

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 24(1) of the Housing (Scotland) Act 2006

Property: 3/1 Dalry Gait, Edinburgh EH11 2AU (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RP/18/1900

Parties:

Josh McPhee, sometime 3/1 Dalry Gait, Edinburgh EH11 2AU (“the Tenant”)

Ms Tsueu-ju Su, represented by SouthSide Property Management, 20 Nicolson Street, Edinburgh EH8 9DH (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Greig Adams (Ordinary Member/Surveyor)

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 has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’), determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should not be made.

Background

1. By application received on 30 July 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Tenant stated that the Landlord had failed to ensure 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.

3. In his application and its supporting documentation, the Tenant stated that he had been experiencing problems with the boiler over a period of three months. He had reported the issue, and someone had come to see it on 18th May 2016, had noted the boiler to be a safety hazard and that it already carried a warning sticker, so should not have been in use. Three separate companies had come to the Property to take measurements, but no further action had been taken. The Tenant stated that he only had dealings with the then letting agents, CMC Property, not directly with the Landlord. The Tenant wished a new boiler to be installed.
4. On 31 July 2018, a Convener with delegated powers under Section 23A of the Act determined that the application should be referred to a tribunal. The Parties were advised of the date set for an inspection and hearing.
5. The Landlord did not make any written representations to the Tribunal.
6. An inspection of the Property was arranged for the morning of 25 September 2018, with a hearing to follow thereafter. On 21 September 2018, the Tenant e-mailed the Tribunal to advise that, as remedial work was under way in relation to the matter which was the subject of his application, the inspection and hearing were no longer required. The Tribunal regarded this as a request to withdraw the application under paragraph 7(1) of Schedule 2 to the Act. The Tribunal, however, was of the view that the matter which had been the subject of the Application would, if established, constitute a significant health and safety risk to the Tenant or anyone else occupying the Property. Accordingly, the Tribunal was not prepared to abandon its consideration of the application without satisfactory evidence that the gas central heating boiler in the Property was in safe working order and met the repairing standard. The Tribunal decided, therefore, to direct the Landlord to exhibit to the Tribunal a current Gas Safety Certificate and issued a Direction to that effect.
7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Greig Adams (Ordinary Member/surveyor).
8. The Landlord failed to comply with the Direction of the Tribunal. Accordingly, a further date, 6 February 2019, was set for an inspection and hearing. These were, however, rescheduled to 19 March 2019 at the request of the Landlord's new agents, SouthSide Property Management, who explained that they had very recently taken over the management of the tenancy and were arranging for a Gas Safety Certificate to be obtained.

9. The Landlord's new agents provided the Tribunal with a Gas Safety Certificate dated 7 February, but the Tribunal, whilst satisfied with the contents of the Gas Safety Certificate, determined that the inspection and hearing scheduled for 19 March 2019 should still go ahead.
10. The Tribunal inspected the Property on the morning of 19 March 2019. The Tenant, who was no longer a party to the proceedings as he had withdrawn the application, had vacated the Property some weeks beforehand and it had been re-let, so the Tenant was not present or represented at the inspection or the subsequent hearing. The Landlord was represented by Mr Alan Wells of SouthSide Property Management.
11. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

12. Following the inspection, the Tribunal held a hearing at Riverside House, 510 Gorgie Road, Edinburgh. The Landlord's representative attended the hearing.
13. The Tribunal considered all the evidence before it, including the matters it had noted at the inspection.

Findings of fact

14. The Tribunal makes the following findings of fact:
 - The Property is a modern, ground floor flat, built circa 2003.
 - The Tribunal has seen a satisfactory current Gas Safety Certificate in respect of the Property.
 - The Property contains an Ideal combi-boiler which was working at the time of the inspection, the Tribunal having been satisfied with the boiler pressure and having checked that it was heating the water to the kitchen tap.

Reasons for the decision

15. The Tribunal determined that, as it had seen the Gas Safety Certificate and the combi-boiler appeared to be working satisfactorily, the Landlord had not failed to comply with Section 14(1)(b) of the Act and the Tribunal would not make a Repairing Standard Enforcement Order.
16. 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

Date: 19 March 2019

..... Legal Member/Chairperson



**Property: Flat 3/1 Dalry Gait, Edinburgh
EH11 2AU ("the Property")**

Chamber Reference: FTS/HPC/RP/18/1900

*This is the Schedule of Photographs
referred to in the foregoing
Statement of Decision
Dunlop
Lynze - Fenton/Chas
19 March 2019*

SCHEDULE OF PHOTOGRAPHS



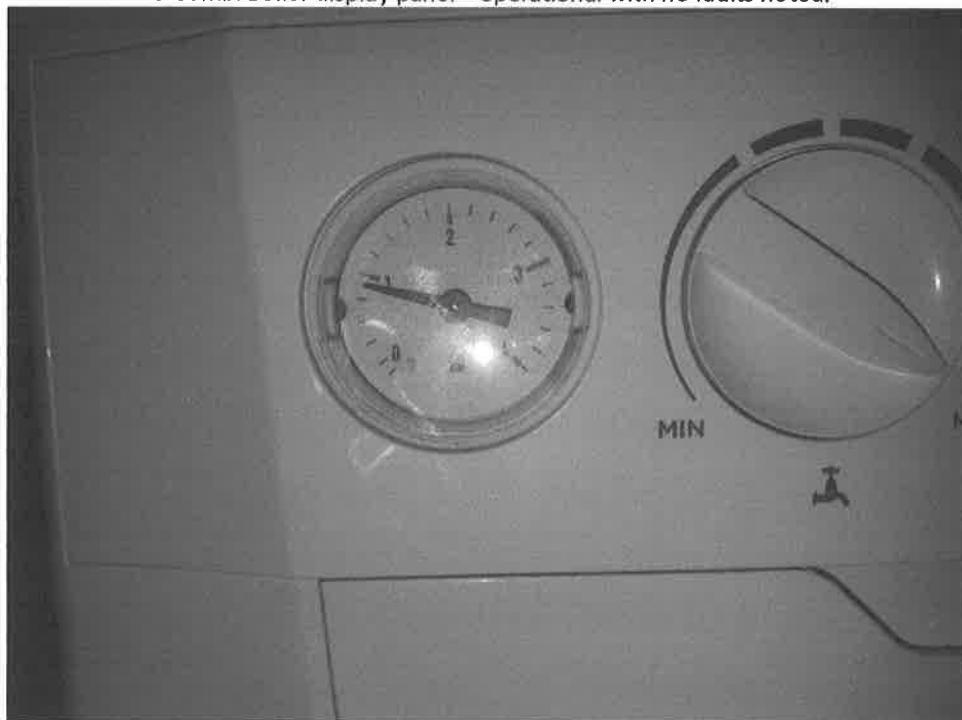
1 Front Elevation.



2 Combi Boiler.



3 Combi Boiler display panel – operational with no faults noted.



4 Pressure gauge.



5 Carbon Monoxide detector.



6 Heat detector in Kitchen.