

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 (“the Act”)

Statement of decision in terms of regulation 26 (3) of the First-tier Tribunal for Scotland

Housing and Property Chamber (Procedure) Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/RT/22/1343

Title number: REN91803

Re: Property at 2/1, 19 Neilston Road, Paisley, PA2 6LL (“the property”)

The Parties:

Renfrewshire Council Communities and Housing, Renfrewshire House, Cotton Street,
Paisley, Pa1 1BR per Mr Martin Salisbury (“the third party”)

Mr Stuart Miller, 2/1, 19 Neilston Road, Paisley, PA2 6LL (“the tenant”)

Ms Yuhan Yu, 2 Maryston Road, Glasgow, G33 1NU (“the landlord”)

Tribunal Members: Simone Sweeney (legal chairing member) Andrew Taylor (ordinary member)

Decision

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 Act to ensure that the property meets the repairing standard under section 13, determined that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act.

The Tribunal proceed to make a Repairing Standard Enforcement Order (“RSEO”) as required by section 24 (2) of the Act.

The decision of the Tribunal was unanimous.

Background

1. By application of 10th May 2022 the third party sought a determination of whether the landlord has complied with the duties imposed by section 14 (1) (b) of the Act.
2. The application contended that the landlord had failed to comply with his duties to ensure that the property meets the repairing standards in sections 13 (1) (a) (b) (c) (d) (f) and (h) of the Act in that the landlord has failed to ensure, at all times during the tenancy, that:-

Section 13 (1):-

“ (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.

(b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

(c) 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...

(f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire...

(h) The house does not meet the tolerable standard. ”

3. The third party specified the nature of the work to be done in the following terms:-

“There should be one functioning smoke alarm in every circulation space, such as hallways and landings that conforms to BS EN 14604:2005. 2. Every apartment in a house should have provision for permanently-fixed artificial lighting to allow the occupants to carry out normal domestic activities in safety and comfort. This will usually take the form of a wall light switch which controls an electric light on the ceiling or wall. 3. A Current Electrical Installation Condition Report is required to be provided. 4. A current Gas Safety Certificate is required to be provided. 5. The radiator in the bedroom should be repaired and reattached to the wall. 6. The hot water tap in the kitchen is required to be repaired. 7. The cause of the damp patch on the ceiling in the living room next to the oriel window should be repaired. 8. The cause of the water ingress in the hallway should be repaired. 9. The living room requires repair. 10. The bedroom window requires repair.”

4. In addition to the application, the third party lodged with the Tribunal copy of a letter which had been sent to the landlord dated 10th March 2022. The letter, addressed to Ms Yu at 2 Maryston Road, Glasgow, G33 1NU, provided that the third party did not consider the property to meet the repairing standard, listed the works required and requested that the landlord revert to the author of the letter within 14 days with a timescale of when the works would be completed.
5. There being no response to the letter, the third party proceeded to lodge the application with the Tribunal on 10th May 2022.
6. By Notice of Acceptance of Application dated 27th May 2022, a convenor with powers delegated under section 23A of the Act determined that the application be referred to the Tribunal in terms of section 23 (1) (a). The Tribunal served notice of the referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and third party in writing on 20th June 2022. Intimation was given of an inspection of the property and hearing by teleconference on 5th August 2022 at 10.30am and 2pm respectively. The tenant was also made aware of these times.
7. Before the Tribunal was a copy of the application, letter to the landlord from the third party dated 10th March 2022, landlord registration information and title information from Registers of Scotland. No written submissions or representations were received from the landlord in response to the application.
8. However by email dated 20th July 2022, the third party advised the Tribunal that the landlord had been in contact to indicate that various works had been undertaken at the property. This had been confirmed by the tenant. Insofar as is relevant, the third party's email provided, "The following work has been carried out; 1. Smoke alarm in the hallway has now been replaced. 2. A permanently fixed artificial light source has been installed in the living room. 3. An EICR has been provided (attached). 4. A gas safety certificate has been provided (attached). 5. The bedroom radiator has been reattached to the wall. 6. The hot tap in the kitchen has been repaired..."
9. Attached to the email was an Electrical Installation Certification Report dated 8th July 2022. The report appeared to have been completed by a suitably qualified engineer, identified as Charles Maguire. The report confirmed that the general condition of the

electrical installation was satisfactory and no remedial action was required at the property.

10. Separately a Gas Safety certificate dated 14th July 2022 was produced. The certificate had been completed by an engineer of Heat Glasgow Ltd. The certificate confirmed all gas installation to be satisfactory and carbon monoxide and smoke alarms to be fitted appropriately and in working order.

Inspection of the property, Friday 5th August at 10.30am

11. In attendance at the inspection was Mr Martin Salisbury on behalf of the third party, the tenant, Mr Stuart Miller, his partner and the Tribunal. There was no appearance by or on behalf of the landlord.
12. At the time of the inspection, weather conditions were clear and dry. The property is located on a main road, positioned on the first floor of a three storey block of traditional tenement flats. The property is a one bedroom flat. A hallway from the entrance door leads into a living room facing towards the front of the property. There is a bathroom and a rear facing bedroom. Within the bedroom is the kitchen area.
13. The surveyor took a schedule of photographs, dated 5th August 2022 which should be considered alongside this decision.

Living room

1. An oriel window is fitted in the living room. The window is in three sections and made of UPVC. The Tribunal observed that the main section of the window could not be closed securely. Moreover the Tribunal identified a patch of water penetration on the ceiling adjacent to the window (see photograph number 1 on the surveyor's schedule of photographs of 5th August 2022).
2. A light fitting was positioned above the living room door. The switch was positioned in the hallway. The light was identified to be in full working order and illuminated the living room when switched on from the hallway.
3. A smoke detector was positioned on the ceiling of the living room (see photograph number 2 on the surveyor's schedule of photographs of 5th August 2022).

4. The window of the bedroom faced the rear of the property. It, too, was made of UPVC with a handle to open the window inwards. The Tribunal observed that the window was faulty. The window could not be closed securely once opened.
5. A smoke detector was fitted to the wall opposite the window in the bedroom.
6. To the left of the window, the Tribunal observed a radiator which was resting against the bedroom wall on top of the tenant's belongings.
7. The kitchen area was within a recess to the left of the bedroom. The surveyor attempted to operate the hot water tap. Water flowed from the tap but reached only a lukewarm temperature. The flow of water was not as strong as it ought to be and some force was required to turn the tap off.
8. The Tribunal observed that a new light had been fitted to the ceiling of the kitchen area. A smoke detector was also attached (see photograph number 5 on the surveyor's schedule of photographs of 5th August 2022).
9. Although not a complaint within the third party's application, the Tribunal observe that plastic wall paneling had been applied to the kitchen area. In the area where the cooker was positioned, the plastic covering had melted away. The covering creates a potential fire hazard. (see photograph number 8 on the surveyor's schedule of photographs of 5th August 2022).
10. Within the hallway, the Tribunal identified a plastic bucket positioned above a cupboard. A patch of water penetration was visible on the ceiling. Albeit conditions were dry at the time of inspection, the Tribunal understood that the bucket was used to catch water ingress from time to time.
11. A smoke detector was fitted to a wall of the hallway.
12. The surveyor undertook a check of the smoke alarms from the kitchen area. Only the alarm in the kitchen was activated. This revealed that the smoke alarms were not interlinked throughout the property.

Telephone hearing, Friday 5th August 2022 at 2pm

13. In attendance at the telephone hearing at 2pm was Mr Salisbury, on behalf of the third party, only. The landlord did not participate. Satisfied that intimation of the

hearing had been provided to the landlord, the Tribunal proceeded with the hearing in her absence.

14. Mr Salisbury referred to his application, email of 20th July 2022 and the inspection from earlier in the day. He invited the Tribunal to find that there was inadequate provision for smoke detection at the property, that neither windows in the living room or bedroom were fully operational given that they could not be closed securely, that there was water penetration in both the living room and hallway, that the radiator in the bedroom was not fitted to the wall and that the hot water tap in the kitchen was not working properly.
15. Beyond this Mr Salisbury accepted that the landlord had addressed the requirement to provide an EICR and Gas Safety report and that the findings of both reports were satisfactory.

Findings in fact

The Tribunal makes the following findings in fact:

16. That the landlord is registered as a private landlord with the third party.
17. That the landlord entered into a tenancy agreement with the tenant on 29th November 2019.
18. That an Electrical Installation Condition dated 8th July 2022 confirms that the general condition of electrical installation at the property is in a satisfactory standard.
19. That a Gas Safety Certificate dated 14th July 2022 confirms that gas installation at the property is in a satisfactory standard, that a CO alarm is fitted at the property and is working order and that a smoke alarm is fitted at the property and is working order.
20. That smoke alarms are fitted within the hallway, kitchen and living room at the property.
21. That there is provision for detecting carbon monoxide within the property.
22. That, at the date of inspection, the provision for smoke and fire detection at the property was not interlinked.
23. That the installations for gas at the property are not in a reasonable state of repair and in proper working order.
24. That a light is fitted to the wall of the living room and in working order.

25. That the lower window casement at the centre of the oriel window frame within the living room does not close securely.
26. That the lower window casement in the bedroom does not close securely.
27. That the hot water tap at the sink within the kitchen area is not operating effectively and providing hot running water.
28. That patches of water ingress are evident at the ceiling of the hallway and living room above the oriel window.
29. That the radiator within the bedroom is not attached securely to the wall.
30. That the property does not meet the tolerable standard.

Reasons for decision

31. The windows within the living room and bedroom could be opened but did not close securely without significant force. The windows should open and close easily and securely to allow ventilation and security at the property. Standing its findings at the inspection, in respect of the windows, the Tribunal determines that the property is not wind and water tight and in all other respects reasonably for human habitation. Therefore the Tribunal finds that the property does not meet the repairing standard in terms of section 13 (1) (a) of the Act.
32. Evidence of water ingress at the ceiling of the living room and hallway was identified by the Tribunal at the inspection. Conditions were dry at this time and no dampness testing was undertaken by the surveyor member of the Tribunal. However, the patches of dampness indicate that water penetration may be the result of an external issue in the fabric of the property in relation to the living room and from an issue from the dwelling above in relation to the hallway. Both require investigation and remedial works addressed once the sources of water are known. Standing the findings at inspection, the Tribunal determines that the property does not meet sections 13 (1) (a) and (b) of the Act. The property is neither wind and water tight and in all other respects reasonably fit for human habitation nor is the structure and exterior of the house in a reasonable state of repair.
33. The third party requested from the landlord an up to date EICR and Gas Safety Certificate. The third party intimated to the Tribunal a copy of an EICR produced by the landlord of 8th July 2022. This certificate is completed by a qualified electrical

engineer and confirms that the general condition of electrical installation at the property is in a satisfactory standard. The Tribunal is satisfied with the terms of that report. The Tribunal determines that the installations for the supply of electricity at the property is in a reasonable state of repair. The property meets the repairing standard in terms of section 13 (1) (c) of the Act.

34. The hot water tap in the kitchen provides water when turned on but the Tribunal found the water temperature to be lukewarm, at best. The flow of water was not as strong as it ought to be and force was required to turn the tap off. Given these findings, the Tribunal determines that installations for the supply of water and heating of water at the property is not in a reasonable state of repair. The property does not meet the repairing standard in terms of section 13 (1) (c) of the Act in this regard.
35. The radiator within the bedroom was detached from the wall. In its present position it cannot provide heating to the room and creates a hazard. Insofar as the issue of space heating is concerned, the Tribunal determines that the property is not in a reasonable state of repair. The property does not meet the repairing standard in terms of section 13 (1) (c) of the Act in this regard.
36. The third party intimated to the Tribunal a copy Gas Safety certificate of 14th July 2022 produced by the landlord. Reference has been made, above, to the content of the certificate. Standing the findings of the Tribunal at the inspection in relation to the smoke alarms not being interlinked, the Tribunal determines that the property does not have satisfactory provision for detecting fires and giving warning of same. To that end the Tribunal finds that the property fails to meet section 13 (1) (f) of the repairing standard.
37. The Tribunal identified that a new light fitting had been fixed to the wall of the living room. A switch positioned in the hallway caused the light to illuminate the room. It was fully operational and the Tribunal was satisfied that the landlord had addressed this part of the third party's application.
38. Standing the issues referred to concerning the inadequate smoke and fire detection, inadequate supply of hot water from the kitchen tap, inadequate space heating in the bedroom, the water ingress at hallway and living room and the faulty windows in

