

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/22/4226

The Property: Flat 1/2, 5 Myrtle Place, Glasgow, G42 8UL (“The Property”)

The Parties:

Glasgow City Council, Private Sector Housing, Exchange House, 231 George Street, Glasgow (“the Third-Party Applicant”); and

Ms Kathleen McFarlane, Flat 1/2, 5 Myrtle Place, Glasgow, G42 8UL (“the Tenant”); and

Mr Manindar Jassal and Mrs Shona Jassal, formerly residing at 14 Netherhill Avenue, Glasgow, G44 3EG and now residing at 3 Clevedon Gardens, Harlington Hayes, Middlesex UB3 1RD (“the Landlords”)

Tribunal Members:

G McWilliams- Legal Member

M Links - 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 or not the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”), in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and that a Repairing Standard Enforcement Order (“RSEO”) should be made.

Background

1. The Third-Party Applicant applied to the Tribunal on 23rd November 2022 in terms of Section 22 of the Housing (Scotland) Act 2006. The Applicant complained that the Landlords had not complied with a significant number of elements of the Repairing Standard and, in this regard, provided a list of repair issues which was sent with the Application. The list comprised stated the following:
 - 1) The lights throughout the Property need to be repaired/replaced;
 - 2) The flooring throughout the Property is not fit for purpose and needs to be replaced;
 - 3) There are cracks on the walls and ceilings which require investigation;
 - 4) There is a damp issue in one of the bedrooms which requires investigation;
 - 5) There is an issue with the opening and closing of a bedroom window;
 - 6) Curtain rails have fallen off a wall;
 - 7) There are exposed pipes in the bathroom;
 - 8) The cooker is faulty – only two rings work on the hob and the oven is not functioning;
 - 9) There is no CO monitor in the Property;
 - 10) A tap in the kitchen needs to be repaired/replaced

2. The Third-Party Applicant also submitted an email to the Landlords' letting agents, dated 25th October 2022, with the Application. In that email the Third-Party Applicant sought that the Landlords produce an Electrical Condition Installation Report ("EICR") and Gas Safety Certificate both in satisfactory terms.

Inspection

3. The Tribunal Members inspected the Property in the morning of 14th March 2023. The Tenant Ms McFarlane was present. The Third-Party Applicant and the Landlords were not present.

4. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Decision.

Hearing

5. Following the Inspection, the Tribunal held a Hearing which proceeded remotely by telephone conference call at 2.00pm on 14th March 2023. The Third-Party Applicant's Ms T. Coyle attended. The Landlord Mrs Shona Jassal and Tenant Ms McFarlane also attended.

6. The Tribunal heard evidence and submissions from Ms McFarlane, Mrs Jassal and Ms Coyle in respect of the Application and, in particular, the 10 repair issues identified in the Application.

7. Ms Coyle relied on the terms of the Application. She stated that she had notified the Landlords' letting agents of those issues in an e-mail dated 25th October 2022, which was within the Application case papers. She also stated that the Landlord Mrs Jassal was in e-mail communications with her and in particular sent an e-mail on 26th October acknowledging receipt of a copy of the e-mail of 25th October sent to the letting agents. Ms Coyle forwarded copies of e-mail communications between her, the letting agents and the Landlords to the Tribunals Office in the afternoon of the Hearing.
8. Mrs Jassal stated that she had previously only been made aware of a requirement to repair and paint the walls and replace the floor coverings within the Property. She said that the letting agents had contacted her and her husband in September 2022 to inform them of these necessary repairs. She stated that she was not aware of the other repair issues identified in the Application until she received copies of the Application papers through the letting agents in late February 2023. Mrs Jassal stated that her husband has been suffering from blood cancer and she and her husband do not have the financial means to have repair works carried out at the Property. She stated that they had received a quote from the letting agents for the walls and floor covering works in October 2022 but could not afford to pay for them. She stated that she had asked the letting agents to inform the Tenant Ms McFarlane that she could move out of the Property. Mrs Jassal stated that action was underway to seek to recover possession of the Property. Mrs Jassal forwarded a copy of an incomplete Gas Safety Certificate to the Tribunal's Office following the Hearing. In the email attaching the incomplete Gas Safety Certificate Mrs Jassal stated that she did not have a current EICR.
9. The Tribunal considered all of the evidence it had obtained at the Inspection and noted at the Hearing.
10. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A property (house) meets the Repairing Standard if:-

- (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,
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (h) The house meets the tolerable standard.

Findings in Fact

11. Having considered all of the evidence the Tribunal made the following findings in fact:

- i) The Property is a former local authority first floor flat situated in a three-storey block and located in a residential area in the south side of Glasgow. The accommodation comprises a hall, living room, two bedrooms, kitchen and bathroom. There is a communal close entrance and stairway and common garden ground to the front and rear.
- ii) Two out of four lights in one of two light fittings in the living room of the Property are not working. Two out of four lights in the light fitting in the kitchen are not working. The hall light is not working. One spotlight in the bathroom is not working.
- iii) There are no floor coverings in the living room, kitchen and bathroom and the floorboards in those rooms are in poor condition.
- iv) There are several cracks on walls throughout the Property, in particular in the hall above the entrance to the bedroom to the front of the Property and under the windowsill in the bedroom to the rear of the Property. There is also a crack in the hall above the door to the bathroom.
- v) There are moderate recordings of dampness in the bedroom to the rear of the Property and in the living room near to the veranda door.
- vi) The window in the bedroom to the rear of the Property tilts open but does not swivel open.
- vii) There are no curtain rails above the windows in the living room and the bedroom to the front of the Property. The window frame in that bedroom has fallen away on the right-hand side.
- viii) There are wall tiles missing and exposed pipes to the left of the toilet bowl in the bathroom.
- ix) The electric oven in the cooker in the kitchen is not working. Two of the gas rings on the cooker (front right and rear left) are not working.
- x) There is no CO monitor in the Property. The smoke and heat alarms in the kitchen, hall and living room are working and are only partially interlinked.
- xi) The cold tap in the kitchen is loose.
- xii) There are no wall coverings in the rooms within the Property with the exception of painting/artwork in the bedroom to the rear of the Property and tiles in the bathroom.
- xiii) There is cracking in three areas on the rear external wall of the Property.
- xiv) The Tenant has not been provided with copies of a satisfactory EICR or Gas Safety Certificate for the Property by the Landlords.

Decision, Reasons and RSEO

12. The Tribunal considered all of the evidence and the submissions of Ms Coyle and the Landlord Mrs Jassal, as well as their findings at the Inspection. The Tribunal, in particular, relied on their findings at the Inspection.
13. The Tribunal, at the Inspection had found the following. Two out of four lights in one of two light fittings in the living room of the Property are not working. Two out of four lights in the light fitting in the kitchen are not working. The hall light is not working. One spotlight in the bathroom is not working. There are no floor coverings in the living room, kitchen and bathroom and the floorboards in those rooms are in poor condition. There are several cracks on walls throughout the Property, in particular in the hall above the entrance to the bedroom to the front of the Property and under the windowsill in the bedroom to the rear of the Property. There is also a crack in the hall above the door to the bathroom. There are moderate recordings of dampness in the bedroom to the rear of the Property and in the living room near to the veranda door. The window in the bedroom to the rear of the Property tilts open but does not swivel open. There are no curtain rails above the windows in the living room and the bedroom to the front of the Property. The window frame in that bedroom has fallen away on the right-hand side. There are wall tiles missing and exposed pipes to the left of the toilet bowl in the bathroom. The electric oven in the cooker in the kitchen is not working. Two of the gas rings on the cooker (front right and rear left) are not working. There is no CO monitor in the Property. The fire alarm monitors in the living room and the hall are working but are not interlinked with each other. The fire alarms in the kitchen, hall and living room work and are connected. The cold tap in the kitchen is loose. There are no wall coverings in the rooms within the Property with the exception of painting/artwork in the bedroom to the rear of the Property and tiles in the bathroom. There is cracking in three areas on the rear external wall of the Property. The Tenant has not been provided with copies of satisfactory EICR or Gas Safety Certificate for the Property by the Landlords.
14. The Tribunal also found that the Landlords were aware of the ten repair issues identified by the Third-Party Applicant as these were referred to in email communications between them. In particular the Landlord Mrs Jassal sent an email to the Third-Party Applicant on 26th October 2022 acknowledging that she had seen the latter's email to the letting agents which set out the repair issues.
15. The Tribunal also found that the Gas Safety Certificate submitted by the Landlords following the Hearing was incomplete. The full pages of the copy Certificate sent by email to the Tribunal's office by Mrs Jassal are not visible.
16. The Tribunal considered whether or not the defects in the Property, narrated above, and the lack of compliance with the relevant legislation in relation to fire safety and the detection of carbon monoxide, as well as the lack of a current EICR and complete Gas Safety Certificate brought the Property below the Repairing Standard in terms of the provisions of the 2006 Act. The Tribunal, in particular,

relied on their findings at the Inspection. Having considered all of the evidence and submissions, and made their findings in fact, the Tribunal found, on a balance of probabilities, that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property is not in a reasonable state of repair; the installations in the Property for the supply of gas and electricity and for sanitation and heating water are not in reasonable state of repair and in proper working order; the fixtures and fittings provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order; the furnishings provided by the Landlords under the tenancy are not capable of being used safely for the purpose for which they are designed; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and the Property does not meet the tolerable standard. The Tribunal therefore decided that the Property does not meet the Repairing Standard, specifically in terms of Section 13 (1) (a), (b), (c), (d), (e), (f), (g) and (h) of the 2006 Act.

17. The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the 2006 Act given the said defects, and lack of proper heat, smoke and CO detectors and monitor, and lack of an EICR and a complete Gas Safety Certificate.

18. The Tribunal have therefore decided to make an RSEO, as required by Sections 24 (1) and 24(II) of the 2006 Act, in the following terms:-

a) The Landlords are to carry out such works, and to provide appropriate documentation, to ensure that the Property complies with the Repairing Standard. Specifically the Landlords have to:-

i) Repair or renew interlinked smoke and heat detectors in the Property to comply with all current regulations and guidance.

ii) Install a CO detector in the Property to comply with current regulations and guidance.

iii) Repair or renew properly working light fittings and lights in the living room, kitchen, hall and bathroom in the Property.

iv) Repair the cracks in the walls in Property, in particular in the hall above the entrance to the bedroom to the front of the Property and under the windowsill in the bedroom to the rear of the Property and in the hall above the door to the bathroom;

v) Repair or renew the window in the bedroom to the rear of the Property to ensure that it opens fully by tilt and swivel;

vi) Replace the floor coverings in the kitchen, bathroom and living room.

- vii) **Repair or replace the curtain rails above the windows in the living room and bedroom to the front of the Property;**
 - viii) **Repair the window frame around the window in the bedroom to the front of the Property;**
 - ix) **Replace the wall tiles to the left of the toilet bowl in the bathroom to ensure that there are no exposed pipes in that room;**
 - x) **Repair or replace the cooker in the kitchen in the Property to ensure that the electric oven and all gas rings are in a reasonable state of repair and proper working order;**
 - xi) **Repair or replace the cold tap in the kitchen in the Property to ensure that it is in a reasonable state of repair and proper working order;**
 - xii) **Add suitable wall coverings or paint to the walls in the living room, kitchen, hall and bedroom to the front of the Property;**
 - xiii) **Instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the Property and exhibit a satisfactory EICR and PAT to the Tribunal; and**
 - xiv) **Instruct a suitably qualified Gas Safe engineer to inspect the gas boiler, carry out a service and any necessary repairs to the boiler and thereafter inspect all the gas appliances in the Property and provide the Tribunal with a satisfactory, complete Gas Safety Certificate and written evidence of the service and any repairs carried out to the boiler and cooker gas hob.**
- b) In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, and the extent of the remedial works which require to be carried out, the Tribunal determines that the RSEO requires to be complied with by 31st May 2023.**

19. As the Tribunal stated at the Hearing, they are sympathetic to Ms McFarlane and Mr and Mrs Jassal's difficult personal circumstances but, in these proceedings, have had to focus solely on whether or not the Property currently meets the Repairing Standard.

20. The Tribunal, separately, consider that it would be helpful if the Landlords notify the Factor of the block of flats in which the Property is situated of the three areas of cracking on the rear external wall of the block.

21. The decision of the Tribunal is unanimous.

Right of Appeal

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 McWilliams

Legal Member

Date: 21st March 2023