

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: PRHP/RP/16/1010

**106E Walker Road, Torry, Aberdeen, AB11 8BR
("the Property")**

The Parties:-

**Mr Athanasios Kandias, 106E Walker Road, Torry, Aberdeen, AB11 8BR
("the Tenant")**

**Dr Elaina Susan Renata Collie-Duguid and Mr Graeme Rae Duguid, Cartref,
Dnecht, West Hill, AB32 7EQ
("the Landlords")**

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 Landlords have complied with the duty imposed by Section 14(1)(b) in relation to the Property, and taking account of the evidence led by both the Landlords and the Tenant at the hearing, determined that the Landlords have not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application (which application comprises documents received between 30th November 2016 and 30th January 2017)("the application") the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords have failed to ensure that:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.

- (b) That any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order; and
 - (c) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purposes for which they are designed.
3. By letter dated 9th February 2017 the Convener of the Housing and Property Chamber intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
 4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenant.
 5. Following service of the Notice of Referral the Tenant made no further written representation to the tribunal other than the application. The Landlords made the following written representations to the tribunal:-
 - (a) By e-mail dated 12th March 2017 with (i) detailed report attached, (ii) various e-mails dated 28th December 2016, 4th, 5th and 6th January 2017, 10th March 2017 and 27th February 2017 with photographs of bath attached and (iii) invoices dated 27th November 2016 and 10th March 2017 from GA Wilson Electrical and North East Electronic Limited respectively;
 - (b) By e-mail dated 14th March 2017 with invoice of McGregor Glazing dated 10th March 2017 attached;
 - (c) By e-mail dated 15th March 2017 with invoice from A J M Plumbing dated 2nd March 2017 attached; and
 - (d) By e-mail dated 20th March 2017 with e-mails dated 8th, 10th and 17th March 2017 attached.
 6. The tribunal, comprising Miss Gillian C Buchanan, Legal Member and Chairperson, and Mr Colin Hepburn, Ordinary Member, inspected the Property on the morning of 21st March 2017. The Tenant, the Tenant's wife and the Landlords were present during the inspection. Photographs taken during the inspection are attached.
 7. Following the inspection of the Property the tribunal held a hearing at Credo Centre, 14 – 20 John Street, Aberdeen, AB25 1BT and heard from the Tenant and from the Landlords.
 8. The Tenant submitted as follows:-
 - (a) That as a consequence of repairs carried out by the Landlords' contractor between 7th and 10th March 2017, there are no longer any issues with the window in the lounge.

- (b) That as a consequence of repairs carried out by the Landlords' contractor between 7th and 10th March 2017, there are no longer any issues with the window in the kitchen other than when particularly windy outside.
- (c) There are no issues with the window in the bathroom.
- (d) That as a consequence of repairs carried out by the Landlords' contractor between 7th and 10th March 2017, there are no longer any issues with the window in the single bedroom.
- (e) That whilst repairs were carried out to the window in the double bedroom to the front of the Property by the Landlords' contractor between 7th and 10th March 2017, draughts can still be felt at either side of the window where the window closes against the window frame and when particularly windy outside, the window also emanates a humming type noise
- (f) That as a consequence of repairs carried out by the Landlords' contractor between 7th and 10th March 2017, there are no longer any issues with the window in the bedroom situated to the rear of the Property.
- (g) That the intercom has now been repaired and operates correctly.
- (h) That the problem with the plug in the bath has been fully resolved.
- (i) That there are no longer any issues with the ceiling light in the bathroom which appear to have been resolved.
- (j) That within the single bedroom, the radiator pipe leading from the lower left side of the radiator through the floor has turned green in colour but has never leaked.
- (k) That the carpet in the hall cupboard continues to have an unpleasant odour most likely as a consequence of the floor beneath the carpet having been soaked with urine from cats having been kept in that cupboard during the previous tenancy and notwithstanding the replacement of the hall cupboard carpet by the Landlords at the commencement of the Tenant's tenancy.
- (l) That the lower broken window in the cupboard in the common stairwell to the flat, having been boarded over, is no longer an issue.

9. The Landlords submitted as follows:-

- (a) That, having instructed a contractor to undertake all necessary repairs to the windows in the Property to ensure they seal well and all works have been effected, the windows are all now wind and water tight.
- (b) That all carpets in the Property were replaced by the Landlords prior to the Tenant moving in, that it was a number of months into the lease before the

Tenant complained of any issue of a bad odour from the hall cupboard, and that the Tenant has kept two rabbits in the flat.

- (c) That the defective intercom was repaired on 10th March 2017.
- (d) That the repair to the bath was effected on 27 February 2017 as a result of which the plug now operates correctly.
- (e) That the radiator in the bedroom is fully functioning and no action is required.
- (f) That the light fitting in the bathroom has been inspected and no fault or other hazard was found. There has been no further water ingress and the area around the light fitting is completely dry.
- (g) That the repair of the stairwell cupboard window has been effected by the broken window being boarded over.

Summary of the Issues

10. The issues to be determined are:-

- (a) Whether the Property is wind and water tight and in all other respects reasonably fit for human habitation having particular regard to the fitting of the windows within the Property and that in the front double bedroom;
- (b) Whether any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed and in particular whether the carpet in the hall cupboard requires repaired or replaced.

Findings of Fact

11. The tribunal finds the following facts to be established:-

- (a) That the Landlords are the heritable proprietors of the Property;
- (b) That the Landlords leased the Property to the Tenant and others for the period 24th March 2016 to 23rd March 2017.
- (c) That the lease between the Landlords and the Tenant is an assured tenancy.
- (d) That during the period of the lease the Tenant has made various complaints that the windows within the Property are draughty, allowing cold air to enter into the Property and causing heat loss and noise nuisance.
- (e) That as a consequence of repairs effected by the Landlords contractor, McGregor Glazing, between 7th and 10th March 2017 the windows throughout the Property are properly sealed, that no draughts are present and that no noise nuisance is present.

- (f) That any prior defect with the intercom serving the Property has been resolved and the intercom now operates correctly.
- (g) That any prior leak affecting the ceiling light in the bathroom has been resolved, the area is dry and the light fitting, having been properly checked by an electrician, operates safely and constitutes no hazard.
- (h) That the radiator in the single bedroom operates correctly and any discolouration of the copper pipe leading from the lower left side of the radiator to the floor is caused by oxidation.
- (i) That the carpet in the cupboard in the hall is free from any odours and is in a reasonable state of repair.
- (j) That the broken window in the cupboard in the common stairwell has been boarded over and does not affect habitability of the Property.
- (k) That the bathroom plug has been repaired and now operates correctly.

Reasons for the Decision

12. The Property is a second floor flat forming part of a three storey tenement of flats. The Property comprises a lounge, kitchen, bathroom and 3 bedrooms all of which are accessed from a corridor leading from the main entrance door of the Property. Within the corridor is the telephone for the intercom and a cupboard. Externally and down one flight of stairs to a stair landing, the Property enjoys the use of a small storage cupboard within which there is a single glazed window.

On the date of the inspection by the tribunal, it was sunny and dry.

The tribunal proceeded to examine the windows in the Property which had been the subject of adjustment and repair by the Landlords' contractor between on or around 7th and 10th March 2017. On examination the tribunal found that each of the windows operated correctly and sealed properly. The Tenant accepted that, with the exception of the window in the front double bedroom, all of the windows in the Property had now been repaired and no further issues arose.

The Tenant confirmed that the intercom serving the Property had also recently been repaired and now operated correctly.

Within the bathroom the Tenant advised the tribunal that the bath plug had been repaired and that there were no longer any issues with the ceiling light fitting which had been resolved.

Within the single bedroom, the Tenant advised the tribunal that the pipe leading from the lower left side of the radiator which had turned green in colour had never leaked

and there was no suggestion that the radiator did not function correctly. The pipe and the area around the pipe at the floor were found to be dry.

The tribunal examined the carpet within the hall cupboard and lifted the carpet to examine the floor beneath. The carpet was in a good state of repair and no odour from the carpet or the floor beneath could be detected.

On examination of the cupboard on the landing in the common stairwell, the lower pane of glass was found to have been boarded over and the Tenant confirmed that he had no issue with that repair which did not otherwise affect the habitability of the Property.

Decision

13. The tribunal accordingly determined that the Landlords had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
14. The decision of the tribunal was unanimous.

Right of Appeal

15. 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.

Effect of section 63

16. 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 Buchanan

Signed.....

Date

29 MARCH 2017

Chairperson









