

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24

Chamber Ref: FTS/HPC/RP/19/3061

Title no: ANG69785

6 Clifden Blue Court, Dundee DD4 0LR (“The House”)

The Parties:-

- Mr Adam Liggat, 6 Clifden Blue Court, Dundee DD4 0LR (“the Tenant”)
- Mr Peter Boyle and Mrs Pauline Boyle, Ninevah House, Murthly, Perthshire PH1 4EZ (“the Landlords”)

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr David Godfrey - Ordinary Member (Surveyor)

Decision

1. 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 has complied with the duty imposed by Section 14(1)(b) in relation to the House and taking account of the evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. On 11th September 2019, the Tenant had written to the Landlord with the list of the complaints. A copy of this letter has been provided to the Property and Housing Chamber. The correspondence related to the matters within the application.

3. By application received 2nd October 2019, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
4. The application by the Tenant stated that it was considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that:-
 - a) The House is not 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 not in a reasonable state of repair and in proper working order; and
 - c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
5. In particular, the complaints consisted of the following issues:-
 - a) That the windows need to be replaced;
 - b) The heaters need to be replaced;
 - c) There needs to be a new hot water timer; and
 - d) The kitchen fan is broken and needs to be replaced.
6. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant dated 30th October 2019. Representations were requested no later than 20th November 2019. The Tenant contacted the Housing and Property Chamber to request that the date for the representations could be extended as further work was due to be carried out on behalf of the Landlord. It was agreed that the date for lodging representations could be extended to 2nd December 2019. The date for the inspection and hearing was noted as 9th December 2019.

The Inspection

7. The Tribunal attended the House on the morning of 9th December 2019. It was a clear dry day. The Tenant was present and let the Tribunal into the House to carry out the inspection. The Landlord was neither present nor represented.
8. The House comprises a two-storey maisonette flat which forms part of a five storey block built around 1973. The accommodation comprises: Hall, Living/Dining Room, Three Bedrooms, Kitchen and Bathroom.
9. Each point on the list submitted by the Tenant was inspected in turn.
10. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

11. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

12. The hearing took place at the Carers Centre, Seagate, Dundee. Mr Peter Boyle and Mrs Pauline Boyle, the Landlord, were present. Mr Adam Liggat, the Tenant, along with his brother, Mr Sam Liggat, were present also.

13. The list of complaints were discussed one by one.

14. The Tenant advised that the hot water timer had now been replaced and was working. He withdrew this item from the list of complaints.

15. The Windows were discussed first. The Tenant informed the Tribunal that not all windows were wind tight around the edges and this was making the rooms cold. Additionally, slight water penetration had occurred at the living room window. The windows have now had draught excluders fitted. Prior to this the windows were letting in more draughts at gaps in the frames and through the trickle vents. The Tenant was still of the opinion that the windows should be replaced. The Landlord noted that when the contractor was instructed to look at the windows it was not to replace them but to ensure that they were wind and water tight. The draught excluders were added to resolve the situation. The vents were to be replaced but the contractor was struggling to obtain covered vents that were long enough. He was not able to inform the Tribunal when the vents would be repaired but that this was being investigated.

16. The heaters were discussed next. The living room and hall heaters are storage heaters. The heaters in the kitchen and upstairs are panel heaters. There had been discussion in the papers regarding the cost of running the heaters. The Tribunal was primarily focused to determine, on the balance of probabilities, if the heaters were working as they should be. There may be more economical heating systems available but this was not a concern for the Tribunal. The Tenant was still of the view that the heaters needed to be replaced. He was of the view that the electrician who visited and examined the living room heater had made it worse and it now worked less than it did before. He noted that all the upstairs panel heaters worked but had smelled of burning when turned on. He confirmed that for two weeks he had the upstairs heaters on for 2-3 hours at a time. The Landlord noted to the Tribunal the House was inspected by two different electricians from the same firm. He was of the view that any smell from bedroom 1 (where the Tenant sleeps) was due to the Tenant spilling an unknown substance on the heater and this was burning off when used. The Landlord was of the view that as the Tenant had damaged the heater by spilling an unknown substance on it it was the Tenant's responsibility to repair or replace it.

17. The Tribunal had found that the kitchen heater was not plugged in as the freezer was plugged into the socket it should be plugged into. The Tenant had offered to swap the plugs over to test it. The living room and hall heaters were not on. The towel heater in the bathroom was not raised as an issue and Tenant informed that it was working. The heater in bedroom 3 (the smallest bedroom next to the bathroom) was turned on. After a few minutes it had a clear smell of burning. The Tribunal concluded that smell was common to that of panel heaters as the dust was burning off the element. The other two panel heaters were not turned on. The Landlord made an undertaking to get an electrician to look at the heating controls in the downstairs heaters as he anticipated that this would resolve any issues.
18. The fan was discussed next. The fan can be seen to be a similar one to all the others in the block of flats. The Tribunal was not able to inspect it during the inspection as it had been taped up. The Landlord was of the view that it was working as two electricians had been out and considered it in working order. In the report provided it stated that the fan had been run for 15-20 minutes without noise. The Tenant maintained that there was a noise coming from it.

Summary of the issues

19. The issue to be determined was whether the House meets the repairing standard as set out in section 13 of the Act and whether the Landlord has complied with the duty imposed on them by section 14(1)(b).

Findings of fact

20. Having considered all the evidence, the Tribunal found the following facts to be established: -
- a) The tenancy is a Private Residential Tenancy Agreement between the Landlord and the Tenant which commenced on 2nd April 2018.
 - b) The Tenant raised a number of complaints. The Tribunal found these complaints did meet the repairing standard.

Reasons for the decision

21. The Tribunal considered that the windows met the repairing standard. The windows were the same as all the others in the block of flats. The Tenant had raised the issue of the vents. However, the vents in themselves were not broken but of a style that did not have a cover to prevent the flow of air. It would be expected that there would be some air let in to the room to allow ventilation not through a fault but through the design of the vent. The windows were touched during the inspection. They were cold to the touch but not draughty. The draught excluders had resolved the issue of draughts. It is noted that the Landlord contacted on 30th December to inform the Tribunal the vents were to be custom made as it had not been possible to purchase them off the shelf.

22. The Tribunal considered that the heaters met the repairing standard. It is a characteristic of such heaters to burn off dust when on. The Tenant described not using them for a while then when using them they smelt. This would be expected. The Tribunal looked at all the evidence before them with regard to the heater heating up and the smell being beyond what was expected. On balance, at the inspection the heaters were operating as would be expected. The downstairs heaters were not turned on during the inspection, the Tribunal drew the conclusion on the evidence before them as it was not able to determine from the inspection that the heaters did not work. While the Tenant may maintain that the heater was not working properly it was still his view that it was heating up. Issues of cost were raised but this was not considered to be within the remit of this Tribunal. It is noted as per the Landlord's undertaking an electrician attended the Property on 30th December 2019 to carry out repairs to the heating and carry out the repairs to the heating controllers for the downstairs heaters.
23. The Tribunal considered that the fan in the kitchen met the repairing standard. It could be seen from outside the block that it was the same fan as had been fitted through the entire block of flats. Two electricians had been to look at it. The report provided stated that the fan was in working order. It had been run for 15-20 minutes without a noise. The Tribunal concluded that any noise coming from it resulted from the design of the fan as opposed to it not operating properly.
24. The Tribunal looked at the evidence before them. Both parties agreed on the report from the electrician that had been submitted as part of the Tenant's submissions. The report stated that bedroom 1 heater should be replaced due to spilt residue. The Landlord maintained that this was the responsibility of the Tenant as he had spilt the residue. The Tenant disputed this. On balance we found it reasonable to presume that the Tenant would have been the one who could have had the access to spill residue on the heater thus causing it to smell when heated. On this basis it would not be an issue for a failure of the repairing standard and as such not an issue for the Tribunal.
25. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant and Landlord at the hearing.
26. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
27. The Tribunal was in no doubt, from its inspection, that the House did meet the Repairing Standard.
28. The Tribunal was satisfied that the Repairing Standard was met and that no further orders were necessary.

Decision

- (a) The Tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal did not need to issue any further orders.
- (c) The Tribunal did not need to take any further action.
- (d) The decision of the Tribunal was unanimous.

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 Miller

G Miller, Chair

6th January 2020