

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/RP/21/2422

Title Number: LAN117009

**Bramble Cottage, Muiredge and Jersey Road, Salsburgh, Shotts, ML7 4NS
("the Property")**

Parties:

Yvonne Beaton, Address Unknown ("the former Tenant")

**Janet Ward, Bramble Cottage, Muiredge and Jersey Road, Salsburgh,
Shotts, ML7 4NS ("the Landlord")**

Tribunal Members:

Josephine Bonnar (Legal Member)

Nick Allen (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 6 October 2021, the former Tenant lodged an application with the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The former Tenant stated that the Landlord had failed to meet the repairing standard in relation to the property. In particular, the application stated that the oil boiler at the property had not worked at the property since the start of the tenancy. The Landlord had installed a new boiler herself, but this also does not work. Electric heaters were provided as a replacement

source of heat which tripped the mains box. The electrics are defective, and the property requires to be rewired, the guttering is damaged and there are no smoke, heat or CO detectors in the property. The former Tenant lodged a large bundle of documents in support of the application which includes photographs and email correspondence between the parties.

2. The parties were notified that the Tribunal would inspect the property on 17 February 2022 and that a hearing would take place by telephone conference call on 24 February 2022.
3. Prior to the inspection and hearing the parties both sent correspondence to the Tribunal about the status of the tenancy. The Landlord stated that the tenancy had come to an end following service of a Notice to Leave. She also stated that she had moved into the property and was now residing there. The former tenant disputed this. She said that she had been provided with temporary accommodation by the Local Authority due to the condition of the property. She was then admitted to hospital. While she was in hospital, the Landlord had changed the locks and the former tenant was no longer able to get access to the property. She denied that the tenancy had been lawfully terminated.
4. For health and safety reasons the Tribunal cancelled the hearing and inspection. The Tribunal issued a direction to the Landlord dated 23 February 2022. In terms of the direction the Landlord was required to provide evidence that she has installed hard-wired or wireless interlinked heat and smoke detectors at the property, which comply with current regulations and guidance; a report from a suitably qualified engineer in connection with the oil boiler at the property which confirms that the boiler has been installed in accordance with relevant guidance and regulations and that it is in proper working order; and a certified electrical installation condition report ("EICR") for the property from a suitably qualified SELECT, NAPIT OR NICEIC registered electrician dated no earlier than 1 December 2021. The said documents and evidence were to be lodged with the Tribunal no later than 14 March 2022 and the Landlord was notified that if she failed to provide them, the Tribunal may draw an inference from that failure that the property does not meet the repairing standard
5. On 13 March 2022, the Landlord provided a response to the direction. She stated that wireless interlinked heat and smoke detectors had been installed at the property. An undated copy of an order from Linked Up Alarms was submitted which related to an order for "Pick and Mix (Smoke, heat and CO and optional remote control)". The response also stated that the oil boiler has not been in use since September 2021. Following a discussion with Environmental services at North Lanarkshire Council and the CAB, the Landlord said that she had provided electric heaters. This was all that was required as there was an immersion heater and electric shower. The Landlord stated that the EICR had expired in

2019. The previous tenants had said that they would get an electrician they knew to carry out the inspection and the Landlord was led to believe that this had been achieved. The Landlord added that she had made attempts to arrange for an electrician to carry out the inspection but had been unsuccessful due to the remote location of the property. One electrician had attended but declined to carry out the inspection due to the former tenant "hanging over him taking pictures of everything he was doing". An appointment with an electrician had been arranged for 8 March 2022 but was then postponed to 15 March 2022. No further information or documents were submitted in response to the direction.

6. On 18 March 2022, the parties were notified that a hearing would take place by telephone conference call on 11 May 2022 at 10am. They were provided with the telephone number and passcode. This was acknowledged by the Landlord's representative by email on 23 March 2022. On 29 March 2022, the former Tenant advised the Tribunal that she had now been provided with permanent accommodation by the Local Authority and that the tenancy had come to an end. However, she indicated that the termination of the tenancy had not been lawful and that she was taking legal advice on the matter.
7. On 10 April 2022, the Tribunal decided that they would continue to determine the application in terms of Schedule 2 Paragraph 7(3) of the 2006 Act. A Minute of continuation was issued to the Landlord with a further copy of the direction, as the Tribunal noted that the Landlord had not provided a full response. No further correspondence or submissions were received from the Landlord
8. The hearing took place by telephone conference call on 11 May 2022 at 10am. Neither the Landlord nor her representative participated and accordingly no evidence heard. Following the hearing the Landlord submitted photographs of smoke and heat alarms attached to walls or ceilings and an Electrical Visual Condition report. This does not appear to be an EICR, does not have a reference or certificate number and does not appear to have been completed by an electrician who is registered with one of the professional bodies.

Findings in Fact

20. The oil boiler at the property is defective and does not work
21. The Landlord does not have an up-to-date electrical installation condition report for the property issued by a suitably qualified SELECT, NAPIT or NICEIC registered electrician.

22. The Landlord has purchased a smoke detector, a heat detector, and a CO detector.

Reasons for decision

23. The Tribunal considered the issues of disrepair set out in the application, the information and documents provided by the former tenant and the submissions and documents lodged by Landlord.
24. 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 Tenant notified the Landlord of most of the complaints prior to lodging the application. However, there is no evidence that the complaint about the guttering was previously notified. Accordingly, the Tribunal determined that they could not consider this aspect of the application.
25. Section 13 of the 2006 Act states that the property meets the repairing standard if “(h) the house meets the tolerable standard”. In terms of subsection 7, regard must be had to any guidance issued by the Scottish Ministers in relation to electrical safety standards, equipment for detecting fire and giving warning of fire and installation of a fixed heating system.
26. A house meets the tolerable standard if it complies with the relevant requirements in relation to satisfactory smoke and heat alarms. In terms of Scottish Government Guidance on the tolerable standard (chapter 16) there requires to be one smoke alarm in the room most frequently used for general daytime living purposes (normally the living room), one smoke alarm in every circulation space on each storey, such as hallways and landings, and one heat alarm in the kitchen. All must be ceiling mounted and interlinked. The Tribunal directed the Landlord to provide the Tribunal with evidence that hard wired or wireless smoke and heat detectors have been installed at the property which comply with current regulations and guidance. In response the Landlord stated that these have been installed. A copy of an undated order from Linked Up Alarms and some photographs of alarms on walls or ceilings of an unidentified property were submitted. The order also appears to include a CO detector which was not requested. The order also only includes one smoke detector. The Landlord has not provided any evidence that the detectors shown on the order form have been installed at the property which is the subject of the application, that they comply with current regulations and guidance or that they are in working order. The Tribunal is satisfied that Landlord has not complied with the direction which has

been issued. The direction notified that Landlord that if she failed to provide the Tribunal with the relevant evidence, the Tribunal may draw an inference that the property does not comply with the repairing standard. In the circumstances, the Tribunal is satisfied that the Landlord has failed to comply with the repairing standard in relation to the provision of smoke and heat detectors at the property.

27. As there does not appear to be a gas supply at the property, and the oil boiler is not in use, the Tribunal is not persuaded that the property currently requires a CO detector to be installed. Accordingly, the Tribunal is not satisfied that the property does not meet the repairing standard in relation to the provision of a detector for giving warning if carbon monoxide is present. However, the Tribunal would recommend that the Landlord takes the necessary steps to ensure that a CO detector is installed in an appropriate location at the property, if this is required.
28. In the application, the former tenant stated that the oil boiler at the property is defective and does not work. In her direction response the Landlord conceded that the oil boiler has not worked since September 2021 and is not in use. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard in the relation to the oil boiler installed at the property. The Tribunal notes that the Landlord may have provided electric heaters (although no information about these was submitted) and some hot water may be available. However, no evidence was submitted which establishes that there is adequate provision of hot water and heating at the property or that the boiler presents no health and safety risk to occupiers in its current condition. The Tribunal is satisfied that the Landlord has failed to comply with the repairing standard in relation to the oil boiler.
29. In terms of the statutory guidance on electrical installations and appliances in private rented property a landlord is required to provide a tenant with a EICR at the start of the tenancy and inspections must be carried out every 5 years. The inspection must be carried out by a suitably qualified and competent person. In the application, the former tenant stated that the electrics at the property are defective. The Tribunal issued a direction which required the Landlord to lodge a certified EICR from a suitably qualified SELECT, NAPIT or NICEIC registered electrician dated no earlier than 1 December 2021. The landlord was notified that if she failed to provide this document the Tribunal may draw an inference that the property does not meet the repairing standard. In her direction response the Landlord conceded that the last EICR obtained for the property expired in 2019. The Tribunal was advised that an appointment had been arranged with an electrician for 15 March 2022. The Landlord did not participate in the hearing but lodged an Electrical Visual Condition Report later that day. The Tribunal considered this document and noted that it is not a complete EICR, does not have a reference or certificate number and does not appear to have been issued by a registered electrician. In the circumstances the Tribunal is satisfied that the Landlord has not complied with the direction

E Munroe

so determined.

J Bonnar

Josephine Bonnar, Legal Member

18 May 2022