

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: Reference number: FTS/HPC/RP/21/1889

Property: 5 Graden Farm Cottages, Kelso, TD5 8BS ("The property")

Title Number: ROX70

Parties:

Lesley Renton, residing at 5 Graden Farm Cottages, Kelso, TD5 8BS ("the Applicant" and "the Tenant")

And

Paul and Deborah Mills, residing at Grayfield, Drumkeeran, Co. Leitrim, Ireland, N41 R6K7 ("the Respondent" and the Landlord)

Tribunal Members:

Paul Doyle (Legal Member)

Andrew McFarlane (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 the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the totality of evidence led, dismisses the application.

Background

1. On 5 August 2021 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the repairing standard.

2. The applicant says that the respondent 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 house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair nor are they in proper working order.

(b) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in proper working order.

(c) The furnishings provided by the landlord are incapable of being used safely and for the purpose for which they are designed.

(d) The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

(e) The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. By letter dated 9 November 2021 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 both the Landlord and the Tenant.

5. Following service of the Notice of Referral both the Landlord and the Applicant made written further representations as the application progressed.

6. Tribunal members inspected the Property on the morning of 4 March 2022. The Tenant was not present, but her husband was. The Landlord was present and unrepresented. During the inspection on 4 March 2022, the Ordinary member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 10am on 11 March 2022. The Tenant was neither present nor represented. The Landlord was present but not represented.

Summary of the issues

8. The issues to be determined are whether the property meets the repairing standard set out in s.13 of the Housing (Scotland) Act 2006.

Findings of fact

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

(a) The landlord is the heritable proprietor of 5 Graden Farm Cottages, Kelso, TD5 8BS ("the property"). The landlord let the property to the

tenant. On 12 August 2021 the landlord served a notice to leave on the tenant.

(b) The property is an end terraced farm cottage built in 1896. The property has gardens to front, side, and rear. Accommodation is spread over three floors. The front door opens onto a hallway, providing access to the living room and dining room/kitchen with utility room off. On the first floor there is a bathroom (with a three-piece sanitary suite and a shower unit). There are three bedrooms on the first floor, from which stairs lead to the top floor where there are a further two bedrooms.

(c) The Landlord has installed interlinked smoke and heat detectors, and carbon monoxide detectors, within the property, which are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(d) The fittings in the bathroom are old & tired. Even though there is a window opening to the exterior of the property, there are signs of condensation staining. The tenant has not adequately heated and ventilated the bathroom. As a result, there are surface mould spots on the ceiling and on the vinyl floor covering. Damp meter readings were taken during the inspection, which showed high damp meter readings around the base of the shower unit and medium damp readings at the base of the toilet pedestal.

(e) The bathroom (and in fact the entire house) will benefit from cleaning and redecoration, but the concerns about the bathroom will be remedied by adequate heating and ventilation.

(f) The electrical consumer unit is situated in the bedroom on the first floor, to the front of the property. It appears to be a new consumer unit, but on inspection, it was impossible to tell simply by looking at the consumer unit when it was last tested. The landlord obtained an unqualified and satisfactory electrical installation condition report (EICR) on 3 May 2022. This indicated the entire property had been rewired.

(g) During the inspection on 4 March 2022, the applicant's husband told tribunal members that there is evidence of vermin infestation in the kitchen/dining room of the property on the ground floor. Tribunal members examined the floor surfaces, the cupboards, and work surfaces in the kitchen. Tribunal members inspected all of the rooms, hallways, and stairs on the ground and first floors. There was no sign of vermin infestation. Tribunal members could neither see holes created by vermin nor droppings from vermin.

(h) There are no pest traps in the property.

(i) The tenant has now removed from the property and the landlord now lives there.

Reasons for the decision

10. (a) Tribunal members inspected this property at 11:30am on 4 March 2022. It was a damp, early spring, morning. The tenant's husband welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) Following a case management discussion on 20 December 2021, directions were issued in the following terms.

1. The Respondent is required to

(i) Instruct a SELECT, NICEIC OR NAPIT registered electrician to provide an Electrical Condition Installation Report (EICR) following a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any areas categorised C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards

(ii) Install interlinked smoke and heat detectors, and carbon monoxide detectors, within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

All within 28 days of service of this direction.

(c) There are four heads of claim in this application. The first is that the bathroom floor needs to be inspected by a damp expert to see if the floor needs to be replaced. At inspection higher than average damp meter readings were obtained at the skirting adjacent to the shower unit and medium damp meter readings were found at the skirting between the basin pedestal and the WC pan. Examination of the ceiling showed surface mould spots which clearly indicated that the room had not been properly heated and ventilated.

(d) There is no reliable evidence that there is damp affecting the floor of the bathroom. All the evidence before the tribunal indicates that the bathroom has not been adequately heated and ventilated, the bathroom fittings are tired, but it's time for redecoration of this entire house.

(e) Higher than average damp meter readings can be remedied by adequately heating & ventilating the bathroom.

(f) The second head of claim relates to electrical installation. On inspection, there were no obvious defects of the electrical installation, and it could be seen that a modern consumer unit has been fitted.

(g) The third head of claim relates to smoke and heat detectors. Both parties agree that the interlinked smoke and heat detectors and carbon monoxide detectors have been installed in the property since the case management discussion on 20 December 2021.

(h) The final head of claim relates to pest control. The tenant complains that mice are getting into the walls of the house. At inspection there was no evidence of vermin infestation, nor was there evidence of pest control measures taken to manage an infestation.

(i) Relying on the evidence placed before the tribunal, and tribunal members observations made during the inspection in March 2022, tribunal members find that

(i) The fixtures and fittings and appliances provided by the landlord are in a reasonable state of repair and proper working order

(ii) The furnishings provided by the landlord are capable of being used safely for the purpose for which they are designed

(iii) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

(iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration as is hazardous to health

(j) On 11 March 2022 the tribunal issued the following direction to the landlord

1. The Respondent is required to

(i) Instruct a SELECT, NICEIC OR NAPIT registered electrician to provide an Electrical Condition Installation Report (EICR) following a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any areas categorised C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards

All within 8 weeks of service of this direction.

(k) On 6 May 2022 the landlord sent the tribunal an unqualified and satisfactory EICR dated 3 May 2022.

(l) At today's date, the property meets the repairing standard. There is no merit in the application, and it is dismissed.

Decision

11. A Repairing Standard Enforcement Order is not necessary. The application is dismissed.

12. The decision of the tribunal was unanimous.

Right of Appeal

13. 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

14. 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.

P Doyle

Signed

Legal Member

16 May 2022