



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

Chamber Ref: FTS/HPC/RT/23/0641

Property : 28 Rashiehall Road, Slamannan FK1 3HL (Registered under title number STG43263) (“Property”)

Parties:

Falkirk Council, The Forum, Suite 2, The Forum, Callendar Business Park, Falkirk KK1 1XR (“Third Party”)

Joanne Reid-Williams, 28 Rashiehall Road, Slamannan FK1 3HL (“Tenant”)

Jane Henderson and Mark Henderson, 84 Bruce Drive, Stenhousemuir FK5 4DE (“Landlord”)

Tribunal Members :

Joan Devine (Legal Member); Sara Hesp (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(a), (b) and (c) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 1 March 2023, the Third Party applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Third Party stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1)(a)(b)(c)(d)(f) and (h) of the Act. The Application stated that the work which required to be carried out was:

General

- Provide a copy of a current Electrical Installation Condition Report (“EICR”) from a SELECT, NICEIC OR NAPIT accredited electrician in respect of the property containing no category C1 or C2 items of disrepair.

Living Room

- Repair or replace electric heater (on same wall as door) as it only heats up to a low temperature

- Repair or replace electric heater as it does not produce heat and if switched on trips the consumer unit
- Front window – repair hopper window on right (as you look from inside property) does not close fully (also no key for window lock)
- Front window – repair hopper window on left (as you look from inside property) as cannot be opened as handle mechanism appears broken (also no key for window lock)

Hall (ground floor)

- Assess two electrical consumer units in cupboard. When the electric is tripped it is always the older unit (on back wall) that requires to be reset

Bathroom

- Assess issue with toilet backing up periodically

Kitchen

- Repair rubber seal around window which is free from its lower mounting
- Repair / replace window handle mechanism
- Assess possible dampness on wall in base units to left and right of oven

Bedroom 1 – daughter's room

- Assess smaller side window as it does not open – appears locked but no key
- Repair larger main window as handle is loose and on occasion to close it requires the manual suppression of the hinge
- Assess possible dampness issue on right hand side of main window wall

Exterior of Property

- Assess/ repair leaks to rear gutter (one of which is dripping onto sill and masonry at rear living room) and consider clearing it of moss / leaves / foliage
- Assess/ repair leaks to front gutter and consider clearing it of moss / leaves / foliage
- Assess possible blocked drain issue

3. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 22 May 2023.
4. On 9 May 2023 the Landlord provided a copy of what was stated to be an EICR but was incomplete. On 17 May 2023 the Landlord provided a copy of a further EICR. It was not provided by a SELECT, NICEIC OR NAPIT accredited electrician.

The Inspection

5. The Tribunal inspected the Property on the morning of 22 May 2023. The weather conditions at the time of the inspection were dry and bright. The Tenant was present at the Property during the inspection. The Property is a semi-detached house. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

7. The Hearing took place on 22 May 2023 at Glasgow Tribunals Centre. Neither the Tenant or the Landlord were in attendance. The Third Party was represented by Craig Beatt.

The Evidence

8. The evidence before the Tribunal consisted of:
 - 8.1 The Application completed by the Third Party Applicant
 - 8.2 Land Register report relating to the Property
 - 8.3 Notification letter to the Landlord dated 18 January 2023
 - 8.4 Summary of actions by the Third Party Applicant
 - 8.5 The Tribunal's inspection of the Property
 - 8.6 Written submission from the Tenant
 - 8.7 The oral representations of the Third Party

Summary of the Issues

9. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

10. Tribunal made the following findings in fact:
 - 10.1 The Tenant has lived in the Property since 13 December 2019.
 - 10.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 10.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 10.3.1 Smoke alarms had been fitted in the ground floor hall, the living room and the upstairs hall.
 - 10.3.2 A heat detector had been fitted in the kitchen.

- 10.3.3 The alarms were interlinked.
- 10.3.4 The storage heater in the living room does not provide heat.
- 10.3.5 The electric heater in the fireplace in the living room has been repaired.
- 10.3.6 In the living room, the hopper window on the right does not close.
- 10.3.7 In the living room, the hopper window on the left does not open.
- 10.3.8 In the hall cupboard there are two consumer units.
- 10.3.9 In the bathroom the toilet could be flushed without “backing up”.
- 10.3.10 In the kitchen the rubber seal around the window is free from its lower mounting.
- 10.3.11 In the kitchen the oven is no longer plugged into the socket via an extension cable.
- 10.3.12 Readings taken in the kitchen did not indicate dampness.
- 10.3.13 In bedroom 1 the smaller side window does not open.
- 10.3.14 In bedroom 1 the main window can be opened and closed.
- 10.3.15 Readings taken in bedroom 1 did not indicate dampness.
- 10.3.16 The electric heater in bedroom 2 has been repaired.
- 10.3.17 Externally, the gutters have been replaced and are no longer leaking.
- 10.3.18 Externally, the drain below outside the bathroom is blocked.

Reasons for Decision

- 11. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1)(a), (b) and (c) of the Act.
- 12. At the inspection the Tenant told the Tribunal that she had attended to the repair of the electric heater in the fireplace in the living room and that the Landlord had attended to the repair of the electric heater in bedroom 2.
- 13. In the living room the Tribunal noted that the electric heater on the wall did not provide heat although switched on. The Tribunal noted that the hopper window on the right would not close and the one on the left would not open.

14. In the ground floor hall cupboard the Tribunal noted that there are two consumer units.
15. The kitchen the Tribunal note that the rubber seal around the window was loose which made it difficult to shut the window. The oven was removed from its housing and the Tribunal observed that the oven is no longer connected to the socket via an extension cable. The Tribunal noted damp staining in the cupboard to the right of the oven but meter readings taken did not indicate dampness.
16. In bedroom 1 the Tribunal noted that the small window could not be opened. The larger window could be opened and closed. The Tribunal noted staining on the wall beside the bed but meter readings taken did not indicate dampness.
17. Externally the Tribunal noted that new gutters had been fitted and were not leaking. At the request of the Tribunal the Tenant ran water in the bathroom. The Tribunal noted that this caused the drain outside the bathroom to overflow.

Decision

14. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the Property is not wind and watertight, the structure and exterior of the Property including drains are not in a reasonable state of repair and proper working order and the installations in the Property for the supply of electricity and space heating are not in a reasonable state of repair and in proper working order.
15. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
23 May 2022**