

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/22/4483

**Flat 13, Fife House, Low Street, Banff, AB45 1AB, registered in the name of the Landlord in the Land Register on 21 June 2004 under Title Number BNF1579
("The Property")**

The Parties:-

Melanie and Jacob Miles, formerly residing at the Property ("the Tenant")

**Aberdeenshire Council, Housing and Building Standards, Gordon House, Blackhall Road, Inverurie, AB51 3WA
("the Third Party Applicant")**

and

**Mr Michael Glyn Rowberry, 69 Comer Road, Worcester, WR2 5HY
("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr Andrew Murray (Ordinary Member) (Surveyor)**

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) in relation to the Property concerned, and taking account of the evidence available to it following inspection determined that the Landlord has failed to comply with the duty imposed by section 14 (1)(b) of the Act.

Background

1. By application dated 23 December 2022, the Third Party Applicant applied to the Housing and Property Chamber 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”).

2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) ensure that the installations for space heating were in a reasonable state of repair and in proper working order
 - (b) there was an up to date valid Electrical Installation Condition Report (EICR) in force in respect of the Property
3. By letter dated 10 February 2023, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. On 2 March 2023, the Landlord provided the Tribunal with a copy of a valid EICR dated 25 February 2023 in respect of the Property. The EICR did not specify any C1 or C2 items requiring immediate attention.
6. The Tribunal inspected the Property on the morning of 20 July 2023. The Third Party Applicant and the Landlord were not present during the inspection. Entry to the Property was provided by the Landlord’s letting agent, Messrs Stewart and Watson.
7. Following the inspection of the Property the Tribunal held a hearing at Banff Sheriff Court, Low Street, Banff. The Landlord and the Third Party Applicant were not present at the hearing. The Landlord’s letting agents informed the Tribunal that they would not be present at the hearing to represent the Landlord.
8. Accordingly, the Tribunal proceeded to deliberate in the absence of the parties, based upon the written information before it and the matters found by it during the property inspection.

Summary of the issues

9. Given the provision of a valid EICR, the sole issue to be determined by the Tribunal was whether the installations for space heating were in a reasonable state of repair and in proper working order.

Findings of fact

10. The Tribunal finds the following facts to be established following inspection:-

- The Property is a one bed attic flat at the top floor of a converted building.
- On entry there is an L-shaped hallway providing access to the bedroom in front and the other rooms to the left, namely the bathroom, lounge and adjoining kitchen
- There were no fixed installations for space heating in the bedroom
- There was one portable electrical heating unit in the bedroom which did not bear a PAT tested sticker
- There was a storage heater fixed to the wall in the hallway. It appeared to be of considerable age
- On the wall of the lounge opposite the window there was a storage heater similar to that located in the hallway
- There were two further portable electric heaters in the lounge.
- Neither portable electrical appliance bore a PAT tested sticker
- At the time of the inspection, there was no electricity supply so that no appliances or installations could be tested to verify whether they were in working order
- In email correspondence dated 19 December 2022 to the Third Party Applicant (Diane Coutts) from the Tenant, the Tenant confirmed that the storage heaters were not operational and this was the reason for the portable electrical heaters being present
- The tenancy in relation to the Property had come to an end by the time of the inspection

A schedule of photographs is appended to the present decision

Reasons for the decision

11. Having been provided with the EICR by the Landlord, the Tribunal was satisfied that the Landlord had complied with his obligations in that respect.
12. Although there was no electricity supply to the Property at the time of the inspection, correspondence dated 19 December 2022 from the Tenant to the Third Party Applicant clearly indicates that the only fixed appliances capable of providing space heating were not in working order throughout the tenancy.
13. As a matter of inference, the presence of further portable electrical heaters indicates to the Tribunal that the installations for the provision of space heating were not working or at least were not in proper working order in the sense of providing adequate heating within the Property.
14. There was no installation for space heating within the bedroom.

Decision

15. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(c) of the Act.
16. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
17. The decision of the Tribunal was unanimous.

Right of Appeal

- 18. A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

19. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M O'Carroll

Signed

Date 20 July 2023

Chairperson Maurice O'Carroll, Advocate

Housing and Property Chamber First-tier Tribunal for Scotland



Housing

(Scotland) Act 2006: Schedule of Photographs

Property: Flat 13 Fife House Low Street Banff AB45 1AB

Chamber Reference : FTS/HPC/RT/22/4483

Inspection Date: 20 July 2023 - 10.30am

In attendance:

Mr Maurice O'Carroll (tribunal legal member)

Mr Murray (tribunal surveyor member)

Stewart and Watson Rep (landlord letting agent)



1 Front elevation



2 Heat detector in kitchen



3 Aged electric storage heater in living room



4 Portable electric space heater in living room



5 Smoke detector in living room



6 Aged electric storage heater in hall

Andrew Murray FRICS MIFireE ; Date of report: 20/07/2023