

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006, section 24(1)

Chamber Ref: FTS/HPC/RP/17/0192

Title no/Sasines Description: DMB70079

22 Hillhead Road, Kirkintilloch G66 2HF ("the Property")

The Parties: -

Mr Gerard McCann, 22 Hillhead Road, Kirkintilloch G66 2HF ("the Tenant")

Mr Raymond Heath, East Dunbarton Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch, G66 1HB ("the Tenant's Representative")

And

Ms Karen Lang, c/o R and G Estate Agents, 57 Townhead, Kirkintilloch, Glasgow, G66 1NN ("the Landlord")

R and G Estate Agents, 57 Townhead, Kirkintilloch, Glasgow, G66 1NN ("the Landlord's Representative")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

Andrew Taylor - 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) of the Housing

(Scotland) Act 2006 ("the Act") in relation to the Property and taking account of all of the available evidence, determines that the Landlord has complied with the duty imposed on her by Section 14 (1) (b) of the Act.

Background

1. By application received on 16 May 2017 the Tenant applied to the Housing and Property Chamber under section 22 (1) of the Housing (Scotland) Act 2006 for a determination of whether the Landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Act ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and 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 in terms of section 13(1)(c) of the Act.
3. The detail of the complaint being specifically that a boiler repair had been outstanding since 27 February 2017 which had been reported verbally and in writing to the Landlord's Agent; there having been no hot water since February 2017 and no heating except temporary electric heaters which had been supplied to the Tenant that in turn had placed an extra financial burden on the Tenant due to the running costs.
4. The Tenant stated that a boiler repair or replacement was needed of the gas boiler at the Property to ensure that the Property meets the repairing standard.
5. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 5 June 2017 the Tenant, Tenant's Representative, the Landlord and the Landlord's Representative were all notified that the President of the Housing and Property Chamber had decided to refer the application to a Tribunal for determination.
6. The Tenant and Landlord, both through their Representatives, intimated their intention to attend the hearing. No written representations were made to the Tribunal.
7. On 11 July 2017, the Tenant's Representative intimated to the Tribunal by e-mail that a repair to the gas boiler was completed the night before.

The Inspection

8. On the morning of 12 July 2017, the Tribunal inspected the Property in the presence of the Tenant, the Tenant's Representative and the Landlord's Representative. The weather conditions at the time of the inspection were dry and sunny. Photographs were taken during the inspection and these are attached as a Schedule to this decision.
9. The Property is a flatted dwelling house. The Property has two bedrooms, a lounge, kitchen and bathroom. The gas central heating boiler is situated in the kitchen of the Property.
10. Both the Tenant and the Landlord's Representative confirmed to the Tribunal during the inspection that the Boiler had been replaced with a new boiler which had been installed at the instance of the Landlord a day or so before.
11. Inspection revealed that a new Vokera Easy Heat boiler had indeed been installed. The registration guarantee paperwork had been left in the Property. The boiler was in full working order when activated, heating the radiators and supplying hot water.

The Hearing

12. Following upon the inspection of the Property, the Tribunal held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL.
13. The Tenant, the Tenant's Representative and the Landlord's Representative attended. The Tribunal was satisfied that the requirements of Rule 47 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 had been complied with in that the Landlord had received proper notice of the hearing and proceeded to deal with the application in her absence on the representations of Landlord's Representative, Mr Gary McNulty.
14. The Tribunal considered all the written material before it which comprised of the application form and accompanying letters dated 6 and 21 April 2017 from the Tenant's Representative to the Landlord's Representative; the letters from the Landlord's Representative to the Tenant's Representative dated 18 and 27 April 2017; exchange of e mails between the Landlord's Representative and Police Scotland dated 27 April 2017; the lease between the parties, AT6, a Notice to Quit dated 11 May 2017 and the Land Certificate.
15. The Tenant confirmed that notwithstanding the service of a Notice to Quit he remained the Tenant and the tenancy was ongoing. He did not intend to leave. No further action had been taken by the Landlord to legally end the tenancy as far as he was aware.

16. The Tenant's position in evidence was stated to be that committed to paper in his Representative's letter of 6 April 2017, which was referred to by him and stated, "In February 2017 the tenant was awoken in the early hours of the morning to very loud banging and noise. He went to the boiler and the pressure gauge was on the red section and at the highest placing. The noise and banging was so intense and Mr McCann was so fearful that the boiler was going to explode. He was in a panic and switched the gas tap off. This did not stop the noise and banging. In a panic, he removed the wiring loom, but the pressure and noise remained the same. He then turned off the water supply and eventually this stopped the pressure rising and the banging stopped. The next day he reported this to the letting agency." He said that this was an accurate description of his version of events. The Tenant's contention was that it was the heat exchange valve that had caused a problem to occur with the boiler and that two engineers who had visited the Property had diagnosed that as having caused the problem.
17. The Tenant's Representative stated that the repairing standard had not been met as the Landlord had refused or delayed to repair or replace the boiler since February and that is why the application had been made to the Tribunal for a decision.
18. The Landlord's Representative referred to the letter dated 18 April 2017 from his company which he said accurately set out the Landlord's position in response which stated, "Our engineer reported that the tenant advised him he had turned off the power to the boiler to stop the banging. He also turned off the gas supply and water supply. Our engineer reports that upon inspecting the boiler he could see that all the cables entering the boiler and inside the boiler had been cut causing severe and uneconomical repairable damage to the boiler. Our engineer further reports that the noise the tenant heard was caused by the pressure relief valve constantly discharging as the Tenant had left the filling loop in the open position which in turn put the pressure in the boiler to a dangerous level causing the safety mechanism to engage to lower the pressure. The engineer reports that that had the tenant not left the loop in the open position then this issue would not have occurred at all."
19. Two photographs were produced during the hearing by Mr McNulty, the Landlord's Representative, which he indicated depicted the cables and pipes attached to the old boiler in the Property which had been damaged by the Tenant. He stated that these had been e mailed to the Tenant in a previous e-mail exchange and formed part of the dispute in issue between the parties. He had believed that the Tribunal had copies of them with the Landlord's paperwork as he had instructed his office staff to lodge them. The Tribunal confirmed they were not with the papers. The Tenant's Representative objected to them being received. The Tribunal then considered whether to admit them in evidence having

regard to Regulation 39 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2016. The Tribunal allowed them to be received being satisfied that the Landlord's Representative had exchanged them with the Tenant by e mail, his explanation as to his misunderstanding that they had been lodged, and because Mr McNulty relied on them when making his representations to the Tribunal. Both parties were however advised that the photographs may ultimately have limited evidential value given that there were no expert witnesses present to assist the Tribunal in any technical matters relating to the old boiler and no-one in attendance was qualified to give an expert opinion to the Tribunal.

20. The Landlord's Representative told the Tribunal that as far as the Landlord was concerned that the Tenant had caused criminal damage to the old boiler. This had been reported to the police as evidenced by the e-mail exchange with Police Scotland. He was waiting to hear what action the police were to take. The Tenant stated he was unaware of this development as he had not been contacted by the police.
21. All Parties present confirmed that the new boiler had been installed on 10 July 2017 and that it was in proper working order. It had been paid for by the Landlord. There was clearly a dispute between the Parties about whether the Tenant should bear the cost of the replacement boiler and that was to be dealt with between the Parties separate to these proceedings, as was the complaint to Police Scotland.
22. The finding of the inspection was that there was a newly installed and fully functioning boiler in the Property.
23. The Landlord's Representative was asked if a Gas Safety Record certificate was available for the Property following the new boiler having been installed. He confirmed that there was one which could be made available to the Tribunal following on from the hearing. The Tenant and the Tenant's Representative confirmed that they had no objection to this document being provided to the Tribunal late, given that the boiler had only just been installed and that the Tenant was to be provided with a copy in addition. It was agreed that the Tribunal would receive this document and that the Tribunal would take its terms into account if produced when considering if the repairing standard is met.

Summary of the issues

24. The issue to be determined was whether on the day of the inspection the Property meets the repairing standard as set out in section 13 (1) (c) of the Act, and whether the Landlord had complied with the duty imposed on her by section 14(1) (b) of the Act.

Findings in fact

25. The Tribunal finds the following facts to be established

- I. The Landlord is the registered owner of the Property and the Landlord.
- II. The tenancy between the parties is a Short-Assured Tenancy and one to which the repairing standard applies.
- III. The tenancy agreement between the Landlord and Tenant commenced on 28 August 2015 and has continued since then by agreement, notwithstanding the service of a Notice to Quit letter on 11 May 2017.
- IV. The Tenant's Representative raised the extant complaint referred to the application with the Landlord in writing on 6 and 21 April 2017, that is prior to the current application being made.
- V. The Tribunal carefully inspected the Property having regard to the item complained of in the application being the subject of the complaint and found on the day of the inspection that there was a newly installed and fully functioning boiler in the Property.
- VI. There has been produced to the Tribunal a Gas Safety Record certificate for the Property dated 10 July 2017 which satisfies the Tribunal in all respects with regards to the new boiler.
- VII. The Property does meet the repairing standard required under section 13 (1) (c) of the Act.

Reasons for decision

26. The Tribunal was satisfied that the tenancy between the parties was an ongoing tenancy to which the repairing standard duty applies in terms of section 12 of the Act being a Short - Assured tenancy.

27. A new boiler had been installed two days before the hearing and that was found to be in proper working order. It had been paid for by the Landlord. There was clearly a dispute between the Parties about whether the Tenant should bear the cost of the replacement boiler and that was to be dealt with separately to these proceedings, as was the complaint to Police Scotland.

28. Following on from the Hearing a Gas Safety Record certificate dated 10 July 2017 was produced to the Tribunal which satisfied the Tribunal that the Gas Safety (Installation and Use) Regulations had been met. A copy

of that certificate is produced and signed as accompanying this decision.

29. The Tribunal found that the repairing standard is met under section 13(1) (c) of the Act.

30. The Parties are in dispute over whether there was a fault in the old boiler, the nature of the fault if there was one, whether the Tenant's actions caused a fault to occur or not and whether the Tenant's subsequent actions caused irreparable damage to the old boiler. Whilst both Parties stated that they had sought opinions from gas safety engineers on these matters, no written evidence of any findings of any engineer were produced by either party to the Tribunal or exchanged between them at an earlier stage in their dispute. No expert witnesses were called by the parties. The Tribunal therefore did not have the opportunity to consider any expert advice or opinion. The evidence that was provided to the Tribunal offered two different opinions and the Tribunal was not in a position, based on the evidence and material before it, to make any findings on these matters.

31. The Landlord seeks recompense from the tenant for the cost of the new boiler and thus far no agreement on liability or for any cost has been agreed between them. The Landlord also considers that the Tenant has committed criminal damage to the boiler and this has been reported to Police Scotland. These matters are out with the remit of the Tribunal.

Summary of Decision

The Landlord has complied with the duty imposed by section 14(1)(b) of the Act and the Property meets the repairing standard under sections 13(1) (c) of the Act. The decision of the Tribunal is 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.

Signed

Date 22 July 2017

Susan Christie, Legal Member and Chair



22 Hillhead Road, Kirkintilloch, G 66 2HF

FTS/HPC/RP/17/0192

Schedule of Photographs - Inspection Date 12th July 2017

Weather – Bright and sunny.



1. The property



2. New Vokera combi boiler



3. Vokera manual

This inspection is for gas safety purposes only to comply with the Gas Safety (Installation and Use) Regulations. Flues have been inspected visually and checked for satisfactory evacuation of products of combustion. A detailed internal inspection of the flue integrity, construction and lining has NOT been carried out.

REGISTERED BUSINESS DETAILS Reg No: **235845**

Gas Engineer: **DEAN MUIR**

Gas Safe registered engineer No: **287**

Company: **DEAN MUIR**

Address: **107 ALEMAN DRIVE**

Postcode: **SE6 2JF** Tel: **0742965344**

INSPECTION/INSTALLATION ADDRESS

Name & Title: **DEAN MUIR**

Address: **22 HILLHEAD ROAD**

Postcode: **SE6 2JF** Tel: **0742965344**

I certify that I carried out inspections on the appliances detailed below.

Signed: **Dean Muir** Inspection Date: **10/7/17**

LANDLORD (OR AGENT) NAME & ADDRESS (if applicable)

Name & Title: **R & G ESTATE AGENTS**

Address: **57 TOWNHEAD**

KIRKINTILLOCH

Postcode: **G66 1NN** Tel: **578 4100**

APPLIANCE DETAILS				FLUE TESTS				INSPECTION DETAILS			
Location	Make and Model	Type	Flue Type OFRS/FL	Operating pressure in mbar or heat input kWh or Btu/h	Safety device/ correct operation: Yes/No/NA	Spillage test: Pass/Fail/NA	Smoke pellet flue flow test: Pass/Fail/NA	Initial combustion analyser reading	Final combustion analyser reading	Satisfactory termination: Yes/No/NA	Flue visual condition: Pass/Fail/NA
1 KITCHEN	VIEGA EASY HEAT	COMB	RS	24kw	YES	PAS	N/A	N/A	Same	YES	PAS
2											
3											
4											
5											

Gas Installation Pipework: Satisfactory Visual Inspection: Yes ☒ No ☐

Emergency Control Accessible: Yes ☒ No ☐

Satisfactory Gas Tightness Test: Yes ☒ No ☐

Equipotential Bonding Satisfactory: Yes ☒ No ☐

GIVE DETAILS OF ANY FAULTS

1 **WIRING INSTALLATION**

2 **THIS IS THE GAS SAFETY RECORD CERTIFICATE**

3 **REFERRED TO AND ACCOMPANYING THE DECISION**

4 **OF EVER DATE REFERENCE FISH HOLE 17/10/192**

5 **LEGAL MEMBER - Chair of Tribunal**

RECTIFICATION WORK CARRIED OUT

1 **WIRING, 22 July 2017**

2 **THIS IS THE GAS SAFETY RECORD CERTIFICATE**

3 **REFERRED TO AND ACCOMPANYING THE DECISION**

4 **OF EVER DATE REFERENCE FISH HOLE 17/10/192**

5 **LEGAL MEMBER - Chair of Tribunal**

Audible CO Alarms: Approved CO Alarms Fitted: Yes ☒ No ☐ N/A ☐

Are CO Alarms in Date: Yes ☒ No ☐ N/A ☐

Testing of CO Alarms Satisfactory: Yes ☒ No ☐ N/A ☐

Smoke Alarms Fitted: Yes ☒ No ☐ N/A ☐

Number of appliances tested: **1**

This record is issued by: **Dean Muir** Signed: **Dean Muir** Date: **10/7/17**

Received on behalf of the Landlord/Home Owner: **Dean Muir** Signed: **Dean Muir** Date: **10/7/17**

Received on behalf of the Landlord/Home Owner: **Dean Muir** Signed: **Dean Muir** Date: **10/7/17**