

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/21/2651

Property: 7 Brannock Place, Newarthill, Motherwell, ML1 5DX ("The property")

Title Number: Lan184860

Parties:

Christina Robinson, residing at 7 Brannock Place, Newarthill, Motherwell, ML1 5DX ("the Applicant" and "the Tenant")

And

Stewart and Janet Cook, residing at 10 Kilbreck Lane, Motherwell ML1 5HL ("the Respondent" and the Landlord)

Tribunal Members:

Paul Doyle (Legal Member)

Carol Jones (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 evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 25 October 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 including the tolerable 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 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, in terms of Section 13(1)(c) of the 2006 Act; and
- (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 in terms of Section 13(1)(d) of the 2006 Act; and
- (c) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act; and
- (d) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in terms of Section 13(1)(g) of the 2006 Act; and
- (e) The house does not meet the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

Specifically, the tenant complained that the boiler has never had a yearly inspection, it constantly loses pressure/water causing the bathroom and living room radiators to leak. Due to that, a leak from the living room radiator has caused the flooring in the living room to lift which causes a tripping hazard and mould on the wall. The radiators don't heat properly. The mixer of the shower needs replaced and the shower head needs to be attached again. The toilet needs to be looked at, no proper pressure when flushing. In an email dated 4 June 2021 to the landlord and attached to the application the tenant also complains of various electrical issues in the kitchen and a defective fridge freezer along with a complaint about the front door canopy being worn and dangerous.

3. On 10 January 2022 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. On 2 February 2022 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 neither the Landlord nor the Applicant made any written further representations.

6. On 24 February 2022 the tribunal issued the following direction to the respondent

The Respondent is required to

(i) Send to the First-tier Tribunal for Scotland (HPC) an up to date Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation within the property and all electrical appliances and equipment supplied by the landlord carried out by a suitably qualified and registered SELECT, NICEIC or NAPAT electrical contractor.

(iii) Send to the First-tier Tribunal for Scotland (HPC) a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property,

All not later than 21 March 2022.

7. There has been no response to that direction.

8. Tribunal members inspected the Property on the morning of 25 March 2022. The Tenant was present. The Landlord was neither present nor represented. During the inspection on 25 March 2022, the ordinary member took photographs of the property. A schedule of those photographs is annexed hereto.

9. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 10am on 1 April 2022. The Tenant was present but not represented. The Landlord was neither present nor represented. The hearing was scheduled to start at 10am, but was delayed until 10.08 to enable extra time for the respondent to join the conference call. Because the respondent did not participate, the hearing was brief, and finished at 10.25am. At 10.34am, after tribunal members had left the conference call, the first respondent dialled into the call to be told that the hearing had been conducted in his absence and had finished.

Summary of the issues

10. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

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

(a) The landlord is the heritable proprietor of 7 Brannock Place, Newarthill, Motherwell, ML1 5DX ("the property"). The landlord let the property to the tenant on 7 February 2015.

(b) The property is a former local authority 3 bedroomed semi-detached traditionally built dwellinghouse on two floors. It is located in an area of similar residential properties in Newarthill around 3.5 miles north-east of Motherwell town centre. There are gardens to the front, side and the rear. The front door opens onto a small vestibule which provides access to a hallway. On the ground floor there is a living room, kitchen, and bathroom, patio doors in the kitchen provide access to the rear garden, stairs lead from the hallway to the first floor where there are 3 bedrooms. The property benefits from double glazing and gas fired central heating.

(c) The property does not have interlinked smoke and heat detectors, nor carbon monoxide detectors, and so does not comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(d) The fittings in the bathroom are old & tired. Over the bath there is a shower unit. The shower head is missing from the shower hose so that the shower cannot be used. There is a small vanity unit below the frosted glass window in the bathroom. Water leaks into this vanity unit and drips across the skirting board there. The toilet cistern does not provide an effective flush.

(e) There is laminate wood flooring in the hallway and living room. In the living room, the central heating radiator fixed to the wall is showing signs of corrosion and it is misaligned. There are signs of previous leaks. The flooring in the living room has been damaged by water, and several boards are loose, warped, stained, and uneven. It is clear that the water damage has been caused by a defect in the central heating system.

(f) The living room wall bears signs of previous water damage.

(g) The central heating boiler is located in a cupboard in the kitchen. The central heating boiler leaks. The central heating boiler fails to maintain a constant pressure.

(h) There is an old fuse box situated in the ground floor vestibule, adjacent to the front door. It is not a modern consumer unit. It is impossible to tell simply by looking at the fuse box when it was last tested. The landlord has not provided an electrical installation condition report (EICR) or Portable Appliance Test Certificate (PAT),

(i) An up-to-date the EICR and PAT is still required.

(j) Throughout the ground floor of the property there are signs that the central heating radiators have leaked. The most obvious signs of leakage are in the hallway and in the living room. There are obvious defects in the central heating boiler which prevent the central heating from working reliably. The living room radiator was found not to heat up adequately.

(k) The plumbing, heating, and electrical systems within the property need to be inspected, repaired or, if necessary replaced.

(l) Above the front door to the exterior of the property there is a small canopy which is held up by two timber brackets. The integrity of the timber bracket to the left side of the door is compromised by rot and requires to be replaced.

Reasons for the decision

12. (a) Tribunal members inspected this property at 10:30am on 25 March 2022. It was a warm, dry, spring, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) The central issue in this case is the condition of the plumbing, heating, and electrical systems in the property. Before the inspection on 25 March 2022, directions were issued in the following terms.

The Respondent is required to

(i) Send to the First-tier Tribunal for Scotland (HPC) an up to date Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation within the property and all electrical appliances and equipment supplied by the landlord carried out by a suitably qualified and registered SELECT, NICEIC or NAPAT electrical contractor.

(iii) Send to the First-tier Tribunal for Scotland (HPC) a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property,

All not later than 21 March 2022.

(c) Nothing has been heard from the respondent since that direction was sent.

(d) When tribunal members inspected the property on 25 March 2022 it was obvious that it does not have a modern electrical consumer unit. The tenant told tribunal members that throughout her occupancy of the property she has never

been given an EICR or PAT. There is no reliable evidence before the tribunal of regular electrical inspection.

(e) On inspection, there were no obvious defects in the electrical installation, but the landlord has not produced an up-to-date and unqualified EICR or PAT. The tenant informed the tribunal that she has replaced the defective fridge freezer with a new appliance herself and has stored the landlord's appliance in the garden shed. A Repairing Standard Enforcement Order requiring production of an up to date and unqualified EICR and PAT, if the landlord has supplied any portable appliances, is necessary.

(f) At inspection it was obvious that the property does not have interlinked smoke and heat detectors and carbon monoxide detectors. They have been a legal requirement since this tenancy commenced. The only smoke detector in this property is a ceiling mounted battery operated detector installed by the tenant. A Repairing Standard Enforcement Order is necessary to ensure that the requirements of the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 are met.

(g) The front door of the property (to the exterior) is sheltered by a canopy. The canopy has two timber brackets supporting it. At least one of those timber brackets is rotten and needs to be replaced. A Repairing Standard Enforcement Order is necessary to ensure the canopy is repaired or replaced.

(h) The remainder of this application concerns the plumbing and heating systems. There is one bathroom in the property. The toilet does not flush properly. The vanity unit in the bathroom has water leaking through it. The shower is broken and the shower head is missing.

(i) The concerns expressed by the applicant were reported to the landlord by text messages in early 2020. In a text message from the landlord dated 18 April 2020 (responding to the applicant's concerns about the shower) the landlord said

I'll get someone to dismantle the shower as it'll need a new one in & trying to get one now...

(j) The shower has neither been repaired nor replaced since 18 April 2020.

(k) A Repairing Standard Enforcement Order is necessary because plumbing investigations must be carried out to find the leak manifesting itself in the bathroom cupboard; because the toilet unit needs to be repaired or replaced so that there is an adequately powered flush; and because the shower requires to be replaced.

(l) On inspection, it was obvious that the central heating boiler is not maintaining pressure. It was equally obvious that radiators in the hall and living room have leaked, and some of the radiators in the property are past their useful life. A Repairing Standard Enforcement Order is necessary to ensure that a Gas Safe

engineer inspects the central heating system, repairs or replaces the central heating boiler, the piping, and the radiators and produces a satisfactory Gas Safety Record.

(m) A by-product of the leaks from the central heating system has been damage to the floor in the living room. The flooring is loose and warped and is no longer fit for purpose. The living room flooring needs to be repaired or replaced.

(n) What is left of this application is a complaint that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(o) On the facts as we find them to be, the toilet, gas boiler and radiators in the property are defective. We find that works are necessary to address the issues in relation to the sanitary fittings and before a satisfactory gas safety certificate and an unqualified EICR can be issued, but despite those defects, the property does not fall short of the tolerable standard.

13. The tribunal therefore make a repairing standard enforcement order requiring the landlord to

(i) Install interlinked smoke and heat 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.

(ii) Install carbon monoxide detectors in the property to comply with all current regulations and guidance.

(iii) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property and all electrical appliances and equipment supplied by the landlord and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an unqualified EICR and PAT prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

(iv) Instruct a suitably qualified Gas Safe registered engineer to repair or replace the gas central heating boiler, radiators and piping. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

(v) Install a new shower unit in the bathroom.

(vi) Inspect and then repair or replace the three-piece sanitary suite in the bathroom.

(vii) Repair or replace the flooring in the living room with a floor surface of comparable standard.

(viii) Repair or replace the canopy above the front door to the property.

14. The decision of the tribunal was unanimous.

Right of Appeal

15. 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

16. 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

4 April 2022

Legal Member