

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

Chamber Ref: FTS/HPC/RT/18/3279

Title no: DMF16698

4 MacDonald, Loaning, Heathhall, Dumfries, DG13RX ('The Property')

The Parties:-

Andrew Thomson Gray and Lee James Gray, residing at 89 Annan Road, Dumfries, DG1 3EG ('the Landlord').

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('Third Party')

Robert Chalmers residing formerly at 4 MacDonald, Loaning, Heathhall, Dumfries, ('the former Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Debbie Scott (Ordinary Member).

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlords have not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. The Tenant leased the Property from the Landlords in terms of the lease between the parties, which had not been produced. The Third Party applied to the Tribunal for a determination of whether the Landlords have 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 they considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; 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 proper working order; the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

In particular the application stated :-

- 2.1 No evidence of EICR supplied.
- 2.2 No evidence of Gas Safety Check Supplied.
- 2.3 No Co Detection.
- 2.4 No heat detector in the kitchen.
- 2.5 Gutters front and back defective.
- 2.6 Garden, no perimeter fence.
- 2.7 Utility room ceiling not watertight and glass cracked.

3. Maurice O'Carrol, as Convenor of the First- tier Tribunal (Housing and Property Chamber), having considered the application, comprising documents received between 6th December 2018 and 18th January 2019, referred the application under Section 22 (1) of the Act to a Tribunal.

3. On 12th February 2019 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Third Party, the Landlords and the Tenant.

4. The Tribunal attended at the Property on 29th March 2019. The Tenant was not present at the inspection having previously vacated the Property. Lee Gray, one of the Landlords was present at the inspection.

The Property, 4 MacDonald Loaning, Heathall, Dumfries, DG1 3RX is a mid terraced villa which dates from circa 1970. The accommodation comprises 2 bedrooms, living room, kitchen, bathroom and utility room.

The Tribunal inspected the alleged defects and found:-

4.1 No evidence of EICR supplied and 4.2 No evidence of Gas Safety Check Supplied.

Lee Gray advised that copies of the certificates would be provided at the hearing.

4.3 No Co Detection.

There were two wall mounted Co detectors in the Property. One in the kitchen and one in the front bedroom.

4.4 No heat detector in the kitchen.

There was a hardwired and interlinked heat detector in the kitchen.

4.5 Gutters front and back defective.

The gutters were UPVC gutters to front and back. There was no evidence of vegetation growth but some visible staining to the soffits below in part. However it is not known if this is current or historic. The weather at the inspection was dry and accordingly it was not possible to determine if the gutters are in proper working order.

4.6 Garden, no perimeter fence.

There was a boundary wall and gate to the front of the Property. The boundaries at the rear comprised a hedge between the Property and number 2 MacDonald

Loaning. The division between the Property and 6 MacDonald Loaning was delineated by gravelled paths.

4.7 Utility room ceiling not watertight and glass cracked.

The utility room to the front of the Property seemed to be part of the original construction. The roof had a low pitch and was constructed of reinforced glass panels. Six of the panels were cracked. There was no evidence to suggest that they were not wind and watertight.

Photographs were taken during the inspection and are attached as a Schedule to this report.

6. Following the inspection of the Property the Tribunal held a hearing at Lochvale House, Lochvale House, Georgetown Road, Dumfries, DG1 4DF.

The Tenant did not attend the hearing. Lee Gray and Robert Rome, on behalf of Dumfries and Galloway Council, attended the hearing.

In respect of the matters in the application Lee Gray and Robert Rome advised as follows:

6.1 No evidence of EICR supplied.

An EICR report dated 16th January 2019 was provided by Lee Gray. It had been prepared by Ryan Johnstone, electrical contractor. It was established that Ryan Johnstone was a registered member of SELECT. The report confirmed that the electrical installation was satisfactory.

6.2 No evidence of Gas Safety Check Supplied.

A Gas Safety Certificate dated 5th December 2018 was provided by Lee Gray. It had been prepared by Dean Sterritt of 208 Heathhall Industrial Estate, Dumfries. It was established that Dean Sterritt is a registered on the Gas Safe Register. The certificate confirmed that the gas boiler and hob were in a satisfactory condition.

6.3 No Co Detection.

Lee Gray and Robert Rome acknowledged that Co detectors had been installed in the Property.

6.4 No heat detector in the kitchen.

Lee Gray and Robert Rome acknowledged that a heat detector had been installed in the kitchen.

6.5 Gutters front and back defective.

Lee Gray advised that he had had the plastic fascias replaced to the front and rear of the Property by a local roofer and as part of this repair the gutters had repaired and had been fixed to plastic fascias.

6.6 Garden, no perimeter fence.

Robert Rome advised that he wished to withdraw this matter from the application.

6.7 Utility room ceiling not watertight and glass cracked.

Lee Gray advised that he had lived in the Property for approximately five years from 2007. The cracks in the reinforced glass ceiling were there at that time. There is no evidence that the ceiling of the utility room leaks and there is no damp staining to the walls of the utility room and the adjacent to the roof.

7. Decision

7.1 The issues to be determined are:-

7.1.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the utility room ceiling results in the utility room not being wind and water tight and in all other respects reasonably fit for human habitation.

7.1.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

Whether the condition of the gutters results in them not being in a reasonable state of repair and proper working order.

7.1.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

The Tribunal must determine if there is a valid EICR

7.1.4 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

The Tribunal acknowledged that the statutory guidance requires:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All alarms should be interlinked.

The Tribunal must determine if the heat and smoke detectors in the Property comply with the statutory guidance.

7.1.5 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1) (g) of The Housing (Scotland) Act 2006).

The Tribunal must determine if the carbon monoxide detectors in the Property comply with the statutory requirements.

7.2 Determinations:

7.2.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determine that there was no evidence that the utility room ceiling was not wind and watertight at the inspection.

7.2.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine that there was no evidence that the gutters are not in a reasonable state of repair and proper working order at the inspection.

7.2.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Tribunal determine that the EICR 16th January 2019 was a valid EICR that had been prepared by a SELECT registered engineer.

7.2.4 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

The Tribunal acknowledged that there were hardwired and inter connected smoke detectors in upper and lower halls and a hardwired and inter connected heat detector in the kitchen and therefore determined that the heat and smoke detectors in the Property comply with the statutory guidance.

7.2.5 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1) (g) of The Housing (Scotland) Act 2006).

The Tribunal determine that the two carbon monoxide detectors in the Property comply with the statutory requirements.

7.3. The Tribunal accordingly determined that the Landlords have NOT failed to comply with the duties imposed by Sections 13 (1)(a)(b)(c)(f) and (g) of the Act, as stated.

8. The decision of the Tribunal was unanimous.

Appeal

9. 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.

J Taylor

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.....Chairperson

12th April 2019

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Front Elevation

12/4/19

This is the Schedule of Photographs
referred to in the foregoing
Decision of the First-tier Tribunal
for Scotland.

J Taylor



Carbon monoxide meter in kitchen



Gas Central Heating boiler located in bedroom cupboard.



Carbon monoxide meter in bedroom



Combined smoke and heat detector



Repaired porch roof. Dry at time of inspection. Externally repaired with a flashing detail.



Cracked glass roof panels in porch. No water ingress. Surrounding areas were dry at time of inspection



Rear Entrance porch with glass roof. Flashing detail repaired.



Guttering repaired at front and rear, damp staining noted to boarding.



Boundary with next door neighbour clearly delineated.



Boundary wall.



Hedge boundary and path delineation boundary with neighbour at front of property.



Entrance pathway adjacent to garage with gate.

4. MacDonald Loaning, Heathall, Dumfries, DG1 3RX
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High damp readings in the porch area noted.
This is noted as an observation.



Movement crack in rear porch structure.
This is noted as an observation.