

# 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/21/2745

Title no: STG22012

57 Cowane Street, Stirling FK8 1JP ("The Property")

## The Parties:-

Mr Ewan Stewart, previously residing at 57 Cowane Street, Stirling FK8 1JW and whose present whereabouts are unknown ("the former Tenant")

Mr Stuart James Robert Reid and Ms Jacqueline Ann Brown, residing at 29 Vorlich Crescent, Callander, Stirling FK17 8JE and care of Stuart Reid Properties, Flat 8, Lock Mill Apartments, Whiston Road, London E2 8GF ("the Landlords")

Tribunal Members: Richard Mill (Legal Member) and Mike Links (Ordinary Member)

## Decision

The property meets the repairing standard. The landlords have complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary.

## Background

1. By way of application, the former tenant applied to the Tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the application the tenant stated that the landlords had failed to comply with their duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the

repairing standard put at issue are those contained within Section 13(1)(a), (c), (d), (e), (f), (g) and (h).

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
  - 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.
  - Whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - Whether any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
  - Whether the house has satisfactory provision for detecting fires and for giving warning in the event of fires or suspected fire.
  - Whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
  - Whether the house does not meet the tolerable standard.
3. Notices of referral were issued to parties on 13 January 2022.
  4. The Tribunal issued a Direction dated 18 January 2022 which required the landlords to produce:-
    - a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
    - a copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.
  5. The Tribunal received confirmation that the tenant had vacated the property on 22 December 2021. The Tribunal determined in terms of Schedule 2, Paragraph 7(3) of the Act, that the application should be continued. A Minute of Continuation dated 2 February 2022 was issued.

## **Landlords' Representations**

6. The landlords submitted lengthy written representations by email dated 26 January 2022. Submissions regarding the factual background together with the condition of the property were provided, together with a copy of the current Gas Safety Certificate, photographs of the property and messages between the parties.
7. Additional representations were received from the landlords by email dated 10 February 2022. An EICR dated 9 February 2022 was produced. A number of category C2 items were noted on the record.

## **Inspection**

8. The Tribunal inspected the property on 18 February 2022 at 10.30 am. Mr Reid, the first-named landlord, was present and invited the Tribunal members into the property. Covid-19 precautions and protocols were followed.

## **Pre-Hearing Survey Report following the Tribunal's Inspection of the Property on 18 February 2022**

9. An inspection report with schedule of photographs was produced to the landlords following the inspection. These depict the condition of the property relating to the issues complained of.

## **Hearing**

10. Following the inspection of the property, the Tribunal convened a hearing on 25 February 2022 at 10.00 am by teleconference. Both landlords joined the hearing and made oral submissions.

## **Summary of Issues**

11. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
12. The following narrative was specified in the written application and a paper apart:-
  - The need for interlinked smoke and heat alarms. The existing ones provided by the fire brigade are not interlinked and are only intended to be temporary.

- There is no Electrical Installation Condition Report (EICR), Portable Appliance (PAT) Certificate, Energy Performance Certificate (EPC) or any Gas Safety Certificate.
- Wall above front door needs repairing.
- Chest of drawers in both bedrooms need replacing.
- Walls are damp and walls in the hall are spongy.
- Hole in the bedroom needs to be repaired with a new wall. Also reference to a spongy wall and mould.
- Shower and wet wall are leaking into the bedroom and the electric cupboard.
- Missing and rotten floorboards in the bathroom,
- New extractor fan is required in the bathroom.
- Light in the bathroom requires replacing.
- Skirting board in the kitchen requires replacing.
- Kitchen walls require repairing, ceiling in the kitchen annex requires replacing.
- Under stairs cupboard in the kitchen is mouldy.
- Rear door is insecure and draughty.
- New carpets required in the hall.
- Keys are missing for the kitchen window which cannot be opened.

### **Findings in Fact**

13. The Tribunal makes the following findings in fact:-

1. The title to the subjects known as 57 Cowane Street, Stirling FK8 1JP is held by the landlords. Their interest is held in the Land Register of Scotland under Title number STG22012 on 12 February 2008.
2. The property which is the subject of this application is a two bedroomed flat. It is within a traditional tenement building which comprises of a total of eight flats. The property is accessed by its own front door. There is a hallway, two bedrooms to the front

of the property and a living room/kitchen and bathroom to the rear. There is a rear exit door from the kitchen area.

3. The former tenant entered into a Short Assured Tenancy which commenced on 1 August 2021. The agreed rent was stipulated at £325 per month. The tenants vacated the property on 22 December 2021.
4. The property was managed on behalf of the landlords by Stuart Reid Properties which is operated by the landlords.
5. The former tenant made numerous complaints regarding the condition of the property. In relation to the matters complained of in the application an inspection conducted on 18 February 2022 revealed:-
  - i. Interlinked smoke and heat detectors were found in the hallway and kitchen/living room. They were tested and are in working order.
  - ii. A combi gas boiler is situated in the kitchen. A laminated copy of the Gas Safety Certificate was available for inspection. This is dated 12 November 2021 and has been prepared by a Gas Safe Engineer. A carbon monoxide detector is situated on the wall adjacent to the gas boiler. It was tested and found to be in working order.
  - iii. There were no signs of damp in the hallway. Some recent decoration had taken place around the entrance door.
  - iv. The broken headboard of the bed in the main bedroom, the subject of complaint, had been fixed. The chest of drawers complained of in that room have been replaced. All the drawers were functional. There was evidence of reinstatement and redecoration works undertaken in the main bedroom following a leak from the adjacent bathroom.
  - v. There was no evidence of mould or damp in either of the bedrooms.
  - vi. Lights in the bathroom were fully operational. The extractor fan in the bathroom was fully operational. There was no evidence of the shower leaking. There was no evidence of any loose tiles in the shower area. The floorboards in the bathroom were sound. The bathroom has been recently refurbished.

- vii. The door divide between the kitchen and the hallway, which is the subject of complaint, has had remedial work undertaken and does not pose any hazard. The previously missing skirting boards in the kitchen have been replaced. The kitchen window was not capable of being opened because of a missing key. There is direct entry outside from the kitchen via the back door. The back door is fully secure and is not draughty.
14. Reference is made to the schedule of photographs comprised within the inspection report prepared by the Tribunal and issued previously to the parties.

### **Reasons for Decision**

15. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal at the hearing. Subsequent documents as required by the Tribunal have also been considered.
16. The Tribunal is only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the hearing on 25 February 2022.
17. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
18. The Tribunal has principally based the decision that the landlords have complied with their duties based upon the circumstances noted at the time of their inspection together with the further documentary evidence provided by the landlords.
19. The landlords have candidly acknowledged in this process that there were repair issues affecting the property though they have taken seriously the application before the Tribunal and instructed and resolved the various complaints. This was evident to the Tribunal on the basis of the inspection carried out on 18 February 2022.
20. At the time of inspection on 18 February 2022 and at the time of the hearing on 25 February 2022, there were two residual outstanding issues. Firstly, the kitchen window could not be opened because there was no key for the window. The landlords were noted to have sourced a suitable alternative key which was to be received shortly. Secondly, the landlords had produced an EICR which confirmed that the electrical condition of the property was "satisfactory". The landlords assumed that this was sufficient in order to meet the repairing standard. In fact,

for the purposes of the repairing standard, it is necessary for all C2 category repair issues identified by the approved electrician to be resolved. This was discussed with Mr Reid at the time of the Tribunal's inspection. The Tribunal received confirmation in advance of the hearing from the landlords that an electrician had been instructed to undertake and remedy the C2 issues, but that due to pressure of business it had not been possible to secure an electrician in the week between the inspection and hearing. The work had been instructed and was booked to be undertaken on 7 March 2022. In these circumstances, the Tribunal requested that the landlords provide a fresh EICR following the work to be undertaken on 7 March 2022 confirming that all C2 issues had been resolved. The landlords were advised at the hearing that subject to such EICR being provided, together with photographs of the kitchen window being operational and in particular opened with a key, all by Thursday 10 March 2022, a compliance decision would be issued finding that the property does meet the repairing standard. A Direction was subsequently issued by the Tribunal confirming the further procedure to be adopted by the Tribunal for ease of clarity.

21. By way of email dated 28 February 2022, the landlords provided suitable photographs of the kitchen window. On 11 March 2022 a copy of the updated EICR has been produced. This is dated 7 March 2022 confirming that there are no C1 or C2 issues.
22. In all the circumstances the Tribunal found that the property does meet the repairing standard.

### **Decision**

23. The Tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlords have not failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does meet the repairing standard.

### **Right of Appeal**

24. 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.

25. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 11 March 2022 before this witness:-

Legal Member

Witness

Name

Address