

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/22/4314

Property: 74/9 Restalrig Road South, Edinburgh EH7 6LE (“the property/house”)

Title Number: MID140760

The Parties:-

Miss Arantzazu Mora Bellido, 74/9 Restalrig Road South, Edinburgh EH7 6EL (“the Tenant”)

Mr Trevor Wilson and Mrs Iryna Wilson, 147 Flat 3, Bukovacka, Zagreb 10000, Croatia (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Andrew Murray (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 the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

By application, received by the Tribunal on 2 December 2022, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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’).

The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlord had failed to ensure that 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 and had not complied with the requirement that the house meets the tolerable standard. The Tenant referred in the application to two holes in the bathroom, one of them with direct access to the outside of the building and a dangerous and expensive heater.

The Tenant provided the Tribunal with copies of email exchanges with the Landlord's letting agents, which included (17 May 2022) an apology from the letting agents for the delay with the bathroom works, information that the work could not start because the contractor had had an accident on holiday and, having returned from holiday, had contracted COVID (August 2022), that the contractor would be starting on 28 November and (29 November 2022) that this had not happened because his plumber had COVID. On 25 January 2023, the letting agents had asked for access for an inspection on 31 January and for the work to be carried out on 27 February, but the Tenant said that she was unable to take more days off work and wished to wait until the Tribunal made its Decision.

The Landlord's agents provided written representations on 1 February 2023. They included an Electrical Installation Condition Report ("EICR") of 23 February 2022, which contained no C1 or C2 items of disrepair and stated that the installation was in generally good condition. They stated that, in April 2022, the Tenant had reported a flood in the bathroom. It had been investigated, but, as it is a concealed cistern, it would be necessary to employ both a plumber and a joiner, to remove all tiling, replace the defective part in the cistern and re-do the boxing and tiling as necessary. They provided a timeline of events since then. The first they had known of the holes in the bathroom was 22 December 2022. The heater in the living room was old, but had at no time been reported by a contractor as unsafe, nor had it been mentioned in the EICR. They stated that they understood the Tenant's frustration, that they had been trying to reschedule the works and are keen to arrange this as soon as possible

The Inspection

The Tribunal inspected the Property on the morning of 15 March 2023. The Tenant was present. The Landlord was not present or represented. A Schedule of Photographs, taken by the Tribunal at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

The Inspection was followed by a Hearing, held by means of a telephone conference call on the afternoon of 15 March 2023. The Tenant was not present or represented. The Landlord was represented by Ms Jenny Skeldon of Campbell Stafford Lettings, Edinburgh. She repeated that the Landlord is eager to carry out the necessary works, but it would be necessary for the plumber and joiner to work together and for the Tenant to provide access.

Having concluded giving evidence, Ms Skeldon left the Hearing, and the Tribunal Members considered all the evidence written and oral, that had been presented to them, together with the evidence the Tribunal had seen at its Inspection.

Reasons for Decision

The Tribunal noted the following at the Inspection:

1. There is a hole, approximately 30cms square in the wall behind the w.c. and the window ledge tiling is loose.
2. The front casing of the night storage heater in the living room is partially detached.

The Tribunal noted that the hole in the wall would have been made during investigations into the reported flooding in the bathroom in April 2022 and that there had been delays in carrying out the necessary remedial work. Nevertheless, the existence of the hole means that the Property does not meet the repairing standard. The night storage heater is a fitment, rather than a portable appliance, so would have been included in the EICR inspection, but its front casing requires to be re-fitted. The Tribunal decided, therefore, to make a Repairing Standard Enforcement Order.

The Tribunal considered that a period of 6 weeks should be allowed for the Landlord to carry out the works required by the Order it has decided to make, but would encourage the Landlord to progress matters as quickly as possible. The Tenant will have to allow reasonable access for the work to be done, but the Landlord should ensure that the contractors turn up when scheduled to do so, to avoid the Tenant having to take time off work unnecessarily.

The decision of the Tribunal was 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.

G Clark

Signed

Date: 15 March 2023
George Clark (Legal Member/Chairman)

Housing and Property Chamber First-tier Tribunal for Scotland



Housing

(Scotland) Act 2006: Schedule of Photographs

Property: 74/9 Restalrig Road South Edinburgh EH7 6LE

Chamber Reference : FTS/HPC/RP//22/4314

Inspection Date: 3/15/2023 - 10.00am

In attendance:

Ms Ms Bellido (tenant)

Mr G Clark (tribunal legal member)

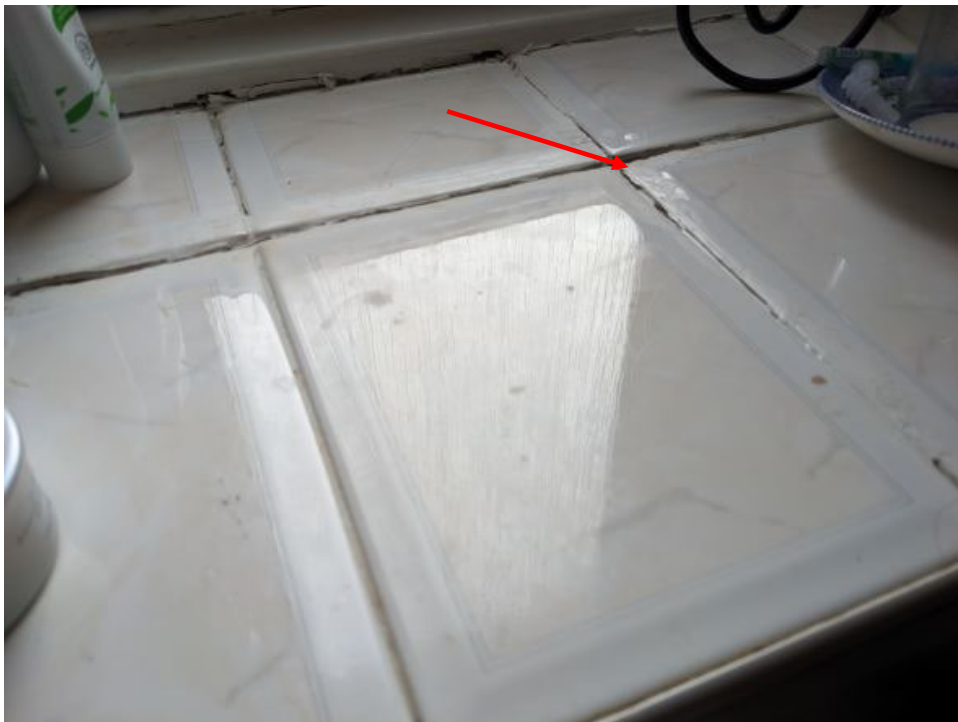
Mr A Murray (tribunal surveyor member)



1 Front elevation 74/9 Restalrig Road South



2 Hole behind bathroom WC



3 Loose tiling at bathroom window sill



4 Heater in living room

Andrew Murray FRICS MIFireE ; Date of report: 15/03/2023