

# 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/RP/17/0410

**Title no/Sasines Description:** MID137762

**Property address:** 19/11 Milton Street, Edinburgh EH8 8HA ("the house")

**The Parties:-** Mr Kai Tarafdar, residing at 19/11 Milton Street, Edinburgh EH8 8HA ("the tenant")

Mr Elliot Tait, 2 Brighthouse Park Gardens, Edinburgh EH4 6GY ("the Landlord")

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as they saw fit for the purpose of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house and taking account of the evidence presented in writer and oral representations, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The tribunal composed: Mark Thorley, Legal Member, Susan Napier, Ordinary Member.

### Background

1. By application received on 7 November 2017, the tenant applied to the tribunal 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. In particular the tenant stated as follows:-
  - (a) The boiler has a recurring fault where it will stop supplying hot water to the radiators/or just stops functioning.
  - (b) There is grout requiring replacement/refilling in the tiles in the kitchen.
  - (c) There is a hole in the window frame in the livingroom.

3. Apart from the application form the tenant also submitted a copy of the Short Assured Tenancy Agreement and a number of emails between the tenant and DJ Alexander the letting agents for the property regarding the works to be undertaken to the property.
4. On 7 November 2017 the tribunal wrote to the tenant acknowledging receipt of the application.
5. Further correspondence was sent to the tenant by the tribunal on 20 November 2017 to clarify the extent of the issues. By email dated 1 December 2017 the tenant confirmed that the issues were solely those contained within the application. By letter dated 10 January 2018 the tribunal wrote to the landlord both at care of his letting agents DJ Alexander and also at his home address. By email dated 31 January 2018 written representations were received by the tribunal from DJ Alexander the letting agents. In said email it was indicated that "We will submit confirmation of all completed works in due course and give you a final position before 14 February 18".
6. The tribunal inspected the house on the morning of 14 February 2018. The tenant provided access to the house and was present during the inspection. Neither the landlord nor the landlord's agent attended.
7. Following inspection of the house the tribunal had a hearing at George House, Room D10, 126 George Street, Edinburgh. The tenant attended. There was no attendance by the landlord nor the landlord's agent.

### **Inspection**

8. At the time of inspection the weather was cold and dry. The tribunal noted that the subjects form part of a tenement. The property itself is a flat on the top floor of the building.
9. The accommodation comprised livingroom, kitchen, bathroom and bedroom.
10. The tribunal noted the following on inspection:-
  - (a) That the hole in the window frame in the livingroom has been filled and accordingly repair has been completed.
  - (b) The grouting work to the tiles in the kitchen has been undertaken and accordingly that issue has been resolved.
  - (c) The boiler (at the point of inspection) appeared to be working but there appeared to be intermittent issues with it.
  - (d) There was a smoke alarm in the kitchen but it appeared to be battery operated and not hard wired.
  - (e) There was no heat detector in the kitchen.
  - (f) A Gas Safety Record was provided.

(g) A schedule of photographs taken during the inspection by the Ordinary Member is attached to this Statement of Decision and executed as relative hereto.

(h) At the hearing the tribunal had before it the application and other documents referred to. The tenant was present.

### **Findings in Fact**

1. Reference is made to the tribunal's findings on inspection.
2. The tenant has occupied the house under a Short Assured Tenancy which commenced on 17 October 2017.
3. The grouting issues to the tiles in the kitchen have been made good as has the hole in the window frame in the livingroom.
4. The boiler continues to fail. The boiler at times has completely non-functioned and at other times produces hot water but thereafter without heating the radiators.
5. The Gas Safety Certificate dated 6 October 2017 identifies that a boiler service is recommended and also confirmed that the application ventilation was not safe.

### **Reasons for decision**

1. The tribunal considered the issues as set out in the application and as noted at the inspection. The tribunal was not satisfied that in terms of Section 13(1)(c) of the Act that the boiler was in a reasonable state of repair and proper working order.
2. The Gas Safety Certificate dated 6 October 2017 identifies that a boiler service is recommended and that the application ventilation is not safe.
3. The tribunal is of the view that there requires to be a Repairing Standard Enforcement Order ("RSEO") in respect of the matters identified above. Given the nature of the required repairs the tribunal is of the view that a period of four weeks from service of the RSEO was an adequate and reasonable timescale for the repairs to be completed.

### **Decision**

1. The tribunal accordingly determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
2. The tribunal proceeds to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.
3. The decision of the tribunal is unanimous.

**Comment**

It was noted in terms of the inspection that the smoke alarm fitted in the kitchen did not comply with current Scottish Government Regulations in respect that it was not hard wired.

**Right of Appeal**

**A landlord, tenant or third party applicant 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.

**Mark Thorley**

Signed .....

Chairperson

Date ..... 23. 2. 18 .....