

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

Chamber Reference number: FTC/HPC/RT/23/0979

Parties:

1. Renfrewshire Council per its employee Ms. Bernadette Kettle, Environment, Housing and Infrastructure, Renfrewshire House, Cotton Street, Paisley, PA1 1JD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Brian Millisom residing at Flat 0/1, 13, Wilson Street, Renfrew, PA4 8NP (“the Tenant”)
3. Mr. Yoon Fat Siow, residing formerly at 40, Bowhill View, Cardenden, Lochgelly, KY5 0NP and now at Flat 2/3, 13, Wilson Street, Renfrew, PA4 8NP (“the Landlord”) per his agents, Mackinlay & Suttie, Solicitors, 48, Cross Arthurlie Street, Barrhead, G78 1QU (“the Landlord’s Agents”) together referred to as “the Parties”.

Property: Flat 0/1, 13, Wilson Street, Renfrew, PA4 8NP being the subjects registered under title sheet number REN8655

Tribunal Members

Karen Moore (Chairperson) and Donald Wooley (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) (c), 13(1)(f), 13 (1) (g) and 13(1) (h) of the Act and that for the reasons set out below.

Background

1. By application received between 27 and 28 March 2023 (“the Application”), the Third -party Applicant 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) (c), 13 (1) (d), 13(1)(e), 13(1)(f), 13 (1) (g) and 13(1) (h) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
 - i) The entrance door is badly damaged and not capable of being locked;
 - ii) The kitchen wall unit door is missing;
 - iii) The kitchen floor unit door is missing;
 - iv) The living room window handle is faulty;
 - v) The bathroom shower is slow to drain;
 - vi) The toilet cistern runs constantly as the ballcock valve is faulty;
 - vii) There are no smoke or heat detectors in the Property;
 - viii) There is no carbon monoxide detector in the Property and
 - ix) There is no Electrical Installation Condition Report (EICR).
 3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act determined to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act the First-tier Tribunal for Scotland served Notice of Referral upon the parties on 20 April 2023 and fixed an Inspection and Hearing for 22 June 2023 at 10.00 and 11.45, respectively.
 4. Prior to the Inspection and Hearing the, the Landlord’s Agents submitted two written representations requesting that the Inspection and Hearing be postponed to allow the Landlord to be represented, advising the Tribunal that the Tenant had removed from the Property and is residing in temporary accommodation provided by the Third Party Applicant’s social services and advising that the Landlord now resides within the building of which the Property forms part . The Tribunal was also advised that the Property had been secured by the police. Given the nature of the complaints in the Application, the fact that the Landlord resides within the building of which the Property forms part and could provide access and that there was sufficient time for the Landlord to arrange representation, the Tribunal declined to postpone the Inspection and Hearing.

Inspection

5. The Inspection took place on 22 June 2023 at 10.00 a.m. at the Property. The Third -party Applicant was represented by Mr. W. Holmes. The Tenant was not present. The Landlord was present and accompanied by Mr. Dickson as a supporter. Siu Ying Tervit attended as an interpreter of the Cantonese language.
6. The Tribunal was unable to inspect the internal part of the Property as the front door had been boarded up. From the outside of the Property, the Tribunal noted that the living room window was broken and boarded up. At the Inspection, the Tribunal took photographs which form the Inspection Report annexed.

Hearing

7. The Hearing was held at the Glasgow Tribunal Centre on 22 June 2023 at 11.45. by telephone conference call on 15 June 2022 at 10.00 am. The Third -party Applicant was not present or represented. The Tenant was not present. The Landlord was present and accompanied by Mr. Dickson as a supporter. Siu Ying Tervit attended as an interpreter of the Cantonese language.
8. The Tribunal explained the purpose of the proceedings, the scope of the Act, the Tribunal's role and explained how the Hearing would be conducted.
9. With reference to the Application and the Inspection, the Tribunal noted that the Application complaints in respect of the entrance door and window were evidenced. The Tribunal advised that it could not be certain in respect of the internal condition of the Property and so could not make an assessment on the kitchen and bathroom at this time. The Tribunal asked the Landlord if there is an EICR for the Property and he advised that there is not. The Tribunal advised, therefore, that it cannot be certain that the electrical installations and the smoke, heat and carbon monoxide detection are in a satisfactory condition.
10. The Tribunal invited the Landlord to set out his position in respect of the Property. The Landlord advised that he bought the Property at auction around three years ago and intended to use it as his main residence. He explained that he had not read all of the background sales information and did not realise that the Property was subject to a tenancy. He explained that he had not been able to access the Property and had never been inside it. He stated that the Tenant had not paid any rent to him and confirmed that he had paid common repairs and charges for the Property when asked. The Landlord explained that he had instructed solicitors to remove the Tenant but did not know if any formal action had been taken or if an application had been lodged with the Tribunal. He explained that he currently rents the flat at 2/3,13, Wilson Street and that his intention to reside in the Property as his main residence when he secures vacant possession.
11. The Tribunal advised that it could not advise the Landlord as he had solicitors acting for him but stated that the websites of agencies like Shelter could provide an overview of private renting in Scotland.

Summary of the Issues

12. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 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 Inspection and Hearing.

Findings of Fact

13. The Tribunal's findings in fact were made from the Application, the written submissions and the Inspection and Hearing.
14. The Tribunal found the following matters established: -
 - i) The Landlord owns the Property which is subject to a tenancy;

- ii) The Property is a ground floor flat within a four storey tenement built around 1900 and is of traditional construction with sandstone external walls under a pitched roof clad with concrete tiles;
- iii) The Property is accessed via a common entry close shared with eleven other properties;
- iv) The individual entrance door to the Property is boarded up and entry cannot be gained;
- v) The living room window of the Property is broken and a temporary repair in the form of replacement timber boarding has been completed in an effort to render the property secure, wind and watertight and
- vi) There is no EICR for the Property.

15. From the Hearing, the Tribunal accepted that the Landlord had purchased the Property at auction, had not been aware that it was subject to an existing tenancy and that he has not been able to gain access to the Property.

Decision of the tribunal and reasons for the decision.

16. Section 24 (1) of the Act states: *“The First-tier Tribunal, must in relation to an application under section 22(1) or (1A) decide whether the landlord has complied with the duty imposed by section 14(1)(b)”* and Section 24 (2) of the Act states: *“(2)Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a “repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purposes of ensuring (a)that the house concerned meets the repairing standard, and (b)that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good.”*

- 17. Therefore, the Tribunal was bound to make a decision on the Application. The Tribunal's decision is based on the Application, the written submissions, the limited Inspection and the Hearing.
- 18. In respect of the complaint in terms of Section 13(1) (c) that the installations in the Property 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 as there is no EICR, the Tribunal could not be satisfied on that the installations are in a in a reasonable state of repair and in proper working order. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- 19. In respect of the complaint in terms of Section 13(1)(d) that any fixtures, fittings and appliances furnishings provided by the Landlord are capable of being used safely for the purpose for which they are designed, as no evidence was led in this respect and no internal access was possible, the Tribunal are currently unable to determine if the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

20. In respect of the complaint in terms of Section 13(1)(e) that any furnishings provided by the Landlord are capable of being used safely for the purpose for which they are designed, as no evidence was led in this respect, the Tribunal found that the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
21. In respect of the complaint in terms of Section 13(1)(f) that the Property has satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire, the Tribunal found that as there is no EICR, the Tribunal could not be satisfied in this regard. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
22. In respect of the complaint in terms of Section 13(1)(g) that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, the Tribunal found that as no internal access was obtained, it is currently unable to determine that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
23. 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 absence of an EICR and the condition of the entrance door and the living room window are such that the Property does not meet the Tolerable Standard. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
24. The decision is unanimous.

Repairing Standard Enforcement Order

25. 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 (RSEO) as required by Section 24 (2) of the Act.
26. With regard to the terms of the RSEO, as the Tribunal could not inspect the internal parts of the Property, if an inspection of the Property at a later date shows that further works as in respect of the matters complained of in the Application are required so that the Property meets the Repairing Standard, the Tribunal may exercise its powers in terms of Section 25 of the Act to vary the RSEO as the Tribunal sees fit.
27. With further regard to the RSEO, the Tribunal appreciates that the Landlord may have to take formal action to access the Property to comply with the RSEO.

Ordinarily, the Tribunal would fix a timescale of 6-8 weeks for the works to be carried out. In this case, the Tribunal allows an extended time for compliance with the RSEO.

Appeal

28. 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.

29. 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.

Notes to Landlord

- a) **Section 28A(1) of the Act states that a landlord may apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) for assistance in exercising a landlord's right of entry. Rule 55 of the Rules sets out the procedure for a right of entry application.**
- b) **If the Landlord recovers possession of the Property and resides in the Property as his main or principle residence, he should notify the Tribunal of this as soon as he is able to do so.**

Signed

Karen Moore, Chairperson

Date 26 June 2023