

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RT/16/0327 and PRHP/RT/16/0366

Title no: Subjects at 78 Thurso Crescent, Dundee, DD2 4AW registered under Title Number ANG65721

**Property at 78 Thurso Crescent, Dundee, DD2 4AW
("The House")**

The Parties:-

Dundee City Council, Private Sector Services Unit, Dundee House, 50 North Lindsay Street, Dundee, DD1 1DU
("the Third Party Applicant")

Lee Gordon, formerly residing at 78 Thurso Crescent, Dundee, DD2 4AW
("the former Tenant")

Nigel Squire, having a place of business at Dundee Joinery Services, Unit 9, Angus Works, Tannadice Street, Dundee, DD3 7PT ("the Landlord") whose agent is Baker Bradley Ltd, 211a Albert Street, Dundee, DD4 6QA ("the Landlord's Agent")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Harry Maclean - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 17 October 2016 the Third Party Applicant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to complied with the duties imposed by Section 14(1)(b) of the Act.

2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (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;
 - (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
 - (d) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
 - (e) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In summary, the Third Party Applicant submitted that the smoke detectors had been incorrectly installed, there was exposed electrical wiring in the house, no electrical installation condition report ("EICR") nor gas safety certificate had been produced, damaged doors and walls required to be repaired and an old boiler required to be removed.
4. By further application dated 17 November 2016 the Third Party Applicant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
5. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) 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;
 - (b) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
6. In summary, the Third Party Applicant submitted that issues raised in the application of 17 October 2016 were still outstanding. In particular the smoke detectors had been incorrectly installed, no EICR had been produced and the storage heaters within the house did not work and required repair.
7. By letters dated 20 December 2016 the President intimated her decision to refer both applications under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2,

Paragraph 1 of the Act upon the Landlord, the Landlord's Agent, the Third Party Applicant and the Former Tenant.

8. The applications of 17 October 2016 and 17 November 2016 related to the same property and the same parties and raised the same, or substantially similar, issues of disrepair at the house. The Tribunal therefore determined that the applications should be conjoined and heard together in accordance with rule 37 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016.
9. Following service of the Notices of Referral the Tribunal were advised by the Landlord's Agent that the tenancy had been terminated. This was subsequently confirmed by the Tenant. The Tribunal was aware that it must continue with the application unless the Third Party Applicant sought to withdraw same. The Third Party Applicant did not take any action in this regard. The Landlord and the Landlord's Agent were therefore advised that the applications would proceed.
10. The Tribunal attended the Property on the morning of 31 January 2017. Rizwan Aboobaker and Graeme Bradley were present as representatives of the Landlord's Agent. They advised that the Landlord would be putting the house up for sale and they were no longer instructed to manage the property. Donald Graham was present on behalf of the Third Party Applicant. The Tribunal proceeded to inspect the property.

The Inspection

11. During the inspection the Tribunal members examined the various areas of complaint raised by the Third Party Applicant.
12. Upon entering the house, the Tribunal noted that there were works underway in respect of the electrical wiring. The Tribunal were advised that an electrical inspection condition report would be instructed in due course once the works were completed, which was expected to be in the next two weeks. There were loose wires throughout the house and it was clear that work on the electrical system was ongoing.
13. The Tribunal further noted storage heaters in the two bedrooms and the living room. The heaters were in the process of being rewired, having been incorrectly installed previously and it was intended that they would be operational once the electrical works were completed. There was presently no working heating system in the house. The Tribunal did observe a gas boiler in the kitchen which was solely for the heating of hot water for the kitchen sink and confirmed that a gas safety certificate had been obtained in respect of same. The old boiler referred to in the application had been removed.
14. The Tribunal viewed base units for smoke and heat detectors on the lower ground floor of the house, in the upper hall, the kitchen and the living room. The Tribunal noted that these were in the process of being installed but were not yet operational. The Tribunal further viewed a battery operated carbon monoxide detector in the kitchen.

15. On the lower ground floor of the house, the Tribunal noted that the doors to the two bedrooms and the hall cupboard had been incorrectly fitted. The wood was splintering in parts. The Tribunal did not observe damage to any of the walls in the house.
16. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
17. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

18. The hearing took place in Caledonian House, Greenmarket, Dundee. Neither the Landlord nor the Landlord's Agent were present. Donald Graham attended on behalf of the Third Party Applicant.
19. Mr Graham made submissions to the Tribunal. He confirmed that a gas safety certificate had been produced by the Landlord's Agent and he was satisfied that this was now in order. The old boiler had been removed and the damage to the wall referred to in the application had been rectified.
20. Notwithstanding, Mr Graham advised that in his view that property was presently unsafe for any prospective tenants. The smoke and heat detectors were not yet installed and the electrical system was undergoing work and required an EICR to confirm it was in safe working order. Mr Graham understood that a report had been undertaken by an electrician in September 2016 which appeared to conclude that the property required rewiring. It was clear that these works were now underway. Further, the doors on the lower ground floor had been incorrectly fitted and in his view were unsafe and required repair.
21. Mr Graham advised the Tribunal that he had notified the Landlord of the required works in July 2016. The Landlord's Agent had contacted him in September 2016 to advise that the works had been carried out. However following an inspection, Mr Graham noted that this was not the case which then prompted the application to the Private Rented Housing Panel.

Findings in fact

22. Having considered all the evidence the Tribunal found the following facts to be established:-
 - The tenancy was a short assured tenancy between the Landlord and the former Tenant. The tenancy commenced on 9 June 2016 and has now been terminated. The house is currently vacant.

- The Property consists of a two storey flatted dwellinghouse. The accommodation comprises a downstairs and upstairs hall, two bedrooms, bathroom, living room, kitchen and three hall cupboards.
- The electrical wiring in the property is not in a reasonable state of repair.
- The storage heaters in the house are not in proper working order.
- There is insufficient provision in the house for the detection of fire.
- The doors to the bedrooms and the cupboard on the lower ground floor are not in a reasonable state of repair.

Reasons for the decision

23. The Tribunal determined the application having regard to the terms of the applications, the findings of their inspection, and the submissions and documents from the Third Party Applicant, the Landlord and the Landlord's Agent.
24. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
25. The Tribunal was in no doubt, from its inspection that the property did not meet the Repairing Standard. The electrical wiring was undergoing work and was not in a reasonable condition. Due to the issues with the wiring, the storage heaters were not presently working and there was therefore no heating within the property. There were also no operational smoke and heat detectors albeit it was clear from the inspection that works were underway to install these.
26. The Tribunal also had concerns about the state of the doors to the bedroom and cupboard on the lower ground floor. It was evident that the wood had been cut in a haphazard fashion leading to splintering which would pose a risk to any occupier of the house.
27. The Tribunal was conscious that the Landlord had taken steps to carry out works to the property and noted the issues which Mr Graham had confirmed were resolved, which included the production of a gas safety certificate and the removal of the old boiler. However the Tribunal was also aware that the Landlord had received notification from the Third Party Applicant of the requirement for the works in July 2016. The Landlord's Agent had sought to confirm to the Third Party Applicant in September 2016 that the works had been carried out however following an inspection by Mr Graham it had transpired that this was not the case. The Tribunal was therefore satisfied that the Landlord was aware of the requirement to carry out the works through the involvement of the Third Party Applicant. The Tribunal had no option but to conclude that the landlord was in breach of the duty to comply with the Repairing Standard.
28. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
29. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

30. The Tribunal noted a battery operated carbon monoxide detector within the kitchen which complied with current standards. However as a matter of best practice and as part of the ongoing works to the electrical system the Tribunal would recommend that the Landlord considers installing a mains operated detector to mitigate any risk of battery failure rendering the detector inoperable.

Decision

31. In respect of section 13(1)(c) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as 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.

32. In respect of section 13(1)(d) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provided under the tenancy are not in a reasonable state of repair and in proper working order.

33. In respect of section 13(1)(f) of the Act the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

34. The decision of the Tribunal was unanimous.

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.

R O'Hare

Signed

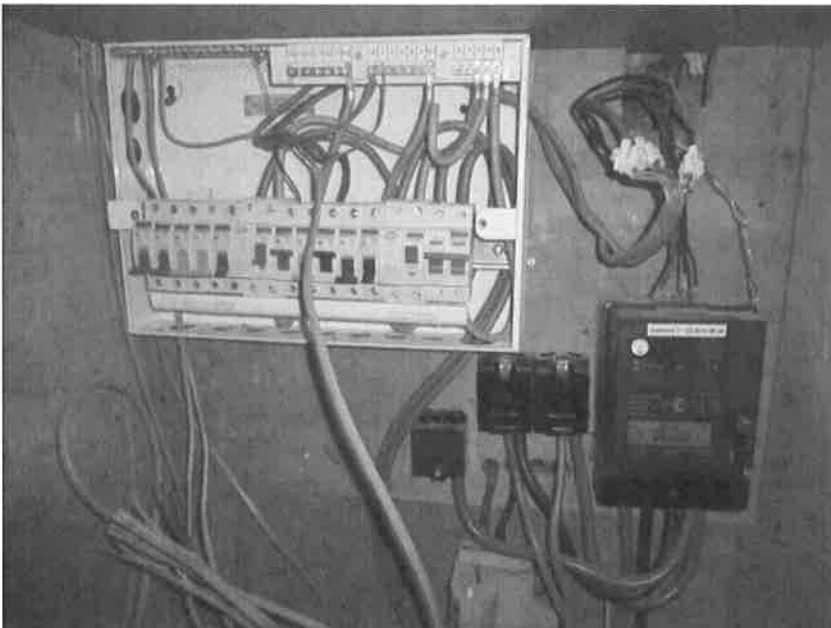
Ruth O'Hare
Chairperson

3 March 2017

THIS IS THE SCHEDULE OF PHOTOGRAPHS REFERRED TO
IN THE DECISION OF THE FIRST TIER TRIBUNAL DATED
3 MARCH 2017
CHAMBER REF :- PRHP/RT/16/0327 AND PRHP/RT/16/0366



Main entrance – front door



New distribution board – January 2017



Ill-fitting bedroom door



Kitchen – Carbon Monoxide detector



Night Storage heaters – being re-wired January 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

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The Parties:-

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Lindsay Street, Dundee, DD1 1DU
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Angus Works, Tannadice Street, Dundee, DD3 7PT ("the Landlord") whose
agent is Baker Bradley Ltd, 211a Albert Street, Dundee, DD4 6QA ("the
Landlord's Agent")**

Whereas in terms of their decision dated 3 March 2017, the First-tier tribunal for Scotland (Housing and Property Chamber) ('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 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) 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;
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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:-

- (a) Produce an electrical installation condition report by a suitably qualified person confirming that the electrical system within the house is in a safe condition and in proper working order;
- (b) Carry out such works to the storage heaters throughout the house to ensure that the installations for heating are in a reasonable state of repair and in property working order;
- (c) Install smoke and heat detectors in the house in compliance with the requirements of the revised Domestic Technical Handbook issued by the Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire); and
- (d) Repair or replace all damaged doors on the lower ground floor of the house to ensure they are in a reasonable condition and in proper working order.

The tribunal order that the works specified in this Order must be carried out and completed within the period of forty two days from the date of service of this Notice.

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 any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ruth O'Hare, Solicitor, 7 Mossbeath Grove, Glasgow, G71 7UU, chairperson of the tribunal at Stirling on 3 March 2017 before this witness:-

L Grant

R O'Hare

_____ witness

_ chairperson

Lauren Grant, c/o Stirling Council,
Old Viewforth, Stirling, FK8 2ET