

Housing and Property Chamber First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/21/0003

The Property: 8 Cresswell Gardens, Dumfries, DG1 2HH (“The Property”)

The Parties:

Dumfries and Galloway Council, Communities Strategic Housing, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD (“the Third Party Applicant”) and

Mrs Gillian Landsburgh, 22 Summerville Crescent, Dumfries, DG2 9BY (“the Respondent Landlord”)

Tribunal Members:

G McWilliams- Legal Member

C Jones- Ordinary Member

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 or not the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”), in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and that a Repairing Standard Enforcement Order (“RSEO”) should be made.

Background

1. The Third Party applied to the Tribunal on 31 December 2020 in terms of Section 22 of the Housing (Scotland) Act 2006. The Applicant complained that the Respondent had not complied with a significant number of elements of the Repairing Standard and, in this regard, provided a detailed list of issues in their letter to the Respondent, dated 10th February 2020, which was sent with the Application. This list comprised the following detailed issues:
 - 1) No smoke detector in living room.
 - 2) No heat detector in kitchen.
 - 3) Battery smoke detector in hallway not working.
 - 4) All detectors should be interlinked.
 - 5) Combi boiler in bedroom not operating.
 - 6) No CO monitor.
 - 7) Bathroom ceiling has extensive mould.
 - 8) Bathroom fan not working.
 - 9) Toilet cistern leaking.
 - 10) Shower curtain rod broken.
 - 11) Living room door hinges not secured to station.
 - 12) Defective bedroom ceiling.
 - 13) Roof ridge tile missing adjacent to chimney stack.
 - 14) Render on chimney stack cracked and missing.
 - 15) Roof tiles cracked and missing.
 - 16) No EICR.
 - 17) No Gas Safety Check.

Case Management Discussions

2. A Case Management Discussion (“CMD”) took place on 1st April 2021. A further CMD proceeded on 12th August 2021. Reference is made to the Notes on the CMD dated 1st April 2021 and 12th August 2021 as well as the Notice of Directions, also dated 1st April 2021, which were issued to the parties but not fully complied with.

Inspection

3. The Tribunal Members inspected the Property on 11th November 2021. The Third Party Applicant was represented at the Inspection by Mr A. Black. The Respondent was also present.
4. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Decision.

Hearing

5. Following the Inspection, the Tribunal held a Hearing which proceeded remotely by telephone conference call on 18th November 2021. Mr Black and the Respondent attended. The Respondent gave details of the work she has recently carried out after the tenant vacated in February this year. She explained that she had found it hard to engage tradespeople to complete all the work due to the effects of the pandemic and there were difficulties in progressing the external communal repairs. She is in touch with the Wheatley Group who provides a factoring service for this block of flats and is actively pursuing the external repairs in this regard. She also intends to have an electrical inspection carried out soon along with a service on the boiler and gas safety check. Mr Black offered to help the Respondent with her efforts to pursue the communal repairs with the Wheatley Group and the Respondent accepted.
6. The Tribunal considered all of the evidence it had obtained at the Inspection and noted at the Hearing.
7. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A property (house) meets the Repairing Standard if:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) The installations in the house 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,
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (h) The house meets the tolerable standard.

Findings in Fact

8. Having considered all of the evidence the Tribunal made the following findings in fact:
 - i) The Property is a former local authority first floor flat situated in a two storey block and located in a residential area south east of Dumfries town centre. The accommodation comprises a hall, living room, bedroom, kitchen and bathroom. There is a communal close entrance and stairway and garden ground to the rear. The property is currently unoccupied.
 - ii) There is no smoke detector in the living room.
 - iii) There is no heat detector in the kitchen.

- iv) The battery smoke detector in the hallway is not working.
- v) The Property does not have interlinked heat and smoke detectors.
- vi) There is a combi-boiler in the bedroom.
- vii) There is no CO monitor in the Property.
- viii) There is no mould on the bathroom ceiling.
- ix) The extractor fan in the bathroom is not working.
- x) The toilet in the bathroom is not connected and in working order.
- xi) The shower curtain rod in the bathroom is broken.
- xii) There is a new internal living room door with new hinges.
- xiii) The bedroom ceiling is in good condition.
- xiv) There is a ridge tile missing adjacent to the chimney stack on the roof of the Property.
- xv) The render on the chimney stack is cracked and missing.
- xvi) There are cracked and missing roof tiles on the roof of the Property.
- xvii) There is no current Electrical Installation Condition Report for the Property.
- xviii) There is no current Gas Safety Record for the Property.

Decision, Reasons and RSEO

9. The Tribunal considered all of the evidence and the submissions of Mr Black and the Respondent. Having done so the Tribunal found that there are no working smoke and heat detectors and no Carbon Monoxide ("CO") monitor in the Property. The Respondent stated that the Combi boiler is in working order but she was unable to demonstrate this because there was no power available at the inspection. The extractor fan in the bathroom is not working. There is a new toilet in the bathroom but this has not been connected yet. The shower curtain rod in the bathroom is broken. The bathroom and bedroom ceilings are in good condition and have been redecorated recently. The landlord has replaced the internal living room door and it was found to be in working order. On the outside of the Property there is a roof ridge tile missing adjacent to the chimney stack and the render on the chimney stack, to the front of the Property, is cracked and missing. There are also one or two roof tiles which are cracked and missing, to the front of the Property. The lack of smoke/heat detectors and CO monitor, and the aforementioned defects, were visible at the Inspection and agreed by Mr Black, for the Applicant, and the Respondent, at the Inspection and Hearing. It was also accepted by the Respondent that there is no current EICR or Gas Safety Record for the Property.
10. The Tribunal further considered whether or not the lack of compliance with the relevant legislation in relation to fire safety and the detection of carbon monoxide, the lack of a current EICR and Gas Safety Record and all the other defects, brought the Property below the Repairing Standard in terms of the provisions of the 2006 Act. Having considered all of the evidence and submissions, and made their findings in fact, the Tribunal found, on a balance of probabilities, that the Property is not wind and watertight and in all other respects reasonably fit for human habitation. The Tribunal further found that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. The Tribunal also found that the installations in the Property for the supply of water, gas and electricity and for

sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order. The Tribunal further found that fixtures, fittings and appliances provided by the Respondent under the tenancy are not in a reasonable state of repair and in proper working order and that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, nor for giving warning if carbon monoxide is present in a concentration that is hazardous to health and the Property does not meet the tolerable standard. The Tribunal therefore decided that the Property does not meet the Repairing Standard specifically in terms of Section 13 (1) (a), (b), (c), (d), (f), (g) and (h) of the 2006 Act.

11. The Tribunal accordingly determined that the Respondent has failed to comply with the duties imposed by Section 14 (1)(b) of the 2006 Act given the stated, and agreed, lack of heat, smoke and CO detectors and monitor, lack of an EICR and Gas Safety Record and the said defects detailed above.

12. The Tribunal have therefore decided to make an RSEO, as required by Sections 24 (I) and 24(II) of the 2006 Act, in the following terms:-

a) The Respondent is to carry out such works, and to provide appropriate documentation, to ensure that the Property complies with the Repairing Standard. Specifically the Respondent has to:-

i) Install new interlinked smoke and heat detectors in the property to comply with all current regulations and guidance, and

ii) Install a CO detector in the property to comply with current regulations and guidance, and

iii) Repair or replace the extractor fan in the bathroom of the Property to ensure that there is fan within that room which is in a reasonable state of repair and proper working order; and

iv) Complete the installation of the toilet in the bathroom of the Property to ensure that the toilet is in a reasonable state of repair and proper working order; and

v) Repair or replace the shower curtain rail in the bathroom of the Property to ensure that this is in a reasonable state of repair and proper working order; and

vi) Replace the missing tiles on the roof the Property, including the missing ridge tile adjacent to the chimney stack, to ensure that the roof is in a reasonable state of repair and the Property is wind and watertight; and

vii) Repair the render on the chimney stack at the Property to ensure that the stack is in a reasonable state of repair and that the Property is wind and watertight; and

viii) **Instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the property and exhibit a satisfactory EICR and PAT to the Tribunal; and**

ix) **Instruct a suitably qualified Gas Safe engineer to inspect the gas boiler, carry out a service and any necessary repairs to the boiler and thereafter inspect all the gas appliances at the property and provide the Tribunal with a satisfactory Gas Safety Record and written evidence of the service and any repairs carried out to the boiler.**

b) In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, and the extent of the remedial works which require to be carried out, the Tribunal determines that the RSEO requires to be complied with by 31st March 2022.

13. The decision of the Tribunal is unanimous.

Right of Appeal

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.

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: G McWilliams

Legal Member

Date: 19th November 2021