

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision for the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0355

Title no/Sasines Description: MID43397

Property address: 43/5 Durar Drive, Edinburgh EH4 7HW ("The house")

The Parties:-

Ms Sharon Hendry, formerly residing at "the house" and now treated as having withdrawn her application ("the tenant")

Mrs Kadira Liton, 20 East Craigs Wynd, Edinburgh EH12 8HJ ("the landlord")

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 house, and taking account of the evidence presented in the written and oral representations, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The tribunal comprised:

Mark Thorley, Legal Member
Susan Napier, Ordinary Member

Background

1. By application received on 14 September 2017, the tenant 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 Housing (Scotland) Act 2006 ("the Act"). The application by the tenant stated that the tenant considered that the landlord had failed to comply with her duty to ensure that the house meets the repairing standard. In particular the tenant stated as follows:-

- (i) Leaking tank in the loft.

- (ii) Dampness in three of the bedrooms.
 - (iii) Electrics not working and in particular two main lights and sockets.
 - (iv) Windows not able to be vented properly at all times as do not function properly.
 - (v) Front door insecure.
 - (vi) No fire alarm fitted.
 - (vii) No Gas Safety Certificate since 2014.
2. Apart from the application form, the tenant also submitted a copy of her Tenancy Agreement, Notice to Quit and a copy of a letter sent by the tenant to the landlord dated 13 September 2017 requesting that the landlord undertake works to the property.
 3. On 3 October 2017 the tribunal wrote to the tenant indicating that the landlord must be given an opportunity to carry out the repairs after notification and to confirm if any response has been received from the landlord by 17 October 2017.
 4. A further email was sent by the tribunal to the tenant on 30 October 2017 requesting confirmation as to whether any response had been received by the landlord and to confirm the information by 2 November 2017.
 5. On 8 November 2017 the tenant wrote to the tribunal confirming that she is no longer living at the house but confirmed that she still wished the application to proceed.
 6. On 30 November 2017 the tenant was notified that she is no longer party to the application and would not receive further correspondence from the tribunal however the tribunal had decided to proceed with the application.
 7. A notice of referral was sent to the landlord on 14 December 2017 and by email of 4 January 2018 an email response was received from the landlord regarding the matters referred to.
 8. The tribunal inspected the house on the morning of 23 January 2018. The landlord's husband provided access to the house and was present during the inspection. The property had been "re-tenanted".
 9. Following inspection of the house the tribunal had a hearing at George House, Room D10, 126 George Street, Edinburgh. The landlord's husband attended at the hearing as her representative.

Inspection

1. At the time of the inspection the weather was cold, dry and bright. The tribunal noted that the subjects form part of a tenement in which there are six flats. The house itself was a top floor property.
2. The accommodation comprised a livingroom, kitchen, bathroom and three bedrooms.

3. The tribunal noted the following on inspection:-

- (a) That in two of the bedrooms which were at the furthest west part of the property there were damp patches in the corners between the wall and ceiling. Aside from that there were no other areas of damp in the property.
 - (b) The leaking tank in the loft had been fixed and did not appear to be creating any ongoing issue.
 - (c) The electrics appeared to be working although it was noted that there was no Electrical Installation Condition Report.
 - (d) All windows appeared to be functioning properly and venting.
 - (e) The front door was secure.
 - (f) There was a smoke alarm in the kitchen and in the hall but these appeared to be battery operated and were not hard wired.
 - (g) A Gas Safety Certificate was provided.
4. A schedule of photographs taken during the inspection by the ordinary member is attached to this statement of decision and executed as relative hereto.
5. The landlord's husband was asked by the tribunal if he had an Electrical Installation Condition Report. He indicated that there may be one and would check. No such report has been made available.
6. At the hearing the tribunal had before it the application and other documents referred to. The landlord's husband represented her at the hearing.

Findings in fact

- 1. Reference is made to the tribunal's findings on inspection.
- 2. The tenant occupied the house under a Short Assured Tenancy which appears to have commenced on 1 June 2013. The tenant had moved out of the house by 8 November 2017.
- 3. The landlord has subsequently recovered possession of the property and has re-let the property.
- 4. Some of the repairs issues raised by the tenant in her application and which had been notified to the landlord have been resolved namely the leaking tank, the function of all the windows, the security of the front door and the Gas Safety Certificate.

Reason for decision

1. The tribunal considered the issues of disrepair set out in the application and noted at the inspection.
2. The tribunal was not satisfied that the house is wind and watertight in terms of Section 13(1)(a) of the Act.
3. As no current Electrical Installation Condition Report has been submitted by the landlord the tribunal is not satisfied that the installations in the house for the supply of electricity are in a reasonable state of repair and proper working order in terms of Section 13(1)(c) of the Act.
4. The tribunal was not satisfied that the house has provision for protecting fires and for giving warning in the event of fire or suspected fire in terms of Section 13(1)(f) of the Act. The smoke alarms fitted in the kitchen and hallway do not comply with current Scottish Government current building regulations and do not accordingly meet the repairing standard.
5. The tribunal is of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified above. Given the nature of the required repairs the tribunal is of the view that a period of six weeks from the service of the RSEO was an adequate and reasonable timescale for the repairs to be completed.

Decision

1. The tribunal accordingly determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
2. The tribunal proceed to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.
3. The decision of the tribunal was unanimous.

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.

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.

In witness whereof these presents type written on this and the four preceding pages are executed by Mark Thorley, chairperson of the tribunal at Edinburgh on 7 February 2018 before this witness:-

M Thorley

__witness

chairperson

ALISON GIBSON name in full

51 SOUTH BRIDGE Address

EDINBURGH EH1 1LL

Property – 43/5 DURAR DRIVE, EDINBURGH EH4 7HW

Inspection Report 23 January 2018 - Photographs

South - Front Elevation



West - Gable Elevation



Rear elevation - no signs of any water exiting overflow pipe for tank in roof space



Dampness in 3 of bedrooms

Bedroom 1 – south – damp staining in south west corner



Bedroom 2 – north – damp staining in north west corner



Bedroom 3 – north - no dampness found



Windows – all windows opened and closed and had permavents fitted



Front Door - showing new mortice lock and door secured



Smoke detectors – battery detectors fitted in kitchen and hall



Carbon monoxide detector fitted in kitchen



Susan Napier BSocSc FRICS
Ordinary Member
23 January 2018