

**First-tier  
and**

Housing and Property Chamber  
First-tier Tribunal for Scotland



**Tribunal for Scotland (Housing  
Property Chamber)**

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

**Chamber Ref: FTS/HPC/RP/22/2719**

**Property at 3 Morar Street, Methil, Fife, KY8 3JA ("the Property")**

**The Parties:-**

**Mr James Ellinsworth formerly residing at 3 Morar Street, Methil, Fife, KY8 3JA ("the Tenant")**

**Mr Dean Crombie, 51 Upper Kinneddar, Saline, Fife, KY12 9TR ("the Landlord")**

**Tribunal Members:**

Gillian Buchanan (Chair) and Greig Adams (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 Property, and taking account of the documentary and oral evidence given by the parties, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. By application comprising various documents received between 4 August and 21 September 2022 the Tenant applied to the tribunal 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 his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) The house is wind and watertight and in all other respects fit for human habitation.
  - (b) 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.
  - (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

- (d) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (e) The house meets the tolerable standard.
3. By letter dated 22 September 2022 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
  4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.
  5. Following service of the Notice of Referral the tribunal received the following additional written representations from the parties:-

*From the Tenant:-*

- i. Emails dated 8 and 15 August 2022;
- ii. Emails dated 20 and 28 September 2022;
- iii. Email dated 24 October 2022;
- iv. Email dated 3 November 2022; and
- v. Email dated 5 January 2023.

*From the Landlord:-*

- i. Email dated 28 November 2022;
- ii. Email dated 24 December 2022; and
- iii. Email dated 9 January 2023.

### **Minute of Continuation**

6. The Tenant vacated the Property and the tenancy ended on or around 8 January 2023. However, the complaints identified by the tenant included matters of a serious nature that might affect the health and safety of future tenants of the Property. Accordingly, the tribunal decided to continue to determine the application and issued a Minute of Continuation to that effect.

### **Inspection**

7. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Greig Adams, Ordinary Member, inspected the Property on the morning of 23 January 2023. The Landlord attended the inspection. The Tenant did not attend and was not represented. Photographs were taken and are contained in a "Schedule of Photographs" attached.
8. At the time of the inspection it was fair and dry.
9. Subsequent to the inspection and prior to the Hearing the tribunal received the following further representations from the Landlord:-
  - E-mail from the Landlord dated 23 January 2023 with attachments.

## Hearing

10. Following the inspection of the Property the tribunal held a Hearing by telephone conference on 23 January 2023. The Landlord attended the hearing. The Tenant was neither present nor represented.
11. The Landlord made the following submissions:-
- i. With regard to the central heating system, a new boiler was installed on 9 November 2022 and the up to date Gas Safety Record for the Property has been produced.
  - ii. The smoke and heat detectors are sufficient and are in proper working order.
  - iii. The immersion heater was removed when the new boiler was installed.
  - iv. With regard to certification, a current Electrical Installation Condition Report, Gas Safety Record and Portable Appliance Testing Report are produced.
  - v. The exterior of the extractor fan in the bathroom has been repaired.

## Summary of the Issues

12. The issues to be determined are:-
- (a) Whether the central heating system is in a reasonable state of repair and in proper working order.
  - (b) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
  - (c) Whether the installations within the Property for the supply of hot water are in a reasonable state of repair and in proper working order.
  - (d) In particular, whether the water filtration system installed within the Property is in a reasonable state of repair and in proper working order.
  - (e) Whether the electrical appliances provided by the Landlord are in a reasonable state of repair and in proper working order.
  - (f) Whether the extractor fan in the bathroom is in a reasonable state of repair and in proper working order.
  - (g) Whether the Property meets the Repairing Standard.

## Findings in Fact

13. The Tribunal finds the following facts to be established:-
- (a) That the Landlord is the heritable proprietor of the Property.
  - (b) That the parties entered into a Private Residential Tenancy Agreement in respect of the Property with effect from 23 February 2021.
  - (c) That the Tenant vacated the Property on 8 January 2023 and the Property is currently empty.
  - (d) That the central heating system, including the radiators, and the installations for the provision of hot water are in a reasonable state of repair and in proper working order.

- (e) That the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire with the alarms therefore being interlinked and in proper working order.
- (f) That the Property has adequate certification in the form of a current Electrical Installation Condition Report, Gas Safety Record and Portable Appliance Test Completion Certificates.
- (g) That the extractor fan in the bathroom is in a reasonable state of repair and in proper working order.
- (h) That the Property therefore meets the tolerable standard and the Repairing Standard.

### **Reasons for the Decision - Inspection & Findings**

14. Supplementing a visual inspection of the issues of complaint raised and as part of the investigation into the adequacy of radiators, hot water and effectiveness of the boiler system a thermal imaging camera was utilised. The Thermal Imaging System deployed on site detects Infra-red Radiation, which in basic terms means that heat is being observed instead of light. The Thermal Imaging System then automatically allocates a colour palette to the different temperatures which are detected. Under normal conditions a Thermal Image will display the hottest colour detected as being white and the coldest colour will be represented in black. Everything in-between will be represented with the constituent colours of the visible spectrum of light (i.e., the colours of the rainbow) Generally, red denotes hot and blue/purple will represent cold.
15. Review of the thermal images taken at the Property recorded evidence that the radiators were exhibiting an adequate heat output whilst a relatively uniform distribution of heat was evident. In addition, the presence of hot water on demand was identified to both the kitchen and bathroom at wash basins.
16. Various environmental data was recorded using a hygrometer as part of the inspection including the relative humidity and ambient temperatures within the Property. The ambient temperatures recorded throughout the Property were noted at lowest to equate to 18<sup>0</sup>C despite the presence of a relatively cold external environment, which was considered to provide a comfortable indoor environment.
17. There was found to be a heat detector located within the kitchen and smoke detectors present within the living room and corridor. These were manually tested at the time of inspection and found to be "interlinked", i.e., when one detector is triggered, all detectors will alarm.
18. The hot water/immersion cylinder had been removed from the Property and the boiler presents satisfactory hot water provision on demand.

19. The "hole in bathroom wall" reported related to the ventilation grille of the extract ventilation being damaged and it was noted that a replacement louvre had been fitted returning such parts to acceptable order.
20. Issues raised regarding any possible absence of certification of the electrical installation and PAT testing was investigated by review of the following certification provided to the Tribunal:-
- Gas Safety Record (Certificate No. RM012184 dated 29 December 2021 (prior to installation of new boiler and removal of back boiler and fire).
  - Electrical Installation Condition Report (EICR) dated 13 December 2021.
  - Portable Appliance Test (PAT) Completion Certificates dated 29 December 2021 and 4 November 2022.

The certification provided to the Tribunal was considered to be adequate in relation to the items of complaint reviewed.

### **Decision**

21. The Tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

### **Right of Appeal**

22. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

23. **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**

**the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Signed G. Buchanan

Date : 23 January 2023

Legal Member and Chairperson