

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(1A) of the Act

Re: Property at 53, Lenzie Way, Glasgow G21 3TB (“**the Property**”) registered in the Land Register for Scotland under title sheet number GLA114402

The Parties:

Artin Properties having a place of business at 77, Seres Road, Glasgow, G76 7PG (“the Landlord”)

Tribunal Members:

Karen Moore (Legal Member) and Nick Allan (Ordinary Surveyor Member)

Decision

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13(1) (c) and 13(1) (h) of the Act and that for the reasons set out below.

Background

1. By application received between 1 and 3 June 2020 (“the Application”), the then tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord 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) (a), 13(1) (c) and 13(1) (h) of the Act. On 11 June 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 14 January 2021 at 14.00 by telephone conference call. The CMD was intimated to the Parties.

2. The Application noted the following matters as defects at the Property:
 - i) Leak under kitchen sink which is causing damp and mould as well as damage to cupboard and flooring;
 - ii) Leak present in kitchen ceiling which has grown to an unhealthy and dangerous level. Waste water that is coming from the leak continues to pose a risk to both health and safety;
 - iii) Ongoing issues with electrics in the property – repeated short circuits of the fuse board and kitchen lights are now unusable as they continue to overheat and blow the lights;
 - iv) Boiler needs servicing, as the wiring is dangerous and is causing the plug to overheat when it is turned on.

3. By email dated 12 June 2020, the then tenant advised the Tribunal that he had vacated the Property. The Tribunal continued the Application of its own accord in terms of Schedule 2 to the Act and issued a Direction (“the First Direction”) in terms of Rule 16 of the Rules requiring the Landlord to submit documentation in respect of the condition of the Property, namely: a current Gas Safety Certificate; a current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord and evidence that a heat alarm is installed in the kitchen. The Landlord did not comply with the First Direction.

First Case Management Discussion

4. The CMD took place on 14 January 2021 at 14.00 by telephone conference call. The Landlord was not present and was not represented. The Tribunal had no information before it to ascertain the condition of the Property with regard to the Repairing Standard, and so, given its statutory role, decided that it was necessary to arrange an inspection at the earliest time possible, in order to ascertain the condition of the Property with regard to the Repairing Standard.

Inspections and Hearings

5. Following the relaxation of COVID-19 restrictions and the introduction of the Chamber’s protocol for carrying out COVID-19 safe inspections, the Tribunal arranged an Inspection and Hearing for 27 May 2021 and 3 June 2021 respectively. However, these were cancelled due to lack of certainty on compliance with Chamber’s protocol. Further Inspections and Hearings were arranged for 5 and 27 July 2021 and 29 September 2021 and 11 October 2021 which were also cancelled due to lack of certainty on compliance with Chamber’s protocol.

6. The Tribunal had regard to Rule 2 of the Rules which allows the Tribunal to deal with proceedings informally and flexibly and states that the Tribunal should avoid delay so far as compatible with proper consideration of the criteria. The Tribunal took the view that, in the circumstances, it was unlikely that an Inspection and Hearing would take place in the near future and that, in the interests of justice, it should give consideration to alternative procedures. Accordingly, the Tribunal took the view that the appropriate procedure is to arrange a further CMD under Rule 17 of the Rules and to issue a further Direction to the Respondent.

7. The Tribunal gave notice to the Respondent that Rule 17(4) of the Rules states that the Tribunal “may do anything at a case management discussionincluding making a decision”. Therefore, the Tribunal is empowered to make a decision in terms of Section 24(1) of the Act at a CMD.

Second Direction

8. On 5 October 2021, the Tribunal on its own initiative made the following Direction (“the Second Direction”):

“The Landlord is directed to submit:

1. *A current Gas Safety Certificate for the Property;*
2. *A current Electrical Installation Condition Report (EICR) for the Property;*
3. *Portable Appliance Testing (PAT) on appliances provided by the Landlord at the Property;*
4. *Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings*
5. *Evidence that a heat alarm is installed in the kitchen.*
6. *Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking) and*
7. *If the Landlord considers it would be helpful to the tribunal, photographic or video evidence of the general condition of the Property;”*

The said documentation should be lodged in hard copy or by email attachment with the Chamber no later than close of business on 29 October 2021.”

9. The Landlord did not comply with the Second Direction.

Second Case Management Discussion.

10. The CMD took place on 19 November 2021 at 10.00 by telephone conference call. The Landlord was not present and was not represented.
11. The Tribunal had regard to Rules 2 and 3 of the Rules.
12. Rule 2 of the Rules is the overriding objective and states:
“(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes—
(a)dealing with the proceedings in a manner which is proportionate to the complexity of the criteria and the resources of the parties;(b)seeking informality and flexibility in proceedings; (c)ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party’s case without advocating the course they should take; (d)using the special expertise of the First-tier Tribunal effectively; and (e)avoiding delay, so far as compatible with the proper consideration of the criteria.”
13. Rule 3(2) of the Rules states that the Tribunal “*must manage the proceedings in accordance with the overriding objective*”. Therefore, the Tribunal was bound to apply Rule 2 of the Rules in its dealing with the Application and at the CMD.

14. Rule 2 allows the Tribunal to deal with proceedings informally and flexibly and states that the Tribunal should avoid delay so far as compatible with proper consideration of the criteria. The Tribunal took the view that, if it could ensure proper consideration of the Application on the written evidence before it, an inspection of the Property was not necessary.
15. The Tribunal had regard to the fact that the Landlord had had notification of the detail of the complaint of his failure to comply with the Repairing Standard in the Application, in the CMD and procedure note and in both Directions and so was satisfied not only that Landlord was fully aware of the proceedings but was fully aware of the effect of the proceedings. The Tribunal reached the conclusion that it had sufficient information to proceed with the CMD in the absence of the Landlord.

Summary of the Issues

16. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13(1) (c) and 13(1) (h) of the Act at the date of the further CMD.

Findings of Fact

17. The Tribunal was mindful that ordinarily the onus of proof rests with the party making the application and that the onus is not on the other party to disprove the complaint. However, in these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Further, Schedule 2 Paragraph 7(3) of the Act allows the Tribunal to proceed in the absence of the party who made the complaint.
18. Therefore, regardless of the onus not being on the Landlord to disprove the complaint, the Tribunal took the view that, having notified the Landlord that its purpose in directing him to provide evidence which ought to be in his possession was to make a determination in respect of compliance with the Repairing Standard as set out in the Act and the Landlord having failed or refused to comply with the Directions, the Tribunal's statutory function allows it to infer that the Landlord does not dispute the complaint.
19. The Tribunal's findings in fact were made from the Application and the Landlord's lack of response to the Directions. The Tribunal's assessment of the facts was based on the balance of probability, being the standard of proof required in civil proceedings.
20. The Tribunal found the following matters established:-
 - i) Artin Properties are the owner of the Property in terms of Land Certificate GLA[] in their favour;
 - ii) At the date of the Application there had been a tenancy of the Property;
 - iii) There is no evidence of a current EICR for the Property;
 - iv) There is no evidence of a current Gas Safety Certificate for the Property;
 - v) There is no evidence of a carbon monoxide detector in the Property;

- vi) There is no evidence of a heat detector in the kitchen of the Property;
- vii) There is no evidence of Portable Appliance Testing (PAT) on appliances provided by the Landlord at the Property;
- viii) There is no evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings;
- ix) There is no evidence that there is no dampness under the kitchen sink which is causing damp and mould as well as damage to cupboard and flooring;
- x) There is no evidence that the Property free from water ingress in the kitchen and
- xi) There is no evidence that the Property meets the Tolerable Standard.

Decision of the Tribunal and reasons for the decision.

21. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make a decision in terms of Section 24(1) of the Act.

22. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal having found on the balance of probabilities that there is no evidence that the Property is wind and watertight and reasonably fit for human habitation, the Tribunal found that at the date of the CMD the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

23. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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, the Tribunal having found on the balance of probabilities that there is no evidence that the installations 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, the Tribunal found that at the date of the CMD the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

24. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the tolerable standard, the Tribunal having found on the balance of probabilities that there is no evidence that the Property meets the basic standard of repair to make it fit for a person to live in, the Tribunal found that at the date of the CMD, the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

25. The decision is unanimous.

Repairing Standard Enforcement Order

26. 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

27. 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

28. 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

Signed

Karen Moore, Chairperson

19 November 2021