

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/23/1265

Title No: MID64269

35 Eskview Terrace, Musselburgh EH21 6LT ("The Property")

The Parties:-

East Lothian Council, Housing Options Team, Brunton Hall, Ladywell Way, Musselburgh EH21 6AF ("the third party applicant")

Miss Janice Monteith, residing at 35 Eskview Terrace, Musselburgh EH21 6LT ("the tenant")

Mr Craig Oliver and Mrs Rochelle Oliver, 46 Denholm Road, Musselburgh EH21 6TU ("the landlords")

Tribunal Members: Ri Mill (Legal Member) and M Links (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlords have not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The third party applicant local authority applied to the tribunal for a determination of whether the landlords have failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the third party applicant stated that the landlords had failed to comply with their duty to ensure that the property meets the repairing standard according to section 13(1)(a), (b), (c), (d), (e), (f), (g) and (h), which set out the following obligations:-
 - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
 - whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - whether any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
 - whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
 - whether the house does not meet the tolerable standard.
3. On 14 June 2023 the tribunal issued a direction requiring the landlords to produce the following evidence no later than 10 July 2023. This was not complied with.
 - a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which

also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.

- a copy of a current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection and a corresponding report regarding the condition of the heating system.
4. The tribunal first inspected the property on 28 July 2023 and thereafter conducted a hearing. The landlords failed to participate. An RSEO and corresponding written decision, both dated 31 July 2023, were thereafter issued.
 5. An application was subsequently made by the landlords which was treated as an application for recall under Rule 30. The tribunal's Decision and RSEO, both dated 31 July 2023 were recalled for the reasons as set out in the Decision on that application for recall.

Inspection

6. The tribunal further inspected the property on 18 September 2023 at 10.00 am. The tenant permitted entry to the tribunal. The third party applicant and landlords were invited but did not attend.

Hearing

7. Following the inspection of the property, the tribunal convened a hearing at 3.00 pm by teleconference. The tenant and the first named landlord, Mr Craig Oliver, joined the hearing. The landlords were represented by Mark Oswald of TLT Solicitors. The third party applicant was invited but did not attend.

Summary of Issues

8. The issues to be determined by the tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
9. The written application raised a large number of concerns. All aspects of the repairing standard in terms of the 2006 Act were put at issue.

Relevant History

10. Following a complaint from the tenant to East Lothian Council an inspection was performed on 3 March 2023. The assessment was

undertaken with reference to the Housing (Scotland) Act 1987 (as amended) and also with regard to the repairing standard set out in the 2006 Act. It was found that the property had failed to meet the tolerable standard due to the absence of provision for the detection of fire and carbon monoxide. Concerns existed in relation to the electrical installation. Otherwise it was noted that the property did not appear to be wind and watertight. There appeared to be penetrating damp within parts of the property and an area of east facing wall of one of the bedrooms was wet to touch and there was discolouration of wallpaper in areas of the property. It had been reported that a number of radiators were reported not to work. There were other items of disrepair noted including the fridge freezer being broken, together with some fixtures and fittings being broken such as floor tiles in the kitchen and bathroom and door handles in the property which were missing.

Findings in Fact

11. The tribunal makes the following findings in fact (as at 18 September 2023):
 - a. The title to the subjects known as 35 Eskview Terrace, Musselburgh EH21 6LT is held by the landlords in the Land Register for Midlothian MID64269.
 - b. The property which is the subject of this application is an upper two bedroomed flat. The property is comprised of a hallway, living room, kitchen, two bedrooms and bathroom.
 - c. Externally the property showed signs of neglect. The gutters were noted to be corroded at the joints and the render around the chimneyhead on the gable end was noted to be cracked.
 - d. There was no provision for the detection of smoke and fire in the property.
 - e. There was no provision for the detection of carbon monoxide in the property.
 - f. The integral fridge freezer, supplied as part of the tenancy, was noted to be broken.
 - g. There were cracked, broken and loose floor tiles in both the kitchen and bathroom.
 - h. There was evidence of water staining, evidencing water ingress, at multiple points throughout the property on the walls at ceiling level.

- i. There was evidence of damp and mould in areas of the property, in particular on the gable end wall in the bedrooms.
 - j. The door handles and latch mechanism are missing from the internal hallway door. It cannot be closed. The latch mechanism in the rear bedroom door does not function. It cannot be closed.
 - k. Gas central heating radiators were reported not to be working as was the electric focal point radiator in the living room.
12. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision. The photographs were taken at the first inspection on 28 July 2023. The condition of the property remained the same at the most recent inspection on 18 September 2023.

Reasons for Decision

13. The tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection. Reference is made to the tribunal's findings in fact and the corresponding schedule of photographs.
14. The tribunal is only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the inspection and hearing on 18 September 2023.
15. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
16. A number of submissions were made on behalf of the landlords. In the main these were irrelevant considerations. It was submitted that the landlords had encountered difficulties in entering the property for the purposes of carrying out repairs. This appeared unlikely but, in any event, was irrelevant for the purposes of the tribunal's consideration of making an RSEO given the current condition of the property. It was further submitted that the landlords were under financial pressures due to the lack of rent currently being paid. It was made clear that this could not be taken into account in that the tribunal in this process was only concerned with the repairing standard under the 2006 Act. It was further submitted that the landlords intend to sell the property and have already made a failed attempt to carry out an eviction process. Again, this is irrelevant for the purposes of this process. It was clear as the hearing progressed that the landlords legal representative had not been provided with full or, indeed, accurate instructions.

17. The landlords' representative made submissions suggesting that the tenant has been responsible for some of the disrepair issues in the property. The detail of this had already been set out in writing by the landlords themselves. The tribunal rejected this. The tribunal did not find Mr Oliver who attended the hearing to be a credible and reliable witness. The tribunal preferred the evidence of the tenant who was found to be credible and reliable.
18. The landlords' general line of defence, in respect of some items of disrepair, is that the tenant has wilfully and maliciously damaged the property. The tribunal had regard to the tenants personal profile. She is the primary carer for her young son, aged 9 who lives with her. She is employed by a health professional. She denies acting in such a manner and the tribunal found that it is unlikely that she should do so. She has been fully cooperative with this process, which was not commenced by her and has provided detailed factual explanations about the history of the relevant issues.
19. It was suggested by the landlords that the cracked tiles had been caused by malicious damage by the tenant. There is an area of eleven adjoining tiles in the kitchen which are badly cracked and broken. Whilst a single broken tile may be the cause of an accident, for which the tenant may be responsible for, the suggestion of malice on the part of the tenant in the absence of any evidence to support this is implausible. There is no other evidence of malicious behaviour on the part of the tenant evidenced. It is further noted that the whole of the tiled area in the kitchen is in a state of disrepair with grouting missing in a number of areas. The problem is general wear and tear. Further, there are three bathroom floor tiles which are badly loose which are not cracked. They adjoin the bath and have become loose due to wear and tear and not through malice of the tenant who would have been unable to prise them loose.
20. It was suggested by the landlords that the smoke detectors had been removed by the tenant. The tribunal rejected this suggestion. The tenant was clear that she would have no cause to remove the smoke detectors and leave herself and her young son in danger. Moreover, there is no evidence that the property has ever had a carbon monoxide detector or compliant smoke and heat detectors as required by legislation.
21. It was suggested by the landlords that the broken door handles had been caused by malicious damage. The tribunal rejected this suggestion. The tribunal preferred the evidence of the tenant to the effect that she was unable to obtain entry to the property on an occasion and required to summon the landlords for assistance. They had specifically instructed the inner and external door to be broken to enable entry.

22. It was suggested by the landlords that the fridge freezer was not part of the tenancy as it was unfurnished. The tribunal accepted the tenant's narrative that whilst unfurnished, the white goods had been included in the tenancy and that the integrated fridge freezer complained of was present and in situ at the commencement of the lease.
23. It was suggested by the landlords that the living room electric fire was broken due to malicious damage by the tenant. There is no evidence of this. The fire is affixed to the wall in the living room. There are no obvious or visible signs of any damage having been caused to it. The tribunal had the opportunity of plugging the fire in and testing it. It does not work. It is incredible that the tenant would be in a position to cause the malfunction.
24. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The Tribunal determined that the landlord be provided with a period of 6 weeks to carry out these works which is reasonable given the nature and extent of the works. There will now be serious legal consequences if the landlords fail to comply with the tribunal. The landlords should prioritise as a matter of urgency the installation of smoke, heat and carbon monoxide detectors.

Unregistered landlords

25. The landlords are not registered landlords. This is a criminal offence. The tribunal is obliged to refer this matter to the local authority under section 72 of the Private Housing (Tenancies) (Scotland) Act 2016 for further investigation.

Decision

26. The tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlords have failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does meet the repairing standard.

Right of 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.

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.

In witness whereof these presents type-written on this and the preceding pages are executed by R Mill, solicitor,
legal member of the tribunal at Edinburgh on
19 September 2023 before this witness:-