

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/19/0593**

**Re: 3/L 48 Union Street, Dundee, Angus DD1 4BE (“the Property”)**

**Parties:**

**Miss Claire Mitchell, 3/L 48 Union Street, Dundee, Angus DD1 4BE (“the Tenant”)**

**Mr Jonathan Guthrie and Mrs Florence Guthrie c/o EasyLets Ltd, 7 South Tay Street, Dundee DD1 1NU (“the Landlords”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and David Godfrey (Ordinary Member)**

**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) in relation to the house concerned, and taking account of the evidence, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application dated 20 February 2019 the Tenant applied to the Housing and Property Chamber 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 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. Specifically, the Tenant complained that there was an intermittent fault with the gas central heating boiler that resulted in the property being without heating or hot water for anything between 10 minutes to 5 hours.
3. By Notice of Acceptance dated 28 February 2019 a legal member of the Tribunal with delegated powers intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.
  4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
  5. Following service of the Notice of Referral the Tenant (by email dated 21 March 2019), made written representations to the Tribunal indicating that as the Landlord intended to take further steps to fix the boiler that week, she wished to withdraw her application. The Landlords representatives, EasyLets Ltd, 121 Nethergate, Dundee (by email dated 2 April 2019), made written representations to the Tribunal advising that as the boiler could not be repaired the installation of a new boiler had been authorised and the work was expected to be completed by 4 April 2019.
  6. By Directions dated 22 March 2019 the Tribunal requested that the Landlords provide a report from a qualified gas engineer.
  7. As the Landlords did not provide a gas engineers report in compliance with the direction nor confirmation that the boiler had been replaced and as it was in the public interest to continue to determine the Application the Tribunal issued a Minute of Continuation.
  8. The Tribunal inspected the Property on the morning of 23 April 2019. The Tenant and the Landlord were not present during the inspection. Access was provided by another tenant Mr Stuart Whitelaw who confirmed that a new boiler had been installed and was working properly. A schedule of photographs taken by the Ordinary Member of the Tribunal is attached to this decision.
  9. Following the inspection of the Property the Tribunal held a hearing at Caledonian House, Greenmarket, Dundee. There was no appearance by the Landlords or their representatives and the Tenant who had withdrawn her application was also not present.
  10. The Tribunal was able to ascertain from the documentation made available to them at the inspection and from contacting the Landlords

representatives by telephone that the new boiler had been installed by Advance Plumbing and Heating, Unit 7, Riverside Court, Mayo Avenue, Dundee. The Tribunal noted from the Engineer's completed Central Heating Boiler Commissioning Checklist that the new boiler was operating properly and was in a safe condition. The Tribunal was able to confirm that Advance Plumbing and Heating were on the Gas Safe Register.

### **Summary of the issues**

11. The issues to be determined are whether 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.

### **Findings of fact**

12. The Tribunal finds the following facts to be established: -
  - The gas boiler in the property could not be repaired and required to be replaced.
  - The Landlords arranged for a new boiler to be installed in the property in about the beginning of April 2019.
  - The new boiler appears to be working properly and has been installed by a Gas Safe registered contractor.

### **Reasons for the decision**

13. The Tribunal was satisfied from the parties' written representations, the documentation seen at the inspection, the information provided by Mr Whitelaw and the subsequent information obtained by telephone from the Landlord's representatives that the original boiler had been replaced with a new boiler by a Gas Safe registered contractor and that it was in proper working order.
14. It was unfortunate that the Landlords had not complied with the Directions issued by the Tribunal and provided the requested documentation in advance of the inspection as that might have avoided the need for the case being continued to a hearing. Be that as it may the Tribunal was satisfied that the property did meet the repairing standard

### **Decision**

15. The Tribunal accordingly determined that the Landlord had not failed in the duty imposed by Section 14 (1)(b) of the Act.

16. The decision of the Tribunal was unanimous.

### **Right of Appeal**

**17. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

18. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

Signed      Graham Harding Chairperson

Date          26 April 2019



PHOTOSHEET



**Property:** FLAT 3/1, 48 UNION STREET, DUNDEE, DD1 4BE

**Ref no:** FTS/HPC/RP/19/0593

**Tribunal:** Graham Harding and David Godfrey

**Inspection:** The property was inspected at 10.00 am Wednesday 23rd April 2019.

**Access:** Miss Claire Mitchell was not present during the inspection however access was provided by Mr Stuart Whitelaw.

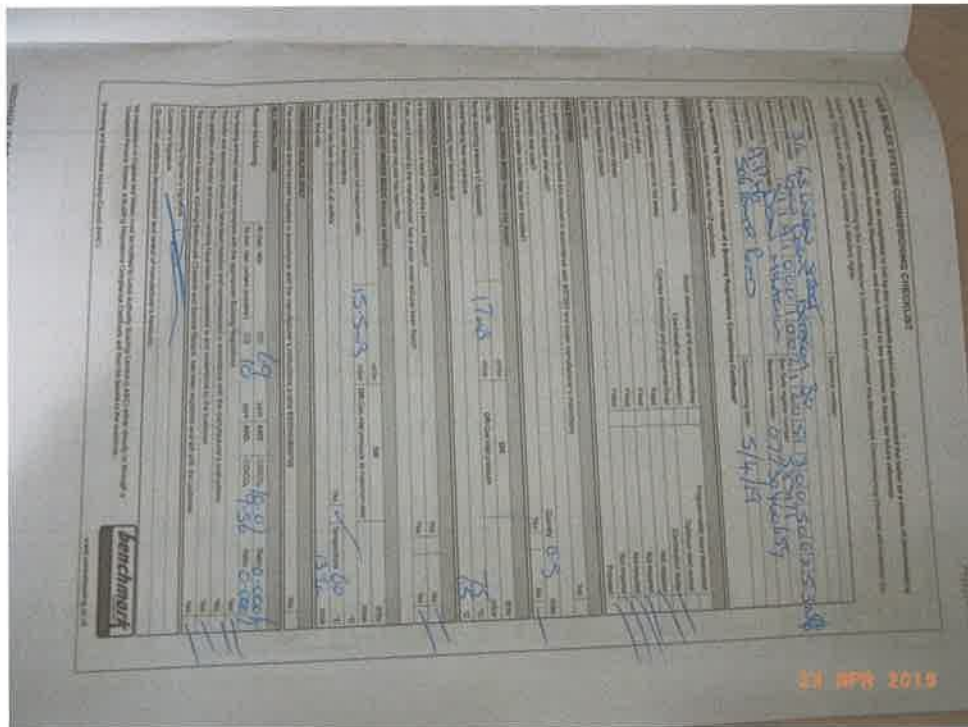
**Photographs**

1. Central Heating Boiler
2. Central Heating Boiler Commissioning Checklist

D Godfrey



Central Heating Boiler



Central Heating Boiler Commissioning Checklist

David Godfrey  
23<sup>rd</sup> April 2019