

In particular, the Tenant stated:

Cracks and dampness in ceiling – ceiling collapse

Sofa broken

Ignition on hob broken

Mold on walls

Broken drawers in desks & wardrobes

Woodworm

TV aerial broken

Broken freezer drawers

Broken/detached back of wardrobe with nails sticking out

Boiler in poor condition

It was clear from the matters complained of that the Tenant was also alleging that the Landlord had failed to comply with his duty under the Act in that the House was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the House was not in a reasonable state of repair and in proper working order; and the installations in the House for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and in proper working order.

2. The Tenant included with his application an undated notification of repair letter to the Landlord, outlining his complaint. The Landlord's representative acknowledged receipt of this letter on 24th April 2018. Email correspondence between the parties from 28th August 2017 to 24th April 2018 was included with the application, and this correspondence referred to the matters complained of.
3. On 2nd May 2018, a Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal.
4. The Tribunal members were Ms Helen Forbes (Legal Member) and Mr Robert Buchan (Ordinary Member).
5. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 19th June 2018.
6. On 1st July 2018, the Landlord submitted written representations in response to the Tenant's complaints.
7. On 3rd July 2018, the Tenant informed the Tribunal by email that he would not be attending the hearing set down for 27th July 2018.
8. On 3rd July 2018, the Tenant submitted written representations to the Tribunal giving further information on his complaint, and stating that he felt that the

occupants of the House were entitled to 'a fair rent reduction for tolerating the lack of cooperation from Barbara Leasing'.

9. On 3rd July 2018, a Notice of Direction was served upon the Landlord in the following terms:

The Landlord is required to present a copy of a current Gas Safety Certificate in respect of the House with the First-tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT by 20th July 2018.

In the event that there is no current Gas Safety Certificate, the Landlord is required to:-

Engage a Gas Safe Registered Engineer to carry out an inspection of the gas systems in the House and complete a Gas Safety Certificate and lodge this certificate as described above.

10. On 4th July 2018, the Landlord's representative submitted a Gas Safety Certificate dated 6th September 2017. The Certificate identified that the automatic sparkler on the gas hob in the kitchen was not working and that a manual sparkler had been supplied.
11. On 5th July 2018, the Tenant informed the Tribunal that he would be present to allow access for the inspection, but would not be in a position to attend the hearing due to work commitments.
12. On 24th July 2018, the Landlord's representative notified the Tribunal that both Landlords would be present at the inspection and hearing.

Inspection

13. The Tribunal attended at the House on 27th July 2018. The weather was warm, dry and sunny. The House is the top flat in a traditional granite terraced building built around 1900, with three bedrooms on the first floor, a further bedroom and laundry room in the attic, a sitting room, a kitchen and a bathroom. There is gas central heating. The Landlord, Mr Fraser Loudon, was present. The Landlord's representative, Ms Barbara Ellis was present. The Landlord's father, Mr John Loudon, was present. The Tenant had been present to provide access to the Landlord, but he left before the inspection commenced. The Tribunal inspected the alleged defects and found as follows:-

13.1 Cracks and dampness in ceiling – ceiling collapse

The ceiling in the front bedroom below the attic laundry room had collapsed. The plasterboard had been removed, and the ceiling had been temporarily patched with plywood.

The ceiling in the second front bedroom showed slight cracks in the plaster.

The ceiling in the back bedroom showed slight cracks in the plaster and a watermark from a previous leak.

13.2 Sofa broken

A new sofa had been provided.

13.3 Ignition on hob broken

The ignition on the gas hob did not work. There were manual sparkers in the kitchen for lighting the hob.

13.4 Mould on walls

There was rippled wallpaper behind the heater in the back bedroom.

13.5 Broken drawers in desks & wardrobes

The broken drawers in the desk of the front bedroom had been fixed.

13.6 Woodworm

There were small holes evident in the internal door frame of the attic bedroom. No other evidence of woodworm was seen in the exposed timbers in the laundry room.

13.7 TV aerial broken

There was a large screen TV and various attachments. There was an aerial connection. In the absence of the Tenant, the Tribunal did not test the TV to see whether the aerial was working.

13.8 Broken freezer drawers

There were no drawers or shelves in the freezer. A plastic container from the fridge was used to store food in the freezer.

13.9 Broken/detached back of wardrobe with nails sticking out

The back of the wardrobe in the Tenant's bedroom was slightly detached from the wardrobe, which was against the wall.

13.10 Boiler in poor condition

There was a Potterton boiler in the laundry room. In the absence of the Tenant, the Tribunal did not observe the boiler in operation.

The Ordinary Member tested the exposed gable end wall in the laundry room. The damp meter readings showed evidence of damp in the wall.

13.11 Window in the attic room

The Ordinary Member inspected the Velux window in the attic room and found no evidence of a leak that would affect the ceiling of the bedroom below. The roof could be observed from the window. There was a chipped slate evident, but there was no evidence of any damage to the roof that would account for a leak into the House.

The Ordinary Member tested the wall below the window using the damp meter. The readings were normal, with no evidence of damp in the wall.

13.12 External

The Tribunal observed the roof from the back garden. There was no evidence of any damage to the roof that would account for a leak into the House.

Photographs were taken during the inspection and are attached as a schedule to this report.

Discussion on the application

14. Following the inspection, the Tribunal attended for a hearing at the Credo Centre, John Street, Aberdeen. The Tenant was not in attendance. The Landlord's representative, Ms Barbara Ellis was present. The Landlord, Mr Fraser Loudon, was present. Mr John Loudon, was present, as a supporter for Mr Fraser Loudon, in terms of Rule 11 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Rules').

15. The Tribunal considered that Rule 29 allowed the hearing to proceed in the absence of the Tenant, particularly as Rule 24(1) had been duly complied with.

Preliminary matters

16. There had been mention at the inspection of showing the Tribunal photographs of the House at the start of the tenancy, to indicate the good condition in which the House was handed over to the Tenant. The Legal Member informed the Landlord and his representative that the Tribunal would not be viewing the photographs as they had not been lodged timeously in terms of the Rules, and the Tenant had not had sight of them. In addition, it was not felt that they were relevant to the matters before the Tribunal, as the crucial matter was the state of the House at the time of the inspection.

17. The Tribunal discussed the matters raised in the application:

17.1 Cracks and dampness in ceiling – ceiling collapse

The Landlord said that the collapsed ceiling in the front bedroom had been dealt with the day after the collapse took place. His insurer would not pay out for the repair as it was put down to fair wear and tear. The ceiling was the original lath and plaster ceiling and there was no evidence of any water damage. He said that the tenant occupying the room had asked that the final repair of the ceiling be delayed as he was in the middle of his university exams when the collapse took place. He was concerned that it would be too much upheaval to vacate the room at a stressful time. The ceiling was scheduled to be repaired on 26th August 2018, by which time the House would be empty.

As for the ceilings in the other two bedrooms, the Landlord said the ceilings had been replaced in 2009. The Landlord's representative said that the first contractor told the Tenant that it was possible that these ceilings could also come down. The second contractor that was called out said he could guarantee that the ceilings would not come down. Ms Ellis said that, contrary to the claims made by the Tenant, the second contractor was not known to her, but was chosen because he had a good reputation. Ms Ellis said a surveyor had found no problems when undertaking a loss adjustment. As for the watermark in the back bedroom, there had been a missing slate, and the roof had been repaired. The room had been decorated, but the stain had come through the paint.

17.2 Sofa broken

Ms Ellis said that she had been looking for a suitable second-hand sofa after the complaint was made regarding the problems with the sofa. The sofa was a corner sofa and it was difficult to find a similar sofa. She pointed out that the problems were confined to both ends of the sofa, and it could still be used. She said there was plenty of room on the sofa, such as its size, and there was a lot of use still left in the sofa. A joiner had looked at the sofa, but, as it was a sealed unit, it could not be repaired. One of the other tenants in the House had told her it did not bother the tenants that it was broken. Eventually, it was decided to order a new sofa. It was ordered in May 2018, but there were delays with delivery and it arrived in July 2018.

17.3 Ignition on hob broken

Ms Ellis confirmed that the ignition on the gas hob did not work at the start of the tenancy. Three sparkers had been provided to the tenants throughout the tenancy. It was not possible to fix this without replacing the hob. The hob still complies with safety regulations. The Landlord confirmed that the hob works.

17.4 Mould on walls

Ms Ellis said she saw the rippled wallpaper behind the heater in the back bedroom for the first time today at the inspection. She was not aware of

any mould on the walls. The Landlord said there had been mould in the front bedroom in 2010 and it was found to be bottom-down condensation. The wood under the window was sealed at that time and the problem did not return.

17.5 Broken drawers in desks & wardrobe

Ms Ellis confirmed that the broken drawers in the desk of the front bedroom had been fixed.

17.6 Woodworm

The Landlord said that the small holes in the internal door frame of the attic bedroom were a result of the tenants playing darts. Ms Ellis confirmed that there had been a dart board fixed to the door.

17.7 TV aerial broken

The Landlord and Ms Ellis said they had no reason to believe that the aerial was broken. They had mentioned it to the Tenant that morning but he had not insisted that it was broken, and had mentioned watching the World Cup on the TV. Ms Ellis said that one of the other tenants had told her that the aerial had not been plugged in since they got a new TV.

17.8 Broken freezer drawers

Ms Ellis checked the inventory for the House and confirmed that there had not been shelves or drawers in the freezer at the start of the tenancy.

17.9 Broken/detached back of wardrobe with nails sticking out

Ms Ellis said that a joiner had attended on two occasions to repair the back of the wardrobe. The Tenant had been told the wardrobe would have to be emptied before it could be repaired, but it was not emptied and the joiner could not undertake the repair. The Tenant was offered a third opportunity to empty the wardrobe so that it could be repaired, but he did not empty the wardrobe. The joiner could not undertake the repair while the wardrobe was full.

17.10 Boiler in poor condition

Ms Ellis said there had been a problem with the boiler in that it was not switching off, but that had been attended to as soon as it was reported, and the boiler was now in good working order.

The Landlord and his representative informed the Tribunal of their frustration as the House had been in good order at the start of the tenancy and they were disappointed with the current state of the House. Carpet had been removed from the steps despite being firmly secured. There has been a

complaint of noise made to the police. They confirmed that the House was a House in Multiple Occupation and said most of their past tenants had been respectful of the House. In relation to the current occupants, only the Tenant had made complaints.

Summary of the issues

18. The issues to be decided are whether:

18.1 The House is wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006).

Whether the existence of mould and woodworm within the House renders it reasonably unfit for human habitation.

18.2 The structure and exterior of the House (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

Whether the state of the ceilings means that the structure of the House is not in a reasonable state of repair.

18.3 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 the gas boiler is in a reasonable state of repair and in proper working order.

18.4 Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; (Section 13(1)(d) of the Housing (Scotland) Act 2006).

Whether the gas hob, the TV aerial and the freezer are in a reasonable state of repair and in proper working order.

18.5 Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; (Section 13(1)(e) of the Housing (Scotland) Act 2006).

Whether the sofa, desk drawers and wardrobe are capable of being used safely for the purpose for which they are designed.

Decision

19 The Tribunal determined that:

19.1 The House is wind and water-tight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006).

There was no evidence of mould within the House. The rippling in the wallpaper in the bedroom may have been due to the occupant drying clothes on the radiator.

The damp meter readings in the upstairs exposed gable wall were consistent with exposed stone in a gable wall of a property of this age and character.

It was impossible to determine if the holes in the door frame were caused by woodworm or darts. The Tribunal noted that there was no evidence of woodworm in the exposed timbers in the attic laundry room. The Tribunal determined that, even if the holes in the door frame were caused by woodworm, it did not render the House unfit for human habitation.

19.2 The structure and exterior of the House (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

The Tribunal determined that the cracks seen in two of the bedroom ceilings were consistent with the age and character of the building. There was no evidence of a current leak causing the water stain on the ceiling. There was no evidence of imminent collapse of the ceilings.

The Tribunal considered the matter of the unsightly temporary repair to the collapsed ceiling. The Tribunal noted that the Tenant had not specifically complained about the delay in restoring the ceiling as part of his application. In addition, the Tribunal accepted the evidence of the Landlord and his representative that the occupant of the room had asked that the repair be delayed until the exams were over, due to the level of inconvenience that would be caused by re-plastering. The Tribunal also accepted the evidence that the ceiling was to be repaired shortly.

19.3 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; (Section 13(1)(c) of the Housing (Scotland) Act 2006).

The Tribunal determined that there was no evidence that the boiler was not in proper working order. The Tribunal accepted the evidence of the Landlord's representative that the boiler had been repaired as soon as

the problem was reported. There was no evidence to the contrary from the Tenant.

19.4 Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; (Section 13(1)(d) of the Housing (Scotland) Act 2006).

The Tribunal determined that the gas hob was in a reasonable state of repair. Although the ignition was not in proper working order, the hob was capable of being used with a manual sparker. This had been the situation since the start of the tenancy, and the Tenant had been provided with manual sparkers in order that the hob could be used.

There was no evidence before the Tribunal other than an allegation from the Tenant, who was not present to provide any further information, that the TV aerial was not a reasonable state of repair and in proper working order.

The Tribunal determined that the freezer was in a reasonable state of repair and in proper working order.

19.5 Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed; (Section 13(1)(e) of the Housing (Scotland) Act 2006).

The Tribunal did not uphold this complaint as a new sofa had been provided, and the desk drawers had been repaired.

The Tribunal considered that, although the wardrobe had not been repaired, it was capable of being used safely for the purpose for which it was designed. In addition, the Tenant had failed to empty the wardrobe on at least two occasions, thus preventing a repair from being carried out.

Observations

The Tribunal made an observation that there was a significant and unfortunate delay in replacing the sofa. It would appear to have been in an unreasonable state of repair for a considerable length of time, and the Landlord delayed in replacing it. No order was made in this regard, as the sofa has now been replaced.

The Tribunal considered it unfortunate that the Tenant was not present for the inspection or the hearing. It would have been helpful to have had his input on the matters discussed. The Tribunal would point out to the Tenant that a rent reduction is not a remedy available to the Tribunal at this stage in such an application, even if the Tribunal had found that the Landlord had failed to comply with the duties imposed by Section 14(1)(b), of the Act.

Decision

- 20 The Tribunal accordingly determined that the Landlord has not failed to comply with the duties imposed by Section 14(1(b), of the Act, as stated.
- 21 The decision of the Tribunal was unanimous.

Right of Appeal

- 22 **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Signed

Legal Member and Chairperson

Date: 27th July 2018

This is the schedule of photographs referred to in the foregoing Statement of Decision dated 27th July 2018

H Forbes

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA

Solicitor
Chair
+ legal
Member



Rear



Patched ceiling

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA



Crack in ceiling



Desk

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA



Chest of drawers



Boiler

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA



Hob with sparkers



Freezer compartment

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA



Suggested woodworm



Stain on ceiling

Photographs taken during the inspection of
29 Orchard Street, Aberdeen, AB24 3DA



Wardrobe



Damp meter reading