

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006, Section 24 in respect of an application under section 22(1).

Reference number: FTS/HPC/RP/22/0117

Re: House at Flat 0/1, 67 Marine Parade, Dunoon, PA23 8HF registered in the Land Register of Scotland under Title Number ARG4822 (“the House”)

The Parties:

Miss Yvonne Notman, Flat 0/1, 67 Marine Parade, Dunoon, PA23 8HF (“the Tenant”)

Mrs. Marion Wedlock, Flat 12, 5 Lochinvar Drive, Edinburgh EH5 1GJ (“the Landlord”)

Tribunal Members:

Susan Christie (Legal Member) and Nick Allan, surveyor, (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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the House and taking account of all of the available evidence, determines that the landlord has failed to comply with the duty imposed on her by Section 14 (1) (b) of the Act. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal’s decision is unanimous.

Background

1. By application dated 17 January 2022, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”). The application is in terms of Section 22 of the 2006 Act.

2. The application states that the House does not meet the repairing standard set out Section 13 of the 2006 Act in the following respects: The installations in the House for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, the House has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, and that the House does not meet the tolerable standard as set out in the 2006 Act.
3. The application at Parts 8 and 9 gave detail on why the Tenant considered that the House did not meet the repairing standard:
 - (1) Dampness in the bedroom
 - (2) Mice infestation
 - (3) No door on back (of close) contributing to damp
 - (4) Cracks on walls and windowsills
 - (5) Light fittings not working
 - (6) Slaters infestation
 - (7) Kickboards in kitchen not fitted correctly
4. On 2 February 2022, a legal member of the Tribunal, acting under delegated powers, referred the application to a tribunal for determination. Parties were notified of this. The notification to the Parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.
5. Written representations were submitted by the Landlord on 16 March 2022.
6. Written representations were submitted by the Tenant's Representative on 18 March 2022.

Inspection

7. The tribunal inspected the House on 13 April 2022. The weather conditions were dry and sunny.
8. A copy of the inspection summary and Schedule of Photographs is attached to this Decision. The Tenant was present at the inspection and allowed access. The Landlord had indicated in advance that she would not attend.

The Hearing

9. A Hearing was held by telephone conference call on 20 April 2022. The Tenant participated and was represented by Ms. Fidelo, trainee solicitor. The Landlord participated, with her husband present as an observer.

Preliminary Matters

10. The tribunal asked the Parties what the current position was in relation to the tenancy. The Parties expectation was that the tenancy would end by mutual agreement on 24th April 2022.

11. The Landlord referred to the tenancy having been set up on a mainly informal basis as they were friends of the Tenants father. The tribunal however noted that a short assured tenancy agreement had been produced by the Tenant that had been signed by the Parties on 31 July 2016. The rent being £300 per calendar month. A deposit was taken and dealt with in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011. A copy of the letter from Safe Deposits Scotland had also been produced by the Tenant at the outset, showing the deposit had been registered. The tribunal is satisfied that the tenancy is one to which the repairing standard duty applies by section 12 of the Housing (Scotland) Act 2006.
12. The Tribunal went through the matters detailed in the application and the pre-hearing inspection summary and schedule of Photographs. It was noted by the tribunal that although other issues had been raised in the written representations, the application had never been amended to include those.
13. Matters no longer insisted on: 'any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.'
14. Matter resolved: Light fittings not working. The tribunal found on inspection that an appropriate working light fitting had now been fitted in the bathroom of the House- Photograph 11.
15. The tribunal then went through the inspection findings relating to the issues specifically raised in the application:
16. Dampness in the bedroom

The ordinary member summarised the findings of the inspection. There were no surface readings of dampness on the bedroom walls around the window area and close side, despite evidence of damp marks. However, using a radio wave device there were significant readings of dampness under the surface. Photographs numbered 2,3,4 and 5 depict the areas of concern. A large hole in the plaster was noted and loose/cracked plaster was also noted in the vicinity of the hole. It is the ordinary members view having regard to the significant readings noted that there is a source of damp in the bedroom of the House.

The evidence of damp was not accepted by the Landlord who stated that her husband had been in the building trade for 50 years and that they felt it was the Tenant who had got it into her head that there was rising damp in the bedroom. They had asked two tradespersons to inspect the bedroom. One was disregarded by them and the other went under the floor and carried out an inspection on 28 October 2021. He had said that he did not know what they wanted him to look for and he subsequently did not give a report. The landlord did not accept the stain on the ceiling depicted in Photograph 3 was damp and instead associated this with an old leak from the House above. A dehumidifier had been provided to the Tenant by the Landlord.

The ordinary member referred the Parties to Photographs 18-20 depicting saturated stonework on the external rear elevation wall at ground level, and up to a height of around two feet. This visible dampness occurs within the vicinity of the internal damp readings recorded around the hole in the internal wall of the bedroom. It was observed that the metal structural bracing work has been sealed with mortar and may be a potential source of water penetration. It is the ordinary members view that there is an issue with rising damp and water penetration affecting the bedroom that requires to be investigated and remedied. The ordinary member did not consider that the cracks in the external stonework were the likely cause of the internal dampness issues.

17. Mice infestation

A photograph of a mouse had been submitted by the tenant along with the application. On the day of the inspection. It was noted that the Tenant had two mouse traps sited in the kitchen near to a loose kickboard. No mouse droppings were evident. The tribunal did observe that there were two potential access points for mice-adjacent to the loose kickboard and in the hall cupboard as shown in Photographs 4 and 7.

18. No door on back (of close) contributing to damp

A new door had been fitted at the rear of the close at some point after the application had been made to the tribunal. This is shown in Photograph 8. The tribunal notes that it is ill fitting with gaps between the door and frame, and also the frame and the close wall.

19. Cracks on walls and windowsills

There were cracks on the external walls of the House, noted at the inspection by the tribunal. Structural bracing supports are evident in several locations. There is fairly large hole in the stonework above and to the right of the kitchen window. These are shown in Photographs 20 and 21.

20. Slaters infestation

The tribunal noted that there were several dead insects including slaters within the House at inspection in or around the hall, bedroom and bathroom, Photographs 16-17. The Landlord attributed this to the replacement of the shower tray, joists, and floorboards. Rectification work had been said to have been carried out in the bathroom. Whilst the presence of slaters is not a health issue as such, it could be indicative of the presence of a source/sources of damp in the House.

21. Kickboards in kitchen not fitted correctly

As depicted in Photograph 6 there was a loose kickboard in the kitchen of the House on the day of the inspection.

22. Space heating and heating water are not in a reasonable state of repair and in proper working order.

The kitchen radiator was found at the inspection to be cold, and the Tenant had stated she had bled it-Photograph 12.

The bathroom radiator had not been bled as an appropriate key was not available.it was noted to be leaking water-Photograph 14.

A bathroom wall heater was inoperable at inspection-Photograph 13. The landlord had stated that this was in full working order at the outset of the tenancy. The Tenant said it had never worked. The Tenant accepted that whilst those had been included in the written representations, the Landlord had not been specifically advised of those items of disrepair.

23. Carbon monoxide alarm

On inspection the tribunal found there to be a carbon monoxide detector present and situated in the kitchen-Photograph 10.

On inspection of the House the tribunal noted with concern that there were insufficient smoke alarms within the House and there was no heat detector in the kitchen. The fire safety requirements are well publicised and were brought to the Landlords attention at the Hearing for immediate rectification as a smoke alarm is required in the lounge of the House to be interlinked to that already installed in the Hall, and a heat detector is required in the kitchen all to comply with current statutory guidance.

Observations

24. There were matters that had been raised in the Tenant's Representatives written representations that did not specifically form part of the application.

Those were:

- a) Insulation-given the age of the building there might be areas that only have plastered internal walls.
- b) Guttering- possibly in disrepair on visual inspection.
- c) Cracks in bedroom ceiling- none apparent on inspection.
- d) Mould growth in the hall cupboard- this was found on inspection and is depicted at Photograph 15. The door appeared to be tightly fitting and there was no vent allowing air to circulate.
- e) Heating system running costs excessive.
- f) Electrical system. The Tenant stated that annual safety checks were not carried out until 10 March 2022. It was contended that there is an issue with the electricity box in the hall cupboard. The tribunal was unable to determine on visual inspection the exact issue complained of.
- g) Laminate flooring in bedroom lifting.

As these matters have now been brought to the attention of the Landlord the appropriate investigations and remedial work should be considered as needed.

The Issues

Section 13 (1) (c), (g) and (h) of the 2006 Act are the specific matters which the tribunal required to address were those detailed in the application and referred to in this Decision. Part (e) having been withdrawn by the Tenant. Section 13(1) (g) referred to in the application is repealed by Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019/61 (Scottish SI) reg.3(2)(b) (February 1, 2021: repeal has effect on February 1, 2021 as specified in SSI 2019/61 reg.1(3)). Instead, consideration is made under section 86 (k) of the Housing (Scotland) Act 1987:

86.— Definition of house meeting tolerable standard.

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

[

(ca) has satisfactory thermal insulation;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;

(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances; “the relevant requirements” are that the electrical installation is adequate and safe to use;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;

(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health,

]5 and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.

(1A) In construing any such reference, regard shall be had to any guidance issued by the Scottish Ministers.

(1B) The Scottish Ministers must issue the guidance in such manner as they consider appropriate for bringing it to the notice of local authorities and other persons with an interest.

(1C) The Scottish Ministers may vary or revoke any such guidance.

(2) The Secretary of State may by order vary or extend or amplify the criteria set out in the foregoing subsection either generally or, after consultation with a particular local authority, in relation to the district, or any part of the district, of that authority.

(2A) An order under subsection (2) is to be made by statutory instrument, and no such order is to be made unless a draft of the order has been laid before and approved by resolution of the Scottish Parliament.

(3) This section shall be without prejudice to section 114 (certain underground rooms to be treated as houses not meeting the tolerable standard).

Findings in fact

The tribunal makes the following findings in fact:

- I. The House is a traditional ground floor flat in a block of four.
- II. The Tenant has a short assured tenancy over the House signed by the Parties on 31 July 2016. The tenancy is one to which the repairing standard duty applies.
- III. The Landlord is the registered owner of the House.
- IV. The Tenant took entry to the House on 1 August 2016.
- V. There is evidence of significant below-surface damp readings in the walls in the bedroom around the back external wall and plaster was damaged and loose on the bedroom interior wall adjoining the common close.
- VI. There was no evidence of the presence of rodents in the House.
- VII. The external back door to the common close has been reinstated however it is not draughtproof.
- VIII. Cracks are visible on the back exterior wall and there is a hole in the stonework.
- IX. There is evidence of past, and possibly ongoing structural issues with metal bracing having been fitted to the external rear elevation and gable wall.
- X. There is evidence of slaters accessing the House along with other insects.
- XI. There are potential access points in the kitchen and hall cupboard where rodents or insects could gain access to the House.
- XII. There is a loose kickboard in the kitchen.
- XIII. One radiator in the heating system provided by the Landlord is not functioning properly and another in the bathroom appears to be leaking water, therefore the installations for space heating are not in a reasonable state of repair and in proper working order. This was not reported to the Landlord and the duty only applies where the tenant notifies the Landlord or where the landlord becomes otherwise aware.
- XIV. The bathroom wall heater is inoperable and not in a reasonable state of repair and in proper working order. This was not reported to the Landlord and the duty only applies where the tenant notifies the Landlord or where the landlord becomes otherwise aware.
- XV. There is satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

- XVI. The House does not have satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire.

15. Reasons

The tribunal had regard to what it had found at the inspection relevant to matters complained of in the application and considered the oral evidence of the Parties. The tribunal also considered the written representations of the Parties. Matters had been raised in the written representations that did not form part of the application and some had not been raised beforehand with the Landlord. This made it difficult for the tribunal when determining the application. Where the oral evidence conflicted with the findings of the inspection of the House the tribunal relied on the findings of the inspection as being the most recent inspection of the House. No expert or specialist documentation had been produced by the Landlord for consideration to contradict the findings.

The tribunal did not accept the evidence of the Landlord when she sought to disassociate herself from her obligations as a Landlord and the repairing standard. The Landlord appeared to have a casual approach to her duties as a Landlord.

There was evidence of damp in the bedroom. The ordinary member used a damp meter and recorded significant readings of dampness below-surface using radio waves. No surface readings of dampness were obtained from the damp meter when in its conventional setting. Photographs numbered 2,3,4 and 5 depict the areas of concern. A large hole in the plaster was noted with loose plaster under the wallpaper that was intact but loose. It is the ordinary members view having regard to the significant reading noted that there is a source of damp in the bedroom of the House. There was no evidence of the presence of rodents in the House.

The external back door to the common close has been reinstated however is not draughtproof. There is evidence of past structural issues with metal bracing supports having been fitted to the external rear elevation and gable wall.

There is evidence of slaters accessing the House along with other insects. Whilst the presence of slaters is not a health issue as such, it could be indicative of the presence of a source/sources of damp within the House. There is a loose kickboard in the kitchen.

One radiator in the heating system provided by the Landlord is not functioning properly and another in the bathroom appears to be leaking water, therefore the installations for space heating are not in a reasonable state of repair and in proper working order. This was not reported to the Landlord and the duty only applies where the tenant notifies the Landlord or where the landlord becomes otherwise aware.

The bathroom wall heater is inoperable and not in a reasonable state of repair and in proper working order. This was not reported to the Landlord and the duty only applies where the tenant notifies the Landlord or where the landlord becomes otherwise aware. There is satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The House does not have satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire.

The tribunal is constrained to make an order only in respect of the parts of Section 13 of the 2006 Act raised in the application. Observations have also been made in this decision relating to other matters raised but not formally included in the application, for which the Landlord has now been made aware of.

16. Determination

The tribunal determined to make a repairing standard enforcement order (RSEO) as required by section 24(1) of the 2006 Act. The decision of the tribunal is 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.

S Christie

Susan Christie,
Legal member and Chairperson,
20 April 2022