



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

STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 24 (1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/20/0471

Re: Property at Flat 1/1, 764 Pollokshaws Road, Glasgow, G41 2AE (“the Property”)

The Parties:

Ms Janette Ross residing at Flat 1/1, 764 Pollokshaws Road, Glasgow, G41 2AE (“the Tenant”)

Mr Mohammed Alam, 738 Pollokshaws Road, Glasgow, G41 2AE (“the Landlord”)

Tribunal Members

James Bauld (Legal Member and Chair)

Donald Wooley (Ordinary Member)

Background

1. This application was lodged in February 2020. Its progress was initially significantly delayed by the restrictions introduced to deal with the coronavirus pandemic.
2. On 22 January 2021 a Case Management Discussion (CMD) was held by means of a telephone case conference and it was indicated to the parties that the normal procedure of having an inspection and then a hearing would require to be delayed until the pandemic restrictions had been eased.
3. A formal Direction was issued by the tribunal. In terms of that Direction the landlord was required The Landlord was required to provide no later than close of business on 19 February 2021.

- Valid and up to date Gas Safety certificate in respect of the property as required by the Gas Safety (Installation and Use) Regulations 1998
 - Valid and up to date electrical inspection condition report (EICR) in respect of the property as required by sections 19A and 19B of the Housing (Scotland) Act 2006
 - Any invoices/reports in connection with boiler repairs at the property since November 2019
 - Evidence showing the installation of smoke detectors, heat detectors and carbon monoxide detectors within the property in compliance with the requirements set out in the Housing (Scotland) Acts 1987 and 2006 and all subsequent Scottish Government statutory guidelines.
4. Arrangements were then made for an inspection to take place on 16 July 2021 with a hearing to be held on 30 July 2021. The inspection and hearing were cancelled on 15 July 2021 as the pre-inspection checks indicated that it would not be safe to proceed.
 5. The inspection was rearranged for 1 October 2021 with a hearing rescheduled for 8 October 2021. On 29 September 2021, the applicant's representative emailed the tribunal to indicate that the applicant suspected that she had contracted Covid and requested a postponement of the inspection and the hearing. The tribunal again took the view that it would not be safe to proceed with the inspection and the inspection and hearing were cancelled.
 6. A further inspection was rearranged to take place on 19 November 2021 with a hearing set to take place on 26 November 2021
 7. On 18 November 2021 the tribunal received an email from Lisa Doran, solicitor of Moir and Sweeney Litigation who indicated they were now acting for the applicant. Until that time the tribunal had understood that the applicant was represented by Miss Holly Sloey, solicitor from Govanhill Law Centre. Ms Doran advised the tribunal that the applicant was recovering from a recent stay in hospital and would not be fit to allow the inspection to proceed. A number of

telephone calls were then made between the tribunal administration staff and the solicitor and the applicant. It became clear that the applicant would not be in a position to allow access for the inspection. The tribunal made the decision to postpone the inspection schedule for 19 November 2021. The tribunal also decided to proceed on that date set for the hearing by holding a Case Management Discussion. Appropriate intimation was sent to all parties regarding this decision of the tribunal. The tribunal requested that the applicant provide information confirming that she had recently been treated in hospital.

8. By emails received on 25 November 2012, Ms Sloey provided letters from the applicant's GP and a discharge report from the Queen Elizabeth University Hospital. These documents were not disclosed to the respondent but the tribunal members had sight of them. The documents confirmed the applicant's position with regard to her health and her relative fitness to allow the inspection to take place on 19th November

9. The CMD proceeded on 26 November by telephone case conference. The applicant was personally present. The respondent was personally present. The applicant was also initially assisted by two separate solicitors, namely Mr Charlie Shearer from Moir and Sweeney and Miss Holly Sloey from Govanhill Law Centre. The tribunal clarified the reason why two solicitors were appearing on behalf of the applicant at the same hearing. After some discussion it was agreed that Miss Sloey would represent the applicant in this matter and Mr Shearer left the hearing.

10. A note was issued after the CMD .The tribunal noted that the issues which are still alleged to exist were as follows
 - The boiler is not functioning and needs replaced.
 - There is no hot water or heating in the property.
 - The property is damp.
 - The shower within the property does not work.
 - The bath within the property cannot be used.

- The toilet leaks when flushed.
- There is no extractor fan within the property.
- There are no smoke detectors or heat detectors in the property.
- There is inadequate insulation in the property.
- The property does not meet the tolerable standard

11. The tribunal however determined that this matter should proceed and that a fresh date should be fixed for an inspection and a hearing. The tribunal indicated to the applicant and her representative that any further failure to allow the tribunal to have access for an inspection may have adverse consequences in respect of the future progress of the application. The tribunal drew the attention of the parties to the tribunal's procedural rules (The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules of Procedure 2017 as amended) and in particular to rule 27 which would allow the tribunal to dismiss an application when an applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

12. The tribunal decided that an inspection and hearing would take place on 21 January 2022. Regrettably the inspection and hearing required to be cancelled owing to the unavailability of one of the tribunal members

Inspection and hearing 18 March 2022

13. The tribunal inspected the property on 18 March 2022 and then held a hearing by telephone case conference

14. Both parties were in attendance at the inspection and the hearing

15. The following site observations, prepared by the tribunal's ordinary member, are a note of what the tribunal observed at the inspection dealing with each alleged item of disrepair contained within the application. In addition an "Inspection summary and schedule of photographs" prepared by the ordinary member is attached to this decision

Site Observations

16. The property comprises a first floor self-contained, purpose built flat within a three storey tenement constructed around 1900. Access to the flat is taken via a shared common stairwell and close protected by a security door at ground floor level
17. The outer walls are of sandstone construction and the roof is pitched, clad with concrete tiles
18. The accommodation comprises living room, two bedrooms, dining kitchen and bathroom.
19. "The boiler is not working and needs replaced"

There is, within the kitchen, a wall mounted gas fired combination boiler. It is estimated to be in excess of 20 years in age. The boiler was not functioning during the inspection and there is no evidence of recent "testing" or maintenance having been undertaken. No current, valid satisfactory gas safety certificate is held by the tenant.

20. "There is no hot water or heating in the property"

The central heating system does not appear functional and no hot water is available at the bath, wash hand basin or sink unit. The wash hand basin within the bathroom is choked and was partially filled with water.

21. "The property is damp"

It was alleged that the kitchen wall close to and above the radiator, was damp. Readings taken with a moisture meter at the relevant areas failed to identify any significant damp. Behind and below the wash hand basin within the bathroom there is significant evidence of damp staining and moisture readings taken confirmed the presence of a high damp content. There is also damp behind and around the WC.

22. "The shower within the property does not work"

There is an electric "Triton 7" shower fitting above the bath. It appears old and there is no evidence of recent testing. The shower head is "lying/resting" on the rim of the bath and there is no functional shower screen.

23. The bath within the property cannot be used"

There does not appear to be any hot water supply to the bath.

24. "The toilet leaks when flushed"

The Tribunal tested the WC by flushing. It was clearly evident that there was water seeping from the joint in the waste disposal pipe at the rear.

25. "There is no extractor fan within the property"

There is within the bathroom a ceiling mounted electrical extractor fan. This was tested and was functioning during the inspection.

26. "There are no smoke detectors or heat detectors within the property"

Within the hall and kitchen there are ceiling mounted detectors which appear to be battery operated. At the kitchen the battery has been removed from the fitting. There is no smoke detector within the living room. The appliances are inadequate and not in accordance with current Scottish government guidelines as defined in the Housing (Scotland) Act 2006

27. "There is inadequate insulation in the property"

Historically the outer walls of the property, at both the front and rear elevations, have been strapped and relined in plasterboard, possibly as part of a previous repair or refurbishment. The Tribunal did not inspect behind the wall lining although, there is no evidence to suggest that the insulation is inadequate.

28. "The property does not meet the tolerable standard"

While the boiler remains defective there is no permanent supply of hot water to the kitchen sink, wash hand basin or bath

The hearing

29. At the hearing the landlord was questioned by the tribunal with regard to the observations which had been made at the inspection

30. He indicated that in his view the boiler did not need replaced. He claimed that he held a gas safety certificate from February 2021 which certified that the boiler was safe and fit to use. He claimed that

repairs had been done and that the problem with the boiler was that the tenant did not have a gas supply. Every time she tries to use the boiler when there is no gas supply the boiler chokes and stops working. It then requires to be reset. If there was a gas supply to the boiler it would function properly at all times. The tribunal indicated to the landlord that during the inspection the tenant was able to light the gas cooker which indicated that there was a gas supply to the property.

31. The landlord also complained that he was unable to access the flat in order to carry out repairs. He indicated he did not have a contact telephone number for the tenant. He indicated over 12 appointments had been made to attend to carry out repairs at various times but access was not allowed.
32. He stated that in February this year the police gained access to the floor by forcing the door. Concerns have been raised with regard to the tenant's safety. She was given an option to move to another flat or return to the flat and she chose to return. The landlord had provided photographs to the tribunal which he said showed the condition of the flat when the police had forced entry. The flat was in an appalling condition. It was impossible to carry out work within the flat owing to debris and rubbish strewn throughout the flat.
33. It was the landlord's position that the gas cooker within the flat belonged to the tenant although he claimed that he maintained it for the purposes of the gas safety check.
34. The tenant indicated that she has had no heating or hot water in the flat for the last five years. She has never refused to allow repairs to be carried out. She indicated the cooker did not belong to her. The cooker was in the flat when she first moved in.
35. The tenant accepted that access to the two bedrooms was limited by the amount of belongings stored within the bedrooms. She claimed these were items which had belonged to her late mother.
36. During the course of the hearing, the tribunal members were able to see a gas safety certificate which had been emailed to the tribunal by the landlord on the morning of the hearing. This was one of the items which the tribunal had directed the landlord to produce to them in the note issued by the tribunal after the case management discussion of 22 January 2021. The landlord has previously failed to comply with

any part of this direction and has still failed to produce the other items which were ordered by the tribunal in that direction.

37. The gas safety certificate is dated 23 February 2021 and appears to have been undertaken by a gas engineer called Mark Jackson. The details of the registered business are shown as PGS Ltd. The tribunal have been unable to locate either the engineer or the company in the Gas Safe register as at the date of the hearing.
38. The certificate indicates that the cooker and boiler were both safe to use. The tribunal notes that the certificate indicates that the boiler is in poor condition, that it has multiple faults and that the engineer advises that it is beyond economic repair. Given these comments the tribunal is somewhat surprised to note that the engineer regarded the boiler as safe to use and compliant with the relevant regulations.
39. In any event the certificate is now more than a year old and no up to date certificate has been produced. At the date of the inspection by the tribunal the boiler was clearly not working. In the tribunal's view it is almost certainly beyond repair
40. The landlord had no explanation for his failure to produce the other items required by the tribunal's previous direction including the electrical installation condition report.
41. In addition to the gas safety certificate, the landlord also produced what is claimed to be a report from "C McCraw property maintenance" indicating that they checked the boiler on 23 February 2021. They found no gas at the prepaid meter. The report indicates they fixed four leaks on the boiler, replaced the seals on the boiler, topped up the gas meter, conducted a test of the boiler and found it to be in working order. The report claims that the tenant was shown how to use the boiler and how to reset it for gas at the meter. This report is unsigned and nothing in the report indicates that this company are registered Gas Safe engineers
42. The landlord indicated that he is willing to produce the gas safety report, the electrical report and the other documents required by the tribunal. It was his position that the tenant was being deliberately evasive and non-cooperative and preventing access.
43. The tenant indicated to the tribunal that she would provide a contact number for the landlord and would allow access to contractors.

44. The tenant then indicated that in her view the property needed a new boiler. She also indicated that the shower in the bathroom was not working and that the sink was blocked. There were substantial repairs required to this property. It was her position that she had not caused these faults by any negligence on her part.

Discussion and reasons for decision

45. The tribunal carefully considered the evidence which had been obtained at the inspection and at the hearing.

46. The tribunal has no hesitation in deciding that this property does not meet the repairing standard set out in the legislation. It requires significant and major works to bring it up to standard. Indeed the property currently falls short of the tolerable standard set out in the Housing (Scotland) Act 1987. The Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006

47. The tribunal accordingly proposes to make a repairing standard enforcement order requiring the landlord to undertake a number of works

48. These works will include the requirement to instruct an appropriately qualified electrician to carry out a full inspection of the electrical installations and apparatus throughout the property and to produce an appropriate electrical installation condition report to the tribunal.

49. The order will also require that the landlord instructs a Gas Safe registered engineer to undertake a full inspection of all gas fittings and appliances and to repair and renew any parts which are identified within that report as requiring repair or replacement. The landlord will require to provide a gas safety certificate to the tribunal which meets the current standards.

50. The tribunal will also require the landlord instruct a suitably qualified contractor to inspect the areas of damp in the bathroom, to identify the source of the damp and to complete all necessary repairs to ensure the property is dry. The tribunal will also require repairs to the WC to ensure it does not leak when flushed.

51. The Tribunal will require that the landlord installs smoke alarms within the living room and hall together with a heat detector in the

kitchen ensuring that all are in accordance with the relevant legislation and meet the current standards.

52. The appropriate repairing standard enforcement order is attached to this decision

53. The decision of the tribunal is unanimous

Signed

J Bauld

A handwritten signature in blue ink that reads "JAMES BAULD". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Date 11 April 2022

Legal Member