

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/17/0113

Property at 10 Queen Street, Falkirk FK2 7AF

(“The Property”)

The Parties:-

Victoria Duncan, 10 Queen Street, Falkirk FK2 7AF

(“the Tenant”)

Natasha Kirkwood, 3 Kinnaird Drive, Stenhousemuir, Larbert FK5 4JN

(“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 evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:

Rory A.B. Cowan – Legal Member

Greig Adams – Surveyor/Ordinary Member

Background

1. By application received on 22nd March 2017 the Tenant applied to the First-tier Tribunal: Housing and Property Chamber for a determination of whether the Landlord 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 Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) **the house is wind and water tight and in all other respects reasonably fit for human habitation; and**
 - (b) **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.**
3. By letter dated 7th April 2017 the President 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 Landlord and the Tenant.
5. Following service of the Notice of Referral, the Tenant intimated her intention to continue with the application by email of 28th April 2017. The Landlord made the following further written representations dated:
 - 25th April 2017;
 - 28th April 2017 (in response to the tribunal's request for a copy of the Electrical Installation Condition Report (EICR) for the Property); and
 - 4th May 2017.
6. The tribunal inspected the Property on the morning of 18th May 2017. The Landlord was represented at the inspection by Louise Taylor and Gillian Smith of Taylor William Letting and Estate Agents of 108A Main Street, Larbert (the Agents). The Tenant was also present at the inspection.
7. Following the inspection of the Property, the tribunal held a hearing at Westfield Community Centre, Westfield Street, Falkirk FK2 9DX. The Tenant was also present and was accompanied by her mother an Anne Wilson who assisted her.
8. On behalf of the Tenant it was submitted as follows:

The Windows

- a) That since the lodging of the application, the windows had been repaired "to the best of her knowledge".

- b) That, although she felt the Property was still very cold, the problems with the windows identified in her application had been rectified.

Dampness/Mould

- c) That there were mould patches in the bedroom of the Property between the window and the walk-in cupboard. There was also mould in the living room underneath the window, although the problem was worse in the bedroom.
- d) The Tenant acknowledged that damp contractors instructed by the Landlord had been out to the Property and that they had prepared a report, a copy of which she had seen and read. She did not agree with the report's findings although she did accept she had been drying clothes within the Property at the time the damp contractor had inspected the Property, but they were not 'heavy items'.
- e) The Tenant indicated that she felt she did heat and ventilate the Property adequately as she often left the front door to the Property open.
- f) That there had been an ongoing problem with the Property since the date of entry and that the blinds in the bedroom had to be cleaned and that the original curtains had to be replaced by agreement with the Agents because of "mould spores".
- g) She indicated that the mould in the bedroom was supposed to be rectified once she moved into the Property and had been identified in the check-in inventory.

The Shower

- h) That her original complaint was that the shower was not safe and could not be used;
- i) She stated that since then, the shower had been replaced with a new shower unit. That she had suffered with some issues with the new shower including loss of pressure and being too hot.

Flickering Lights

- j) That there had been an issue with lights flickering particularly the 2 pendant lights in the living room. The lights would dim then flicker.
- k) Other rooms were also affected by lights dimming, flickering and bulbs blowing regularly.
- l) That on 12th May 2017 an electrician instructed by the Landlord had inspected the light fittings and located a loose wire in one of the pendant lights in the living room. That the electrician had also inspected all other lights, sockets and the consumer board.
- m) That since 12th May 2017, there had been no further issues with the lights.
- n) She indicated that the loose wire had been a fire risk.
- o) On behalf of the Tenant, Anne Wilson indicated that the plastic cover for the base of the light fitting had also been loose, but had now been 'glued in place'.

9. On behalf of the Landlord it was submitted as follows:-

The Windows

- a) That following the Tenant's complaint contractors had been instructed to carry out the required remedial work. This had been done and an invoice dated 13th April 2017 from Homeseal Windows of Main Street, Polmont was produced to vouch the repairs.

Dampness/Mould

- b) That it was accepted that the blinds in the bedroom did need cleaned and the curtains were replaced.
- c) That following the Tenant's complaint regrading damp and mould, the Agents had been in the Property on 13th April 2017 and the bedroom windows had been "dripping with condensation" and the Tenant had advised them it was too cold to open the windows.
- d) That following their inspection on 13th April 2017, the Agents instructed specialist damp contractors to inspect the property. It was only after that, the issue of mould in the living room was identified.
- e) That they had received a report from Angus Orr Property Preservation Limited of Ferniebank, Redding Road, Falkirk dated 28th April 2017. The report stated that on inspection they had found "slight mould growth" in the rooms complained of, but had recorded low readings from a protimeter. They had found all windows in a closed position, , condensation on lower window panes and sills and damp washing on a clothes frame. They identified the cause of the mould as the Tenant's lifestyle and that adequate ventilation and drying of clothes outside would help alleviate the problem. The Agents adopted what was said in that report, which was produced.
- f) That they had not undertaken to remove the mould evident at entry and that this could simply be wiped off.

The Shower

- g) That the original shower in the Property had been replaced since the Tenant had moved in.
- h) That any issues with the replacement shower had only been reported to them on 16th May 2017 and were being investigated.

The Flickering Lights

- i) That the Property had an EICR dated 3rd February 2017 and no issues were identified.
- j) That following complaints by the Tenant, the same electrician re-inspected the Property on 12th May 2017. That upon re-inspection, a loose wire was found in one of the pendant lights in the Livingroom and had been repaired.
- k) That the electrician had indicated there should be no further issues with the lights.
- l) That no previous issue had been raised in relation to the pendant light fitting covers, but that these would not affect the working of the lights in any event.

Summary of the issues

10. The issues to be determined are whether:

- a)** the house is wind and water tight and in all other respects reasonably fit for human habitation; and
- b)** 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.

Findings of fact

c) The tribunal finds the following facts to be established:-

- The tenancy is a short-assured tenancy that commenced on or around 6th February 2017.
- The Property is a stone built random rubble construction and comprises a ground floor tenement flat with a simple timber construction pitched roof incorporating interlocking flat concrete tiles. It was constructed in the early 1900s and subsequently extended to the rear with the rear outshot comprising of a combination of render and timber panel finishes. The Property has UPVC double glazing throughout and a UPVC exterior door. All windows were fitted with trickle vents. The accommodation comprises of 1 bedroom with a walk-in cupboard, 1 bathroom, a living room off a separate kitchen with a small internal hallway.
- The Property is served by gas central heating.
- That the windows had been subject to remedial repairs on or around 13th April 2017 and were now wind and watertight;
- That the Property is affected by slight mould growth on the wall in the bedroom and to a lesser extent in the living room.
- That the levels of damp within the bedroom and living room were all low and within acceptable levels.
- There is no penetrating or rising damp within the Property.
- Any damp or mould was caused by condensation as a result of the Tenant failing to adequately heat and ventilate the Property.
- That the original shower had been replaced.
- That the loose wire within one of the pendant lights in the living room had been repaired.
- That, since that repair there had been no further issues with the lights flickering or dimming.

Reasons for the decision

d) Given the tribunal's findings on inspection and taking into account the application form and submissions on behalf of the Landlord and Tenant at the hearing, the tribunal was satisfied that the Property was wind and watertight and in all other respects reasonably fit for human habitation for the following reasons:

- The windows had been subject to repair and were now wind and water tight.

- That any issues of damp/mould within the Property were caused by condensation which was a result of the Tenant's lifestyle. The tribunal carried out a series of tests using a thermal imaging moisture meter and an infrared surface thermometer. These tests outlined that moisture content in the walls with mould contamination were not elevated and as such the mould growth was resultant from condensation and affecting the surface of the wall only. There was therefore no evidence found of penetrating or rising damp. The report by Angus Orr Property Preservation Limited confirmed this view and came to the same conclusions.

The tribunal were also of the view that 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 for the following reasons:

- That the shower originally complained of had been replaced with a new electric shower unit.
- The tenant's subsequent complaints of low pressure and overheating were not demonstrated on inspection and, in any event, were new matters which did not form part of the application and accordingly could not be taken into account.
- That the issue with the lights flickering had been subject to a repair on 12th May 2017 and the Tenants accepted there had been no repeat of the problems since then. On inspection, no issue was noted. The Property also had a very recent EICR which detailed no faults with the electrical installations or appliances.

Decision

- e) The tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.
- f) The tribunal therefore declined to make a Repairing Standard Enforcement Order (RSEO) under section 24(1).
- g) The decision of the tribunal was unanimous.
- h) The Surveyor Member of the tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- i) 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.

- j) 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 7th June 2017.....

Chairperson



1. Kitchen window viewed externally evidencing perimeter sealant condition.



2. Kitchen window sealants and crack to render.



3. Kitchen window wall internally.



4. Living Room window recess location.



5. Queen Street elevation.



6. Rear Extension at Kitchen.



7. Rear Elevation.



8. Main entrance door to Kitchen - seals.



9. Closed trickle vent to Bedroom with mould growth.



10. New shower within Bathroom.



11. Area of mould contamination within Bedroom adjacent to window.