



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

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

Chamber Ref: FTS/HPC/RP/24/2501

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 3 and 4 June 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 (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order;
3. By letter 19 June 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 13 August 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 Hearing the Tribunal received the following additional documents from the parties:-

From the Tenants –

- Email from Tenants dated 4 September 2024.

From the Landlords –

- Email from Mr Nicholas Collins dated 1 September 2024 with attachments.

Inspection

6. The Tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Angus Anderson, Ordinary Member, previously inspected the Property on 20 May 2024 in connection with a prior application between the parties bearing reference FTS/HPC/RP/24/0185. Accordingly the Tribunal determined that no further inspection was immediately necessary and that the application should proceed to a Hearing.

Hearing

7. The Tribunal held a Hearing by telephone conference on 22 October 2024. The Tenants attended the Hearing. Dr Andrew Collins and Mr Nicholas Collins of the Landlords also attended.

8. The Tribunal heard the following oral submissions from the Tenants:-

- i. With regard to the installation of non-return valves on the by-pass valve by Flame Boilers, the Tenants were not aware of this work until after it had been carried out and by virtue of the Landlords' written submissions in this application. They said this work must have been done to fix a problem and that the Landlords had previously admitted heat leaching from the system.
- ii. The Tenants had not carried out any testing subsequent to the installation of the non-return valves to see if this addition to the system had alleviated the problem they complain about namely the increase in the heat meter readings even when no supply is demanded by the Property. They said it would be difficult to do testing, witnesses would be needed and whilst not impossible organisation would be required. If the frost thermostat is the issue there would also need to be a drop in temperature.
- iii. The Tenants said they don't know precisely what has changed nor have they received a diagram of the system showing the newly installed valves.
- iv. With regard to the water temperature control, there is none within the Property. The Tenants can only switch the supply on or off.

9. The Tribunal heard the following oral submissions from the Landlords:-

- i. The non-return valves were installed in May or June 2024. This was organised by the Landlords' letting agents, Martin & Co, with the contractor, Flame Boilers, after the Tenants' previous complaints.
- ii. Flame Boilers are specialists in renewable heating and were identified by Martin & Co.
- iii. Flame Boilers investigated and fitted the non-return valves but said there was no problem with the system and that the valves would not make any difference. The Landlords went ahead anyway to demonstrate to the Tenants they are trying to resolve the complaint.
- iv. Flame Boilers reported their findings by email and invoiced for their work. These documents could be produced if required.

- v. The non-return valves are fitted on the Tenants' "side" of the system on the pipework to the Property on either side of the by-pass valve to prevent the water being fed back and forth.
 - vi. The Landlords accepted the Tenants would not have known about the fitting of the non-return valves until the Landlords' written submissions were lodged in these proceedings in early September.
 - vii. The Landlords maintained there is no problem with the system and further testing to that previously carried out in March 2024 cannot be carried without co-operation between the Landlords and the Tenants.
 - viii. With regard to the issue of there being no temperature control within the Property, the Landlords stated that the absence of a temperature control is not a breach of the Repairing Standard. They said the position is analogous to the voltage of the electricity supply into the Property over which the Tenants have no control either.
 - ix. The temperature control is in the accumulation tank. The temperature control is operated by a control panel on the front of the boiler. Flame Boilers set the temperature control when they attended and the Landlords have not touched it since. The temperature will only drop if the boiler runs out of fuel but even then the immersion heaters will come on as a back up.
 - x. The solar panels augment the heat provided by the boiler and are a supplementary heating system.
 - xi. The non-return valves are situated on the pipework running from the top of the boiler to the top of the store. One pipe has the bypass and non-return valves and the other has the heat meter.
 - xii. The control turns on both the pump under the floor in the Property and on the boiler and also opens a 3 port valve.
10. The Tribunal heard further representations from the Tenants in response to questions from the Tribunal as follows:-
- i. The temperature of the water supply has recently been good and consistent. There have been no major issues, other than being off one time for 12 hours.

Summary of the issues

11. The issues to be determined are:-
- i. Whether the heating and hot water system fail to meet the Repairing Standard due to reading on the heat meter increasing even when there is no supply demanded from the Property; and
 - ii. Whether the absence of a temperature control for the heating and hot water system within the Property breaches the Repairing Standard.

Findings of fact

12. 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) It is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.

- (d) In around May/June 2024 the Landlords' contractor, Flame Boilers, on their instructions installed non-return valves on the heating and hot water system serving the Property.
- (e) Whilst the Tenants were not made aware of the installation of the non-return valves by the Landlords or their letting agents until the Landlords' written submissions to the Tribunal lodged on 1 September 2024, by the Hearing the Tenants had not carried out any tests, rudimentary or otherwise, to identify if the installation of the non-return valves have resolved their complaint.
- (f) There is no temperature control for the heating and hot water system within the Property.
- (g) The temperature of the water serving the Property has, in recent times, been consistent and good.

Reasons for the Decision

13. 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.
14. The tribunal had previously inspected the heating and hot water system in May 2024. The configuration of the system within the Property had not changed in the intervening period. The tribunal was therefore aware that within the kitchen, there is a wall mounted controller for the heating and hot water system. Via a hatch in the sun lounge floor the incoming flow and return heating water pipes can be seen together with a heat meter. The hot water cylinder is boxed-in within the attic and inaccessible. 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 Property.
15. Externally, the heating system has flow and return pipes within insulated ducts. They emerge from underground, adjacent to the sun lounge.
16. The outbuilding situated south east, across the garden from the Property, contains the wood pellet boiler and accumulator tank which serves three properties on site including the Property. 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 the Property. There are various temperature gauges and an immersion heater thermostat.
17. Subsequent to the Tribunal inspecting the Property in the previous application and the Hearing in this application the Landlords had employed Flame Boilers to investigate the system and install non-return valves.
18. Whilst the Tenants were not made aware of the installation of the non-return valves by the Landlords or their letting agents until the Landlords' written submissions to the Tribunal lodged

on 1 September 2024, by the Hearing the Tenants had not carried out any tests, rudimentary or otherwise, to identify if the installation of the non-return valves have resolved their complaint that the readings on the heat meter within the Property continued to increase even where no supply is demanded by the Property. The Tribunal does not accept that testing would have been difficult or required much organisation as the Tenants suggested. Basic testing would have been easily achievable and ought to have been done. It is for the Tenants to establish, on the balance of probabilities, that the Repairing Standard has been breached.

19. Despite the absence of a temperature control within the Property the Tenants accepted the temperature of the hot water had been consistent and good in recent times.
20. The Tribunal did not any have evidence to establish a breach of the Repairing Standard. Works have been done by the Landlords to the heating and hot water system the effect of which is entirely unknown to all concerned including the Tribunal. The absence of a temperature control does not breach the Repairing Standard where the temperature of the hot water is consistent and good.

Decision

21. In the circumstances, the Tribunal determined that the Property meets the Repairing Standard relative to the issues raised in the application.
22. The decision of the Tribunal was unanimous.

Right of Appeal

23. **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

24. **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 : 22 October 2024

Legal Member and Chairperson