

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act 2006

Chamber Reference number: FTS/HPC/RP/18/1436

Parties: Ms Emma Kelly now formerly residing at 6E Macewan Place, Kilmarnock, KA3 7ER (“the Tenant”) and represented by Miss Claire Strong, Shelter, 116 Osborne Street, Glasgow G1 5QH and

Stewart Hale residing some time at 12 Ash Tree Avenue Manchester and Mrs Janet Hale (“the Landlords”), per their agents Mackenzie Way Estate and Letting Agents 36 Hamilton Street, Saltcoats KA21 5DS (“the Landlords’ Agents”)

Property: 6E Macewan Place, Kilmarnock, KA3 7ER registered in the Land Register of Scotland under Title Number AYR75216 (“the Property”)

Tribunal Members

Karen Moore (Chairperson)

Carol Jones (Ordinary Member)

Background

1. By application comprising an application form and supporting copy emails and correspondence between and amongst the parties and their respective agents and representatives received on 20 June 2018 (“the Application”), the Tenant’s

representative applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act.

2. Specifically, the Application stated that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard for the following reasons:-

- i) The living room radiator does not work properly;
- ii) The flooring in the kitchen is uneven and rotten and the floor is structurally unsound;
- iii) There is insect infestation in the kitchen and living room;
- iv) The windows are not properly sealed;
- v) The boiler is faulty and requires to be operated manually;
- vi) There is insufficient hot water to run a bath;
- vii) There is no portable appliance test (PAT) for the landlord's white goods;
- viii) There no electrical report or gas safety certificate and
- ix) The smoke alarms are not working and there is no carbon monoxide alarm.

3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the Act, intimated to all parties by Notice of Referral dated 12 July 2018 , a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 7 September 2018 at 10.00 a.m. and 11.30 a.m., respectively.

Preliminary Matters

4. By email dated 21 August 2018, the Landlords Agents submitted a satisfactory Electrical Installation Condition Report (EICR) by a SELECT registered electrician dated 25 June 2018 to the tribunal.

5. By email dated 29 August 2018, the Tenant's representative intimated to the tribunal that the Tenant had been served with a notice terminating the tenancy at 28 September 2018 and requested that the Application be withdrawn. The tribunal by Minute of Continuation dated 31 August 2018 determined to continue with the Application of its own accord.

Inspection

6. The Inspection took place on 7 September 2018 at 10.00 a.m. at the Property. The Tenant was present at the Inspection together with her friend Ms. Emma Sherry, as a supporter in terms of Rule 11 of the of First-tier Tribunal for Scotland Housing & Property Chamber (Procedure) Regulations 2017 ("the Rules"). Neither the Landlords nor the Landlords' Agent were present at the Inspection.

7. The tribunal inspected the Property in respect of all of the matters complained of in the Application, namely:
 - i) The living room radiator;
 - ii) The flooring in the kitchen;
 - iii) The insect infestation in the kitchen and living room;
 - iv) The windows;
 - v) The boiler;
 - vi) The hot water tank;
 - vii) The bath taps;

- viii) The landlord's portable appliances, namely a washing machine and a cooker and
- ix) The presence and working order of smoke and carbon monoxide alarms.

8. At the Inspection, the tribunal took digital photographs which photographs form the Schedule annexed to this decision.

9. At the Inspection it was evident to the tribunal that the Tenant had vacated the Property and the Tenant confirmed this fact to the tribunal.

Hearing

10. Following the Inspection, a Hearing was held at North West Kilmarnock Area Centre, Western Road, Kilmarnock, KA3 1NQ on the same day at 11.30 a.m. Neither the Tenant nor the Tenant's Representative attended the Hearing. Neither of the Landlords nor the Landlords' Agents were present at the Hearing.

Summary of the Issues

11. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

12. Stewart Hale is the owner of the Property and he and Janet Hale are the Landlords by virtue of tenancy agreement between them and the Tenant a copy of which comprises part of the Application. Ms Emma Kelly had been the Tenant at the date on which the Application was made.

13. The Property is a first and second floor maisonette in a 5 storey modern tenement of six houses constructed circa 1970s. The property is entered by a common close and is on two levels comprising a hall, open plan dining area and living room and kitchen on the lower floor and three bedrooms and a bathroom on the upper floor.

The windows in the property are UPVC double glazed and appear to have been installed around 2002.

14. From the Inspection, the tribunal found the following in respect of matters specifically complained of in the Application:
- i) The living room radiator is badly corroded and appears to have been leaking. The tenant said it does not work and has never worked since the commencement of the tenancy. There is no alternative form of heating in the living area;
 - ii) The exposed floorboards in the kitchen are stained by water and the laminate floor covering is badly worn and rotted;
 - iii) The kitchen floor is uneven and soft underfoot;
 - iv) There is evidence of insect infestation in the kitchen;
 - v) The tilt and turn mechanism on the living room window appears to be faulty. Although the Tenant complained of condensation at this window no evidence of this could be seen at the Inspection, the weather being dry and relatively warm and the house being unheated and cool. The remaining windows in the Property appeared to be in proper working order ;
 - vi) The boiler is very old and could be obsolete. It does not appear to be functioning fully and the timer switch appears to be ineffective. There is no record of servicing or maintenance affixed to the boiler;
 - vii) The hot water tank is of a considerable age and as the boiler does not function properly, the tribunal could not ascertain if it provides a sufficient supply of hot water;
 - viii) The bath taps are functioning but there did not appear to be a supply of hot water although the boiler was not turned on at this inspection. The tenant said she had to use the shower to fill the bath;
 - ix) The washing machine is disconnected. It was not tested by the tribunal but the tenant said it was not in an operable condition;
 - x) The cooker appeared to be connected but was not tested by the tribunal;
 - xi) There is no evidence that the washing machine and cooker have been portable appliance tested;

- xii) There is no evidence of a gas safety certificate being in place for the Property and
 - xiii) There are a sufficient number of hard wired and interconnected smoke alarms and a wall mounted carbon monoxide alarm in the kitchen. All alarms were tested by the tribunal and found to be in proper working order.
15. In addition, the tribunal noted that, although not complained of in the Application, the kitchen cabinets are in a very poor state of repair with cabinet doors broken or missing and these should be repaired or renewed and the radiator in the kitchen has been removed.

Decision of the tribunal and reasons for the decision.

16. The tribunal's decision is based on the Application with supporting documents and the Inspection and the EICR submitted on behalf of the Landlords.
17. The tribunal had regard to the Tenant's complaints in respect of the living room window and insect infestation and found that these complaints properly fell within the terms of Section 13 (1) (a) that the Property is not wind and watertight and in all other respects reasonably fit for human habitation. The tribunal found that condition of the living room window is such that the Property is not wind and watertight. The tribunal also found evidence of insect infestation in the kitchen. The tribunal took the view that although the Tenant's application had not specified failings in respect of this particular sub-section of the Act, the Landlords had had prior notice of this part of the Tenant's complaint and so the tribunal had no difficulty in finding that at the date of the Inspection and Hearing the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
18. In respect of Section 13(1) (c) of the Act, the tribunal found that at the date of the Hearing the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reasons being, firstly, that the tribunal could not be satisfied that the boiler functions properly and that the hot water tank is of sufficient capacity to provide an adequate hot water supply and so could not be certain that the installation in the Property for heating water is in a reasonable state of repair and in

proper working order. Secondly, the tribunal found that the radiator in the living room is not functioning and that there is no alternative form of heating provided in the living room area. Accordingly, at the date of the Inspection and Hearing, the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

19. In respect of Section 13(1) (d) of the Act, the tribunal found that at the date of the Hearing the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the kitchen floor covering is badly worn and rotted, the kitchen floorboards appear to be unstable and are water stained in parts, the washing machine is not operable and both the cooker and washing machine do not appear to have been tested and certificated as in proper working order and safe to use. Accordingly, the tribunal could not be satisfied that the fixtures, fittings and appliances provided by the Landlords under the tenancy are in reasonable state of repair and in proper working order.

20. In respect of Sections 13(1) (f) and 13(1) (g) of the Act, the Committee found that at the date of the Hearing the Landlords have not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that there is a sufficient number of hard wired and connected smoke alarms and a carbon monoxide alarm in the Property.

21. The decision was unanimous.

Repairing Standard Enforcement Order

22. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1) (b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

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.

Effect of Section 63

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.

K Moore

Karen Moore

Chairperson

18 September 2018

18 September 2018
This is the schedule of photographs referred
to in the foregoing decision dated 9 even save
K Moore

**Housing and Property Chamber
First-tier Tribunal for Scotland**



Schedule of photographs taken during the inspection of 6E MacEwan Place, Kilmarnock
KA3 7ER by the First-tier Tribunal for Scotland (Housing and Property Chamber)
7 September 2018

Reference Number : FTS/HPC/RP/18/1436



Front Elevation



Living Room - radiator



Living Room - radiator



Kitchen - Exposed floorboards showing water staining



Kitchen - damaged laminate floor covering



Kitchen - damaged laminate floor covering



Kitchen - evidence of possible insect infestation



Living Room- Window



Dining Area - Window



Kitchen - Window



Bedroom (1) - Window



Bedroom (2) - Window



Bedroom (3) - Window



Kitchen - Baxi Boiler



Upper landing cupboard - hot water tank



Bathroom



Kitchen - Electric cooker (landlord's)



Kitchen - Washing machine (landlord's)



Cupboard off Kitchen - new electric consumer unit



Upper Landing - ceiling mounted smoke alarm



Lower Hall - ceiling mounted smoke alarm



Living Room - ceiling mounted smoke alarm



Kitchen - ceiling mounted heat alarm



Kitchen - wall mounted CO alarm



Kitchen - several defective base kitchen units (observation)



Kitchen - missing radiator (observation)