

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/22/2670

Property Address: 44/2 Ferry Road Avenue, Edinburgh EH4 4AS ("the property")

The Parties: Miss Iwona Pietrzyk, 44/2 Ferry Road Avenue,
Edinburgh EH4 4AS ("the Applicant")

Sylwia Pienkowska, 123 Saughton Road North,
Edinburgh EH12 7DU ("the Respondent")

Tribunal Members:

Mr Mark Thorley (Legal)
Mr David Godfrey (Ordinary)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having made such enquiries as is fit for the purpose of determining whether the respondent has complied with the duties imposed upon her by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned, and taking account of the evidence presented in the written and oral representations and following upon the inspection, determined that the respondent has failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. An application was received by the tribunal on 27 July 2022 by the applicant's representative namely Ms Natasha McGourt from the Granton Information Centre in Edinburgh. The application was accompanied by correspondence to and from the landlord together with certain photographic evidence. In addition there was a separate sheet for details of work alleged to be outstanding.
3. In summary the documentation complained of the following issues with the property:

- (i) The kitchen ceiling had been flooded from above and there remained water marks on the ceiling.
- (ii) There was a problem with mice in the flat.
- (iii) The thermostat in the hall needed repair.
- (iv) There was damp in a bedroom, livingroom and wardrobes.
- (v) There was no heating in the livingroom.
- (vi) The main door was in a poor condition and there were cracks round about it.
- (vii) The flooring in the property was in a poor condition.

Kitchen:

- (i) The kitchen ceiling had been flooded from above and there remained water marks on the ceiling.
- (ii) New cabinets replaced in the kitchen has been done in such a way that the dishwasher could not be taken out without removal of some of the fixings.

Bedroom 1:

- (i) There was evidence of mice droppings in the wardrobe.

Bedroom 2

- (ii) There was evidence of black mould within this bedroom at the external wall.

Hall:

- (i) There was no thermostat fixed in the hall.

Livingroom:

- (i) There is no fixed heating such as a radiator or fireplace in the livingroom. The electric fire did not work.
- (ii) The flooring was uneven in places and cracked.

Main door:

- (i) There is cracking to the inside wall adjacent to the door and the door does not fit in the frame.

4. The application was acknowledged by the tribunal on 8 August 2022 and was accepted for determination on 19 August 2022.
5. Intimation of the inspection and conference call was made on 31 August 2022.
6. The inspection took place on 20 October 2022 at 10 am and the hearing on the same date at 2 pm.

The Inspection

The tribunal inspected the property on 20 October 2022 at 10 am. The weather was extremely wet.

The hearing

On the teleconference the following persons attended:

1. Ms Natasha McGourt (for the applicant)
2. Mrs Sylwia Pienkowska (the respondent)

The respondent had provided a copy of a damp survey report which was distributed at the outset of the hearing.

The ordinary member narrated the findings of the inspection. Thereafter the parties were provided with an opportunity to provide their comments in relation to the findings.

- (i) The kitchen ceiling had been flooded from above and there remained water marks on the ceiling.

The respondent maintained that the ceiling is purely cosmetic.

- (ii) There was a problem with mice in the flat.

The applicant had not put down mouse traps because of having a young child in the property and also a dog.

The respondent's position was that the mice issue had been dealt with. Remedial work had been undertaken to the property in April 2022 with a full kitchen renovation and all holes sealed. The respondent's view is that the tenant's pets are part of the problem.

- (iii) There was no thermostat fixed in the hall.

The respondent's position is that the new gas boiler was installed in 2018. It has temperature regulation. The temperature can be controlled from the boiler.

- (iv) There was damp in a bedroom, livingroom and wardrobes.

The respondent had produced a damp survey report dated 19 October 2022. In terms of that report it was identified that the property has signs of condensation related mould. The most noted signs of mould were the rear facing bedroom and the external junction wall in the lounge within the recessed area. The black mould was caused by too much humidity and lack of ventilation in the property. It was noted there was no bathroom extractor or kitchen extractor fans which would deal with humidity generally within the bathroom and kitchen. There was no central heating within the lounge. The recommendation is that two wall cores are created and two humidity

extractors installed within the bedroom and kitchen wall sections and for a more efficient source of heat within the lounge.

(v) There was no heating in the livingroom.

This issue correlates with the issue of dampness. There needs to be a heating source within the livingroom. The respondent's position was that the defective electrical heater was never reported by the tenant but she would replace this.

(vi) The main door was in a poor condition and there were cracks round about it.

The respondent indicated this has been replaced in October 2020. She was unaware of the indoor crack next to the door. She was prepared to assess the damage and complete remedial work.

(vii) The flooring in the property was in a poor condition.

The respondent's position was this was in acceptable condition.

Findings in fact

The tribunal made the following facts:

1. The parties entered into a Lease on 11 July 2017.
2. The property is in a flatted block on the ground floor and is the end of the terrace.
3. The property comprises; Hall, two bedrooms, livingroom, kitchen and bathroom.
4. In the kitchen there is evidence of water penetration on the ceiling and cosmetically could be decorated.
5. The dishwasher is plugged into the wall above the kitchen units and the dishwasher could not be removed without taking away some fixings above the dishwasher.
6. Bedroom 1 (the child's bedroom) does have mice droppings within the wardrobe.
7. There is evidence of black condensation related mould near to the window in bedroom 2 (the main bedroom).
8. The thermostat is missing from its fixing in the hall.
9. In the livingroom there is no fixed heating.

10. In the livingroom there is also condensation related mould next to the external junction wall in the recessed area.
11. In the livingroom there is also flooring panels that are separated.
12. The front door does not fit the doorframe.

Reason for decision

In considering the repairing standard the tribunal carried out an internal and external inspection of the building. In addition the tribunal considered the written documentation from the applicant and the respondent. The tribunal also had oral submissions from both the applicant's representative and from the respondent herself.

In dealing with the issues it was noted as follows:

- (a) In the kitchen there was some water penetration on the ceiling. This was cosmetic. It did not fail the repairing standard.
- (b) The dishwasher is plugged in above secured units. If the dishwasher did need to be removed then it would require some taking apart of the fixings but this could be done. It does not fail the repairing standard.
- (c) In addition to the mice in the bedroom there are clearly droppings. The holes have been infilled. These matters could be resolved with humane mousetraps and would not fail the repairing standard.
- (d) In relation to the dampness in the bedroom and the livingroom there is a report from the respondent's own expert which acknowledges that there is condensation related mould. Work is required to be undertaken here in relation to the creation of two wall cores in addition to two humidity extractors being installed within the bedroom and kitchen wall sections. Replacement of the defective heater is required within the lounge area.
- (e) The thermostat in the hall needs replacing.
- (f) The main door does not fit the doorframe and requires fixing.
- (g) The panel separations in the flooring require to be fixed.

Decision

The tribunal considered the terms of section 33(3) of the Act and determined that the respondent has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The tribunal proceeded to make a repairing standard enforcement order as required by section 24(2) of the Act.

The decision of the tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

**Legal
Member**

Mark Thorley

Member/Chair:

Date: 20 October 2022