



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

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

Chamber Ref: FTS/HPC/RP/21/0156

**Property at 7 Kirk Street, Leith, EH6 5EX
Land Register Title Number: MID19306
("the Property")**

The Parties:-

Mr Raymond Lower 7 Kirk Street, Leith, EH6 5EX, ("the Tenant")

Mrs Jie Song, 57 Pentland View, Edinburgh, EH10 6PY ("the Landlord")

Tribunal Members:

Gillian Buchanan (Chair) 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) 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 on/between 22 January 2021 and 22 March 2021 the Tenant 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 Tenant 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 house 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) The house meets the tolerable standard.
3. By letter dated 7 April 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 21 April 2021 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.

5. Following service of the Notice of Referral the tribunal received the following additional written representations from the Tenant:-
 - i. Email dated 7 May 2021;
 - ii. Email dated 13 May 2021 with attachment;
 - iii. Email dated 18 May 2021; and
 - iv. Email dated 25 May 2021.
6. Following service of the Notice of Referral the tribunal received the following additional written representations from the Landlord:-
 - i. Written representations dated 9 and 10 May 2021 with attachments;
 - ii. Email dated 11 May 2021 with photographs attached;
 - iii. Email dated 16 May 2021 with attachments;
 - iv. Email dated 20 May 2021; and
 - v. Email dated 26 May 2021.

Case Management Discussion ("CMD")

7. On 26 May 2021 at a CMD the tribunal resolved to issue a Direction to the Landlord to produce to the tribunal a complete copy of the current Tenancy Agreement between the Tenant and the Landlord relative to the Property.
8. The tribunal also determined that given the issues arising between the parties progress in determining the application could not be made without an inspection of the Property being carried out by the tribunal and resolved to schedule an inspection of the Property.
9. The tribunal subsequently issued a Direction to the Landlord dated 26 May 2021.

Representations pre-Inspection

10. The tribunal received the following additional written representations from the Tenant:-
 - i. E-mail dated 27 May 2021;
 - ii. E-mail dated 28 May 2021;
 - iii. E-mail dated 31 May 2021;
 - iv. E-mail dated 1 June 2021;
 - v. E-mail dated 16 June 2021;
 - vi. E-mail dated 24 June 2021;
 - vii. E-mails dated 28 June 2021 (x 2);
 - viii. E-mail dated 1 July 2021;
 - ix. E-mail dated 2 July 2021;
 - x. E-mails dated 9 July 2021 (x 3); and
 - xi. E-mail dated 12 July 2021.
11. The tribunal also received the following additional written representations from the Landlord:-
 - i. E-mail dated 6 June 2021;
 - ii. Letter dated 5 June 2021 with Tenancy Agreement dated 25 October 2009 and with Notice of Rent Increase dated 12 April 2020 and associated paperwork attached;
 - iii. E-mail dated 3 July 2021; and
 - iv. E-mail dated 28 July 2021.

Inspection

12. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Robert Buchan, Ordinary Member, inspected the Property on the morning of 3 August 2021. The Tenant and the Landlord attended the inspection. Photographs were taken and are contained in the attached Schedule dated 3 August 2021.
13. At the time of the inspection it was fair and dry.
14. Subsequent to the inspection the tribunal received the following further representations:-
 - i. E-mails from the Tenant dated 5 August 2021 (x 6);
 - ii. E-mail from the Landlord dated 6 August 2021 with partial copy Domestic Electrical Installation Condition Report of Ideal Electrical Solutions (UK) Limited dated 2 July 2021 attached;
 - iii. E-mail from the Landlord dated 6 August 2021; and
 - iv. E-mail from the Landlord dated 9 August 2021.

Hearing

15. Following the inspection of the Property the tribunal held a hearing by telephone conference on 10 August 2021. The Tenant and the Landlord attended the Hearing and made oral representations.
16. The parties submitted as follows by reference to the undernoted headings:-

Preliminary matters

17. At the Hearing the tribunal raised two preliminary matters as follows:-

(a) *Extent of the Property leased between the parties -*

The tribunal observed that the Tenancy Agreement between the parties dated 25 October 2009 ("the Tenancy Agreement") referred to the Property as "7 Kirk Street, Edinburgh". However it was clear from the application, the parties representations and the tribunal's inspection that only certain parts of "7 Kirk Street, Edinburgh" were leased by the Landlord to the Tenant. The Tribunal therefore sought clarification from the parties on the extent of the subjects leased.

The Tenant stated that, on the ground floor, he had shared access to the hallway, shower room, kitchen and stairs and on the first floor he had sole occupation of "Room 4" comprising a bedroom with adjoining bathroom.

The Landlord agreed with the Tenant's position.

On the ground floor the Tribunal therefore noted that the Tenant has no right or title to occupy on a shared or sole basis the other rooms on the ground floor of the Property, being Rooms 1, 2 and 3.

(b) *Application, paragraph 8.c -*

The tribunal noted that within the list of elements of the Repairing Standard about which the Tenant has complained the Tenant had failed to tick the box attributable to "installations in the house for the supply of water, gas and electricity and for

sanitation, space heating and heating water". The Tenant therefore asked the Tribunal to amend the application by ticking box 8.c (c) and the Landlord intimated no objection to that amendment.

The tribunal allowed the application to be amended.

18. The parties thereafter made the following submissions by reference to the undernoted headings:-

Ground floor hallway – Cracked Walls

19. The tribunal referred to the inspection and to the Tenant having drawn its attention to cracks on the interior walls beneath the circuit breaker box and between the shower room and Room 3. The tribunal indicated that the Tenant's application did not include within it a complaint about cracking on internal walls. The tribunal therefore refused to consider that issue.

Window in Room 2

20. The tribunal referred to the Tenant's representations at the inspection that the window in Room 2 situated to the front of the Property should not open out on to the adjacent pavement at the height that it does. At the Hearing the Tenant accepted Room 2 not to form part of the Tenancy Agreement between the parties and that no determination of that complaint could be made by the tribunal.

Exterior front door

21. Tenant's Submissions -

At the inspection the Tenant submitted that the door was not wind and water tight. He referred to the door being "squint", to there being a gap beneath the door, to there being no draught-proofing and to the lock being inadequate. At the Hearing the Tenant referred to the door dropping from the hinge side and to the wood expanding during periods of heavy rain and wind. He complained that with the exception of the snib, the locks and door handles do not work and the stone threshold beneath the door is chipped.

22. Landlord's Submissions -

The Landlord indicated that she would prefer to retain rather than replace the front door due to its period nature and was content to ask a tradesman to attend to add draught-proofing and a handle as required.

Circuit Breaker Box

23. Tenant's Submissions -

The Tenant complains that the circuit breaker box is located too high up on the wall of the hall. He complained that the circuit breaker box could not be checked without climbing a ladder or similar and that it should have been located at eye level with a cover to give visibility of the switches.

24. Landlord's Submissions -

The Landlord indicated that she did not agree that the circuit breaker box required to be moved to a different position. She said the installation belongs to the utility supplier and that the Smart Meter in the kitchen provides all monitoring required. She indicated that the electricity supplier is British Gas and that the circuit breaker box had always been in its current location.

Wiring from Circuit Breaker Box

25. During the inspection the Tenant drew tribunal's attention to the front exterior door being prevented from opening fully due to the wooden boxing of wiring running vertically downwards from the circuit breaker box. At the Hearing the Tenant accepted that this observation does not form a complaint within his application and that no determination of this issue is therefore required.

Light fitting in hall

26. Tenant's Submissions -

The Tenant complained that the spotlight bulb within the lower hall pendant light fitting was "not recommended" and was not the original type of bulb. He said the light should not point at the floor within the hallway. He said the light bulb should be an LED motion sensitive bulb.

27. Landlord's Submissions -

The Landlord submitted that provided the light fitting was functional nothing more was required. She said her only responsibility was to ensure the light operates correctly and any special requirement by the tenant as to the style of lightbulb was outwith her remit.

Shower room

28. Tenant's Submissions -

The Tenant complains that the shower head is incorrectly located such that it faces the shower screen rather than being located on the side wall. The Tenant said it was common sense that the shower should face down the length of the shower space. The Tenant also complained that the light fitting had been unnecessarily replaced around 3 to 4 weeks prior to the Hearing and no longer gave sufficient light.

29. Landlord's Submissions -

The Landlord maintained the shower head had always been in its current position. It works perfectly satisfactorily. With regard to the light the Landlord submitted that the electrician had advised that the previous fitting was not appropriately rated and therefore the light fitting was changed. An energy saving 60 watt bulb is contained within the light fitting which, on the advice of the electrician, is bright enough.

The tribunal remarked that within a shower room, light fittings must be enclosed. The tribunal also referred to typical modern lightbulbs not being as bright as older types.

Kitchen

30. Tenant's Submissions:

- That the free standing fridge freezer now situated in the under-stair cupboard was in use at the outset of the tenancy and had drawers within it. At that time it was located on the other side of the room. When the kitchen was refurbished the drawers disappeared and the fridge freezer is now too old to be reliable. The Tenant stated that he has his own fridge freezer in his room on the first floor.
- The Tenant complained that the worktop in the kitchen is higher than it ought to be such that there is a gap between the top of the built-under fridge and the bottom of the worktop. He also pointed out that the cooker required to be set on wooden blocks in order to align with the worktop. He said the worktop had been installed too high to save tiles having to be cut beneath the window.
- The Tenant complained that the cooker hood had been removed when the kitchen was refurbished and had not been replaced. Whilst the Tenant does not use the kitchen

facilities, the tenant of Room 3 does and any kitchen smells circulate due to there being no cooker hood.

- The Tenant complained that the light from the pendant fitting in the kitchen was too dim.
- The Tenant complained that the floor is uneven near the back door. The change in height is not marked and the vinyl flooring is simply draped over the area. The Tenant indicated he was not complaining about the change in height *per se* but the absence of any markings on the vinyl.
- The Tenant complained that the weight of the glass within the kitchen window has distorted the frame such that it is now warped and does not fit properly. Masking tape had been put around the frame to reduce draughts through the gap.
- The Tenant complained that a fire blanket which had originally been provided by the Landlord in the kitchen could no longer be found and, in addition, the fire extinguisher had no label and is not mounted on a wall bracket. The Tenant complained the fire extinguisher had not been serviced for many years and that it may not work.

31. Landlord's Submissions -

- The Landlord accepted that the fridge freezer had been present at the outset of the tenancy and she was happy to throw it away if it was not being used. She maintained the fridge freezer is working and could be switched on. If the fridge freezer is not working she accepted that it should be replaced or repaired.
- With regard to the kitchen worktop the Landlord could not see anything wrong with the height of the worktop and referred to a gap being required between the worktop and the top of the washing machine and built-under fridge.
- With regard to the cooker hood, the Landlord accepted that the cooker hood had been present in the kitchen previously but said it was very dirty and never used. The cooker hood was therefore taken away and not replaced when the kitchen was refurbished.
- The Landlord considered the light from the pendant fitting in the kitchen to be adequate.
- With regard to the flooring, the Landlord stated that the vinyl covering is on top of a laminate floor and is flat enough to accommodate any height differential nearer the back door.
- With regard to the window, the Landlord indicated she had not noticed any difficulty with the window before. However, she is happy to go back to the fitter to find out if the position can be improved. She said the window was not very old and would check for any guarantee relative thereto.

With regard to the fire blanket and the fire extinguisher, the tribunal observed that the Tenant's complaints did not form part of the application and would therefore not be the subject of any determination.

Door between hall and kitchen

32. Tenant's Submissions -

The Tenant complains that the handle had been removed from the door and that it does not therefore close correctly.

33. Landlord's Submissions:

The Landlord stated that the door is always open but that she can put handles back on if required.

Exterior rear door

34. Tenant's Submissions:

The Tenant complained that there is no locking arrangement on the rear door and that the bolt is not sufficient. He is concerned about security. The Tenant referred to the other lock on the exterior rear door but he had never received any key for that. The Tenant referred to the gate to the side of the Property being a means for third parties to gain access to the rear garden of the Property.

35. Landlord's Submissions -

The Landlord stated that the back door was safe enough. She regarded the brass bolt as sufficiently secure. She does not have a key to the other lock on the door.

Ground floor toilet

36. The tribunal observed that during the inspection the Tenant made representations about the ground floor toilet located off the kitchen. At the Hearing the Tenant accepted that any issues relative to the ground floor toilet did not form part of the application.

Rear yard/garden

37. At the inspection the Tenant made representations to the tribunal relative to the state of the rear garden which he complained had been turned into a builder's yard and also to a temporary shed full of discarded items. The tribunal observed that these complaints did not form part of the application and would therefore not be subject of any determination.

Electrical sockets in kitchen

38. Tenant's Submissions -

In the kitchen, the Tenant complained that the two sockets located near the floor should have been moved above the new worktop. He said the sockets were no use in their current location and that the drawers of the kitchen units would in any event get in the way. He said other sockets behind the microwave were filthy and dirty.

39. Landlord's Submissions -

The Landlord stated that the sockets have always been in that location and that she has provided to the tribunal an Electrical Installation Condition Report (EICR). The sockets are not in the wrong position and are not illegal. She said she had sockets in a similar location in her own home. She said she did not understand the Tenant's position.

Boiler

40. Tenant's Submissions -

The Tenant referred to the boiler having been replaced a few weeks ago. He said the boiler is tank fed rather than mains fed. He complained that this arrangement causes there to be extremely low pressure in the shower in his own room on the first floor (Room 4). He indicated that when the shower is turned on in the cold position the pressure is reasonable. However when the shower is hot the water "dribbles out". He said the "tap unit" overheats and goes back to cold. He has given up using the shower and uses a bowl to give himself a wash.

41. Landlord's Submissions -

The Landlord complained that the bathroom within Room 4 is too small and shouldn't be used. She said the Tenant should be using the shower room on the ground floor. She would rather take out the bathroom on the first floor and doesn't recommend that the Tenant use it. She has tested the pressure and there is no problem at all. However, the Landlord stated she had contacted a plumber who was due to attend later that week. The Landlord confirmed that when the Tenancy Agreement was entered into the bathroom within Room 4 was in existence. The Landlord did not know of any problem with the bathroom as she has never been able to get into Room 4 to investigate. She did not think there was a problem with the pressure. She confirmed that the boiler is a "combi" type boiler which was replaced in July. Nothing else has changed.

First Floor, Room 4

42. Tenant's Submissions -

The Tenant complained that neither the door of Room 4 nor the door of the bathroom within Room 4 fits properly. The main door has no handle and an inadequate lock. The door needs to be locked to stay closed. Internally, the key for the lock is too long and prevents the bathroom door opening. On leaving Room 4, the Tenant secures the bedroom closed with a padlock. The bathroom door has no lock and does not close or fit properly.

43. Landlord's Submissions -

The Landlord indicated that the bolt on the inside of the bedroom door secures the room. She did not install the other lock beneath relative to which there is no keyhole on the outside of the door. The bolt functions perfectly properly. The Landlord accepted that the door could not be closed without being locked.

Room 4 mould on walls

44. At the inspection, the Tenant drew attention to mould on the walls within the bedroom and the adjacent storage area. The Tenant accepted that there is nothing the Landlord can do about the mould whilst he is living in the room. The Landlord had made an offer to the tenant to move into Room 1 which he declined as the room is full of rubbish and is on to the street. It also has no shower room. The issue of mould does not form part of the application and could not therefore be determined by the tribunal.

Room 4 electrical sockets

45. Tenant's Submissions -

The Tenant complained that the wall sockets are loose behind the bed and require fixing to the wall. The socket in the adjacent storage area also requires replaced. The Tenant is happy to make access available to an electrician as required.

46. Landlord's Submissions -

The Landlord stated she had "no clue" regarding the Tenant's room as she has been unable to obtain access.

Doorbell

47. Tenant's Submissions -

The Tenant complains that he cannot hear the front doorbell from Room 4 and that a repeater should be installed within or closer to that room.

48. Landlord's Submissions -

The Landlord submitted that the doorbell should be located within the common area as is presently the case but she had no objection to the Tenant taking the plug-in wireless bell to his own room if he wished to do so.

Stair lighting

49. Tenant's Submissions -

The Tenant complains the stair lighting is permanently on and is not efficient. There is no switch to turn it off. In addition one of the fittings is located over the hatch preventing access from the stairwell to the ceiling space and water tank. The Tenant maintained that the stair lighting should take the form of a bulkhead with LED motion sensors.

50. Landlord's Submissions -

The Landlord maintained that the stair lighting had been installed at the request of the Tenant. Everything had been done correctly and she did not understand why he was still unhappy. The Landlord said it was not the Tenant's concern as to how the light fitting was installed and not the Tenant's concern if the fitting was over the access to the ceiling space.

Internet

51. Tenant's Submissions -

The Tenant accepted that there is no reference to an internet service being provided in terms of the Tenancy Agreement. The Tenant complained that he pays for the internet connection and it is not provided.

52. Landlord's Submissions -

The Landlord said that the "internet had expired" and needed renewed. She said the internet should be in the Tenant's name but he would not renew it. She said Housing Benefit does not cover any internet cost only rent.

Electrical Installation Condition Report

53. The tribunal raised various queries relative to the EICR produced by the Landlord for the Hearing and dated 2 July 2021. In particular:-

- The EICR is unsigned.
- The "Date of last inspection" is wrongly stated to be 2 July 2021.
- The EICR includes a C2 outcome which is unacceptable to the tribunal.
- The EICR requires to include access to Room 4.

The Landlord stated she would get in touch with the electrician to "upgrade" the EICR.

Smart Meter

54. The tribunal indicated that any issues relative to the Smart Meter in the kitchen did not form part of the application and would therefore not be capable of determination.

Further Representations

55. Following the Hearing the tribunal received the following further representations:-

- i. E-mails from the Tenant dated 10 August 2021 (x 2);

- ii. E-mails from the Landlord dated 11 August 2021 with Domestic Electrical Installation Condition Report of Ideal Electrical Solutions (UK) Limited dated 2 July 2021 attached;
- iii. E-mail from the Landlord dated 15 August 2021 with photographs attached;
- iv. E-mail from the Landlord dated 18 August 2021;
- v. E-mail from the Tenant dated 18 August 2021;
- vi. E-mail from the Tenant dated 19 August 2021; and
- vii. Emails from Tenant (x3) dated 20 August 2021.

Summary of the issues

56. The issues to be determined are:-

- (a) Whether the exterior front and rear doors are in a reasonable state of repair and in proper working order;
- (b) Whether the electrical installations in the property, including the location of the circuit breaker box, are in a reasonable state of repair and in proper working order;
- (c) Whether the bulb within the pendant light fitting in the ground floor hall and the stair lighting are in a reasonable state of repair and in proper working order;
- (d) Whether the shower arrangement and the light fitting within the shower room on the ground floor are in a reasonable state of repair and in proper working order;
- (e) Within the kitchen whether the fridge freezer, worktops, and kitchen window are in a reasonable state of repair and in proper working order;
- (f) Whether the cooker hood previously installed in the kitchen requires to be replaced;
- (g) Whether the door between the hall and the kitchen and, on the first floor, the door into Room 4 together with the bathroom door therein are in a reasonable state of repair and in proper working order;
- (h) Whether the installations in the property for the supply and heating of water are in a reasonable state of repair and in proper working order;
- (i) Whether the doorbell is in a reasonable state of repair and in proper working order;
- (j) Whether the provision of an internet service is a term of the Tenancy Agreement between the parties, if so, whether the service is in a reasonable state of repair and in proper working order; and
- (k) Whether the extent of the Property leased by the Landlord to the Tenant meets the tolerable standard.

Findings of fact

57. 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 Tenancy Agreement in respect of the Property on 25 October 2009 ("the Tenancy Agreement") in terms of which the tenancy commenced on the same date.

- (c) That the extent of the Property leased by the Landlord to the Tenant in terms of the Tenancy Agreement is comprised of shared access to the ground floor hallway, shower room, kitchen and stairs leading to the first floor and, on the first floor, sole occupation of Room 4 comprising a bedroom with adjoining bathroom.
- (d) That the exterior front door is not in a reasonable state of repair and in proper working order. The door requires repaired or replaced to ensure that it is wind and water tight and to ensure that it opens, closes and locks correctly.
- (e) That the circuit breaker box in the ground floor hallway is in a reasonable state of repair and in proper working order and does not require to be relocated.
- (f) That the bulb within the pendant light fitting in the ground floor hallway is in a reasonable state of repair and in proper working order. The tribunal considers the replacement of the bulb to be the responsibility of the Tenant and any other occupants of the Property.
- (g) That within the shower room, the shower head is in a reasonable state of repair and in proper working order and that the light fitting is also in a reasonable state of repair and in proper working order. The tribunal is satisfied that the shower arrangement and light fitting meet the Repairing Standard.
- (h) That at the outset of the Tenancy Agreement, the fridge freezer was an appliance within the Property and leased to the Tenant. The fridge freezer therefore requires to meet the Repairing Standard for the duration of the tenancy failing which it requires to be repaired or replaced such that within the kitchen the tenant has the use of both a fridge and a freezer.
- (i) That the worktop within the kitchen is in a reasonable state of repair and in proper working order. The positioning of the worktop meets the Repairing Standard.
- (j) That at the outset of the Tenancy Agreement the cooker hood was a fixture and fitting within the kitchen and formed part of the Property leased to the Tenant. The Landlord having removed the cooker hood without the Tenant's consent requires to install a replacement.
- (k) Within the kitchen, the flooring is in a reasonable state of repair and in proper working order and no adjustment or marking is required to highlight any very minor differentials in floor levels near the rear exterior door.
- (l) The kitchen window is not in a reasonable state of repair and is not in proper working order. The kitchen window does not therefore meet the Repairing Standard and requires to be repaired or replaced to ensure that it is wind and water tight and opens, closes and locks correctly.
- (m) The door between the hall and the kitchen is not in a reasonable state of repair and in proper working order and does not therefore meet the Repairing Standard. In particular, the door does not close correctly and a handle has been removed.
- (n) The rear exterior door is not in a reasonable state of repair and is not in proper working order. To meet the Repairing Standard, the rear exterior door requires to be repaired or replaced to ensure that it is wind and water tight and opens, closes and locks correctly.
- (o) That within the kitchen, the location of the electrical sockets meets the Repairing Standard.
- (p) That the boiler within the kitchen has recently been replaced.

- (q) On the first floor the door from the stairwell into Room 4 together with the bathroom door within Room 4 are not in a reasonable state of repair or in proper working order. In particular, the door into Room 4 does not close without being locked. There is no lock on the stair side of the door which requires the Tenant to use his own padlock in order to secure it shut when leaving. On the inside of the door, the lock and key obstruct the bathroom door being opened. The bathroom door does not open and close correctly.
- (r) The doorbell is in a reasonable state of repair and in proper working order.
- (s) The stair lighting is in a reasonable state of repair and in proper working order.
- (t) The provision of an internet connection does not form part of the Tenancy Agreement.
- (u) The EICR produced by the Landlord and dated 2 July 2021 is inadequate in that it is unsigned, erroneously references the "Date of last inspection" as 2 July 2021, contains a category C2 outcome and has not been prepared having regard to the electrical installations within Room 4.
- (v) The Property as leased to the Tenant does not meet the tolerable standard due to (u) above.

Reasons for the decision

58. The front of the Property sits on Kirk Street with the front exterior door being accessed immediately from the pavement. The Property was originally a single storey building with a pitched roof which has subsequently been converted to form an upper floor within the roof space. On the ground floor Room 2 at the front of the building is empty with Room 1, also to the front, being used for storage. Room 3 is rented by the Landlord to a third party who, along with the Tenant, shares the use of the shower room, kitchen and hallway also on the ground floor. At the far end of the hallway a narrow spiral staircase leads to the first floor on which Room 4 is situated and of which the tenant has sole occupation. Within Room 4, there is a small bathroom. On the first floor landing opposite Room 4 there is an unoccupied boxroom.
59. On the day of the inspection of the Property by the tribunal the Tenant took the tribunal around the Property identifying various issues, some of which form part of his application and others which do not. The Landlord also attended the inspection and made remarks in response to the Tenant's complaints all of which are summarised within the parties' submissions outlined above.
60. The complaints by the Tenant that do not form part of this application are as follows:-
 - i. Cracked walls in ground floor hallway;
 - ii. Window opening in Room 2;
 - iii. Encased wiring from circuit breaker box;
 - iv. Missing fire blanket in kitchen;
 - v. Labelling, mounting and servicing of fire extinguisher;
 - vi. Ground floor toilet;
 - vii. Rear yard/garden;
 - viii. Mould on walls in Room 4; and
 - ix. Smart Meter.

61. On inspection the exterior front door was found to be in poor repair. A gap was evident beneath the front door and no draught proofing was present. The internal door handle was loose and the door only closed using the yale lock. The condition of the front door does not meet the Repairing Standard.
62. The circuit breaker box is located towards the top of the wall within the hall. The circuit breaker box is accessible if required and does not require to be relocated to a lower position as suggested by the Tenant. The positioning of the circuit breaker box meets the Repairing Standard.
63. On inspection, the pendant light fitting in the hallway operated correctly. The bulb within the light fitting comprises a spotlight type bulb which adequately illuminates the hallway. The pendant light fitting in the hallway, including the bulb therein, meets the Repairing Standard.
64. Within the shower room, the shower arrangement comprises a shower tray with sliding doors and an electrically operated shower head positioned around the middle of the wall facing the sliding doors. The arrangement of the shower meets the Repairing Standard as does the light fitting within the shower room which comprises a sealed unit providing adequate illumination.
65. In the kitchen, various complaints were highlighted. The free standing fridge freezer is disused and is located within the open under-stair cupboard. Drawers within the freezer section of the appliance are missing. An alternative fridge is provided within the refurbished kitchen by means of a built-under appliance. The built-under appliance is in proper working order. The Tenant does not have access to a freezer within the kitchen. The Landlord accepted that the fridge freezer was an appliance provided at the outset of the Tenancy Agreement and the facilities provided by that appliance ought to be available to the Tenant for the duration of the tenancy. The fridge freezer therefore requires to meet the Repairing Standard by being in a reasonable state of repair and in proper working order and in the event that it does not operate correctly a replacement freezer requires to be provided.
66. There is a gap between the built under fridge and washing machine within the kitchen and the free-standing cooker is located on wooden blocks. Whilst the Tenant complains that the worktop has been installed too high, the tribunal is satisfied that the worktop meets the Repairing Standard.
67. The Tenant and Landlord agreed that at the outset of the Tenancy Agreement a cooker hood had been installed above the cooker which was removed when the kitchen was subsequently refurbished. The cooker hood, being a fixture and fitting present in the Property when the Tenancy Agreement was entered into, ought to be available to the Tenant for the duration of the tenancy and therefore requires to be replaced.
68. With regard to the kitchen window, the tribunal identified a gap beneath the window rendering the window in need of adjustment. Masking tape had been stuck around the window frame to prevent draughts. The tribunal did not consider the kitchen window to be in a reasonable state of repair and in proper working order.
69. On inspection the door between the hall and kitchen was found to be missing a door handle on the hall side which prevented the door being closed correctly. The tribunal therefore considers the door not to be in a reasonable state of repair and in proper working order.

70. The Tenant complained that the halogen type bulb within the pendant light fitting in the kitchen is "totally useless". The tribunal considers the lighting to be perfectly adequate and to meet the Repairing Standard.
71. On inspection of the flooring in the kitchen, the tribunal found the vinyl to be satisfactorily laid and took into account the age and character of the Property in determining that the kitchen flooring meets the Repairing Standard.
72. With regard to the exterior rear door, the only working locking mechanism was a small brass bolt on the inside of the door. There is no means to lock the back door externally and neither the Tenant nor the Landlord has a key to the other lock within the door. The tribunal does not consider the door to be in a reasonable state of repair and in proper working order.
73. The tribunal found the boiler wall mounted within the kitchen. The boiler is a Combination ("combi") style boiler which had been installed in or around July 2021. The tribunal was unable to determine whether the boiler is tank fed rather than mains fed as suggested by the Tenant and was unable to be satisfied that, on the information presently available, the pressure from the boiler to the shower within the bathroom of Room 4 on the first floor meets the Repairing Standard. The tribunal therefore requires input from a suitably qualified plumbing contractor. An up to date Gas Safety Record is also required.
74. On the first floor the tribunal found the door into Room 4 not to be in a reasonable state of repair and in proper working order. In particular, the door could not be closed without being locked nor could the door be locked from the stairwell as a result of which the Tenant had required to supply his own padlock in order to secure the door on leaving the Property. Internally the door has a bolt but also a lock with a long key which obstructs the opening of the bathroom door without the key being removed. The bathroom door within Room 4 does not close properly. The tribunal was satisfied that the door into Room 4 and the bathroom door therein do not meet the Repairing Standard.
75. With regard to the electrical sockets within Room 4, the tribunal was unable to inspect these due to the presence of the Tenant's possessions. The tribunal requires a suitably qualified electrician to inspect the electrical sockets within Room 4 as part of the requirement placed on the Landlord by the tribunal to produce an up-to-date Electrical Installation Condition Report which contains no category C1 or C2 outcomes (see paragraph 79 below).
76. On examination of the doorbell, it operated correctly and the tribunal is satisfied that the doorbell meets the Repairing Standard.
77. With regard to the stair lighting, the stairwell is dark and requires to be properly lit. The stair lighting is in a reasonable state of repair and in proper working order and the tribunal is satisfied that the Repairing Standard is met.
78. The parties accepted that there is no reference to an internet service being provided in terms of the Tenancy Agreement. The tribunal did not consider that the absence of an internet service constituted a breach of the Repairing Standard.

79. Prior to the Hearing, the Landlord produced to the tribunal an Electrical Installation Condition Report (EICR) prepared by Ideal Electrical Solutions (UK) Limited. The tribunal is not satisfied with the EICR. The EICR is unsigned, the "Date of last inspection" is wrongly stated to be 2 July 2021 and includes a category C2 outcome which is unacceptable to the tribunal. The EICR was also prepared without the contractor having access to Room 4 on the first floor. In light of the issues raised relative to the water pressure and the electrical sockets, a further EICR requires to be produced to the tribunal in satisfactory terms and with no C1 and C2 outcomes disclosed.
80. To meet the Tolerable standard a house must have a supply of electricity, where electricity is supplied to the property, that complies with the relevant requirements in relation to electrical installation for that supply and is adequate and safe to use. As the EICR has a C2 outcome, the property does not meet the tolerable standard

Decision

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

Observations

84. For the works required in Room 4 in terms of the RSEO to be undertaken the Tenant requires to make access available to contractors appointed by the Landlord. The Landlord requires to give to the Tenant reasonable prior notice of access being required by contractors and the tribunal suggests that a minimum period of 48 hours notice should be given.
85. At the Hearing the Landlord repeated her offer to the Tenant to move out of Room 4 into Room 1 to allow Room 4 to be upgraded. The Tenant appeared reluctant to consider such a move even on a temporary basis. However, the tribunal would encourage the parties to discuss this matter further.

Right of Appeal

86. 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

87. 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

the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G. Buchanan

Signed

Date 30 August 2021

Legal Member and Chairperson