

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RP/24/0332

12 Southgate, Milngavie, Glasgow, G62 6RB (“the Property”)

The Parties:-

Ms Julie D’Amour, residing at 12 Southgate, Milngavie, Glasgow, G62 6RB (“the Tenant” and “the Applicant”)

Anita Marwaha, 0/2, 40 Derby Street, Glasgow, GB 7TG (“the Landlord” and “the Respondent”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Nick Allan, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined to make a repairing standard enforcement order in terms of Section 24 (2) of the Housing (Scotland) Act 2006.

Background

1. By application dated 18 January 2024, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)
2. The Applicant and Respondent are parties to a private residential tenancy in respect of the Property. It is dated 5 January 2018.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that 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, that 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, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order, that any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed and that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

4. Specifically, the application states:

- 4.1 there are issues with the fire alarms,
- 4.2 a gas safety check is overdue,
- 4.3 the oven timer is not working,
- 4.4 a floor board in the second bedroom is warped and requires to be replaced,
- 4.5 the living room window does not open,
- 4.6 the door to the balcony does not lock,
- 4.7 an external pipe from the central heating boiler freezes in cold weather causing the boiler not to work.
- 4.8 a digital thermostat requires to be installed for the central heating system.
- 4.9 the covering on the balcony floor is warped and the drainage to the balcony is inadequate,
- 4.10 there is a tree and other vegetation growing on the balcony,
- 4.11 the hall and bedrooms require to be painted.
- 4.12 there is excessive dampness and mould in the Property,
- 4.13 the window frames require painting and there is dampness in the beading around some windows and
- 4.14 gutters require cleaning.

5. On 30 January 2024, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

6. The members of the tribunal inspected the Property at 10 am on 16 May 2024 and a Hearing was held on the same day. The Applicant was present at the inspection and was represented by Mr Raymond Heath of East Dunbartonshire Citizens Advice Bureau.

7. A schedule of photographs prepared by the Ordinary Member is attached and is referred to for its terms.

8. Findings on Inspection

- 8.1 No current gas safety certificate was available.
- 8.2 There are smoke alarms in the living room, hallway and upper landing and a heat sensor in the kitchen. The unit in the upper landing was not interconnected.
- 8.3 The oven timer is not functioning.

- 8.4 There is a defective floor board in the second bedroom.
- 8.5 The living room window could not be opened.
- 8.6 The door leading from the living room to the balcony was found not to be lockfast.
- 8.7 There is an external expansion pipe leading from the boiler which is not lagged, and therefore capable of freezing and shutting down the heating system.
- 8.8 There is no means of controlling the temperature of the central heating system.
- 8.9 The membrane floor of the balcony is defective and water does not drain from it. It is not weatherproof.
- 8.10 A tree and vegetation is growing on the balcony.
- 8.11 There is defective décor in the hall and stairway.
- 8.12 There is no evidence of dampness in the Property.
- 8.13 There is mould in the Property as evidenced by its presence on a pair of boots shown to the tribunal by the Applicant and on a bedroom ceiling lightshade.
- 8.14 Inadequate repairs have been carried out to window frames and some wood used to effect the repairs is unsuitable and has not been painted.
- 8.15 There is evidence of vegetation in the gutters.
- 8.16 There are a number of missing dry verge tiles.
- 8.17 There is a section of roughcast on the supporting pier of the balcony which has failed and is in a dangerous condition.

The Hearing

9. A hearing was held in Glasgow Tribunals Centre at 1145 am. The Applicant and Mr Heath were present. There was no appearance by the Respondent.
10. The Ordinary Member summarised what had been found at inspection.
11. The Applicant said that the defects of décor in the hall and stairwell had been caused by a water leak which had occurred prior to the tenancy commencing.
12. The Applicant said that she had reported repair issues to the Respondent on a number of occasions and that no repairs had been effected.
13. The Applicant said that she had no way of controlling the temperature of the heating system. She said that the external pipe which runs from the boiler can freeze in cold weather and that, when this occurs, the boiler does not work until the water in the pipe thaws, and drains away.
14. The Applicant said that water does not drain from the balcony because of the condition of its waterproof membrane. She said that, as a consequence, water pools on the balcony floor.
15. The Applicant said that some repairs were carried out to windows in 2021 and that the material which was used appeared to be "fence wood."

Determination

16. The tribunal determined that the Property does not meet the repairing standard as set out in the 2006 Act and that it was therefore appropriate to make a repairing standard enforcement order ("RSEO").

Repairing Standard Enforcement Order

17. A RSEO was made in the following terms:

The Landlord is required to:

- 17.1 Produce to the Tribunal a satisfactory current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.
- 17.2 Engage a suitably qualified central heating engineer to inspect the central heating system, including the boiler, radiators, external expansion pipe and associated plumbing to ensure that it is in a reasonable state of repair, that the system is fully functioning and includes an appropriate method of controlling the temperature in the Property and thereafter to carry out any necessary repairs. The Respondent is required to submit a report to the Tribunal from the central heating engineer confirming that the system is in a reasonable state of repair, is fully functioning and includes an appropriate method of controlling the temperature.
- 17.3 Repair or renew the defective smoke detector in the upper Landing ensuring that it is in satisfactory working order and interconnected with the existing smoke detectors and kitchen heat sensor in accordance with Scottish Government Guidelines.
- 17.4 Repair or renew the oven to ensure that it is in efficient working order.
- 17.5 Make good the defective flooring in the second bedroom.
- 17.6 Ensure that the window and balcony door in the Living room are in good working order.
- 17.7 Repair or renew the flooring in the balcony to ensure that it is smooth, weatherproof and appropriately pitched to ensure that the drainage from the balcony is effective.
- 17.8 Remove the tree and vegetation growing on the balcony.

17.9 Replace the window frames and sills that have been crudely repaired with rough-sawn timber with modern units.

17.10 Clear the gutters of vegetation. All guttering should be correctly aligned, and joints checked to ensure that rainwater goods are in proper working order.

17.11 Repair the defective/failed roughcasting on the supporting pier of the balcony.

17.12 Replace missing roof tiles.

18. The tribunal determined that the Respondent requires to comply with the RSEO by 15 August 2024.

Reasons

19. The tribunal had inspected the Property and the schedule of photographs prepared by the Ordinary Member is referred to. It relied on what it had found at the inspection and the evidence of the Applicant.

20. The tribunal considered that any defects in décor did not fall short of the repairing standard.

21. The tribunal could not determine that condensation in the Property was as a result of any failure by the Landlord to maintain the Property to the repairing standard. The mould found on the boots and light shade was not at a level to be of concern.

22. The tribunal had concerns that the defective roughcast on the supporting pier of the balcony constituted a safety issue because of possible injury to passers by.

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 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.

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
12 June 2024