

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/17/0316

Title no: GLA66209

Flat 2/1, 47 Durward Avenue, Glasgow G41 3UW("TheProperty")

The Parties:-

- **Mr Ian Paterson, Flat 2/1, 47 Durward Avenue, Glasgow G41 3UW("the Tennant")**
- **Ms Claire McVeigh, 34 Gibson Street, Glasgow G12 8NX ("the Landlord")**
- **Cairn Estate Agency, 34 Gibson Street, Glasgow G12 8NX ("the Landlord's Agent")**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Andrew McFarlane	-	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, determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received on 14th August 2017, the Tenant applied to the Housing and Property Chamber for a determination as to whether the

Landlord has 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 he considered that the Landlord had failed to comply with his duty to ensure that the House met the repairing standard in that the house is not wind and watertight and in all other respects reasonably fit for human habitation and that the installations in the house for the supply of the water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order. In particular, the complaints consisted of:-
 - a) The boiler was not gas safety certified,
 - b) The window in the kitchen did not shut properly and did not lock and
 - c) The Tenant had not been provided with keys for the mortise lock to the front door of the House.
3. By minute dated 5 September 2017 the President intimated a decision to refer the application under Section 23(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 the Landlord, the Tenant and the Landlord's Agents dated 18 September 2017.
5. A date was set for both the inspection and hearing on 24th October 2017.
6. On 8th October 2017, the Tenant notified, by email, that he was on holiday on that date and would not be present to allow access to the House.
7. On 19th October 2017 Tenant withdrew his interest in the application stating that all the repairs had been done. The Tribunal thereafter issued a Minute of Continuation under Schedule 2 Paragraph 7 (3) of the Act as it considered the application should be determined as there were potential health and safety issues arising from some of the grounds raised in the application.
8. A new date for the hearing was fixed for 12th January 2018. This hearing was cancelled on the day due illness. It was rescheduled for 12th February 2018. The hearing proceeded on that day.
9. The Landlord's Agents were present at the hearing.

The Inspection

10. The Tribunal attended the property on the morning of 12th February 2018. The Tenant was present and allowed access. Two of the Landlord's Agents were present. It was a cold dry day during the inspection. There was some snow on the ground.

11. The Property is second floor flat in a three-storey red sandstone tenement located in the residential district of Shawlands on the south side of Glasgow. It is in an urban setting. The accommodation comprises of a sitting room, two bedrooms, a kitchen, a bathroom and hall. Access to the House is via a tiled close and stone stair. There are five other similar flats in the block.
12. The House was occupied and furnished with floor coverings in place. The gas central heating was not operating but the property was not cold.
13. The kitchen was inspected first. It was noted that the window is a replacement for the original. It is a uPVC framed window with sealed doubled glazed unit and of the tilt and turn type. It was confirmed by the Tenant that previously the sash did not lock to the top right of the frame. The window was opened and closed in front of the Tribunal. It appeared to open, close and lock as intended. The boiler was situated in the kitchen. It was confirmed that the boiler had been serviced on 3rd October 2017.
14. The hall was inspected next. The main entrance door opens directly onto the stair from the hall. The door has two locks, an upper night latch style lock and a lower mortise type lock. The Tenant had no issues with the upper lock. At the inspection, the Tenant had a key for the lower lock. The Tenant operated the lock. It both locked and unlocked the door as intended.
15. The Tribunal observed that there was a carbon monoxide alarm installed. The date label confirmed that had been provided in 2014. It was satisfactory although lower on the wall than top of the window as recommended. Smoke detectors and alarms were installed in the hall and sitting room meeting the requirements. There was a heat detector/alarm installed in the kitchen which met with requirements. All were tested and in were in working order.
16. The Landlord's Agent displayed a copy of the Electrical Installation Condition Report (EICR) dated 10th February 2017. It recorded that matters were 'Satisfactory'. The Landlord's Agents advised that a new one was due to be completed at the beginning of March. A Portable Appliance Testing Certificate was also exhibited to the Tribunal.
17. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
18. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

19. The hearing took place at Wellington House, Wellington Street, Glasgow. Only the Landlord Agents were present.
20. The Landlord's Agents confirmed that all the work pertaining to the application had been completed on 3rd October 2017.

Summary of the issues

21. The issues to be determined are:-

- a) Whether the boiler was working and had been serviced.
- b) Whether the kitchen window opened, shut and locked.
- c) Whether keys had been supplied to the Tenant for the mortise lock on the main entrance door and if the lock worked.

Findings of fact

22. Having considered all the evidence, the Tribunal found the following facts to be established:-

- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 10th February 2017.
- b) The boiler was serviced on 3rd October 2017.
- c) The window had been repaired and now was able to open, close and lock.
- d) The mortise lock key to the front door had now been provided to the Tenant.
- e) An EICR had been exhibited to the Tribunal. All items were satisfactory. It was dated 10th February 2017.
- f) A valid Portable Appliance Test was exhibited to the Tribunal at the inspection.
- g) There was a carbon monoxide alarm installed. The date label confirmed that had been provided in 2014. It was satisfactory although lower on the wall than top of the window as recommended.
- h) Smoke detectors and alarms were installed in the hall and sitting room meeting the requirements. There was a heat detector/alarm installed in the kitchen which met with requirements. All were tested and in were in working order.

Reasons for the decision

23. The Tribunal determined the application having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the evidence of the Tenant, and Landlord's Agents.

24. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

25. The Tribunal was satisfied that all the points raised in the application had been dealt with by the Landlord and that there were no outstanding issues.

The Tribunal was satisfied that the Repairing Standard was met and that no further orders were necessary.

Decision

- (a) The Tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal did not need to issue any further orders.
- (c) The Tribunal did not need to take any further action.
- (d) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chairperson and Legal Member

7th March 2018

Housing and Property Chamber

First-tier Tribunal for Scotland



Property Address

Flat 2/1, 47 Durward Avenue, Glasgow G41 3UW

Case Reference

FTS HPC RP 17 0316

Schedule of Photographs taken during the
inspection by tribunal members on 12
February 2018



1. General view of front elevation



2. Gas fired central heating boiler



3. General view of Kitchen window



4. Closer view of Kitchen window



5. Interior of main door to flat



6. Carbon Monoxide Alarm



7. Smoke detector/alarm in hall



8. Smoke detector/alarm in Sitting Room

