

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **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: 23 Ravelrig Gait, Balerno, Midlothian EH14 7NH ("the Property"/ "the house")**

**Chamber Reference: FTS/HPC/RP/18/2186**

**David Gill, 23 Ravelrig Gait, Balerno, Midlothian EH14 7NH ("the Tenant")**

**Ammar Peter Kaka and Bushra Kaka, c/o Dove Davie and Partners, 9,10 and 11 Atholl Place, Edinburgh EH3 8HP ("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Debbie Scott (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 24 August 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 house is wind and watertight and in all other respects reasonably fit for human habitation,

- 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,
  - any fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
  - any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
  - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
  - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In his application and its supporting documentation, the Tenant stated that the hot water mains feed supplying water to the upstairs bathroom of the Property had failed on 3 March 2018. As a consequence, a large section of the kitchen ceiling had collapsed. As at the date of the application, the damage had not been rectified. There were no floorcoverings in the kitchen and main bathroom and there was a 3 metres by 3 metres hole in the kitchen ceiling. The issue had been going on for 6 months, with no end in sight.
  4. On 27 August 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, via Dove Davies and Partners, made written representations to the Tribunal, by e-mail dated 18 September 2018, stating that the work had now been completed. The Landlord had had to make an insurance claim and the insurers and contractors engaged by them had been extremely slow to react at each stage of the process. The Tenant had been given a reduction of 50% in the rent during the period it had taken to carry out the work.
  6. By e-mail dated 5 October 2018, the Tenant advised the Tribunal that the rectification works had been completed to a good standard and, whilst the time taken to commence the work had been excessive and the disruption to his family life significant, the matter had been concluded. He stated that the proposed inspection and hearing were no longer required. This e-mail was not seen by the Tribunal members prior to the date of the inspection and hearing.
  7. The Tribunal inspected the Property on the morning of 22 October 2018. The Tenant was present at the inspection and the Landlord was represented by Fraser Crichton, Partner, Dove Davies and Partners.

8. The Tribunal comprised George Clark (Legal Member/Chairperson) and Debbie Scott (Ordinary Member/surveyor).
9. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
10. At the inspection, the Tribunal noted that new flooring has been installed in the kitchen/dining area, the kitchen ceiling has been repaired after the water leak from the bathroom above, the original bath fittings have been restored following the repair of the damage caused by the leak, and the new flooring adjacent to the bath has been sealed to help prevent any future water spills affecting the lower floor of the Property. The Tribunal also noted that the gas central heating boiler is located in the integral garage.

### **The Hearing**

11. Following the inspection, the Tribunal held a hearing at George House, 126 George Street, Edinburgh. The Tenant was not present or represented at the hearing. The Landlord's representative attended the hearing and confirmed that the works had been completed. He understood that, if the gas central heating boiler was in the garage, there was no requirement to provide a carbon monoxide monitor but said that the Landlord would be happy to provide one, should the Tribunal take a contrary view.
12. The Tribunal considered all the evidence before it, including written submissions and the matters it had noted at the inspection.

### **Findings of fact**

13. The Tribunal makes the following findings of fact:
  - The Property is a modern, two storey detached villa with an integral garage, built circa 1991.
  - The Parties are agreed that all work required to repair the damage caused by the water leak in the upstairs bathroom has been completed.
  - The mains-wired and interlinked smoke detectors that are required in the Property are in place and there is a heat detector in the kitchen area.
  - There is no carbon monoxide monitor in the garage.

### **Reasons for the decision**

14. The Tribunal was of the view that as the Parties were in agreement, it was content that the repair works which had been central to the

application had been completed and that the only item it had to consider was the absence of a carbon monoxide monitor.

15. The Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, dated 12 June 2015, states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where, inter alia, "there is a fixed combustion device in an inter-connected space, for example, an integral garage".

16. The Tribunal was satisfied that the Landlord's representative had simply overlooked that part of the Statutory Guidance and, as an assurance had been given at the hearing that a carbon monoxide monitor would be installed in the integral garage if the Tribunal determined that it was necessary, The Tribunal decided not to make a Repairing Standard Enforcement Order. The Tribunal would, however, expect the monitor to be fitted in early course.

17. 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 ..... Legal Member/Chairperson  
Date: 22 October 2018

This is the Schedule of Photographs  
referred to in the foregoing  
Statement of Dersan  
G Clark

720 October 2018  
Fenky/Chau

23 Ravelrig Gait, Balerno, EH14 7NH

FTS/HPC/RP/18/2186



Front Elevation – Detached villa with integral garage



**Kitchen/ dining area floor – new flooring installed**



**Kitchen Ceiling – repaired after water leak from Bathroom above.**



Corner Bathroom above kitchen area – Hot tap pipe leak from bath. Original fitments restored after water damage repaired.



New floor covering adjacent to bath – sealed areas



Bathroom flooring



Gas Central Heating boiler located within the integral garage – No Carbon Monoxide monitor