

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/23/0020

Flat 2/1, 33 Dundonald Street, Dundee, DD3 7QA (“The Property”)

The Parties:-

Mr Marcin Goryniak, residing at Flat 2/1, 33 Dundonald Street, Dundee, DD3 7QA (“the Tenant”)

Ms Jamila Anvar, residing at 76 Briar Avenue, London, SW16 3AF (“the Landlord”)

Dundee City Council Private Sector Services Unit, 5 City Square, Dundee, DD1 3BA (“the Applicant”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act in relation to the house concerned, and taking account of the evidence obtained at the inspection and at the hearing, determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 5 January 2023, the Applicant, on behalf of the Tenant, applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application by the Applicant stated that they considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that the following particular requirements had been met:-

- That the house is wind and watertight and in all other respects reasonably fit for human habitation
 - 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 in a reasonable state of repair and in proper working order;
 - That the house meets the tolerable standard
3. By Minute of Decision dated 23 January 2023, a Convener, with delegated authority on behalf of the President of the Housing and Property Chamber, intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.
 4. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, the Tenant and the Applicant.
 5. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr R Buchan, Ordinary Member & Surveyor) inspected the Property on the morning of 30 March 2023 at 10am. The Tenant was present and provided access to the Property. The Applicant was represented by Mr Stuart Cuthill of Dundee City Council. The Landlord was neither present nor represented at the inspection.
 6. Following an inspection of the Property the Tribunal held a hearing by teleconference at 2pm on 30 March 2023. Mr Cuthill was not present, nor was the Tenant. A Mr Rashid appeared for the Landlord, he being the managing agent of the Property.

Summary of the issues

7. The following potential repair issues identified by the Applicant in January 2023 were required to be determined by the Tribunal:-
 - Whether there was a current and adequate EICR in place for the Property;
 - Whether the front door was wind and watertight and met the repairing standard;
 - Whether the kitchen window was cracked and required repair;
 - Whether there was evidence of water penetration underneath the kitchen window and cold drafts emanating from under the kitchen sink and window;

- Whether the electric heater in the bedroom worked;

Findings of fact

8. The Tribunal found the following facts to be established:-

- The Property was on the second floor of a traditional four storey stone tenement built in the late 19th Century. The accommodation comprised an entrance hall, living area with small open plan kitchen, one bedroom and a bathroom.
- An EICR had been provided in clear terms;
- The front door was in proper working order and wind and watertight;
- The kitchen window was not cracked and was in proper repair;
- There was no evidence of water penetration underneath the kitchen window;
- There were no cold drafts emanating from under the kitchen sink and window;
- The electrical heater in the bedroom worked;

Reasons for the decision

9. The Tribunal based its decision primarily on the evidence obtained during the course of its inspection where it had the benefit of seeing the actual condition of the Property.

An EICR had been provided by the Landlord to the Tenant in advance of the inspection. The Tenant provided the Tribunal with a copy. There was a small typographical error in relation to the address that this had been issued under. Immediately following the hearing the Landlord's agent arranged for a fresh EICR to be issued by the electrician with the correct address. There were no items marked C1 or C2 on the EICR and accordingly the Tribunal was satisfied that it met the required standard.

The Tribunal inspected the front door of the Property. The Tenant has carried out some repairs to this. The repairs appeared to have been effective and the door fit into the surrounding frame well. Accordingly the Tribunal was satisfied that there was no breach of the repairing standard in this regard.

In relation to the kitchen window and the area underneath it, the Tribunal inspected this. The Landlord had carried out repairs not long before the date of the inspection. There was no sign of any cracks in the window and it

appeared to be in proper working order. There was no evidence of water penetration under the kitchen window. In the cupboard under the kitchen sink some additional wood paneling had been installed to block off the cupboard from the area under the window. This appeared to have been effective and there were no draughts that the Tribunal could detect. The Tribunal was satisfied that the general area met the repairing standard.

The Landlord had replaced the electric heater in the bedroom and the Tenant confirmed that it worked.

The Tenant confirmed that the various items complained of had now been attended to.

Photographs taken during the course of the inspection are annexed to this Decision for information.

Decision

10. The Tribunal accordingly determined that the Landlords had complied with the duty imposed by Section 14 (1)(b) of the Act and no further steps were necessary.
11. The decision of the Tribunal was unanimous.

Right of Appeal

12. 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.

Effect of section 63

13. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed

Chairperson

Date

31 May 2023