



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/22/0103

Re: Property at 8C Boyd Street, Prestwick KA9 1JZ (“Property”)

The Parties:

Kimberley Harkiss, 8C Boyd Street, Prestwick KA9 1JZ (“Tenant”)

Resham Kaur, 2 Winston Avenue, Prestwick KA9 2EZ (“Landlord”)

Tribunal Members :

Joan Devine (Legal Member); Mike Links (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c)(d) and (f) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 14 January 2022, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that she believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1)(a)(b)(c)(d)(f) and (h) of the Act. The Application stated that:
 - There was a leak in the floor and the ceiling.
 - The pipe work in the toilet needed changed.
 - Doors were hanging off in the kitchen.
 - The walls were not airtight.
 - There was dampness in the walls.
 - Plaster was falling off.

3. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 7 and 14 April 2022 respectively.
4. Prior to the Inspection the Landlord submitted a written representations in which they stated that the works had all been carried out aside from painting the ceiling.

The Inspection

5. The Tribunal inspected the Property on the morning of 7 April 2022. The weather conditions at the time of the inspection were clear and dry. The Tenant was present at the Property during the inspection as was the Landlord and her daughter Jasbir Uppal. The Property is a first floor flat within a 2 storey building. Following the Inspection the inspection summary with a schedule of photographs was issued to the Parties.

The Hearing

7. The Hearing took place on 14 April 2022 by conference call. The Tenant was in attendance. There was no appearance by the Landlord.

The Evidence

8. The evidence before the Tribunal consisted of:
 - 8.1 The Application completed by the Tenant
 - 8.2 Land Register report relating to the Property
 - 8.3 Screenshots of messages between the Tenant and the Landlord's daughter
 - 8.4 Photographs of the interior of the Property
 - 8.5 A letter from the Tenant's GP dated 23 November 2021
 - 8.6 The Tribunal's inspection of the Property
 - 8.7 The oral representations of the Tenant and the Landlord's daughter

Summary of the Issues

9. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

10. Tribunal made the following findings in fact:

- 10.1 The Tenant has lived in the Property since 30 March 2018.
- 10.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 10.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 10.3.1 The kitchen units and flooring had been renewed in the kitchen.
 - 10.3.2 "Wetwall" had been installed in the kitchen in part.
 - 10.3.3 Readings taken in the kitchen did not indicate dampness.
 - 10.3.4 The radiator in the kitchen had been removed from the wall but not reinstated.
 - 10.3.5 The ceiling in the living room had been painted.
 - 10.3.6 A gas fire was situated on the wall behind the couch.
 - 10.3.7 The tap on the wash hand basin in the toilet was loose and leaking.
 - 10.3.8 The smoke detector in the living room was operational when tested but was not interlinked.
 - 10.3.9 The CO detector in the kitchen was operational.
 - 10.3.10 There was no heat detector in the kitchen.
 - 10.3.11 The smoke alarm in the kitchen was not operational when tested.
 - 10.3.12 The smoke alarm in the hall was not operational when tested.
 - 10.3.13 A gas safety certificate dated 22 January 2022 was produced.
 - 10.3.14 There was no Electrical Installation Condition Report ("EICR") or Portable Appliances Testing ("PAT") certification available.

Reasons for Decision

11. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (c)(d) and (f) of the Act.
12. The Tribunal noted that whilst the units and flooring in the kitchen had been renewed, the radiator had been removed from the wall but not reinstated.
13. The Tenant told the Tribunal that the ceiling in the living room had been recently painted. The Tribunal noted an apparently redundant gas fire in the living room behind the couch. The Tenant told the Tribunal that she had never used it. The Tenant provided the Tribunal with a gas safety certificate dated 22 January 2022. She said that she did not have a EICR.
14. In the bathroom the Tribunal noted that the tap on the wash hand basin was loose. Areas of damp below the wash hand basin indicated that the tap was leaking.
15. The Tribunal observed that there was one smoke alarm in the hallway which was not operational. There was one smoke alarm in the living room which was operational but was not interlinked. There was an operational CO detector in the kitchen. There was no heat detector in the kitchen.
16. The provision of smoke and heat detectors in the Property does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
17. The current Scottish Government statutory guidance states that there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes;
 - one functioning smoke alarm in every circulation space, such as hallways and landings;
 - one heat alarm in every kitchen; and
 - all alarms should be interlinked.
18. The Landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015.

Decision

19. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the installations in the Property for the supply of water and for space heating are not in a reasonable state of repair and in proper working order; the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order and the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
20. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

14 April 2022

Housing and Property Chamber First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 24 (2)

Reference number: FTS/HPC/RP/22/0103

Re: Property at 8C Boyd Street, Prestwick KA9 1JZ ("Property")

The Parties:

Kimberley Harkiss, 8C Boyd Street, Prestwick KA9 1JZ ("Tenant")

Resham Kaur, 2 Winston Avenue, Prestwick KA9 2EZ ("Landlord")

Tribunal Members :

Joan Devine (Legal Member); Mike Links (Ordinary Member)

NOTICE TO: Resham Kaur ("the Landlord")

Whereas in terms of its decision dated 14 April 2022, the Tribunal determined that the Landlord had failed to comply with the duty imposed on them by Section 14(1)(b) of the Housing (Scotland) Act 2006, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the installations in the Property for the supply of water and for space heating are not in a reasonable state of repair and in proper working order and the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tribunal now requires the Landlord to carry out such works as are necessary for the purpose of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular the Tribunal requires the Landlord to :

- 1. Appoint a certified gas engineer to remove the gas fire in the living room and cap the gas supply thereto.**
- 2. Appoint a suitably qualified heating engineer to reinstate the radiator in the kitchen.**
- 3. Appoint a suitably qualified plumber to repair the tap in the wash hand basin in the bathroom.**

4. **Appoint a suitably qualified plumber to check all pipework in the bathroom and repair as necessary and ensure the connections to the bath and toilet are in good condition and in good working order.**
5. **Install a heat detector in the kitchen.**
6. **Install a smoke alarm in the hallway and ensure all alarms are interlinked.**
7. **Provide to the Tribunal a current Electrical Installation Condition Report and Portable Appliances Testing certificate.**

The Tribunal orders that the works specified in this order must be carried out and completed within the period of 21 days from the date of service of this notice.

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.

In terms of Section 63 of the Act, 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Joan Devine, Legal Member of the Tribunal at Glasgow on 14 April 2022 in the presence of this witness:

J Devine

J Devlin

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20 York Street, Glasgow

G2 8GT

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Address