

# 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/RP/21/2704**

**Title no: MID2414**

**3F1, 91 Comely Bank Road, Edinburgh EH4 1BJ ("The Property")**

**The Parties:-**

**Mr Jacob Webber and Mr Mark Howe, residing at 3F1, 91 Comely Bank Road, Edinburgh EH4 1BJ ("the Tenants")**

**Mr Adrian Hearn, residing at 5 Castle Hill, Berkhamsted, Hertfordshire HP4 1HE ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Mr Andrew Murray (Ordinary Member)**

### **Decision**

The Property meets the Repairing Standard. The Landlord has complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary.

### **Background**

1. The tenants have applied to the Tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 24(1)(b) of the Act in respect of the property.
2. In the application the tenants stated that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the repairing standard put at issue were those contained within Section 13(1)(a), (c), (d) and (e).
  - Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
  - Whether 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.

- Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - Whether any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. Notices of referral were issued to parties on 21 December 2021.
  4. Due to the lack of clarity regarding the issues put at issue given the manner in which the application had been presented, a Direction was issued to identify the live issues in dispute which the Applicant had raised. This was subsequently clarified by the tenants.

### **Inspection**

5. The Tribunal inspected the property on 27 January 2022 at 11.00 am. Covid-19 precautions and protocols were followed. The tenants were present and invited the Tribunal members into the property. Mr Webber showed the Tribunal members around. The Landlord had been invited, but did not attend. He was represented by his letting agents, Braemore Lettings & Sales. Ms lone Paterson property manager attended.

### **Hearing**

6. Following the inspection of the property, the Tribunal convened a hearing later the same day on 27 January 2022 at 3.00 pm by teleconference. Mr Webber joined for both tenants and made further submissions in support of the application. The Landlord's interests were represented by Braemore Lettings & Sales. There were two representatives who joined the teleconference hearing. They were Mr Rafael Bar, head of customer relations and Ms lone Paterson, property manager.

### **Summary of Issues**

7. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
8. The issues raised were restricted to two matters:
  - In the written application it was submitted that the sash and case window in the bedroom was decayed and was not wind and watertight. A series of coloured photographs were provided to support this. It was acknowledged that some work by a contractor had already been carried out to renovate the windows in the flat,

including the bedroom window complained of. It was submitted that the repairs carried out had been ineffective.

- Though not complained of initially, the tenants submitted additional information prior to the Notices of Referral being issued highlighting that there had been a leak in the bathroom causing damage to the property, but also to the downstairs property also. The Tribunal was satisfied that this additional component of the application had been intimated to the Landlord and that it was competent to consider this element of complaint.

### **Earlier proceedings before the First-tier Tribunal**

9. The tenants have complained about the condition of the property since taking up occupation of it in September 2020. They previously raised a repairs action against the Landlord in respect of elements of alleged disrepair. This was subsequently withdrawn in early April 2021 following the letting agent persuading them to do so. They subsequently proceeded to initiate an application against the Landlord's letting agents, Braemore Sales & Lettings, under Tribunal reference FTS/HPC/LA/21/1561. In the Tribunal's determination, dated 1 October 2021 it found "The property was clearly in disrepair at the commencement of the tenancy and when the leak in the bedroom 1 occurred from January 2021." Otherwise in that process the First-tier Tribunal found that the landlord's letting agent had failed to comply with paragraphs 21, 26, 71, 90, 91, 93 and 108 of the Code of Practice for Letting Agents.

### **Findings in Fact**

10. The Tribunal makes the following findings in fact:-
  1. The title to the subjects known as 3F1, 91 Comely Bank Road, Edinburgh EH4 1BJ is held by the landlord. His interest is held in the Land Register of Scotland under title number MID2414.
  2. The property which is the subject of this application is a two bedroomed third floor (top) flat within a traditional tenement which comprises six flats.
  3. The property comprises of a hallway, living room, kitchen, bathroom, and two bedrooms.
  4. The tenants entered into a private residential tenancy which commenced on 21 September 2020. The rent was fixed at £995 per month.
  5. The property is managed on behalf of the Landlord by Braemore Lettings & Sales Edinburgh.

6. The tenants have made numerous complaints regarding the condition of the property since taking up occupation. The landlord has been dilatory in providing his letting agents with instructions to attend to items of disrepair.
7. In relation to the matters complained of in the application an inspection by the Tribunal revealed:-
  - i. The bedroom window complained of is in the main bedroom of the property. This is a traditional single glazed sash and case north facing bay window. This is comprised of 3 windows, a central window, which is flanked by two side windows. The east most side window has been the subject of complaint since the tenants took up occupation. The window was rotten and beyond serviceable repair as evidenced by photographs. It was not wind and watertight. Some temporary ineffective repairs were undertaken previously. Recently, in December 2021, the window was replaced with a new sash and case window. The window has been primed but not yet painted. It is wind and watertight and opens and closes.
  - ii. There has been a leak in the bathroom from the bath / shower which has caused water ingress into the flat immediately below. The leak was investigated and a failed earlier repair was undertaken. The leak was eventually traced to failed tiles, grouting and sealant. These components were replaced, including the installation of a 'wet wall' the day prior to the Tribunal's inspection (on 26 January 2021). It is most likely that the cause of leak has been remedied.
11. Reference is made to the schedule of photographs comprised within the inspection report prepared by the Tribunal which is attached herewith and referred to for its terms.

### **Reasons for Decision**

12. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal at the hearing.
13. The Tribunal was only able to consider the complaints which formed the intimated application and had an obligation to consider the complaints as at the date of the hearing on 27 January 2022. Earlier items of disrepair are irrelevant to the Tribunal's consideration.

14. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
15. Mr Webber accepted that the issues complained of within his application had been resolved. He made additional submissions in relation to two ancillary components. There are a couple of tiles missing from the tiled bath panel. They had previously been removed to investigate the source of the leak in the bathroom. They remain in the bathroom but not been refitted. He also referred to the fact that the shower is no longer operating properly due to it having been damaged in the course of the recent repair works carried out. Ms Paterson advised that she had clear standing instructions from the Landlord to remedy both of these issues and that they would be remedied within the next 14 days. In particular a quotation was outstanding for the replacement of the shower which would be instructed. A new shower will be installed.
16. The Tribunal found that the two ancillary matters raised by Mr Webber do not cause the property to fail the 'repairing standard' test. The missing tiling is an aesthetic issue, is de minimis and does not form part of the fixtures and fittings of the property. Nonetheless given the long history of problems which the tenants have endured, it is only reasonable that the tiles are replaced. The Tribunal had little doubt about the fact that the shower is regrettably no longer working and was keen to understand from those representing the landlord that there will be no difficulty with the shower being replaced in early course. Ms Paterson made it absolutely clear that this was going to happen and undertook to instruct the work as quickly as possible. These residual issues do not form part of the original application. The Tribunal found that it would be disproportionate to continue the application in any manner to allow for these issues to be remedied given the clear undertaking given on behalf of the landlord.
17. The Tribunal was satisfied that despite the fact that the tenants have lived for a long period of time with items of disrepair, which have undoubtedly adversely affected their enjoyment of living in the property, that the issues complained of in this application have now been resolved.
18. The Tribunal has no jurisdiction to make an award of compensation in favour of the tenants as had been requested. Mr Webber acknowledged this at the hearing.

## **Decision**

19. The Tribunal, having made enquiries for the purposes of determining whether the landlord has complied with the duty imposed by

section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlord is currently complying with his duty imposed by section 14(1) of the Act in respect that the property does meet the repairing standard.

### Right of Appeal

20. 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.
21. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 28 January 2022 before this witness:-

**R Mill**

\_\_\_\_\_ Legal Member

**C McNaught** \_\_\_\_\_ Witness

CATHERINE MCNAUGHT Name

69-71 Dalry Road Address

Edinburgh

EH11 2AA

# Housing and Property Chamber First-tier Tribunal for Scotland

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**Housing (Scotland) Act 2006:**

**Repairs Inspection Report**

**Property: Flat 3F1 91 Comely Bank Road Edinburgh EH4 1BJ**

**Chamber Reference : FTS/HPC/RT/21/2704**

**Inspection Date : 27 January 2022 - 11.00am**

**Weather conditions : Cold and dry. External temperature circa 5 deg C.**

**In attendance :**

**Mr J Webber (tenant)**

**Ms I Paterson (Landlord Representative – Braemore Lettings and Sales)**

**Mr R Mill ( tribunal legal member)**

**Mr A Murray (tribunal surveyor member)**



**Front Elevation – Flat 3F1 Top Flat**

### **Repairing Standard Complaint Details**

The matter highlighted in the tenant's application related to the condition of the front bedroom window, which at the time of the application was alleged to be defective and not wind and watertight.

An additional matter highlighted in the submissions was considered at the inspection. The flat directly below the bathroom (flat 2F1) was allegedly regularly being flooded when the shower in flat 3F1 was used.

The above complaints were noted in the applicant's submissions and both defects were highlighted backed by photographic evidence.

### **On Site Findings**

The tribunal was shown firstly in to the bathroom. It was evident that the walls abutting the bath had recently been re-lined with a composite PVC sheeting. These new works appeared to be fitted in a satisfactory manner. Mr Webber confirmed that these works had been completed this week.

The tribunal next inspected the front bedroom. It was apparent that the window complained of in the applicant's submission had been removed and a new window had been installed (Mr Webber later confirmed at the Hearing that the window had been replaced during the period 8th to 13th December 2021). The new window appeared to

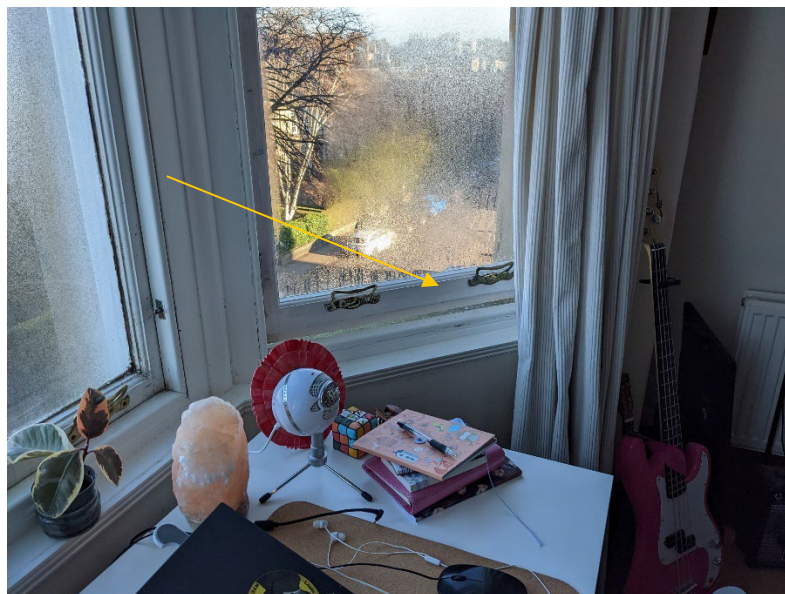


have been fitted to a satisfactory standard, although the paint work had yet to be completed. Mr Webber confirmed that the window was now wind and watertight.

**Photographs were taken on the day of inspection and are attached below.**



1 The new shower walls



2 The new bedroom window