

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RT/23/1689

Title no/Sasines Description: REN93647

Flat 1/2, 63 Park Road, Paisley, PA2 6YB (“the House”)

The Parties:-

Renfrewshire Council (Environment, Housing & Infrastructure, Renfrewshire House, Cotton Street, Paisley, PA1 1BR (“the Third Party Applicant”)

Mr Philip Smith, 28 Ranfurly Road, Glasgow, G52 2RJ (“the Landlord”)

Tribunal Members: Mrs Nicola Weir, Legal Member and Ms Lori Charles, Ordinary Member

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 house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 25 May 2023, the Third Party Applicant applied on behalf of the Tenant to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House, including water ingress at a living room wall; the Tenant not having been provided with an EICR or Gas Safety Certificate; a

damaged and leaking overflow pipe from the toilet cistern; a damaged window handle in the spare room; damaged and leaking washing machine; and issues with missing smoke and heat alarms. Supporting documentation was submitted with the application. The application indicated that the Tenant, Ms Courtney Affleck, did not wish to be party to the application.

2. On 15 June 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Inspection and Hearing was issued to the parties on 25 July 2023, requesting that any written representations should be lodged with the Tribunal by 15 August 2023. No written representations were lodged by the Landlord who has not been in contact with the Tribunal.

3. Inspection

The Tribunal Members carried out an Inspection of the House at 10 am on 29 August 2023. The Tenant was present as was Ms Michelle Stewart, Housing Support Worker (PRS) of Renfrewshire Council who was attending in a supportive capacity. Mr Martin Salisbury, Environmental Health Enforcement Officer of Renfrewshire Council, who had completed the Third Party Application on behalf of the Tenant, was also in attendance. The Landlord did not attend.

4. The Tribunal noted from the Tenant that she has not had any communication from the Landlord for some time and that she has not been issued with an EICR or Gas Safety Certificate. The Tribunal inspected the various issues raised by the application and noted that there was no heat detector in the kitchen, nor smoke alarm in the hall. There was a smoke alarm on the living room ceiling which appeared to be operational but was not interlinked to any other alarms, as there were none. The Tribunal noted that there was a cable-end below the living room window which came out of a hole which appeared to have been drilled through to the exterior wall of the House. The Tenant indicated that water came in at the site of the cable hole when it rained heavily. The Tribunal could see no evidence of water ingress at or around the hole. The Ordinary Member used a damp meter but it showed no moisture reading in the wall around the hole. In the bathroom, the Tribunal noted that the toilet cistern and overflow pipe from the cistern were in poor condition and that the cistern was detaching from the wall. The pipe had a section to which masking tape has been applied and it was understood from the Tenant that the pipe underneath the tape was cracked and that this is where the water leaked from. No leak was detected. In the spare room, it was noted by the Tribunal that the left-hand handle at the bottom of the window was missing altogether and that this made it difficult to close the window and that the window could accordingly not be properly secured. In the kitchen, the Tribunal noted that there was some water staining apparent on the flooring at the front right-hand corner of the washing machine. The Tenant indicated that water leaked from the back and side of the machine every time it was used and that she limited its use as a result. The Tenant also advised that the boiler has not been working for over a year and that she has no heating as a consequence. It was noted by the Tribunal, however, that the boiler issues had not been raised as part of this application. A Summary of

Inspection, including Photographic Schedule taken during the Inspection by the Ordinary Member dated 29 August 2023 is attached to this Statement of Decision.

5. Hearing

The Hearing took place in-person at Glasgow Tribunal Centre at 11.30am on 29 August 2023. Mr Salisbury (Third Party Applicant) attended. The Tenant had indicated at the Inspection that she was unable to attend the Hearing. The commencement of the Hearing was delayed slightly to give the Landlord an opportunity to attend late but he did not do so. After introductory comments from the Legal Member, the Tribunal heard evidence from Mr Salisbury.

6. At the Hearing, the Tribunal had before it the application and supporting documentation referred to above, including copies of the tenancy agreement and the Third Party Applicant's letter to the Landlord dated 27 April 2023, notifying him of the repair issues prior to the application to the Tribunal. The Tribunal also had before it a copy of Land Certificate REN 93647 relative to the House which is registered in the name of the Landlord. The Tribunal noted from Mr Salisbury that the Landlord is on the Register of Landlords for Renfrewshire Council.
7. Mr Salisbury was asked about the background to the application. He confirmed that Ms Stewart, who had been present at the Inspection, had referred the Tenant to his department, Environmental Health, in connection with the condition of the House. He thinks that there may be some suggestion that the Landlord was seeking to evict the Tenant. Mr Salisbury confirmed that he sent the letter of 27 April 2023 to the Landlord by recorded delivery, following an inspection of the House by Mr Salisbury prior to that. He had not been able to get confirmation that the recorded delivery letter had been delivered to the Landlord but he confirmed that he had also sent the letter by email and that the Landlord telephoned him on receipt of the email. He referred to the paperwork submitted to the Tribunal as evidence of this. Mr Salisbury stated that the Landlord had alleged that the Tenant was squatting at the House but that he had explained to the Landlord that he had seen a copy of the tenancy agreement. The Landlord had not said much regarding the repairs issues raised but had hinted that he would be evicting the Tenant. Mr Salisbury stated that, according to the Tenant, she had raised several repairs issues with the Landlord but that the Landlord has not had any involvement with her since during lockdown. The Tenant had indicated that she had never had an EICR issued to her, although he had had sight of an out of date Gas Safety Certificate which had also been unsatisfactory. As to the Tenant's claim regarding water ingress to the living room, Mr Salisbury said that he could see how water could potentially come in at the site of the cable on the wall but that he had not witnessed any water ingress himself. He indicated that it had not been raining when he had inspected the House previously. He advised that he too had taken damp readings of this area of the wall and that the results were negative for any damp. Nor had he witnessed any leak in the bathroom from the pipe leading from the cistern but considered that the leak would only occur if the system was overflowing at the time. He had noted the generally poor condition of the cistern and that masking tape had been applied around an area of the pipe. Mr

Salisbury had not seen the washing machine in operation or water actively leaking from it on his prior inspection but had previously noticed damp patches or discolouration on the kitchen floor beside the machine. The smoke and heat alarm situation noted at the Inspection today was the same as on his previous visit. As to the boiler issues mentioned by the Tenant at the Inspection, Mr Salisbury stated that she had indicated that she may have forgotten to tell him about this previously. He confirmed that, had she mentioned it before, he was sure he would have noted it and included it in the application. The Legal Member advised that, as it was not raised in the application and therefore not notified to the Landlord as part of the application, the Tribunal could not consider the matter further today. Mr Salisbury indicated that he would provide further advice to the Tenant in this regard.

Findings in Fact

1. The House is let to the Tenant by virtue of a Private Residential Tenancy which commenced on 16 February 2021.
2. The rental is £400 per calendar month.
3. The Tenant has been experiencing repairs issues with the House for some time but has not had any recent communication with the Landlord.
4. The Landlord was formally notified by the Third Party of the repairs issues by letter dated 27 April 2023 and given an opportunity to rectify matters prior to this application being made to the Tribunal.
5. This application was lodged with the Tribunal on 25 May 2023.
6. The Landlord has not addressed the repairs issues at the House, nor given any indication that he intends to.
7. The Landlord did not submit any representations nor contrary information to the Tribunal.
8. Reference is made to the Tribunal's findings on Inspection, which took place on 29 August 2023.
9. The House does not meet the Repairing Standard in some respects, as detailed in the Repairing Standard Enforcement Order (RSEO).

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the application and noted at the Inspection, the supporting documentation lodged and the oral evidence of the Third Party Applicant at the Hearing.
2. The Tribunal is satisfied that parts of the Repairing Standard are not currently met in respect of the House, namely Sections 13(1)(c), (d) and (h), given the condition of the cistern, pipe leading from the cistern and the washing machine;

the missing window handle; the lack of adequate provision for detecting fire and giving warning in the event of fire or suspected fire; and the lack of current EICR and Gas Safety certification. The Tribunal did not see any evidence that there was or had been water ingress at the site of the cable coming into the living room wall and, accordingly, did not consider that the Repairing Standard was not met in this regard. As the Tenant's complaint, raised at the Inspection, regarding the boiler not working had not been part of this application, the Tribunal did not consider it could make any order in respect of this matter. However, the Tribunal hoped that, by raising this matter as an observation, that the issue will be investigated and rectified by the Landlord.

3. The Tribunal is satisfied that the Landlord had been notified in writing of the required repairs and given a reasonable opportunity to attend to same prior to this application being lodged with the Tribunal. The Tribunal noted that the Landlord had not engaged in the Tribunal process, attended the Inspection or Hearing, nor lodged any information contrary to the terms of the application. The Tribunal considered that the Landlord was in breach of his duty in terms of the Repairing Standard and that an RSEO requires to be made in respect of the outstanding matters. Given the nature of the required works, the Tribunal is of the view that a period of 6 weeks is an adequate and reasonable timescale for these works to be completed.

Decision

1. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
3. The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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..... Date: 5 September 2023
Nicola Weir, Legal Member of the Tribunal

Housing and Property Chamber

First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property Flat 1-2 63 Park Road, Paisley PA2 6YB

Ref No: FTS/HPC/RT/23/1689

Tribunal members Mrs Weir Legal member and Ms Charles Ordinary member
(Surveyor)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10:00am on 29/08/23. Also in attendance were Mr Salisbury Environmental Health Compliance Officer, Ms Stewart Housing Support Officer Renfrewshire Council and Ms Affleck Tenant.

Lori Charles

BSC (Hons) MRICS

Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
29/08/23

Appendix 1

Schedule of photographs taken during the inspection on 29/08/23

Lounge



A hole has been drilled to accommodate a cable which is no longer in use. No evidence of water ingress was noted around the area of the drill site.

Kitchen



Washing machine was not tested during visit, however an area of water staining was noted at the righthand corner of the washing machine.

Kitchen and Hall



No working heat detector in kitchen. No working smoke detector in hall

Bathroom



The toilet cistern has come away from the wall and the overflow pipe has been sealed with masking tape no leaks were noted.

Bedroom



A handle is missing from the rear bedroom window.