

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Reference number: FTS/HPC/RT/20/0330

Re: Property at 70, Lochleven Road, Lochore, Lochgelly, Fife, KY5 8DA being the subjects registered in the Land Register for Scotland under Title Number FFE63837 (“the Property”)

The Parties:

Mr Tasleem Arshad, residing at Bank House, 22 Station Road, Lochgelly, Fife, KY5 9QW (“the Landlord”)

Tribunal Members

Karen Moore (Chairperson)

David Godfrey (Ordinary Member)

Decision

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 in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (c) 13(1) (e) 13(1) (f) 13(1) (g) and 13(1) (h) of the Act and that the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Section 13 (1) (d) of the Act and that for the reasons set out below.

Background

1. By application received on 3 February 2020 (“the Application”), Fife Council on behalf of the then tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing

Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c), 13(1) (d), 13(1) (e), 13(1) (f), 13(1) (g) and 13(1) (h) of the Act and

2. The Application comprised an application form and copy letters dated 8 March 2018 and 17 December 2019, together with proof of receipt of the latter, and email correspondence from Fife Council to the Landlord setting out the repairs required to the Property. Specifically, the said letters and so the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as follows:-
 - i) There is no current electrical installation condition report (“EICR”) for the Property;
 - ii) There is no carbon monoxide detector in the Property;
 - iii) There is no heat detector in the kitchen of the Property;
 - iv) No Energy Performance Certificate (EPC) for the Property was provided to the then tenant;
 - v) There are no working mains wired smoke detectors in the Property;
 - vi) There is a blocked air vent in the living room of the Property;
 - vii) There are cracks in the ceilings and walls throughout the Property;
 - viii) There is a hole in the bathroom wall behind the bath panel;
 - ix) The floor covering in the bathroom is in a poor state;
 - x) The bathroom window cannot be opened;
 - xi) Two of the bedroom windows have gaps allowing water to ingress;
 - xii) The other bedroom window is unsafe as the glass is loose;
 - xiii) There is no shower cubicle door;
 - xiv) The bath panel is cracked and must be replaced; ;
 - xv) There are holes in the ceiling of the main bedroom cupboard;
 - xvi) The drain hose for the washing machine was removed during a repair;
 - xvii) The down pipe has been removed;
 - xviii) The radiator in the kitchen is leaking;
 - xix) The toilet does not flush and
 - xx) The bulk head light at the entrance stair is broken
3. On 4 February 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and an Inspection and Hearing were fixed for 26 March 2020. The Application and Inspection and Hearing were cancelled due to the national restrictions imposed by the COVID-19 pandemic.
4. Fife Council intimated to the Tribunal that the then tenant had removed from the Property. By Minute dated 25 August 2020, the Tribunal continued the Application in terms of Schedule 2 Paragraph 7(3) of the Act.
5. Under normal circumstances, the Tribunal would carry out an Inspection and hold a Hearing to ascertain the condition of the Property. This was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a CMD was arranged for 22 January 2021 by telephone conference call, in order to discuss further procedure in the case.

Direction 1

6. Prior to the CMD, and in application of the Overriding Objective as set out in Rule

2 of the Rules, the Tribunal issued the following Direction in terms of Rule 16 of the Rules:-

“The Landlord is directed to submit:

- i) A current Gas Safety Certificate*
- ii) A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord.*
- iii) Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings*
- iv) Evidence that a heat alarm is installed in the kitchen.*
- v) Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking)*
- vi) A current Energy Performance Certificate (EPC): The said documentation should be lodged in hard copy or by email attachment with the Chamber no later than close of business on 19 JANUARY 2021.”*

7. The CMD notification and the Direction were received and signed for by the Landlord on 5 January 2021.

8. The Landlord did not comply with the Direction.

First Case Management Discussion

9. The first CMD took place on 22 January 2021 at 14.00 by telephone conference call. The Landlord did not take part and was not represented. The Tribunal had regard to the serious nature of the complaints as outlined in the Application and to the fact that the Landlord had not complied with the Direction nor had he contacted the Tribunal with written representations.

10. The issue to be determined by the Tribunal was whether or not to make a finding of failure to comply with the Repairing Standard as set out in the Act and to impose a Repairing Standard Enforcement Order (“RSEO”). The Tribunal was satisfied that the Landlord was aware of the CMD and had received the Direction, but was not satisfied that the Landlord understood the seriousness of the consequences of the imposition of an RSEO. Accordingly, the Tribunal took the view that it should make clear to the Landlord the severity of the situation, allow further time for him to comply with the Direction and adjourn the CMD to a later date. The CMD was adjourned to 24 February at 10.00 am.

Direction 2

11. The Tribunal made the following further Direction:-

“The Landlord is directed to submit:

- i) A current Gas Safety Certificate;*
- ii) A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord;*
- iii) Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the*

occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings;

- iv) Evidence that a heat alarm is installed in the kitchen.;*
- v) Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking)*
- vi) Evidence that the gas central heating timer is in good working order;*
- vii) Evidence that the air vent in the living room has been repaired or renewed;*
- viii) Evidence that the cracks in the ceilings and walls throughout the Property have been repaired;*
- ix) Evidence that the hole in the bathroom wall behind the bath panel has been repaired;*
- x) Evidence that the windows throughout the Property are fully operable and in good repair;*
- xi) Evidence that the toilet is fully operable and in good repair;*
- xii) Evidence that the bath panel has been repaired or renewed;*
- xiii) Evidence that the shower cubicle door is fully operable and in good repair;*
- xiv) Evidence that the kitchen radiator has been repaired or renewed;*
- xv) Evidence that the down pipe has been replaced and*
- xvi) A current Energy Performance Certificate (EPC):*

*The said documentation should be lodged in hard copy or by email attachment with the Chamber no later than close of business on **31 JANUARY 2021.***

12. In that Direction the Tribunal made it clear to the Landlord that the purpose of the Direction was to make a determination in respect of compliance with the Repairing Standard as set out in the Act. Further, the Tribunal drew the Landlords attention to the terms of Part 1 at Chapter 4 of the Act which set out his specific statutory duties, to the Scottish Government Statutory Guidance issued under the Section 13 of the Act and to the Scottish Government Advice Pack for Private Landlords and to Sections 28(1) and 28 (5) of the Act which states that a landlord who, without reasonable excuse, fails to comply with an RSEO and/or who lets a property subject to an RSEO commits a criminal offence.

13. The further CMD notification and the further Direction were intimated to the Landlord. A reminder letter was received and signed for by the Landlord on 26 January 2021.

14. The Landlord did not comply with the Direction.

Further Case Management Discussion

15. The further CMD took place on 24 February 2021 at 10.00 by telephone conference call. The Landlord did not take part and was not represented. The Tribunal had regard to all of the information before it and considered if it had sufficient information to proceed with the CMD in the absence of the Landlord.

16. The Tribunal had regard to Rules 2 and 3 of the Rules.

17. Rule 2 of the Rules is the overriding objective and states: *“(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes— (a) dealing with the proceedings in a manner which is proportionate to the complexity of the criteria and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party’s case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the criteria.”*
18. Rule 3(2) of the Rules states that the Tribunal *“must manage the proceedings in accordance with the overriding objective”*. Therefore, the Tribunal was bound to apply Rule 2 of the Rules in its dealing with the Application and at the CMD.
19. Rule 2 allows the Tribunal to deal with proceedings informally and flexibly and states that the Tribunal should avoid delay so far as compatible with proper consideration of the criteria. The Tribunal took the view that, if it could ensure proper consideration of the Application on the written evidence before it, an inspection of the Property was not necessary.
20. The Tribunal had regard to the fact that the Landlord had had notification of the detail of the complaint of his failure to comply with the Repairing Standard in the letters from Fife Council, the Application, both CMDs and both Directions and so was satisfied not only that Landlord was fully aware of the proceedings but was fully aware of the effect of the proceedings. The Tribunal reached the conclusion that it had sufficient information to proceed with the CMD in the absence of the Landlord.

Summary of the Issues

21. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c) 13(1) (d) 13(1) (e) 13(1) (f) 13(1) (g) and 13(1) (h) of the Act at the date of the further CMD.

Findings of Fact

22. The Tribunal was mindful that ordinarily the onus of proof rests with the party making the application and that the onus is not on the other party to disprove the complaint. However, in these proceedings, the Tribunal’s statutory function in terms of Section 24(1) of the Act is that it must *“decide whether the landlord has complied with the duty imposed by section 14(1)(b)”* of the Act. Further, Schedule 2 Paragraph 7(3) of the Act allows the Tribunal to proceed in the absence of the party who made the complaint.
23. Therefore, regardless of the onus not being on the Landlord to disprove the complaint, the Tribunal took the view that, having notified the Landlord that its

purpose in directing him to provide evidence which ought to be in his possession was to make a determination in respect of compliance with the Repairing Standard as set out in the Act and the Landlord having failed or refused to comply with the Directions, the Tribunal's statutory function allows it to infer that the Landlord does not dispute the complaint.

24. The Tribunal's findings in fact were made from the Application and the Landlord's lack of response to the Directions. The Tribunal's assessment of the facts was based on the balance of probability, being the standard of proof required in civil proceedings.

25. The Tribunal found the following matters established:-

- a. Mohammed Tasleen Arshad, otherwise Tasleen Arshad, residing at Bank House, 22 Station Road, Lochgelly, Fife, KY5 9QW is the owner of the Property in terms of Land Certificate FFE63837 in his favour;
- b. At the date of the Application there had been short assured tenancy between the Landlord and Alanah Leigh Dow or Johnston;
- c. There is no current EICR for the Property;
- d. There is no current Gas Safety Certificate for the Property;
- e. There is no carbon monoxide detector in the Property;
- f. There is no heat detector in the kitchen of the Property;
- g. No EPC was provided to the then tenant;
- h. There is a blocked air vent in the living room of the Property;
- i. There are cracks in the ceilings and walls throughout the Property;
- j. There is a hole in the bathroom wall behind the bath panel;
- k. The floor covering in the bathroom is in a poor state;
- l. The bathroom window cannot be opened;
- m. Two of the bedroom windows have gaps allowing water to ingress;
- n. The other bedroom window is unsafe as the glass is loose;
- o. There is no shower cubicle door;
- p. The bath panel is cracked;
- q. There are holes in the ceiling of the main bedroom cupboard;
- r. The kitchen radiator is leaking;
- s. The drain hose for the washing machine is missing;
- t. The down pipe is missing;
- u. The toilet does not flush and
- v. The bulk head light at the entrance stair is broken.

Decision of the Tribunal and reasons for the decision.

26. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so proceeded to make a decision in terms of Section 24(1) of the Act.

27. In respect of the complaint in terms of Section 13(1 (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the poor condition of windows in the Property and the condition of the

guttering is such that the Property is not wind and watertight, and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the CMD the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

28. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of windows in the Property, the condition of the guttering, the blocked air vent in the living room of the Property, the cracks in the ceilings and walls throughout the Property and the hole in the bathroom wall behind the bath panel are such that at the date of the CMD the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
29. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of the bathroom, the lack of an operable toilet and the leaking radiator and the lack of an EICR and Gas Safety Certificate are such that at the date of the CMD the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
30. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that any furnishings provided by him under the tenancy are capable of being used safely for the purpose for which they are designed, the Tribunal having seen no evidence in respect of this complaint, found that at the date of the CMD the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
31. In respect of the complaint in terms of Section 13 (1) (e) that the Landlord has failed to ensure that the fixtures, fittings and appliances provided by him under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal found that the condition of the washing machine and the holes in the bedroom cupboard are such that at the date of the CMD, the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
32. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal being satisfied that there are insufficient heat and smoke detectors in the Property, the Tribunal took the view that at the date of the CMD, the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
33. In respect of the complaint in terms of Section 13 (1) (g) that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health, the

Tribunal being satisfied that there is no carbon monoxide detector in the Property the Tribunal took the view that at the date of the CMD, the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

34. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the tolerable standard, the Tribunal found that the poor condition of the Property is such that it does not meet the basic standard of repair to make it fit for a person to live in and so at the date of the CMD, the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

35. The decision is unanimous.

Repairing Standard Enforcement Order

36. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Appeal

37. 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.

Effect of Section 63

38. 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.

Signed

K Moore

Karen Moore, Chairperson

2 March 2021