

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/18/0012

Title no: GLA94933

**House at 24 Newark Drive, Glasgow, G41 4PZ
("The Property")**

The Parties:-

**Dr Catherine Carroll and Mr David Ross, 24 Newark Drive, Glasgow, G41 4PZ
(represented by Mrs Patricia Carroll, 11 Bocclair Avenue, Glasgow, G61 2SE)
("the Former Tenants")**

**Prof Michael Fan, 45 Albert Drive, Glasgow, G41 5HJ
(represented by Mr David Young, BTO Solicitors, 48 St Vincent Street, Glasgow,
G2 5HS)
("the Landlord")**

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 failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application, which application comprises documentation received on/between 3 January and 4 January 2018, ("the Application"), the Former Tenants applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application stated that the Former Tenants considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) 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.
 - (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 16 January 2018 the Convenor of the Housing and Property Chamber intimated a decision to refer the Application under Section 22(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 and the Former Tenants.
 5. Following service of the Notice of Referral the Tenant's representative, Mrs Patricia Carroll, made written representations to the tribunal dated 14 February 2018 enclosing a Safety Warning Notice issued by British Gas dated 13 February 2018 and a letter from Glasgow City Council dated 1 February 2018. The Landlord's representative, Mr David Young of BTO Solicitors, Glasgow, also made written representations to the tribunal (i) by letter dated 15 February 2018, enclosing copy correspondence to the Former Tenants, Notice to Quit and Notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 all dated 7 July 2017 and Sheriff Officers' Certificate of Service dated 10 July 2017, and (ii) by letter dated 9 March 2018.
 6. By Direction dated 7 February 2018, the tribunal required the Landlord to provide the most recent Electrical Installation Condition Report prepared by a suitably qualified electrician to confirm the current condition of electrical systems within the Property and the most recent Gas Safety Record relative to the Property all by midday on 9 March 2018. The Landlord failed to comply with the Direction.
 7. By email dated 27 February 2018 the Former Tenants intimated that that they had vacated the Property and were withdrawing the Application. The tenancy having therefore been terminated, the Application was treated as having been withdrawn in terms of the Act. The tribunal then considered whether the Application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act and decided to continue to determine the Application by Minute of Continuation dated 27 February 2018.
 8. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Mr Andrew Taylor, Ordinary Member inspected the Property on the morning of 13 March 2018 accompanied by Legal Member/Appraiser, Mrs Patricia Pryce. The Former Tenants were neither present nor represented. The Landlord was not present but was represented by Mr David Young of BTO Solicitors. Photographs were taken and are attached.

9. It was dry and bright during the inspection.
10. Following the inspection of the Property the tribunal held a hearing at Teachers Building, 14 St Enoch Square, Glasgow, G1 4DB. The Former Tenants were neither present nor represented at the hearing. The Landlord was not present but was represented by Mr Young.
11. The Landlord's representative made a preliminary submission that the Application is incompetent and ought to be dismissed for the following reasons:-
 - (a) That in terms of Regulation 27(1) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") the tribunal must dismiss the Application if the tribunal does not have jurisdiction in relation thereto.
 - (b) That in terms of Section 22(1) of the Act a tenant may apply to the tribunal for determination of whether the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act (to ensure the Property meets the repairing standard at all times during the tenancy).
 - (c) That in terms of Section 194(1) of the Act "tenant" means a tenant under a tenancy.
 - (d) That as a consequence of the Former Tenants' tenancy having terminated on 11 September 2017 in terms of the Notice to Quit and Notice in terms of Section 33(1)(d) of the 1988 Act served by the Landlord on 10 July 2017, the Former Tenants were no longer tenants under a tenancy and therefore had no right or title to make the Application in January 2018.
12. The Landlord's representative made the following additional submissions to be considered in the event that the tribunal refuses the preliminary submission to dismiss the Application:-
 - (a) That in relation to complaint that there is insufficient hot water and heating:-
 - (i) The fact the Former Tenants remained in occupation of the Property for a considerable period of time after the Notices were served in July 2017 called into question the validity of these claims.
 - (ii) That the Landlord had been unable to obtain the Gas Safety Record from the letting agents, Tay Letting, who maintained they did not hold such a Record, or from the Gas Safe contractors whose accessible records were limited to those prepared within the last 12 months.
 - (iii) That the Former Tenants had frustrated access.
 - (iv) That there had been no recent inspection of the hot water and heating systems other than that instituted by the Former Tenants in March 2017.

- (b) That in relation to the gas hob:-
 - (i) That if the boiler had been made compliant previously then it was reasonable to assume the gas hob had been made compliant too.
 - (ii) That it was surprising the Former Tenants continued to use the gas hob if it was not safe to do so.
- (c) That no EICR could be produced although the Landlord believed Tay Letting held one.

Summary of the issues

13. The issues to be determined are:-

- (a) Whether tribunal has jurisdiction to consider the Application.
- (b) In the event that the tribunal has jurisdiction to consider the Application:-
 - (i) Whether the hot water and heating systems are in a reasonable state of repair and in proper working order.
 - (iii) Whether the gas hob is in a reasonable state of repair and in proper working order.
 - (iv) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (v) Whether the toilet seat is in a reasonable state of repair and in proper working order.
 - (vi) Whether an Gas Safety Record or Electrical Installation Condition Report have been produced and, if not, whether the tribunal requires to order production thereof.

Findings of fact

14. The tribunal finds the following facts to be established:-

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the Former Tenants were the tenants of the Property in terms of a Lease dated 21 June and 11 July 2016.
- (c) That the Former Tenants were the tenants of the Property as at January 2018 when the Application was made.
- (d) That with regard to the required repairs intimated by the Former Tenants:-

- (i) That at the time of the tribunal's inspection the central heating system was not operating and no hot water flowed from the hot water taps in either the kitchen or the bathroom.
- (ii) That at the time of the tribunal's inspection, the gas hob was not in operation.
- (iii) The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (iv) That a Gas Safety Record and an Electrical Installation Condition Report have not been produced.
- (v) That the w.c suite pedestal is broken and the cistern does not flush as a consequence of which it is not in a reasonable state of repair and in proper working order.

Reasons for the decision

15. With regard to the Landlord's representative's preliminary submission:-

- (i) The tribunal did not accept the submission that the Former Tenants ceased to be tenants of the Property on 11 September 2017.
- (ii) The Former Tenants' contractual tenancy of the Property ended on 11 September 2017 on the expiry of the Notice to Quit and Section 33 (1)(d) Notice.
- (iii) On expiry of the contractual tenancy the Former Tenants continued to occupy the Property as tenants under a statutory assured tenancy under and in terms of Section 16(1) of the 1988 Act.
- (iv) The Former Tenants were tenants of the Property under a statutory assured tenancy as at January 2018 when the Application was made.
- (v) The tribunal has jurisdiction to determine the Application.

16. The Property is located on the ground floor of a substantial divided house. Accommodation comprises:-

Entrance vestibule, hall, lounge, kitchen, two bedrooms and a bathroom.

The Property has gas fired central heating system with radiators throughout. The Property was unoccupied and unfurnished at the time of the tribunal's inspection.

- (i) The boiler is located within a cabinet at ceiling height within the kitchen. There were no warning notices attached thereto. The control panel operating the boiler is located on the wall beneath. The tribunal ran the hot

water taps in the kitchen and bathroom. No hot water flowed therefrom. The shower in the bathroom was dripping on the tribunal's arrival. The central heating system was not operating at the time of the inspection.

- (ii) The gas hob was inspected and, visually, was found to be in a reasonable state of repair with no warning notices attached thereto. However, the tribunal did not see the gas hob in operation.
- (iii) The tribunal checked for provision of smoke and heat detectors. There was a mains powered smoke alarm fitted to the ceiling of the hall. There was no heat detector in the kitchen or smoke alarm in the lounge. The fire detection equipment did not meet the Repairing Standard.
- (iv) The toilet within the bathroom was inspected. The seat was found to be loose due to the porcelain w.c pedestal being broken. The flushing mechanism of the toilet did not operate. The w.c. suite does not meet the Repairing Standard.

Decision

17. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

18. The decision of the tribunal was unanimous.

Right of Appeal

19. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

20. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Gillian Buchanan

Signed,

... Chairperson & Legal Member

Date 20 March 2018

Dundee 20/3/18
These are the photographs referred
to in the foregoing Decision.

Gillian Buchanan

Housing and Property Chamber
First-tier Tribunal for Scotland



24 Newark Drive, Glasgow. G41 4PZ

FTS/HPC/RP/18/0012

Schedule of Photographs - Inspection Date 13th March 2018

Weather – Bright, dry, cold.



1. The property



2. Gas central heating boiler



3. Boiler controls



4. Gas Hob



5. Leaking bath/shower taps



6. WC pedestal – broken at seat fixing



7. WC cistern– not flushing



8. Broken section of WC pedestal



9. Smoke alarm in hall



10. Carbon monoxide detector in kitchen



11. Water damage to ceiling/cornice in hall



12. Electrical Distribution Board

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/18/0012

Title no: GLA94933

House at 24 Newark Drive, Glasgow, G41 4PZ
("The Property")

The Parties:-

Dr Catherine Carroll and Mr David Ross, 24 Newark Drive, Glasgow, G41 4PZ
(represented by Mrs Patricia Carroll, 11 Bocclair Avenue, Glasgow, G61 2SE)
("the Former Tenants")

Prof Michael Fan, 45 Albert Drive, Glasgow, G41 5HJ
(represented by Mr David Young, BTO Solicitors, 48 St Vincent Street, Glasgow, G2 5HS)
("the Landlord")

Whereas in terms of their decision dated 20 March 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('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") and in particular that the Landlord has failed to ensure that:-

- (a) The installations in the Property 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.
- (b) Any fixture, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (c) The house has 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 work as is necessary for the purposes 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.

In particular the tribunal requires the Landlord to carry out the following works:-

- (a) (i) Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the safety, suitability and effectiveness of the gas fired heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats.
- (ii) Follow the recommendations of the report referred to in paragraph (a)(i) above to ensure that the entire system is safe and in proper working order.
- (b) (i) Engage a suitably qualified engineer to carry out an inspection and report on the safety and effectiveness of the gas hob.
- (ii) Follow the recommendations of the report referred to in paragraph (b)(i) above to ensure that the hob is safe and in proper working order.
- (c) On completion of the above works referred to in paragraphs (a) and (b) above provide to the tribunal a valid CP12 Gas Safety Certificate.
- (d) (i) Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
- (ii) Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property and including testing of the electric shower, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.
- (e) On completion of the works referred to in paragraph (d) above to provide to the tribunal a copy of the EICR.
- (f) Replace the damaged w.c suite (pedestal, cistern and seat) so that it is in proper working order.
- (g) Carry out any and all making good and decoration associated with the foregoing works.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

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 pages are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Chairperson of the tribunal at Dundee on 20 March 2018 before this witness:-

Jenni Lynch

Gillian Buchanan

_____ witness

_____ Chairperson

✓ JENNI LYNCH
THORNTONS LAW LLP
4 WHITEHALL HOUSE
33 YEAMAN SHORE
DUNDEE
DD1 4BJ

name in full

Address