

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: PRHP/RT/16/0359

Title no: DMF4666

112 Queen Street, Dumfries, DG1 2JT ('The Property')

The Parties:-

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('the Third Party Applicant').

Mrs Dawn Vella residing at 35 Weston lane, Southampton, SO19 9GN ('the Landlord').

Miss Samantha Taylor residing formerly at 112 Queen Street, Dumfries, DG1 2JT ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Nick Allan (Ordinary Member).

NOTICE TO The said Mrs Dawn Vella

Whereas in terms of their decision dated 30th January 2017, the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that (i) the Property is wind and water tight and in all other respects reasonably fit for human habitation and (ii) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord to:-

1. Resolve the source of lateral damp penetration to the front and rear basement rooms and repair the dampness, rising damp and damp penetration to render the Property water tight.

2. Install the washing machine in the kitchen and properly connect the outflow pipe to the drains.

3. Install a fixed heating system in the Property being either high heat retention storage heaters (as recommended by the EPC) or a gas central heating system, sufficient to reasonably heat the Property.

The Tribunal order that these works must be carried out and completed by 1st May 2017.

A landlord, tenant or third party applicant 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the Act.

J Taylor

Signed..... Date 30th January 2017

Chairperson

K Byrne

Irvine

...witness: KEIRSTEN BYRNE, 65, High Street,

Photograph Schedule

Inspection of

112 Queen Street, Dumfries, DG1 2JT

Case Ref: PRHP/RP/16/0359 18th Jan 2017



(Ph1) FE – Basement Bedroom L/H/S (Ph2) FE – Basement Bed. Extreme L/H/S



(Ph3) FE – Base. Bed. exposed p/work (Ph4) FE – Base. Bed. exposed tanking

30/1/17
J Taylor



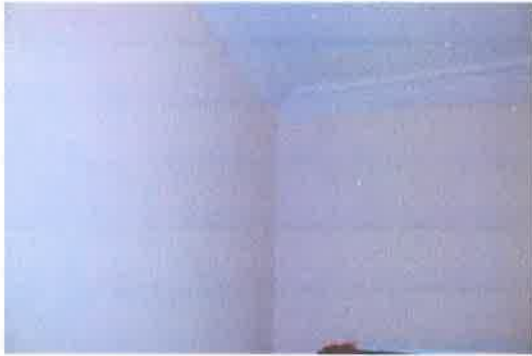
(Ph5) Base. Bed switchboard R/H/W (Ph6) RE – Laundry room



(Ph7) RE – Laundry Room floor drain (Ph8) RE – Laundry Room floor covering



(Ph9) RE – Water ingress floor level (Ph10) RE – Ext. window opening G/L



(Ph11) RE – Stairwell ceiling



(Ph12) Stairwell ceiling smoke detector



(Ph13) Kitchen – below worktop



(Ph14) Kitchen – below worktop



(Ph15) Kitchen R/H/S rear door



(Ph16) Kitchen L/H/S rear door



(Ph17) FE – B/ment window opening (Ph18) FE – L/H/S Drain



(Ph19) FE – Saturated stonework

(Ph20) FE – Moss and weed growth



(Ph21) FE – R/H/S

(Ph22) End Terrace – Construction date



(Ph23) Moveable electric heaters



(Ph24) Moveable heater – Rear Bed.

RE – Rear elevation
SE – Side elevation
FE – Front elevation
B/ment – Basement
G/L – Ground level
R/H/W – Right hand
wall
p/work - pipework

Nick Allan

Surveyor member

27th January 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

Chamber Ref: PRHP/RT/16/0359

Title no: DMF4666

112 Queen Street, Dumfries, DG1 2JT ('The Property')

The Parties:-

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('the Third Party Applicant').

Mrs Dawn Vella residing at 35 Weston lane, Southampton, SO19 9GN ('the Landlord').

Miss Samantha Taylor residing formerly at 112 Queen Street, Dumfries, DG1 2JT ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Nick Allan (Ordinary Member).

Decision

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 Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. The Third Party Applicant applied to the Tribunal 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 ('the Act').**
- 2. The application stated that they considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation and the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.**

In particular the application stated:-

- 2.1 Penetrating damp in basement bedroom and laundry room.
- 2.2 Mould on floor and walls and fungal growth in basement rooms.
- 2.3 Evidence of dampness on the ceiling above stairwell.
- 2.4 No fixed form of space heating within the Property.
- 2.5 Reference within communication to dampness in the kitchen.
- 2.6 Unsuitable drainage from washing machine in basement.

The application also stated that the Tenant of the Property is Miss Samantha Taylor ('The Tenant').

The Third Party also provided the Tribunal with a completed Repairing Standard Checklist dated 26th August 2016 which stated inter alia:

'There appears to be no satisfactory form of fixed economic space heating installed within this property that would be capable of maintaining a temperature of 18 degrees centigrade, when the outside temperature is minus 1 degree centigrade. The average EPC rating in Scotland is Band 61. However, as this property currently has an EPG band G(7) rating, the portable electric convector heaters that you supplied to the Tenant may offer localised heat for short periods but may not be sustainable for this young family over the coming winter months.'

3. The Convenor of the Private Rented Housing Panel, having considered the application, comprising documents received on 21st November 2016, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.

4. On 1st December 2016 jurisdiction of the Private Rented Housing Panel passed to The Housing and Property Chamber.

5. On 9th December 2016 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, Dumfries and Galloway Council and, for information purposes, on the Tenant.

6. The Tribunal attended at the Property on 18th January 2017. The Landlord and Paul Vella, her husband and her contractor and also Robert Rome of Dumfries and Galloway Council were present at the inspection. The Tenant was in the Property during the inspection but did not participate.

The Property, 112 Queen Street, Dumfries, is a two-storey red sandstone mid terraced property with kitchen extension and basement below built in 1888.

The accommodation comprises three bedrooms, living room, dining room, kitchen and bathroom.

The basement comprises two rooms and a storage cupboard.

The Committee inspected the alleged defects and found:-

6.1 Penetrating damp in basement bedroom and laundry room.

The basement was below external ground level.

Rear Room

There was evidence of water ingress on the internal face of the rear elevation at floor level to the right-hand side of the window. The floor surface was saturated at this point, and the Landlord's contractor explained that he had recently found a puddle below the floor covering in this area. In addition, the surveyor member of the Tribunal took damp readings which showed 15-20% damp to the inside face of the internal wall between the rear room and the storage area in the hall.

Front Room

It was observed that the lower sections of insulation board along the entire length of the internal face of the front elevation had been removed by the Landlord's contractor because they had been affected by dampness. Damp meter readings taken of the exposed wall showed that there was no evidence of dampness present. However, water damage to the removed sections of insulation would therefore suggest water ingress from above the level of the tanking. There were two points on the basement wall where pipework and cabling respectively have breached the wall face below the level of the external ground level, and it seemed likely that these were a contributing factor to the water damage affecting the insulation. The surveyor member of the Tribunal also took damp readings on the side wall beneath the circuit board and noted the presence of damp in this area. Externally, at the front of the Property at ground level it was noted that a rainwater downpipe was discharging into a drain that appeared blocked by fallen leaves. The external stonework in this area at ground level appeared saturated and this was evidenced by the presence of attached moss and weed growth. The poor drainage at this location and the concentration of dampness at ground level, combined with the breach in the wall below ground level had contributed to the water penetration and damage to the insulation within the basement.

6.2 Mould on floor and walls and fungal growth in basement rooms.

There was no mould or fungal growth evident at the inspection.

6.3 Evidence of dampness on the ceiling above stairwell.

There was no evidence of dampness at the inspection.

6.4 No fixed form of space heating within the Property.

There was no fixed heating in the Property. The Landlord had provided the Tenant with portable electric heaters in all of the rooms, but not the kitchen and bathroom.

6.5 Reference within communication to dampness in the kitchen.

A Damp Proof Course had recently been installed in the kitchen. The surveyor member of the Tribunal took damp readings which showed 15% damp to the inside

face of the wall below the kitchen units, and on the internal face of the re-plastered wall section to the left of the external door to the garden.

6.6 Unsuitable drainage from washing machine in basement.

The drainage pipe from the washing machine in the basement had been inserted into the open drain by lifting the drain cover which was then placed on top of the pipe to hold it in place.

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

7. Following the inspection of the Property the Tribunal held a hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries, DG1 4DF.

The Landlord, her husband Paul Vella and Robert Rome of Dumfries and Galloway Council attended the hearing.

In respect of the matters in the application the parties advised as follows:

7.1 Penetrating damp in basement bedroom and laundry room.

Robert Rome explained that when he inspected the Property prior to the application being made there was an area of dampness on the floor of the rear basement room and there were mushrooms growing on the carpet. He accepted that there were no mushrooms at the inspection.

The Landlord provided the Tribunal with four reports from damp specialists namely DPR, Richardson and Starling, Martin Irvine and John Quigley. Robert Rome confirmed that he was happy for the Tribunal to consider these documents even although they had not been lodged as productions before the hearing.

The Landlord confirmed that DPR have been instructed to proceed and she has paid them a deposit of £5000.

7.2 Mould on floor and walls and fungal growth in basement rooms.

The parties acknowledged that there was no evidence of mould or fungal growth at the inspection.

7.3 Evidence of dampness on the ceiling above stairwell.

The parties acknowledged that there was no evidence of dampness on the ceiling above the stairwell at the inspection.

7.4 No fixed form of space heating within the Property.

Robert Rome explained that the Property is not well heated. He suspects that the Tenant will be reluctant to use the plug in electric heaters as they will be expensive to run.

The Landlord explained that she has supplied ten plug in electric heaters and the Tenant knew that there was no fixed heating in the Property when she signed the lease. The Landlord advised the Tribunal that she has instructed Adapt to install a gas central heating system.

7.5 Reference within communication to dampness in the kitchen.

Robert Rome expressed concern that if the dampness in the kitchen has been properly treated there should not still be dampness present.

Paul Vella agreed to monitor the dampness.

8.6 Unsuitable drainage from washing machine in basement.

Robert Rome expressed concern that the drain in the basement will have a shallow trap and this could result in flooding from the washing machine.

The Landlord explained that the washing machine, purchased by the tenant, will be relocated in the kitchen as a space has been created for it.

8. Summary of the issues

The Tribunal accepted that there was no evidence of:

- mould on the floor and walls or fungal growth in the basement rooms or
- dampness on the ceiling above the stairwell.

The Tribunal had verified the details of the EPC referred to by the Third Party from the EPC Register. They noted that the EPC for the Property was dated 20th March 2015.

Therefore the issues to be determined are:-

8.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Sections 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the penetrating damp in the basement rooms and dampness in the kitchen and also the absence of a fixed heating system results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

8.2 The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Sections 13(1) (b) of The Housing (Scotland) Act 2006).

Whether the washing machine drainage system is in a reasonable state of repair and proper working order.

9. Findings of fact

9.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determined that the presence of penetrating damp in the basement rooms and dampness in the kitchen results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

The Tribunal were mindful that the Tolerable Standard as defined in section 86 of the Housing (Scotland) Act 1987 requires the Property to have satisfactory provision for heating. The Tolerable standard is a minimum standard and consequently if the

Property does not meet the Tolerable Standard it will not be reasonable fit for human habitation. The Scottish Executive guidance on the Tolerable Standard states:

'For houses without central heating, the minimum requirement where the house has a mains electric supply is that the house should be able to support the use of portable electrical heaters. This means that each apartment should have a fixed electrical installation capable of servicing a plug-in electrical heater.'

The Tribunal acknowledged that the Landlord has provided plug-in electric heaters in all rooms and therefore the Property complies with this section of the Tolerable Standard. However, the Repairing Standard requires the Property to be reasonably fit for human habitation, which they consider to be a higher standard than the Tolerable Standard.

The Tribunal were mindful that the test of reasonableness in relation to the question as to whether a Property is fit for human habitation is a matter for the Tribunal to determine applying their individual knowledge and experience and taking account the particular features of the Property (*Summers v Salford Corporation 1943 AC 283*). This Property has a very low EPC rating. It is rated Band G (7). This low rating means that the Property is inherently difficult to heat. This is due to the particular features of the Property, the fact that it has five apartments, kitchen and bathroom, and has high ceilings. The Tribunal determined that these facts, combined with the dampness present in the Property, results in the Property being not reasonably fit for human habitation as the portable electric heaters are not sufficient to heat this particular Property.

9.2 The structure and exterior of the house (including drains, gutters and external pipes) are not 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 drainage of the washing machine into an open drain results in the drainage system for the washing machine not being in a reasonable state of repair.

Decision

10. The Tribunal accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a) and 13(1)(b) of the Act, as stated.

11. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

12. The decision of the Tribunal was unanimous.

Appeal

13. A landlord, tenant or third party applicant 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.

J Taylor

.....Chairperson

30/1/17

.....Date