

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: FTS/HPC/RT/20/1223

Flat 3/1 31 Causeyside Street, Paisley PA1 1UL (“the Property”)

Parties:

Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley, PA1 1UL (“the Third Party”)

Zeshan Afsal, Flat 2/2 19 Argyle Street, Paisley, PA1 2ET (“the Landlord”)

Tribunal Members:

**Josephine Bonnar (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) 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.

Background

1. On 29 May 2020, the Third Party applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Third Party stated that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the application states that an EICR and Gas Safety Record have not been provided, the property does not have satisfactory provision for detecting fires, a suitably located CO detector has not been installed, the gas boiler is leaking, the ventilation unit in kitchen is defective and the windows in the living room and bedroom are

not wind and watertight. Documents, including photographs, were lodged in support of the application.

2. Under normal circumstances the Tribunal would arrange for the Tribunal to carry out an inspection of the property to assist in the determination by the Tribunal of the application. Unfortunately, this was not possible, due to the continuing effects of the COVID 19 pandemic. In the circumstances, a case management discussion (“CMD”) was arranged, to discuss procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.
3. On 10 December 2020, parties were notified that a CMD would take place by telephone conference call on 22 January 2021 at 10am. They were provided with a telephone number and passcode. Prior to the CMD the Third Party submitted written representations together with copies of emails, an EICR dated 27 July 2020 and a Gas Safety Record dated 26 July 2020. The Third Party advised the Tribunal that these had been sent by the Landlord on 7 January 2021. The Landlord did not contact the Tribunal or lodge written representations.
4. The CMD took place by telephone conference call on 22 January 2021 at 10pm. The Third Party was represented by Mrs Gray. The Landlord did not participate and was not represented.
5. Mrs Gray advised the Tribunal that the property first came to her attention in 2018. She visited the property when she was investigating a report of water ingress in a top floor flat. She brought certain repairing standard issues to the attention of the Landlord at that time. He said that he planned to move into the property himself. She had occasion to make a further visit to the property in July 2019. On this occasion, it was occupied by a tenant. The matters previously identified by her had not been fully addressed. On her first visit there were no smoke detectors in the property. On the second visit battery operated smoke detectors had been installed in the living room and hall. She visited again in November 2019 and noted that longer life battery operated smoke detectors were now in place in the hall and living room, but the one in the living room did not work. Mrs Gray advised the Tribunal that she understood that the previous tenant moved out in March 2020, but that a new tenant moved into the property in June 2020. He provided her with a copy of his tenancy agreement following a visit by her to the property in August 2020.
6. Mrs Gray advised the Tribunal that she had correspondence with the Landlord regarding the issues raised by her. He stated that all required work had been carried out but, other than the EICR and gas safety record, forwarded on 7 January 2021, he had failed to provide any evidence of this. The outstanding issues were – smoke detectors not hard wired and interlinked, the living room smoke detector was not working, there was no heat detector in the kitchen, there was a CO

detector in the kitchen (although not required by the statutory guidance as there is only a gas cooker) but none in the bedroom where the boiler is located. The Landlord had placed black tape round the living room and bedroom windows to address water ingress and draughts. In addition, the current Tenant reported a leak from the boiler and the defect in the ventilation unit in the kitchen. She explained that the kitchen is internal, with no window, so a working ventilation unit is essential.

7. The Tribunal noted that although a satisfactory EICR had now been provided the Gas Safety Record indicated that there was a fault with the boiler and that a CO detector required to be installed in the bedroom and a ventilator in a door.
8. Based on the application, the documents submitted in support of it, and the information provided at the CMD, the Tribunal concluded that it an inspection was required. In the meantime, the Tribunal determined that a direction should be issued for the Landlord to provide evidence that the issues identified in the gas safety record have been addressed, that appropriate fire and CO detectors are now in place and that the windows are in proper working order.
9. The Landlord lodged submissions and photographs in response to the direction. These comprised; - (i) Photographs and receipts for a CO detector, (ii) Photographs and receipts for an extractor fan, (iii) Photographs and copy of a five year guarantee for a Vokera boiler, (iv) Photographs and receipts for smoke and heat detectors, and (v) Photographs and receipts in connection with a roof repair. The Landlord also advised that the roof repair had addressed a problem with water ingress at the windows and that the windows were otherwise in proper working order.

The Inspection

10. The Tribunal inspected the property on 7 July 2021 at 11.30am. The Landlord was present. The Third Party was represented by Ms McIntosh. The current tenant was also present. The Tribunal noted the following: - (i) CO detector in rear bedroom (1 metre from boiler cupboard wall and 1.6 metres from rear wall). Alarm sounded when test button was pressed. (ii) Wall mounted gas boiler in rear bedroom cupboard. (iii) Tape on frame of rear bedroom window. Window opened by landlord, with difficulty. (iv) Ceiling mounted electric fan in kitchen – running at time of inspection. (v) Tape on the frame of the living room window. Left hand window appeared to open and close properly. Middle window opened by landlord, with difficulty. Right hand window opened by Landlord, with difficulty, but only to the tilt position. (vi) Ceiling mounted smoke and heat detectors in living room, hall, and kitchen. Alarm sounded when test button pressed on each but did not activate the others. A report, including photographs, was issued to the parties

following the inspection

The Hearing

11. The hearing took place by telephone conference call on 14 July 2021. The Third Party was represented by Mrs Gray. The Landlord participated. The Landlord lodged short videos of the smoke and heat detectors being tested the evening before the hearing.

Smoke and heat detectors

12. The Tribunal noted that the short videos which had been lodged had been sent to Mrs Gray and that she had viewed them. The Legal Member of the Tribunal advised Mr Afzal that although he had submitted the videos as evidence that the new alarms were interlinked, it was not clear from the videos that this was the case. Mr Afzal advised that he had reviewed the manual which came with the alarms. He had re-set the alarms and then tested them, with the help of the current tenants. He had established that they are all now fully interlinked. Mrs Gray advised the Tribunal that she had been unable to establish that the alarms were interlinked when she had viewed the videos.

The windows

13. Mr Afzal advised the Tribunal that the current tenants put the tape round the windows at the front to block out daytime noise as they worked nightshift and needed to sleep during the day. He advised that all windows are in working order, although some were difficult to open at the inspection, as they had not been used for some time by the tenants. In response to questions from the Tribunal about the reference in the application form to tape on the windows (which predated the current tenants' occupation), Mr Afzal advised that there had been a problem with water ingress. He had attached tape as a temporary solution. Repairs to the roof had then been carried out in February 2020, both at the front and back, and the problem had resolved. The windows are now wind and watertight and in full working order. Mr Afzal referred the Tribunal to the evidence he had submitted in response to the direction.
14. Mrs Gray advised the Tribunal that she had been told by the previous tenant that the Landlord had attached tape to the living room and front bedroom windows because of draughts and water ingress. She advised the Tribunal that she did not recall seeing Mr Afzal's response to the direction. Following discussion, the Legal Member advised that the direction response would be sent to the Third Party and that they could

comment on the submission after the hearing, before the Tribunal made its decision.

The boiler

15. Mrs Gray confirmed that the boiler appears to have been replaced but indicated that no paperwork regarding the installation has been provided. The Tribunal noted that a copy of a guarantee has been provided by the Landlord, as part of the direction response which Mrs Gray had not yet seen. The Tribunal also noted that the gas safety record is due to expire on 25 July 2021. Mr Afzal advised that he has already arranged to have the gas safety check carried out and that the certificate will be lodged with the Tribunal in due course. The Tribunal noted that there is a CO detector in the bedroom where the boiler is located, and Mrs Gray confirmed she had no issues with this.

Kitchen ventilation unit and EICR

16. Mr Afzal confirmed that a new ventilation unit has been installed and Mrs Gray advised that she had no issues with this. She also confirmed that she had no concerns about the EICR submitted by the Landlord.

Further submissions

17. On 15 July 2021, the Landlord submitted a gas safety record dated 13 July 2021. No adverse comments regarding the boiler are noted on the record.
18. On 19 July 2021, Mrs Gray lodged written comments of the Landlord's direction response. She said that although the photographs lodged indicated that the smoke and heat detectors are interlinked, this was not the case at the inspection; the gas safety record dated 26 July 2020 relates to a boiler which was replaced in November 2020, no installation certificate has been provided for the new boiler but a new gas safety record has now been submitted; it is not clear if roof work was carried out at the front, above the bedroom window; contrary to the landlords statement, the windows were not in good working order when the Tribunal inspected the property.
19. On 26 July 2021, the Landlord submitted a response to Mrs Gray's comments. He said that;- when testing the alarms they send signals to the others after an initial cycle of three beeps and that the others could be heard in the background on the videos, proving they are interlinked; that the boiler guarantee was only obtained after he had registered the installation online with the name and registration number of the engineer; the receipt for the roof repairs mentions 2 locations although the precise locations are not stated. The photographs show the repair above the back window but the roof above the front window was also repaired and

there has been no water ingress since the repairs in February 2020; the windows at the property are in good working order. All open to allow fresh air, 5 can be fully opened and the 6th opens to the tilt position. He intends to arrange for the 6th window to be repaired.

Findings in Fact

20. Wireless smoke and heat detectors have been installed at the property.
21. A new boiler has been installed at the property.
22. The Landlord has provided an EICR and gas safety record in satisfactory terms in relation to the property.
23. A new ventilation unit has been fitted in the kitchen.
24. A carbon dioxide detector has been fitted in the bedroom where the boiler is located.
25. The windows at the property have tape around the frames and are not in full working order.

Reasons for decision

26. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Landlord.
27. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the former Tenant notified the Landlord of the repairs issues at the property prior to lodging the application.
28. The Tribunal is satisfied that wireless smoke and heat detectors have been installed at the property. However, when these were tested at the inspection, it was evident that they were not interlinked. The videos submitted by the Landlord do not clearly establish that this issue has been rectified. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard in relation to the smoke and heat detectors.

29. The Tribunal is satisfied that the Landlord has now provided a satisfactory EICR and gas safety record. He has also installed a CO detector in the rear bedroom, where the boiler is located. This is in working order and complies with relevant guidance and regulations. The Landlord has installed a new boiler and new extractor fan at the property, to replace the previous boiler and fan which the Third Party said were defective. The Tribunal is satisfied that the Landlord has not failed to comply with the repairing standard in relation to the CO detector, the boiler, and the electric fan.
30. The Tribunal noted that the living room and back bedroom windows at the property are not in full working order. There is tape on the frames of both windows. The Landlord claims that this was attached to the windows at the front by the current tenants, to block out noise when they are trying to sleep during the day after a night shift. The Tribunal is not persuaded by this explanation. Mrs Gray referred to tape around windows in the application form submitted in May 2020, having been advised by the former tenant that this had been attached by the Landlord, due to water ingress and draughts. At the hearing, the Landlord confirmed that he had done this as a temporary measure due to water ingress. It appears that repairs have been carried out to the roof in February 2020 although this was three months before the application was made to the Tribunal. There was no evidence of draughts or water ingress when the Tribunal inspected the property, although this took place on a dry, sunny day. The Tribunal also notes that the tape was in the rear bedroom and the living room, where it is assumed that nobody sleeps. In any event, it was clear at the inspection that the windows are defective. They were opened with considerable difficulty, and the living room right hand window could not be fully opened. The Tribunal is therefore satisfied that the condition of the windows is a breach of the repairing standard.
31. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard as set out in Sections 13(a) and (f) of the Act, but not as set out in Sections 13(c), (d) and (g) of the Act.

Decision

32. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
33. The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-party applicant 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.

In terms of Section 63 of the Act, 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.

Josephine Bonnar, Legal Member:

29 July 2021