heating control, but this is vertically below the central heating boiler, which is located in the loft space. There is a heat detector and a further carbon monoxide monitor in the kitchen/dining area off the living room at the front of the Property.
- The kitchen lights have recently been replaced.
- One of the light bulbs in the living room was not working at the time of the inspection.
- The entrance step sits on bricks, some of which appear to be missing and some of which are loose.

Reasons for Decision

18. The Tribunal noted that the Electrical Installation Condition Report which it had seen contained C2 items of disrepair. Consequently, the Report is not acceptable to the Tribunal. The location of the carbon monoxide detector at first floor level is below the height of the central heating boiler. The Landlord should install a carbon monoxide monitor in the loft, situated 1-3 metres away from the central heating boiler and interlinked with another carbon monoxide monitor to be located adjacent to the hatch on the first floor landing. The damp smell in the en-suite bathroom requires to be properly investigated and necessary remedial work carried out. The bath panel requires to be replaced or secured and the issue of a leak from the joint at the toilet waste pipe remedied. The toilet cistern in the bathroom should be replaced. The front doorstep is clearly in a state of disrepair
19. The cold water tank is of an old fashioned style and, whilst there was no evidence of it leaking at the time of the inspection, the Landlord should consider replacing it with a plastic tank, safely supported. Given the evidence of the Tenant was that she had been told there was a risk of collapse. The Tribunal also strongly recommends that a suitably qualified contractor carry out a legionella assessment.
20. The view of the Tribunal is that the noise from the water pump does not constitute a failure to comply with the repairing standard, but the Landlord may wish to consider improving the sound insulation, particularly along the party wall.

Decision

21. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.
22. 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..... Legal Member/Chairperson

Date: 7 February 2020