

# 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/23/0758**

**RE: Property known as 23A Court Street, Dundee DD3 7QS**

**(“The Property”)**

**The Parties:-**

**Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA**

**(“the Third-Party”)**

**Christopher Airlie, 8/9 Balfield House, Osprey View, Piperdam, Dundee DD2 5LZ**

**(“the Landlord”)**

**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 house concerned, and taking account of the written and verbal representations by the Third-Party and the inspection, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

**The Tribunal consisted of:**

**Rory A.B. Cowan – Legal Member**

**Robert Buchanan – Surveyor/Ordinary Member**

**Background**

1) By application dated 10 March 2023 the Third-Party applied to the First-tier tribunal: Housing and Property Chamber for a determination as to whether the

Landlord had failed to comply with the duties imposed by Section 14 (1)(b) and Section 19B(4) of the Housing (Scotland) Act 2006 (“the 2006 Act”) and section 86(1)(ga) of the Housing (Scotland) Act 1987.

- 2) The Application stated that the Third-Party considered the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that:-
  - a) The Property did not have a functioning boiler;
  - b) The Property did not have a smoke detection system that meets current legislative requirements;
  - c) The Property did not have an Electrical Installation Condition Report or Portable Appliance Test;
  - d) The Property did not have a Gas Safety Certificate;
  - e) The Property required but did not have a carbon monoxide detector;
  - f) The ceiling in the living room to the rear of the Property had collapsed;
  - g) There was no legionella risk assessment for the Property;
  - h) The external wall and part of the ceiling in the said living room was damp and affected by mould; and
  - i) The shower room was affected by mould on the ceiling.
- 3) By letter dated 19 April 2023 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the 2006 Act to a tribunal.
- 4) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon the Landlord and the Third-Party.
- 5) Following service of the Notice of Referral, no written representations were received from the Landlord.
- 6) The Tribunal inspected the Property on the morning of 26 May 2023. The tenant, a Mr Bannon (not a party to this Application) was present and provided access. The Landlord did not attend the inspection nor was he represented. Mr Stuart Cuthill an employee of the Third-Party was also present at the inspection.
- 7) Following the inspection of the Property, the tribunal held a hearing on 26 May 2023 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee DD1 2HB. The Landlord did not attend the hearing. Mr Cuthill attended on behalf of the Third-Party.

### **The Hearing**

- 8) On behalf of the Third-Party it was submitted as follows:

### The Boiler

That despite the boiler being “old”, it had not been possible to demonstrate whether the boiler was in working order or not because the gas was “off”. The tenant was unable to afford further credit on his meter and was “in debt”.

### Fire Detection

The position advanced was that the “evidence speaks for itself” in that there was no functioning fire detection system in the Property.

### Electrical Safety

That despite requests from the Third-Party, the Landlord had failed to produce an Electrical Installation Condition Report (EICR) including a Portable Appliance Test for any electrical items supplied by the Landlord. No copy of the EICR had been found in the Property and none had been provided to the tenant.

### Gas Safety Certificate

That despite requests to the Landlord, no current Gas Safety Certificate had been sent to the Third-Party by the Landlord. No copy of a Gas Safety Certificate had been found in the Property and none had been provided to the tenant.

### Carbon Monoxide Detector

It was accepted that no prior notification of this had been given to the Landlord, so this issue could not progress.

### Ceiling Collapse

Again, it was submitted that the circumstances spoke for themselves. The ceiling in the corner of the living room had obvious signs of collapse.

### Legionella

Mr Cuthil indicated that the Third-Party included requests for Legionella risk assessments as part of their letters to private landlords. Mr Cuthil indicated that there were no actual issues or concerns with the water supply at the Property that he was aware of.

### Damp to Living Room external wall and ceiling

Again, it was submitted that the circumstances spoke for themselves. The external wall to the rear of the living room of the Property and the ceiling above same were obviously damp and affected by mould.

## Shower Room

It was submitted that, whilst the extractor fan within the shower room activated when the light was switched on, the ventilation for the shower room was not satisfactory. The outlet pipe for the extractor fan was not properly situated and not satisfactory. The shower room was affected by extensive mould. It was also noted there was no space heater within the bathroom.

## **Summary of the Issues**

- 9) The issues to be determined are whether:
- a) The Property is wind and watertight and in all other respects reasonably fit for human habitation.
  - b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
  - c) The installations in the Property 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.
  - d) 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
  - e) The Property meets the Tolerable Standard, being one that is substantially free from rising or penetrating damp, has an adequate supply of wholesome water available, has satisfactory provision for ventilation, has satisfactory equipment installed for detecting and for giving warning of fire or suspected fire and that the electrical supply complies with relevant requirements such that it is safe to use.

## **Findings in fact and law**

- 10) The Tribunal finds the following facts to be established:-
- a) That there is tenancy for the purposes of section 14(1) of the 2006 Act.
  - b) That the tenancy commenced on or around 25 May 2020.
  - c) That Christopher Airlie is the heritable proprietor of the subjects at 23A Court Street, Dundee DD3 7QS and holds the landlord's interest in the tenancy for same with Ryan Bannon.
  - d) That the Property is a ground-floor self-contained one bedroomed flat within a block of 6 such flats within a three-story cast in situ concrete building constructed around 1875. The roof of the block is of pitched configuration finished with tiles whilst outer walls have an applied buff render with a more recent external coating which is in a poor state of repair. Windows and external doors appear to be modern replacements.

- e) That there are no operational smoke detectors in the Property.
- f) That, there is no heat detector in the kitchen.
- g) That the Property has a gas-fired boiler located within the kitchen to the Property which had no active supply of gas due to the circumstances of the tenant within the Property.
- h) That no Electrical Installation Condition Report has been provided by the Landlord for the Property.
- i) That no Gas safety certificate has been provided by the Landlord for the Property.
- j) That the Property had an operational supply of water.
- k) That the ceiling in the living room to the back of the Property had collapsed in the corner.
- l) That the external walls to the living room were damp and affected by extensive mould.
- m) That the ceiling in the living room was damp and affected by mould.
- n) That the ceiling in the shower room was affected by extensive mould.
- o) That there is no source of natural ventilation in the shower room.

### **Reasons for the decision**

- 11) The Tribunal was not satisfied that the installations in the Property for the supply of gas, electricity or space heating were in a reasonable state of repair and in a proper working order or that the electrical supply complies with relevant requirements such that it is safe to use for the following reasons:
  - a) There was no EICR evident for the Property.
  - b) There was no Gas Safety Certificate evident for the Property.
- 12) The Tribunal was not satisfied that the Property had satisfactory equipment installed for detecting and for giving warning of fire or suspected fire for the following reasons:
  - a) There were no operational smoke alarms anywhere within the Property.
  - b) There was no heat detector within the kitchen.
- 13) The Tribunal was not satisfied that the Property was wind and watertight and reasonably fit for human habitation and/or substantially free from rising or penetrating damp for the following reason:

- a) The external walls and ceiling within the living room to the property are extensively affected by damp and mould.
- 14) The Tribunal was not satisfied that the structure of the Property was in a reasonable state of repair for the following reason:
- a) The ceiling within the living room had partially collapsed.
- 15) The Tribunal was unable to determine whether the boiler to the Property was in a reasonable state of repair or in proper working order due to the lack of an active gas supply to the Property. As such, the Tribunal was not in a position to make an order in that regard.
- 16) The Tribunal was not satisfied that the extractor fan within the shower room to the Property was in a reasonable state of repair and in proper working order and/or there is satisfactory provision for ventilation within the said shower room for the following reasons:
- a) There is no natural source of ventilation for the shower room and, as such, mechanical ventilation is required.
- b) The shower room has extensive mould over the ceiling despite the fact that the extractor fan fitted activates when the lights are switched on.
- c) The outlet for the extractor fan for the shower room has no non-return valve fitted to it, is open to the elements and the mechanical ventilation generally appears inadequate for the space and the purpose required.
- 17) The Tribunal determined that the installations for the supply of drinking water within the Property were in a reasonable state of repair and in proper working order and/or there was an adequate supply of wholesome drinking water available within the Property for the following reason:
- a) Whilst the Application complained the Landlord had not supplied a legionella risk assessment for the Property, the Third-Party was unable to point to any issue with the water supply or identify any particular risk associated with same.

### **Observations**

- 18) Whilst the Tribunal was unable to take the complaint regarding the lack of a carbon monoxide detector forward due to a lack of prior notification, it was noted that the Property did not have such a detector and, had they been able to determine the matter would have found the Landlord in breach of his obligations in that regard.
- 19) Further, the complaint regarding damp affecting the Property was focused on the living room to the rear of the Property. However, the Tribunal did inspect the small "anteroom" off the bedroom within the Property and noted that there was extensive damp across the external wall (facing onto Sandeman Street)

## Decision

- 20) The Tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(b) of the 2006 Act.
- 21) The Tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 22) The decision of the tribunal was unanimous.
- 23) The Surveyor/Ordinary Member of the Tribunal took several photographs which form the schedule attached to this decision.

## Right of Appeal

- 24) **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.**
- 25) **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.**

**R Cowan**

Signed .....

Date ..... 11 July 2023.....

Chair Person