

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/2350

Property at 21 Cheyne Street, Edinburgh, EH4 1JD
("The House")

The Parties:-

Mr Alastair Hogg, residing at 21 Cheyne Street, Edinburgh, EH4 1JD ("the Tenant")

Mr John Anderson, residing at 31 Cheyne Street, Stockbridge, Edinburgh, EH4 1JD
("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mrs Debbie Scott - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 20 February 2019 and accordingly made a Rent Relief Order under section 27 of the Act. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated.

Background

1. Reference is made to the decision of the Tribunal dated 20 February 2019 which determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Tribunal therefore made a Repairing Standard Enforcement Order requiring the Landlord to undertake the following works:-
 - (i) Repair or replace the gas boiler so that it is in a reasonable state of repair and in proper and safe working order;

- (ii) Install a carbon monoxide detector in the property in accordance with the Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing;
 - (iii) Instruct a qualified electrician to inspect the electrical installations and carry out such works as are necessary to ensure they are in a reasonable state of repair and safe working order and produce a clear electrical installation condition report thereafter; and
 - (iv) Carry out any redecoration required after completion of the above works.
2. On 5th July 2019 the Ordinary Member carried out a re-inspection of the property. The Tenant was present and allowed access. In summary the findings of the re-inspection were as follows:-
- (a) Repairs had been carried out to the boiler by a contractor who was believed to be registered. The hot water in both the kitchen and bathroom were tested and found to be operational. The heating was tested and the radiators were found to be operational.
 - (b) No gas safety certificate had been produced following the repairs to the boiler.
 - (c) No carbon monoxide detector had been installed and there are no smoke detectors in the property.
 - (d) No Electrical Installation Condition Report had been produced and no inspection had been undertaken of the electrical installations in the property.
3. The Tribunal was satisfied that the Landlord had made some effort to comply with the RSEO by instructing repairs to the boiler. However no works had been done in terms of the installation of a carbon monoxide detector, nor had any inspection been undertaken of the electrical installations within the property. Further, in the absence of a gas safety certificate the Tribunal could not be satisfied that the boiler was in fact safe. The Tribunal therefore determined to vary the RSEO to extend the period of time for completion of the works by six weeks. The Tribunal also directed the Landlord to provide the following information prior to the expiry of the extended period for completion of the works:
- (i) An up to date and clear gas safety certificate;
 - (ii) An up to date and clear Electrical Installation Condition Report; and
 - (iii) Evidence of the installation of a carbon monoxide detector in the form of photographs or written confirmation from a contractor.
4. The Tribunal received no response from the Landlord following the issue of the direction. Accordingly a further re-inspection took place on 10 January 2020. The Ordinary Member attended the property. The Tenant was present and allowed access. The Landlord was not in attendance nor was any representative on his behalf. In summary the findings of the re-inspection were as follows:-

- (i) The tenant had undertaken repairs to the double electrical socket in the living room and had carried out redecoration;
- (ii) The tenant confirmed the boiler was operational with hot water to the kitchen and bathroom and heating working throughout the property;
- (iii) There was no carbon monoxide detectors nor smoke detectors; and
- (iv) There was no Gas Safety Certificate and no Electrical Installation Condition Report. No inspect had been undertaken of the electrical installations.

Damp staining was also noted in the kitchen in relation to water ingress from the upstairs property and the front door was not wind and watertight with visible gaps in the door and frame.

5. The re-inspection report was issued to both parties. No comments were received.

Reasons for Decision

6. The Tribunal considered it had sufficient information to make a determination and it did not require to hold a hearing in the matter. It was noted that neither party had responded to request a hearing following the issue of the re-inspection report.
7. Despite the Landlord having complied in part with the terms of the RSEO, fundamental matters were still outstanding. The lack of both a Gas Safety Certificate ("GSC") and an Electrical Installation Condition Report ("EICR") gave significant cause for concern, as did the absence of a carbon monoxide detector within the property. The Landlord's failure to address these issues highlighted a clear disregard of matters that are crucial to the health and safety of persons occupying the property. The importance of the GSC and EICR for letted properties is reflected in the statutory duties which are incumbent on landlords to produce such documents and ensure they are kept up to date. Accordingly it was clear that by his failure to provide the documentation, the Landlord was in breach not only of his duties under the Repairing Standard but also his duties under Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 and section 19 of the Housing (Scotland) Act 2006.
8. Whilst the Landlord had instructed repairs to the boiler, he had failed to engage with the Tribunal at any point in these proceedings. Accordingly no mitigation had been put forward for his failure to address what he was required to do, in the face of both the RSEO and a specific Direction from the Tribunal. The Tribunal could therefore only conclude that he simply had no intention of complying.
9. The Tribunal was therefore satisfied that there was no justification for a further variation of the order under section 25(3) of the Act. The Landlord had previously been given the benefit of a variation in order to complete the outstanding works and had been subject to a specific Direction but had failed to take any action and the position remained as it had done at the first re-inspection in July 2019. The

Tribunal further concluded that in view of the Landlord's failure to comply with the order, notification should be given to the Local Authority in terms of section 26 of the Act, particularly given the concerns the Tribunal had regarding the Landlord's failure to comply with key legal duties.

10. The Tribunal thereafter had regard to section 27 of the Act and whether it should make a Rent Relief Order. Taking into account the terms of the order, the Tribunal took the view that the outstanding items on the RSEO were of significant concern. The lack of professional assurance as to the safety of the gas and electric installations, coupled with the lack of both carbon monoxide and smoke detectors within the property was a combination that could have potentially lethal consequences for the Tenant and any other occupiers of the property. Taking into account the real and present risk to the Tenant's safety the Tribunal determined that a Rent Relief Order was appropriate and that relief at the rate of 90% reflected the risk to life that exists due to the Landlord's inaction. The Tribunal therefore proceeded to make a Rent Relief Order to that effect.

11. The decision of the Tribunal was unanimous.

Comment

12. As noted in the re-inspection report, other clear breaches of the Landlord's duties under the Repairing Standard have been noted, namely the water ingress from the upstairs property and the visible gaps between the front door and its frame. The property is not presently wind and watertight. The Tribunal would therefore strongly urge the Landlord to take steps to address these issues. Whilst they do not form part of the current application, it would be open to the Tenant or any future occupier to make a further application to the Tribunal on these points if they so wished.

A landlord, tenant or third party applicant 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.

R O'Hare

Signed

Ruth O'Hare
Chairperson