

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/20/1913

30 Quality Street, Edinburgh EH4 5BS (“the Property”)

The Parties:-

**Mr Michael Hughes, 30 Quality Street, Edinburgh EH4 5BS
 (“the Applicant and Tenant”)**

**Ms Victoria Cullen, C/O H Weston, Mavisbank Walled Garden, Polton
Lasswade, Midlothian EH18 1HY
 (“the Respondent and Landlord”)**

Tribunal Members:

**Gabrielle Miller (Chair and legal member)
Andrew McFarlane (Surveyor and Ordinary member)**

Decision

1. 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 led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. An Application was made to the First-tier Tribunal for Scotland under section 22 of the Housing Scotland Act 2006 to determine if the Respondent had failed in their duty under section 14(1) of the Act to meet the Repairing Standard. The Application was dated 30th August 2020.

3. Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection, to assist in the determination by the Tribunal of the application.
4. Unfortunately, when the application was received this was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (CMD) was arranged, in order to discuss further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.
5. A CMD was held on 15th January 2021 at 2pm by teleconferencing. The Applicant was present. The Respondent was not present. Neither party made representations in advance of the CMD. The Applicant told the Tribunal that a carbon monoxide detector had been fitted on 13th October 2020. He considered that matter resolved. The Applicant advised that there were still outstanding repairs required. The Tribunal issued a direction for the Respondent to provide further information. The CMD was continued to another CMD for the information in the direction to be obtained. The CMD will include a surveyor member.
6. A CMD was held on 15th March 2021 at 10am by teleconferencing. The Applicant was present. The Respondent was not present but represented by Mr Simon Douglas from Umega Lettings. Both parties had submitted representations prior to the hearing. The issues regarding the application were discussed. Mr Douglas is to see if someone from his firm can go to inspect the Property to see what items can be agreed and what cannot.
7. On 30th April 2021 prior to the hearing, a report with photos was received from Mr Douglas. It was crossed over to the Applicant prior to the hearing. The Applicant confirmed that he had been able to read it prior to the hearing starting.
8. A CMD was held on 30th April 2021 at 10am by teleconferencing. The Applicant was present. The Respondent was not present but was again represented by Mr Simon Douglas from Umega Lettings. Some matters were agreed to be now resolved. These were namely that the cooker was fixed and that the lack of an up to date fire blanket or the installation of fire extinguisher in the kitchen was not necessary. The remaining items were either to be repaired, inspected or were a matter of dispute. At the point of the CMD inspections were not being set due to Covid 19 restrictions. Another CMD was fixed to progress the case.
9. A CMD was held on 21st June 2021 at 10am by teleconferencing. The Applicant was present. The Respondent was not present but was again represented by Mr Simon Douglas from Umega Lettings. The Tribunal discussed the outstanding issues with both parties. It was agreed that the concern over the furnishings due to there being no fire certification was no longer an issue. Other than that all other issues continued to be of dispute. Mr Douglas was to lodge the gas safety certificate once he had a copy of

the new one in August. The Tribunal continued matters to an inspection and hearing.

The Inspection

10. The Tribunal attended the House on the morning of 15th September 2021 at 11am. Ms Ruth O'Hare was stand in Legal Member for the inspection. It was a dry, dull and warm day. The Landlord's support person, Mr Harley Weston was present. The Tenant was present.
11. The Property is an upper floor of a two storey villa of traditional construction. The main roof is pitched and slated with a flat central section. The outer walls are stone. The gutters and downpipes are metal. There are double hung sash and case windows. There is a stone external stair case that gives access to the Property at the rear.
12. At the CMD on 21st June 2021 it was agreed that there were matters still outstanding and were disputed by both parties. This was a shortened list from that initially submitted as some matters had been resolved. Each point was inspected in turn.
13. The Tenant still remained in occupation of the Property at the inspection.
14. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision. ("the photo report")
15. The inspection was concluded and the Tribunal matters were continued to the hearing on 11th October 2021 at 11.30am by teleconferencing.

The Hearing

16. The hearing took place on 11th October 2021 at 11.30am by teleconferencing. The Applicant was present and represented himself. The Respondent was present with Mr Harley Weston for moral support. She was represented by Mr Simon Douglas from Umega Lettings.
17. The Ordinary Member discussed the points room by room referring to the photo report which had been circulated following the inspection.
18. The shower screen in the bathroom was discussed first. This was shown at photos 1 – 4 of the photo report dated 15th September 2021. The Ordinary Member said that at the inspection it was noted that the seal between the bottom of the screen door and the top of the bath was damaged with a piece missing at the open end, which is furthest from the hinge. The Applicant and Mr Douglas had no further comments. The Landlord explained that her partner had measured the shower screen then bought a seal. This was then fitted by Umega. She did not consider this a Repairing Standard issue.

19. The electric fire in the drawing room was discussed next. This was shown at photos 5 and 6 of the photo report. The Ordinary Member noted that it is a gas fire which exists and has been condemned. It is to be replaced with an electric fire. Works had not been carried out since the last CMD when it was acknowledged that this matter was to be done. The Applicant noted that the electric fire had, since the inspection, now been substituted for the gas fire. He considered this matter resolved. Mr Douglas confirmed that this matter was now resolved.
20. The water damage to the ceiling of the drawing room was discussed next. Photos 7 – 12 of the photo report. The Ordinary Member noted that there were two areas of damp staining indicated. One at the bay window and one towards the rear of the apartment and adjacent to the gable wall. The damp meter reading at the bay window provided evidence of damp penetration from the roof level. There was no visible evidence of the source externally. The Respondent and Mr Douglas told the Tribunal that quotes had been obtained and roof repair works were to be instructed but this had not yet occurred. This is the joint responsibility of the owners of both this property and the adjoining lower property. The Respondent is waiting for the neighbour to consent to the quotes. It will then be a matter of waiting for the work to be done as builders are currently very busy.
21. The skirting boards in the drawing room were discussed next. This was shown at photos 13 – 15 of the photo report. The Ordinary member noted that neither the skirting boards nor the socket outlets fixed in the skirtings were loose or detached. There were gaps observed between sections of timber forming the skirting boards. Evidence of previous infilling of gaps with mastic was noted but the result of this was of poor quality. The Applicant had no further comment on this point. Mr Douglas noted that aesthetics of the repair were not matters of concern in connection with the Repairing Standard.
22. The kitchen window sills were discussed next. This was shown at photos 16-18 of the photo report. The Ordinary Member noted that there was evidence of previous repair with mastic to secure the glass into the frames or fill the gaps between the glass and the frames. There was evidence of the breakdown of the décor externally. The Applicant had no comment to make. The Respondent noted that she had recently replaced all of the front windows. It is her intention to replace the two rear windows once this is affordable. In the meantime the repair that has been done is a temporary repair until such time as the windows are replaced.
23. The kitchen floor tiles were discussed next. This was shown at photos 19 – 22 of the photo report. The Ordinary Member noted that three tiles were observed to be cracked at the kitchen door to the hallway. The Applicant had no further comment to make. The Respondent was surprised to hear that the Applicant was complaining as they have been cracked since he moved in. It is her opinion that he had accepted it then so should not raise this as an issue now. She considers that the tiles are safe.

24. The extractor fan in the kitchen was discussed next. This was shown at photos 23 and 24 of the photo report. The Ordinary Member noted that the fan did not work. The Applicant noted that the fan has now been repaired. It is working and functioning. The matter has been resolved. Mr Douglas confirmed the matter has been resolved.
25. The boiler was discussed next. This was shown at photo 25 of the photo report. The Ordinary Member noted that there was no pressure in the heating circuits. The boiler did operate when the hot tap in the kitchen sink was run. The Applicant noted that it worked intermittently. Mr Douglas had stated that for the boiler to be repaired the Applicant would need to complete a form through his office and then an engineer would be sent out. The Chair queried why the fact that it has been raised in a legal process was not sufficient to prompt an engineer to attend. Mr Douglas was unable to answer that but confirmed to the Chair that the legal process did not affect his office processes and that for the boiler to be seen to by an engineer a form needs to be completed with his office. The Chair queried if the new gas safety certificate had been issued. Mr Douglas confirmed it had been. The Chair queried why it had not been lodged as this was specifically requested at the CMD of 21st June 2021 and was detailed in the CMD note. Mr Weston noted that he had fixed the pressure after the inspection and there had been no issues raised since. The Tribunal asked that this be lodged by close of business on the day of the hearing. The Tribunal notes that this was lodged.
26. The front door was discussed next. This was shown at photos 26 – 32 of the photo report. The Ordinary Member noted that there were gaps between and around the timbers. The previous patch repairs had been ineffective. The Applicant had no comment other than that putty had been used to make the repair. Mr Douglas had believed that the gaps had been filled in but had no other update.
27. The water ingress in the attic and smell of dampness were discussed next. This was shown at photos 33 - 39 of the photo report. The Ordinary Member noted that there was no evidence of direct water ingress but that there had been an extended period of dry weather prior to the inspection. There was evidence of dampness in the roof timbers but that there was not a strong smell of dampness. There was no comment by any party on this point.
28. The exterior wall possibly requiring repointing was discussed next. This was shown at photos 40 – 42 of the photo report. The Ordinary Member noted that at the inspection there was evidence of open and decayed mortar joints in isolated areas. There was no evidence internally currently of any adverse effects as a result of this. There was no evidence of structural movement. The Applicant noted that the Ordinary Member's comments were clear. He had concerns that this may have been affected by the water ingress. Mr Douglas agreed with the Ordinary Member. He had not found any mould in this area.
29. The external steps were discussed next. This was shown at photos 43 – 50 of the photo report. The Ordinary Member noted that there was evidence of

wear to varying degrees to a number of steps. Generally affecting the section from the 7th to 14th steps from the bottom. The 8th and 13th steps were particularly heavily worn with nearly 25mm missing. There was evidence of previous patch repairs. The Respondent did not consider that the stairs did not meet the Repairing Standard. The stairs were in the same condition as when the Property was first rented out to the Applicant. She has seen many stone stairs around Edinburgh in a far worse condition.

30. The exterior light was discussed next. This was shown at photos 51 and 52 of the photo report. The Ordinary Member noted that there was no accumulation of water noted. It had been dry for an extended period prior to the inspection. The wiring of the external light was in a manner suitable for areas exposed to damp conditions. The Applicant was worried that the light was a hazard but was satisfied by the Ordinary Member's report. Mr Douglas noted that there was no issue with it and that the EICR details no issue with it.
31. The outhouse was discussed next. This was shown at photos 53 – 59 of the photo report. The Ordinary Member reported that there was some disrepair. The timber was in a poor condition. The door was ill fitting. The steps had been replaced by breeze blocks. There was some staining inside evidencing a previous water ingress. The Applicant considered the breeze block stairs to be a hazard particularly with use by children. Mr Douglas believed the outhouse was going to be taken down. The Respondent noted that it was not going to be taken down but she had offered to fence it off. However, the Applicant wanted it to remain as it was being used for storage.
32. The Respondent noted that she felt aggrieved that she has to undertake expensive repairs when the Applicant has both caused rent arrears and damage to her garage. The Tribunal explained that it was not within their jurisdiction to look at this further than the Repairing Standard case before them. She stated that you should accept the state of the Property that you sign a lease for when you sign the lease.
33. The Tribunal discussed that the items where the repairing standard had not been met would be the subject of an RSEO. The Tribunal notes for the purpose of this decision that there is a legal obligation to ensure that the RSEO is complied with or a failure to comply could be issued and result in a criminal prosecution. The condition of the Property is considered at the period of the inspection and the hearing.

Summary of the issues

34. The issue to be determined was whether the Property meets the repairing standard as set out in section 13 of the Act and whether the Landlord has complied with the duty imposed on them by section 14(1)(b).

Findings of fact

35. Having considered all the evidence, the Tribunal found the following facts to be established: -
- a) The tenancy is a private rented tenancy between the Respondent and the Applicant. The tenancy has been ongoing since 5th July 2019.
 - b) The Applicant raised a number of complaints. The Tribunal found the some of these complaints did not meet the repairing standard.
 - c) The condition of the Property at the time of the Inspection was as recorded in the photo schedule as amplified by the comments of the Ordinary Member recorded in paragraphs 18-31 above.

Observations

36. There was dampness in the beams in the attic. It did not constitute a Repairing Standard issue but the Tribunal noted that it could be condensation due to poor ventilation. It is directly above the kitchen and bathroom which may be causing further issues with condensation.

Reasons for the decision

37. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and representations of the Applicant, the Respondent's letting agent and Respondent at the hearing.
38. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
39. The Tribunal was in no doubt, from its inspection, that the Property did not meet the Repairing Standard.
40. There was clear evidence that the shower screen seal was too short and left a gap with the open end (furthest from the wall). This is insufficient to allow the shower screen to prevent water from leaving the shower. The Tribunal considered that this did not keep the Property water tight and does not meet the Repairing Standard.
41. There was clear evidence that there was damp above the bay window in the drawing room. This is resulting from damp penetration from roof level above. The Tribunal considered that this did not keep the Property water tight and does not meet the Repairing Standard.
42. There was clear evidence that the tiles in the kitchen were cracked. The tiles could be potentially dangerous. The Tribunal considered that this meant that the Property was not fit for human habitation with regard to this point and that it does not meet the Repairing Standard. For the assistance of the understanding of the Respondent the condition of a property or element of a property at commencement of a tenancy does not displace the obligation to meet the Repairing Standard.

43. There was clear evidence that the boiler was not in a reasonable state of repair. At the inspection there was no pressure in the heating circuits. The gas safety certificate indicates that the boiler was last serviced on 2nd July 2021. However, this was prior to the inspection. At the inspection the boiler was found to have lost pressure. The boiler does not meet the Repairing Standard.
44. There was clear evidence that the front door was in a poor state of repair. There are gaps between and around the timbers. There is evidence of a previous repairs but these have been ineffective. This does not meet the Repairing Standard.
45. There is clear evidence that the steps to the front door are in a poor state of repair. There was evidence of wear and tear of varying degrees to the stairs with the most heavily worn two treads showing a difference of approximately 25 mm between its lowest point from its highest point. This does not meet the Repairing Standard.
46. There was clear evidence that the stairs to the outhouse are not suitable and are dangerous. This does not meet the Repairing Standard.
47. The Tribunal considered that all the other points raised met the Repairing Standard and no further action was require to those points which were namely:
- a) The electric fire;
 - b) The skirting boards in the drawing room;
 - c) The kitchen window sills;
 - d) The extractor fan in the kitchen;
 - e) The smell of dampness in the attic;
 - f) The exterior wall requiring repointing;
 - g) The exterior light; and
 - h) The general structure of the outhouse.
48. Accordingly, in view of its findings, the Tribunal had no option but to conclude that the Respondent was in breach of the duty to comply with the Repairing Standard.
49. The Act states that where a Tribunal decides that a landlord (or Respondent) has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
50. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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 Miller

Legal Member:

G Miller, Chair

11th October 2021