

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier tribunal for Scotland under Section 60 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/16/0019

Re: Property at 23b Nile Street, Kirkcaldy, Fife KY2 5AX ("the Property")

Land Certificate No: FFE26206

The Parties:-

Zakaullah Raja Begum, residing sometime at 26 Kent Road, Dunfermline, thereafter at 25g Dunnikier Road, Kirkcaldy, Fife KY1 2RU and now at 251 Tideslea Path, Thamesmead, London SE28 0NH ("the Landlord") and

Piotr Wozniak, residing sometime at 23b Nile Street, Kirkcaldy, Fife KY2 5AX ("the Tenant")

Tribunal Members; George Clark (Legal Chair) and David Godfrey (Ordinary Member)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order in respect of the Property made on 27 April 2016, determined that the Landlord has complied with the Order and that a Certificate of Completion to that effect should be issued under Section 60 of the Act.

Background

1. By application received on 19 January 2016 the Tenant applied to the Private Rented Housing Panel 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 Tenant stated that the Tenant 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 water tight 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) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire, and
 - (e) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By letter dated 15 March 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee ("the Committee").
 4. The Committee inspected the Property on the morning of 27 April 2016.
 5. The Committee comprised George Clark (chairman) and David Lawrie (surveyor member).
 6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Linktown Community Action Centre, Ramsay Road, Kirkcaldy KY1 1UH.
 7. Following the inspection and hearing, the Committee made a Repairing Standard Enforcement Order ("the Order") in respect of the Property. The Order required the Landlord:
 - To install in the Property interlinked, mains-wired smoke detectors and in the hallway and living room and a heat alarm in the kitchen, all of which comply with the revised Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.
 - To install one or more carbon monoxide detectors in the Property to comply with the Scottish Government's Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, which came into effect on 1 December 2015.
 - To carry out such repairs to the roof, including the slatework, defective rones and associated flashings as are necessary to make the Property wind and water tight.
 - To instruct a suitably qualified electrician to replace the cooker extraction hood in the kitchen or to carry out such repairs to the existing extraction hood as are necessary to restore it to proper working order.
 - To instruct a suitably qualified Gas Safe engineer to carry out such repairs to the gas fire in the living room as are necessary to restore it to proper and safe working order or to disconnect it.
 - To carry out such work as is necessary to repair the leak from the pressure valve adjacent to the boiler.
 - To exhibit to the Committee a current Gas Safety Certificate in respect of the Property, including the boiler and the gas fire.
- The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of 4 weeks from the date of service of the Notice on the Landlord. On 27 July 2016, at the request of the Landlord, the Committee granted an extension of time for the Landlord to complete the works required by the Order, the period of extension being 6 weeks from the date that the variation was notified to the Landlord.
8. The Property was reinspected by the surveyor member of the Committee (now Mr David Godfrey) on 16 June 2016. He reported that none of the work required by the Order had been carried out.

9. On 9 September 2016, at the request of the Landlord, who advised on 5 September that the Tenant was shortly vacating the Property, the Committee agreed to Vary the Order by extending the time limit for carrying out the works by a period of 8 weeks.
10. The jurisdiction of the Private Rented Housing Panel was transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016.
11. The Tribunal comprised George Clark (Legal Member/Chair) and David Godfrey (Ordinary Member/surveyor).
12. The Tribunal reinspected the Property on 1 March 2017 and, following the reinspection, held a hearing at Linktown Community Action Centre, Ramsay Road, Kirkcaldy.
13. The Tribunal noted that the Tenant had vacated the Property, so was no longer a party to the proceedings.
14. The Tribunal held that the Landlord had installed interlinked, mains-wired smoke detectors in the hallway and living room and a heat detector in the kitchen, as required by the Order, but that, otherwise, none of the work required by the Order had been carried out.
15. At the reinspection, the Landlord's representative undertook to forward to the Tribunal the Gas Safety Certificate and receipts for works carried out. He failed, however, to do this.
16. The Tribunal accordingly determined that the Landlord had failed to comply with the Order and that the failure should be reported to the police and the local authority.
17. Following intimation from the landlord that the works required by the Order had been completed, the Tribunal intimated its intention to reinspect the Property on 29 November 2017 and to hold a hearing thereafter. The Tribunal rejected a late request by the Landlord to postpone the reinspection.
18. The Tribunal arrived to reinspect the Property on the morning of 29 November 2017. The Landlord was not present or represented at the Property and the Tribunal was unable to gain entry.
19. Following the unsuccessful attempt to reinspect the Property, the Tribunal held a hearing at Templehall Community Centre, Beauly Place, Kirkcaldy KY2 6EX. The Landlord was not present or represented at the hearing.
20. The Tribunal, having been unable to reinspect the Property, was not able to determine whether or not the remaining works required by the Order had been carried out.
21. The Tribunal noted that there had been a history in this case of the Landlord seeking to postpone scheduled reinspections and hearings and that it was now some 16 months since the Order had been made.
22. The view of the Tribunal was that the works required by the Order relate directly to the health and safety of tenants of the Property and that it would insist on inspecting the Property again.
23. The Tribunal accordingly determined that an application would be made for a judicial warrant authorising the Tribunal to gain entry, by force if necessary.
24. Following that determination and prior to an application for warrant being made, the Landlord contacted the Tribunal, advising that the works had been completed and requesting a final inspection.

25. The Tribunal reinspected the Property on the morning of 24 January 2018. They were admitted to the Property by Mr Quaiser Raja.
26. A file of photographs, taken at the reinspection, is attached to and forms part of this Decision.
27. The Tribunal permitted a short adjournment to allow Mr Quaiser Raja to obtain and fit a carbon monoxide detector in the Property,
28. Following the reinspection, the Tribunal held a hearing at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy KY1 1XT. The Landlord was not present or represented at the hearing.

Findings of Fact

- A carbon monoxide detector has been installed in the Property.
- The Property appears to be wind and water tight. No signs of water penetration were evident internally.
- The cooker extraction hood has been replaced.
- The gas fire in the living room has been removed, but there is adequate alternative heating provision in the room.
- Although not tested by the Tribunal, the central heating boiler was found to be operating satisfactorily.
- A Gas Safety Certificate prepared by H & F Gas Services Limited and dated 26 November 2017 was produced to the Tribunal by the Landlord. A photograph of the Certificate is included in the file of photographs taken at the reinspection.

Summary of Issues

29. The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 27 April 2016 and whether a Certificate to that effect should be issued under Section 60 of the Act.

Decision

30. Noting that the Tribunal had found on 1 March 2017 that the Landlord had installed interlinked mains-wired smoke detectors in the living room and a heat alarm in the kitchen of the Property and on 24 January 2018 that the Landlord had completed the remainder of the items specified in the Repairing Standard Enforcement Order, the Tribunal was satisfied that all of the works required by the Repairing Standard Enforcement Order made on 27 April 2016 had been carried out and determined that a Certificate to that effect should be issued under Section 60 of the Act.
31. The decision of the Tribunal was unanimous.

Right of Appeal

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.

G Clark

Signed....

.....Chairperson

Date: 24 January 2018

Photograph Schedule – 183 Upper Craighour Edinburgh EH17 7SQ

Case reference: FTS/HPC/RP/17/0220

Date of Re-Inspection: 15 January 2018

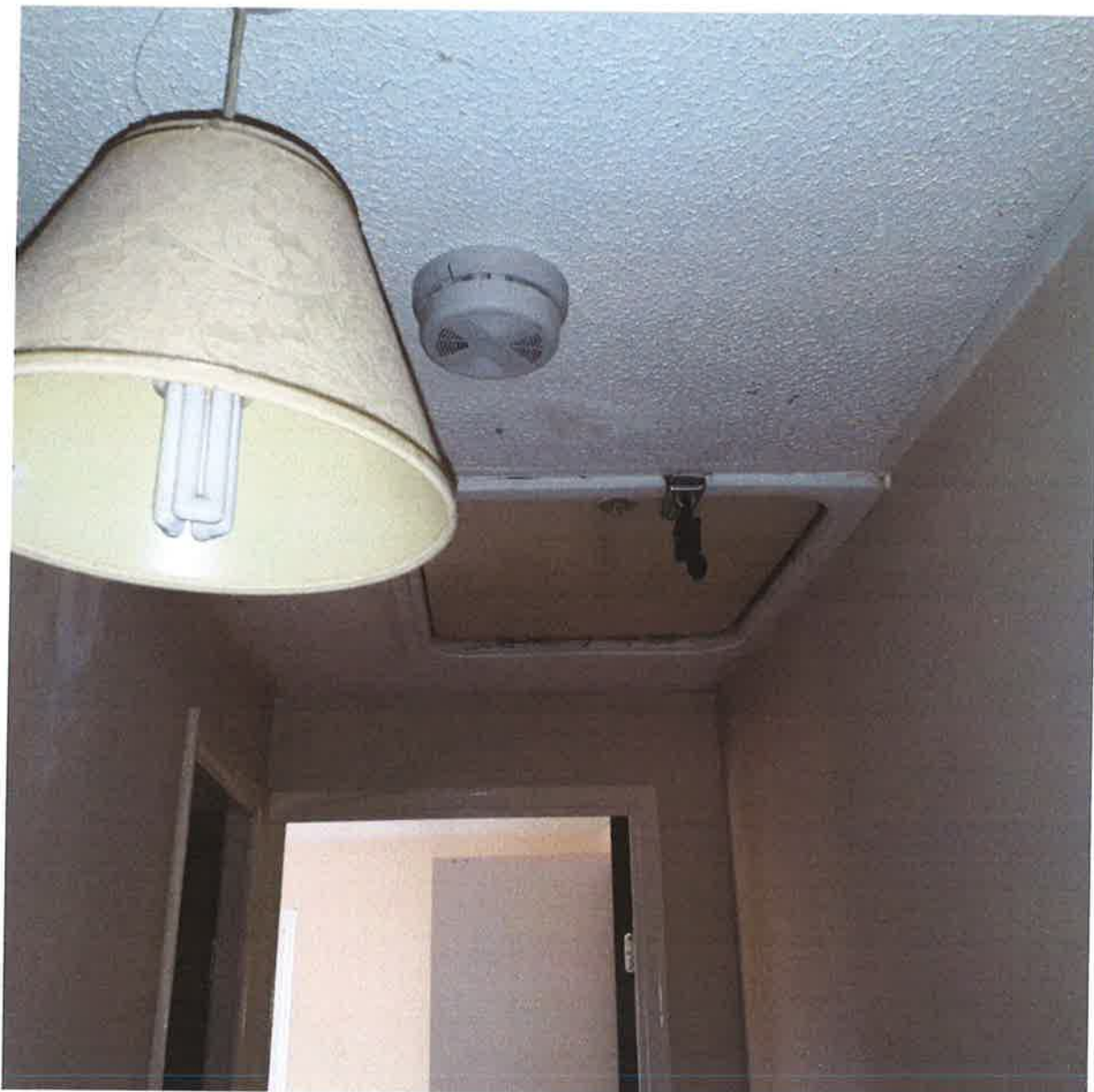
This is the file of
photography referred
to in the foregone
Decision
James Charles Lloyd
24/1/18



1 Front elevation of 183 Upper Craighour



2 View of the repaired lounge ceiling and newly fitted hard wired smoke detector



3 View of the newly fitted hard wired smoke detector in the first floor hallway



4 View of the boiler cupboard. Ventilator fitted awaiting fitting of a CO2 detector in the adjoining bedroom



5 View of newly fitted hard wired heat detector in the kitchen.



6 View of the recently repaired WC.