

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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Determination: Housing (Scotland) Act 2006: Section 24

Chamber Ref: FTS/HPC/RT/21/1609

Flat 0/2, 154 Gallowhill Road, Paisley, PA3 4UF registered in the Land Register of Scotland under title number REN88709 (“the Property”)

The Parties:-

Communities and Housing Services, Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley, PA1 1BR (“the Third Party Applicant”)

Ms Michelle McColgan, sometime residing at the Property (“the Tenant”)

Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT (“the Landlord”) and (“the Respondent”)

Tribunal Members:

Mr Martin McAllister, solicitor, (Legal Member) and Mr Donald Wooley, chartered surveyor, (Ordinary Member)

Background

1. This is an application by the Third Party Applicant under Section 22 (1A) of the Housing (Scotland) Act 2006 (“the 2006 Act”) for a determination with regard to whether the property meets the repairing standard as defined in the 2006 Act. It is dated 5th July 2021. The application makes specific reference to the Tenant not having been provided with an Electrical Installation Condition Report or a Gas Safety Certificate. It also refers to issues with the heating system, gas fire, electrical sockets and absence of a carbon monoxide detector, smoke alarms and heat detector. There is also reference to the ceiling in the tank cupboard having collapsed.

2. A case management discussion was held on 1st September by audio conference. Mr William Holmes of Renfrewshire Council was in attendance. There was no appearance by the Landlord despite him having telephoned the Tribunal office on the previous day.
3. At the case management discussion, the tribunal had a copy of an email sent to the Third Party Applicant by the Tenant on 30th August 2021. It stated "My landlord Mr Ian Tennie has provided me with temporary accommodation which I'm in at the moment while all repairs are carried out." Mr Holmes could provide no further information on this. He said that the last contact he had with the Tenant was on 5th July 2021 and, on that date, no repairs had been undertaken.
4. The application states that an EICR and a Gas Safety Certificate had not been provided to the Tenant. These are matters of safety. In order to advance consideration of the application, the tribunal determined that it should issue a Direction under Rule 16 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 requiring the Landlord to produce an electrical installation condition report (EICR) and Gas Safety Certificate together with a report confirming that the central heating and hot water systems are operating effectively.
5. It was also determined at the case management discussion that an inspection of the Property would be carried out.
6. Inspections were attempted on 24th September, 13th October and 5th November 2021. The members of the tribunal were not provided with access.
7. On 4th November 2021, the Respondent spoke to a member of the tribunal administration staff and said that the Property was on the market and that its keys were with the estate agent. He indicated that he could not provide access on 5th November 2021 despite having been advised on 19th October of the date of the scheduled inspection.
8. The members of the tribunal considered whether or not the tenancy had been terminated. The Third Party Applicant had not withdrawn the application and therefore it was considered appropriate to continue to determine it notwithstanding whether or not the tenancy had been terminated.

9. The tribunal noted that it had made a Direction requiring the Landlord to produce an EICR, PAT testing certificates on all portable electrical appliances provided and a Gas Safety Certificate together with a report confirming that the central heating and hot water systems are operating effectively. This Direction was dated 1st September 2021 and was served on the Respondent on 8th September 2021. The terms of the Direction required it to be complied with by 23rd September 2021. The Direction has not been complied with.

Discussion

10. The tribunal noted that, on three occasions, it had attempted to inspect the Property. It also noted that the Respondent had not actively engaged with the Tribunal process. He had not attended the case management discussion, had not facilitated access to the Property and had not made any substantive submissions to the Tribunal.
11. The tribunal required to decide what further steps it should take to determine the application.
12. The Direction dated 1st September required the Respondent to provide evidence of matters which require to be in place in terms of his duty to maintain the Property to the repairing standard as set out in the Act.
13. Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017 states:

(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

14. The tribunal considered whether or not, in the circumstances of this case, it was appropriate to determine proceedings without a hearing. The tribunal had not inspected the Property but, even if it had, would not have been able to determine whether or not the Property met the repairing standard in respect of electrical or gas safety or the efficiency or otherwise of the central heating system.
15. The Respondent had not complied with the Direction and the tribunal considered that, because of this, it can make a finding, on the balance of probabilities, that the necessary certification required by the Direction does not exist.

Decision

16. The tribunal did not consider that, in determining proceedings without a hearing, it was contrary to the interests of any party. What would be required by the repairing standard enforcement order is no more than the Respondent needs to do to ensure that he is meeting his obligation in terms of Section 14 of the Act:

Landlord's duty to repair and maintain

(1) 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.

17. The tribunal made the following repairing standard enforcement order:

- 1. The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist. The Report requires to have no recommendations of the C1 or C2 category.**

- 2. The Landlord is required to produce a report from a suitably qualified Gas Safe Registered engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property and an appropriate supply of hot water.**
- 3. The Landlord is required to produce a current certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.**

The Landlord is required to submit the documents required by the repairing standard enforcement order within twenty eight days of service of it on him.

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.

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.

M.McAllister

**Martin J. McAllister, Legal Member
12th November 2021**