

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

### **STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**9 John Knox Road, Longniddry EH32 0LP ("the House")**

#### **The Parties:**

**Natascha Niemann, formerly of 9 John Knox Road, Longniddry EH32 0LP ("the Applicant")**

**James Hislop and Margaret Hislop, 47 Ravensheugh Brae, Leven, Musselburgh EH21 7FF ("the Landlord")**

**Reference number: FTS/HPC/RP/23/1281**

#### **DECISION**

The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter "the Act") in relation to the House, and taking account of the evidence led at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

#### **Background**

By application dated 23 April 2023 (hereinafter referred to as "the Application") the Applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...*

*...(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...*

*...(h) the house meets the tolerable standard." (in particular as set out in Section 86 (1) of the Housing (Scotland) Act 1987...*

*"...(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire"*

The Third Party complained about: the absence of an EICR; smoke and heat detectors not being interlinked; the back door not operating correctly; a bay window needing repair; and the central heating thermostatic valve in the hall radiator not working.

By letter of 9 August 2023, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson

Greig Adams, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

It came to the Tribunal's attention that the Tenant was no longer in occupation of the House. Under Paragraph 7(1) of Schedule 2 to the Housing (Scotland) Act 2006 ("The Act"), the Tenant is to be treated as having withdrawn the application under Section 22(1) of the Act. The Tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. The Tribunal noted that the Application contained matters which are likely to affect the health and safety of any future occupier. Accordingly, the tribunal decided to continue to determine the application and issued a Minute of Continuation on 24 August 2023.

The Tribunal inspected the House on 11 September 2023. James Hislop was present. The House was unoccupied. The tenancy had ended on or around July 2023.

Following the inspection, the Tribunal held a hearing on the same day at George House, Edinburgh. Both Mr and Mrs Hislop attended. The Tenant was present as an observer. The Tribunal considered the written evidence submitted by parties and the Landlord's submissions.

### **Submissions at the Hearing**

The Landlord advised that there had been a difficult relationship with the Tenant. The Landlord's position was that the Tenant did not allow access to permit repairs to be carried out. The Landlord intends to sell the House. It is on the market at present.

The Landlord accepts that there is no current EICR and that the smoke and heat alarms are not interlinked. The Landlord's position is that these works would have been completed if access had been made available by the Tenant.

The Landlord advised that a new thermostatic valve had been fitted to the hall radiator. The back door had been replaced. The Landlord's position is that the windows are acceptable as they are wind and watertight.

As the tenancy has ended (albeit the parties are in dispute as to the circumstances leading to that state affairs) the Tenant is no longer a party to the Application and may not make representations.

### **Summary of the Issues**

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

### **Findings in Fact**

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a semi-detached bungalow.
- 2 Natascha Niermann was the tenant under an undated tenancy agreement.
- 3 James and Margaret Hislop are the registered owners of the House.

- 4 The Tenant took possession of the House from on or around August 2019 and vacated the House on or around July 2023.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by email of 11 April and letter of 30 May 2023.
- 7 The inspection on 11 September 2023 revealed:
  - a. No EICR exists.
  - b. A smoke detector is present in the hall and a heat detector in the kitchen. They are not interlinked.
  - c. A new thermostatic valve is present on the hall radiator.
  - d. The back door has been replaced and is in normal working order.
  - e. The double glazed unit of the rear bedroom window has failed and condensation is present within it making the window partially opaque.

A schedule of photographs taken at the inspection has been provided to the parties.

## **Reasons for the Decision**

The House is unoccupied. It is being actively marketed for sale. A "for sale" sign is in the garden. A viewing was taking place at the same time as the inspection. The Landlord has produced a Home Report prepared for the purposes of the sale.

### Electrical Safety

There is no EICR.

### Fire Detection

A smoke detector is present in the hall and a heat detector in the kitchen. They are not interlinked.

### Doors and Windows

The back door has been replaced and is in normal working order. The double glazed unit of the rear bedroom window has failed and condensation is present within it making the window partially opaque.

### Hall radiator

A new thermostatic valve has been fitted.

### The Repairing Standard

The Tribunal considers that the inadequate fire detection; absence of an EICR and the failed rear bedroom double glazed unit represent breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House and the fact that the House is unoccupied and for sale, the Tribunal have allowed four months for the repairs to be carried out.

## **Decision**

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in respect of the matters noted above.

The decision of the Tribunal was unanimous.

## **Right of Appeal**

**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 of the 2006 Act**

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.

# J M MCHugh

John M McHugh  
Chairperson

Date: 15 September 2023