

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/21/0063

Property: 31 Warmanbie Road, Brydekirk, Annan, DG12 5ND ("The property")

Parties:

Joseph Sturgeon, residing at 31 Warmanbie Road, Brydekirk, Annan, DG12 5ND ("the Applicant")

Ross Anderson, residing at Millriggs Farm, Hutton, Boneland, Lockerbie, DG11 2PB ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Donald Wooley (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 both the Landlord and the Tenants 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 5 January 2021 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the repairing standard and 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 property is wind and watertight and in all other respects reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act; and
- (b) 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
- (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.

3. By letter dated 28 January 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 the Landlord and the applicant made written further representations as the application progressed. The landlord lodge two inventories of productions in preparation for Case Management Discussions.

6. Tribunal members inspected the Property on the morning of 27 July 2021. The Tenant was present but was not represented. The landlord was neither present nor represented. During the inspection on 27 July 2021, the surveyor 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 3 August 2021. The Tenant was present but was not represented. The landlord was neither present nor 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 31 Warmanbie Road, Brydekirk, Annan, DG12 5ND ("the property"). On 17 October 2019, the landlord let the property to the tenant.

(b) The property is a two bedroomed, brick built, end terraced house on two floors, with gardens to the front and rear and a driveway to the side. The property has two bedrooms, a living room, a kitchen and a bathroom. The front door to the property opens onto a vestibule which provides access to the living room on the ground floor, and to the stairs leading to the first floor. The kitchen is entered through a door off the living room, and provides access to the backdoor of the property. The property is served by oil fired central heating. There are double glazed windows throughout the property.

(c) To the rear of the property, between the driveway and the back door, there are sections of missing, bossed, and cracked rendering. The interior rear wall within the living room and kitchen show signs of what appears to be previous water ingress and moisture staining. There are sections of the interior wall adjacent to the rear window of the living room where paint has flaked, and plaster has stained.

(d) During the inspection on 27 July 2021, tribunal members took moisture meter readings which show that the interior rear living room and kitchen walls are dry, however, those readings were obtained after a prolonged period of dry, warm, weather. The staining and the condition of the interior decoration indicates that there is a strong likelihood that there has been previous moisture penetration in the living room and kitchen of the property.

(e) To the rear exterior of the property, adjacent to the living room window, an oil-fired combi boiler stands. At the top of the rear garden there is the oil tank to which it is connected. At the time of inspection, the oil tank was empty. The oil-fired combi boiler bears a sticker which indicates that it was last inspected in 2015. It was not functioning. Tribunal members turned on the kitchen taps to find that there is only cold water in the property.

(f) In the living room, there is a wall mounted electric convector heater with two heat settings and a display feature. It was not working.

(g) In a cupboard off the kitchen, there is an electrical control panel. Attached to the ceiling on the landing at the top of the stairs, there is a suspended light fitting. The suspended light fitting is hanging loose from the ceiling. When the landing light is switched on, a circuit breaker trips in the electrical control panel.

(h) To the rear exterior of the house, there is a security light. That light has fallen from its fixture. It was swinging freely on its cable until the tenant secured the light to a downpipe adjacent to the rear door by duct tape.

(i) The oil-fired combi boiler is outside the property. The property is not served by gas. The property does not require a carbon monoxide monitor. The property has only one battery-operated smoke alarm fixed to the ceiling on the upstairs landing.

(j) To meet the requirements of section 13(1)(f) of the 2006 Act and the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, the property requires interlinked smoke and heat detectors within the property.

(k) The landlord made a separate application to the tribunal for a right of entry to the property between 17 February and 4 May, both 2021, (FTS/HPC/RE/21/0353). The landlord was granted a right of entry, so that a builder an electrician and a heating services engineer could inspect the property.

(l) In June 2021. The landlord's wife and one other person went to the property to inspect the property. The tenant refused access.

Reasons for the decision

10. (a) Tribunal members inspected this property at 11:30am on 27 July 2021. It was a warm, dry, summer's morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) Following a case management discussion on 1 March 2021, directions were issued in the following terms.

1. The Respondent shall

(a) 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.

(b) 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.

(c) Instruct a suitably qualified central heating engineer to inspect the oil fired central heating system to ensure that it is operating satisfactorily, capable of providing adequate heating and hot water and/or complete any repairs required to ensure its satisfactory operation.

(d) Instruct a suitably qualified damp specialist to prepare a detailed survey of the rear wall of the property, to identify the cause and full extent of the dampness, damp staining and any remedial action. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects.

(e) The respondent must give the applicant not less than 5 days written warning of the time and date his tradesmen will call at the property

2. The applicant shall allow the respondent's tradesmen reasonable access to the property.

(c) At a case management discussion on 15 May 2021, the landlord's representative said that the tenant had refused contractors access to the property, so that the directions made on 1 March 2021 could not be complied with. Parties were reminded that the directions still exist, and the tenant was urged to allow the landlord's contractors access to the property.

(d) Tribunal members could see a wall mounted electric convector heater in the living room. They invited the tenant to switch the heater on. Initially, it appeared that heat was coming from the heater, but within seconds the heater switched itself off. It was immediately apparent that the wall mounted electric convector heater does not work.

(e) Tribunal members could see that the suspended light fitting in the upstairs landing of the property is no longer properly fitted and that there is exposed wiring there. When the landing light was switched on the circuit breaker tripped.

(f) To the exterior rear of the property, there is a security light which has come away from its fixing and now hangs adjacent to a downpipe.

(g) The security light to the outside rear of the property has come adrift from its fixing. There are bare wires leading to the suspended light fitting hanging from the landing ceiling. The circuit breakers trip when the landing light is operated. The installations in the house for supply of electricity are not in a reasonable state of repair, not having proper working order.

(h) Tribunal members turned on kitchen taps to find that there is no hot water. The oil-fired combi boiler sits outside the property. Tribunal members inspected the fuel tank to the rear of the back garden and found that it was empty. Inspection of the central heating boiler showed that the last service sticker placed on the boiler is dated February 2015.

(i) The central heating in the property is not working. That might simply be because the tenant has not bought any fuel for the central heating system, but tribunal members observations lead them to the conclusion that the central heating boiler was last inspected and maintained in 2015. It would appear that the central heating system has not been used since the tenant moved into the property in October 2019.

(j) The only safe conclusion which can be reached is that the installations in the property for space heating and heating water are not in a reasonable state of repair and are not in proper working order.

(k) On inspection of the property, it was plain to see that there is only one non-lithium battery operated smoke detector, and that is fixed to the ceiling of the first-floor landing. To meet the requirements of the 2006 act, as amended the property must have one smoke alarm installed in the room most frequently used for general daytime living purposes; one smoke alarm in every circulation space on each storey, such as hallways and landings, and one heat alarm installed in every kitchen. All alarms should be ceiling mounted and interlinked.

(l) There are no carbon-fuelled appliances within the property nor is there a flue, so a carbon monoxide detector is not required.

(m) To the rear wall of the living room, tribunal members could see that interior decoration has been affected by moisture. In those areas, damp meter readings were taken, all of which were in the normal range, however, the damp meter readings were taken after a prolonged period of warm, dry weather. The visible staining would suggest previous high levels of damp. On the date of inspection, the fabric of the building was dry although there is no evidence of any recent remedial action having been completed to address the issue of dampness

(n) On the balance of probabilities the property is not watertight.

(o) S.86 of the Housing (Scotland) Act 1987 says

(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;

(p) We find that the installations in the property for space heating and heating water are not in a reasonable state of repair not in proper working order. By analogy, we must find that the property does not have satisfactory provision for heating. The property cannot meet the requirements of s. 86(1)(c) of the 1987 Act, and so does not meet the Tolerable Standard.

(q) Because the property does not meet the requirements of section 13(1)(a), (c), (f) and (h) of the 2006 Act, we make a Repairing Standard Enforcement Order (RSEO).

11. The Tribunal therefore make a repairing standard enforcement order requiring the landlord to

(a) 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.

(b) Instruct a suitably qualified central heating engineer to inspect the oil fired central heating system to ensure that it is operating satisfactorily, capable of providing adequate heating and hot water and/or complete any repairs required to ensure its satisfactory operation.

(c) Instruct a suitably qualified damp specialist to prepare a detailed survey of the rear wall of the property, to identify the cause and full extent of any dampness, damp staining and specify any remedial action. Thereafter to carry out all recommended repairs to remedy dampness and any associated defects.

(d) 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.

All within 6 weeks fo the date of service of the Repairing Standard Enforcement Order.

Decision

12. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

13. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

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.

Signed **Paul Doyle**

4 August 2021

Legal Me.....