



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/24/0185

Property at Mill House, Newmachar, Aberdeen, AB21 ORD

**Land Register ABN101161
("the Property")**

The Parties:-

**Ms Sharon Travers and Mr Martin Kelly, Mill House, Newmachar, Aberdeen, AB21 ORD
("the Tenants")**

**Dr Andrew Collins, Dr Ben Collins, Mr Nicholas Collins and Mr Simon Collins, Strawbales
Mill House, Newmachar, Aberdeen, AB21 ORD
("the Landlords")**

Tribunal Members:

Gillian Buchanan (Chair) and Angus Anderson (Ordinary Member)

Background

1. By application comprising various documents received between 15 January and 1 February 2024 the Tenants applied to the tribunal for a determination of whether the Landlords had 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 the Tenants considered that the Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure 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;
 - The Property meets the tolerable standard.
3. By letter 9 February 2024 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.

4. On 9 April 2024 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenants and the Landlords respectively.
5. Prior to the Inspection and Hearing the tribunal received the following additional documents from the parties:-

From the Tenants –

- i. Email from Ms Travers dated 29 April 2024;
- ii. Response Form from Tenants dated 29 April 2024 with attachment;
- iii. Email from Tenants dated 14 May 2024;
- iv. Emails (2) from Mr Kelly dated 16 May 2024;

From the Landlords –

- i. Email from Mr Nicholas Collins dated 16 April 2024;
- ii. Email from Dr Andrew Collins dated 24 April 2024 with attachments;
- iii. Response Form from Dr Andrew Collins dated 24 April 2024 with attachment;
- iv. Email from Dr Andrew Collins dated 2 May 2024;
- v. Email from Mr Nicholas Collins dated 16 May 2024 with attachment;

Inspection

6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Angus Anderson, Ordinary Member, inspected the Property at 10.30am on 20 May 2024. The Tenants were in attendance and permitted access. The Landlords did not attend the inspection of the Property.
7. It was dry and sunny with mainly warm, dry conditions over the preceding few days.
8. Photographs were taken and are contained in the attached Schedule of Photographs (“the Schedule of Photographs”).

Hearing

9. Following the inspection of the Property the tribunal held a hearing at 48 Huntly Street, Aberdeen, AB10 1SH on 20 May 2024. The Tenants attended the hearing. Dr Andrew Collins and Mr Nicholas Collins of the Landlords attended.
10. At the outset of the Hearing the tribunal reminded the parties that the only item of work required by the Tenants in terms of the application was the fitting of a meter to the Property to enable the Tenants to monitor their own meter readings. The Tenants referred to the meter being calibrated correctly and fitted by an independent contractor.
11. The Tenants accepted that on or around 27 February 2024 the Landlords installed a heat meter at the Property. The installation was carried out by AD Heating Limited which the Tenants accepted to be an independent contractor.
12. The tribunal subsequently heard the following oral submissions from the Tenants:-

- i. That there was no calibration certificate provided when the heat meter was installed by the Landlords' contractor and therefore the Tenants do not know if the meter is measuring correctly.
- ii. The meter measures the amount of hot water being consumed by the hot water and central heating systems.
- iii. On 1 March 2024 the Tenants left the Property and did not return until Monday 4 March 2024. After they left a reading was taken from the heat meter by a representative of Martin & Co, the Landlords' Letting Agents. The same representative returned on Monday 4 March 2024 and took another reading before the Tenants returned. Whilst neither the hot water nor heating systems were used in the Property during the period of the Tenants absence, readings from the meter showed there to have been a consumption of 34kwh. The temperature was above 10 degrees during that weekend and because of that result Martin & Co determined the issue is a bypass one.
- iv. That the fitting of the heat meter has not changed the position. The problem the Tenants complain about is the same before and after the installation of the heat meter. The issue is a system one and the heat meter has proved that to be the case. (The tribunal reminded the tenants that the application does not refer to systems issues.)
- v. The heating controls are not within the Property.

13. The tribunal subsequently heard the following oral submissions from the Landlords:-

- i. The heat meter was installed as requested by the Tenants.
- ii. The frost thermostat in the Property senses the ambient temperature and will switch on when the temperature drops to a certain level. This bypasses the usual controls and allows heat to circulate around the pipes to stop them freezing.
- iii. The frost thermostat is situated on the wall of the kitchen past the fridge.
- iv. If they were away during the weekend of 1 to 4 March 2024 the Tenants could not have known if the temperature at the Property had dropped.
- v. During the weekend of 1 to 4 March 2024 Dr Collins was able to carry out 2 meter readings each day in the plant room. The reading was 630kwh on 1-3 March and rose to 648kwh at 7.00am on 4 March and 668 kwh at 9.30am on 4 March 2024.
- vi. The activation of the frost thermostat accounts for the increase in kwh.
- vii. The Landlords had not looked at weather records for that weekend but it was not warm.
- viii. The Landlords had asked a reputable contractor to install the heat meter and they were entitled to assume it had been calibrated. No certificate was provided by the contractor.
- ix. The Landlords have no connection to AD Heating Limited.
- x. The meter would read zero on installation.
- xi. If there is a system fault it is not clear what it is.
- xii. There was a discrepancy in meter readings over the weekend of 1- 4 March 2024. The plant room readings were higher than those taken using the heat meter at the Property.
- xiii. Dr Collins looked into the detail of that discrepancy. There could be a faulty calibration of one or both meters. There could be a heat loss issue. As the pipework is underground from the plant room to the Property some heat loss will occur. That doesn't account for the whole discrepancy.

14. The tribunal heard further representations from the tenants as follows:-

- i. The frost thermostat is beside the freezer which has a panel at the back which emits heat.
- ii. The temperature was above 10 degrees during the weekend of 1-4 March 2024.

Summary of the issues

15. The issues to be determined are:-

Whether, in respect that the Landlords have employed an independent contractor who has fitted a heat meter in the Property, –

- i. The Tenants are able to take meter readings relative to the provision of heat and hot water in the Property;
- ii. A certificate of calibration from the contractor is required relative to the installation of the heat meter; and
- iii. The heat meter is in proper working order.

Findings of fact

16. The tribunal finds the following facts to be established:-

- (a) The Landlords are the heritable proprietor of the Property.
- (b) The Property is leased by the Landlords to the Tenants in terms of Private Residential Tenancy Agreement ("the PRT")
- (c) That it is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
- (d) On 27 February 2024 the Landlords installed a heat meter in the Property.
- (e) The installation of the heat meter was carried out by an independent contractor, AD Heating Ltd.
- (f) No certificate of calibration was provided by AD Heating Ltd.
- (g) No certificate of calibration was required.
- (h) The Tenants are able to use the heat meter to take readings relative to the consumption of not water and heat within the Property.
- (i) The heat meter is proper working order.

Reasons for the Decision

17. The Property is a one storey and attic detached house with accommodation on two split levels. The main structure is likely to be upwards of 100 years old, having been converted, extended and renovated within the past 25 years or so. The Property is located in a rural setting on the edge of the village of Newmachar.
18. The inspection was confined to the heating and hot water system, in accordance with the case application. Within the kitchen, there is a wall mounted controller for the heating and hot water system. A hatch in the sun lounge floor had been lifted and the incoming flow and return heating water pipes could be seen together with the recently installed heat meter. The hot water cylinder is boxed-in within the attic and could not be inspected. In the kitchen area, there is a central heating radiator fitted with a thermostatic radiator valve; this is typical of the other radiators fitted throughout the house.

19. Externally, the heating flow and return pipes contained within insulated ducts were observed where they emerge from underground, adjacent to the sun lounge.
20. At the outbuilding situated south east, across the garden from Mill House, two of the Landlords, Dr Andrew Collins and Mr Nicholas Collins were in attendance and permitted access for the Tribunal and the Tenants to the outbuilding containing the wood pellet boiler and accumulator tank which serves three properties on site. The Landlords answered some questions on the operation of the heating system. The boiler was not running during the inspection. There are three 4.5kW immersion heaters which provide a back-up system in the event of failure of the pellet boiler. There is a solar hot water system that supplements the pellet boiler. There is a heat meter which shows heat generated by the pellet boiler for renewable heat incentive calculations. There is a heat meter attached to the flow and return pipes serving Mill House. The circulation pump that moves the water from the pellet boiler to the accumulator was highlighted by the landlords as being the cause of the system breakdown at the beginning of 2024. The various temperature gauges showed the water temperature to be in the range 54 to 64 degrees centigrade. Mr Collins stated that these analogue gauges were not accurate and demonstrated that the immersion heater thermostat indicated that the accumulator temperature was closer to 70 degrees centigrade.

Reasons for the decision

21. Prior to the Tribunal inspecting the Property the Landlords has installed within the Property a heater meter as requested by the Tenants in the application. The Tribunal saw the heat meter in operation and an invoice relative to its installation by AD Heating Limited.
22. At the Hearing the Tenants accepted AD Heating Limited to be an independent contractor.
23. The only remaining issues for the Tribunal to determine are whether a certificate of calibration of the heat meter ought to have been provided by AD Heating Limited and whether the heat meter is in proper working order.
24. At the Hearing the Tenants accepted the heat meter to be in proper working order. Under questioning from the Tribunal the Tenants stated that the fitting of the heat meter has not changed the issues that they have with the costs charged by the Landlords for the Tenants' consumption of heat and hot water in the Property which they consider to be overstated. The problem, the Tenants said, is the same before and after the installation of the heat meter. The heat meter has simply confirmed the conclusions the Tenants had reached before it had been installation. Reference was made to the real issue being a bypass one - effectively an issue with the supply system not a meter reading issue - and the heat meter has proved that to be the case.
25. The application does not raise or seek any remedy relative to the heating and hot water system more generally and the tribunal could not therefore consider any representations in that connection.

26. In that the Tenants accepted the heat meter to be in proper working order and there is no evidence to the contrary the tribunal does not consider a calibration certificate required as part of the Landlords' compliance with the Repairing Standard.

Decision

27. The tribunal determined that the Property meets the Repairing Standard relative to the issues raised in the application.

28. The decision of the tribunal was unanimous.

Right of Appeal

29. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Effect of section 63

30. 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.

G Buchanan

Signed

Date : 12 June 2024

Legal Member and Chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

Mill House, Newmachar, Aberdeen AB21 0RD

Chamber Reference: FTS/HPC/RP/24/0185

Inspection: Schedule of Photographs

Inspection Date: 20/05/2024



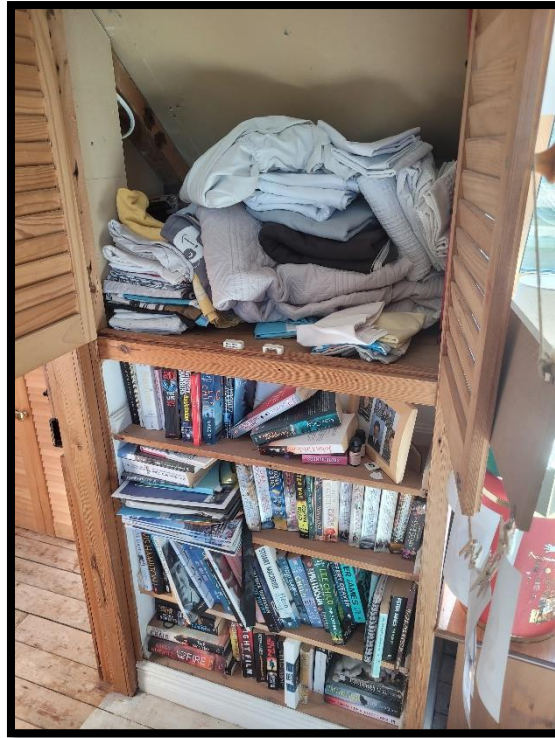
Photograph 1 Front (south east) Elevation.



Photograph 2 Kitchen – typical radiator with thermostatic valve



Photograph 3 Kitchen – Central heating and hot water programmer.



Photograph 4 Landing area – Fully enclosed hot water cylinder.



Photograph 5 Sun lounge underfloor – Recently fitted heat meter.



Photograph 6 Outbuilding – Communal central heating boiler and accumulator tank.