

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/22/0944

Re: Flat 2/2, 65 Inglefield Street, Glasgow, G42 7AN (“ the house”)

Land Register Title No: GLA1253

The Parties:

Glasgow City Council –NRS Private Sector Housing, 3rd Floor Samaritan House,79 Coplaw Street, Glasgow G42 7JG (“the third-party applicant”)

Mrs Kishwar Babar and Mr Babar Magsood, residing at the house (“the tenants” (non-participating parties)

Mr Sanjay Sharma, 71 Ninian Crescent, Kirkintilloch G66 3RJ and Mr Vikas Sharma, 4 Greenside Place, Bearsden G61 4RY (“the landlords”)

Tribunal Members – Sarah O'Neill (Legal Member) and Nick Allan (Ordinary (Surveyor) Member)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have 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 all the available evidence, determines that the landlords have not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 1 April 2022, the third-party applicant applied to the tribunal for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In its application, the third-party applicant stated that it believed the landlords had failed to comply with their duty to ensure that the house met the repairing standard as set out in section 13(1) (c) (f) and (g) of the Act. The application stated that the landlords had failed to ensure that:

- the installations in the house for the supply of water, gas and electricity and for sanitation, space and heating water are in a reasonable state of repair and in proper working order
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
- the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. The third-party applicant complained that:

1. There are no compliant smoke/heat detectors or carbon monoxide monitors in the house.
2. No gas safety certificate has been provided.
3. No Energy Installation Condition Report (EICR) has been provided.
4. There is no handle on one of the bedroom doors.

4. An amended application form was received from the third-party applicant on 8 April 2022 in response to a letter from the tribunal administration. The original application form had named only Mr Sanjay Sharma as landlord and Mrs Babar as tenant. The application form was amended to include the details of both landlords and both tenants in relation to the house.

5. On 22 April 2022, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President.

6. The tribunal issued a direction to the parties on 23 May 2022. This directed the landlords to provide to the tribunal by 14 June 2022 an up to date and compliant gas safety certificate and an up to date EICR produced by a suitably registered contactor by 23 May 2022. It also directed the third-party applicant to confirm whether the tenants would be present to allow access to the house for the tribunal's inspection on 21 June 2022, and whether the tenants would require an interpreter to be present. A response was received by email from Mr Sanjay Sharma, one of the joint landlords, on 26 May 2022. A response was received

by email from Mr John Dundas, Community Relations Officer with the third-party applicant, on 31 May 2022.

7. The tribunal later noted that as part of his response, Mr Sharma had forwarded an email from Mr Dundas dated 20 April 2022, which appeared to have been sent to the tribunal administration. The email referred to a gas safety certificate, EICR and legionella assessment as being attached. On investigation, it appeared that this email had never been received by the tribunal administration. The tribunal therefore wrote to Mr Dundas, asking him to send these documents on to the tribunal administration. A copy of these documents was received from Mr Dundas on 15 June 2022.

The inspection

8. The tribunal inspected the house on the morning of 21 June 2022. The weather conditions at the time of the tribunal's inspection were dull and overcast. The tenants were present at the inspection. The third-party applicant was not present or represented. Neither of the landlords were present or represented. Also present at the inspection was Ms Fauzia Ameen, an Urdu interpreter, who was there to interpret for the tenants.
9. Photographs were taken during the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

The house

10. The house is a second floor flat within a four-storey Victorian tenement building.

The hearing

11. A hearing was held by teleconference on 21 June 2022. The third-party applicant was not present or represented. Mr Sanjay Sharma, one of the joint landlords, was present. Ms Ameen was also present initially, but the tribunal advised her that as the tenants (who were non-participating parties) were not present, her services were not required.
12. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the third-party applicant, in terms of rule 29 of the 2017 rules.

The evidence

13. The evidence before the tribunal consisted of:

- The original application form completed by the third-party applicant received on 1 April 2022 and the amended application form received on 8 April 2022.
- Repairs notification letter from the third-party applicant to Mr Sanjay Sharma, one of the landlords, dated 8 December 2021.
- “Landlord summary” document relating to the house prepared by the third-party applicant.
- Copy tenancy agreement between the landlords and the tenants dated 1 September 2019.
- Various email correspondence between Mr Dundas and Mr Sharma dated between 14 December 2021 and 23 February 2022.
- Registers Direct copy of Land Register title GLA1253.
- Scottish Landlord Register registration details for the property.
- Written representations received from Mr Sharma on 26 May 2022.
- Emails received from Mr Dundas on 31 May and 15 June 2022.
- EICR dated 11 April 2022 relating to the house produced by Heat It Up Ltd, Newton Mearns, received from Mr Dundas on 15 June 2022.
- Gas Safety Certificate dated 11 April 2022 relating to the house produced by Heat It Up Ltd, Newton Mearns, received from Mr Dundas on 15 June 2022.
- The tribunal’s inspection of the house.
- The oral representations of Mr Sharma at the hearing.

Summary of the issues

14. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlords have complied with the duty imposed on them by section 14 (1) (b).

Findings of fact

15. The tribunal made the following findings in fact:

- The house is owned jointly by Mr Sanjay Sharma and Mr Vikas Sharma, who are also the registered landlords in relation to the house.

- There was a tenancy in place between the landlords and the tenants which commenced on 1 September 2019.
- The landlords had provided to the tribunal a valid gas safety certificate dated 11 April 2022 in respect of the house which had been produced by a Gas Safe registered engineer.
- The landlords had provided to the tribunal a valid EICR dated 11 April 2022 in respect of the house which had been produced by a NAPIT registered electrical contractor.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. Smoke alarms had been fitted in the hall and the lounge, which was also being used as a bedroom (photographs 5 and 8 of the photograph schedule).
 - ii. There was a heat sensor in the kitchen (photograph 6).
 - iii. The smoke alarms and heat sensor were interconnected, and when tested by the tribunal were all functioning correctly.
 - iv. There was a wall mounted carbon monoxide monitor installed in the kitchen adjacent to the boiler (photograph 7). The monitor was functioning correctly.
 - v. The bedroom door and door frame had been damaged. The door appeared to have been forced open (photographs 3 and 4). The door handle had been replaced and was functioning correctly (photograph 2).

Reasons for decision

16. The tribunal considered each of the complaints made by the third-party applicant in turn, as set out below.

1. Smoke/heat detectors and carbon monoxide monitor

17. The tribunal observed during its inspection that smoke alarms had been fitted in the hall and the lounge, which was also being used as a bedroom. There was also a heat sensor in the kitchen. The smoke alarms and heat sensor were interconnected, and when tested by the tribunal these were all functioning correctly.

18. The tribunal also observed during its inspection that there was a wall mounted carbon monoxide monitor adjacent to the boiler. The monitor was functioning correctly.

19. The tribunal determined that the house has satisfactory provision for 1) detecting fires and for giving warning in the event of fire or suspected fire and 2) giving warning if carbon monoxide is present in a concentration that is hazardous to health.

2. Gas safety certificate

3. Energy Installation Condition Report (EICR)

20. The tribunal was satisfied that the gas safety certificate which had been provided by the landlord had been produced by a Gas Safe registered engineer and that it showed that the gas installation was satisfactory.
21. The tribunal was also satisfied that the EICR which had been provided by the landlord had been produced by a contractor who was a member of NAPIT member and that it showed that the electrical installation was satisfactory.
22. The tribunal therefore determined that the installations in the house for the supply of water, gas and electricity and for sanitation, space and heating water are in a reasonable state of repair and in proper working order.

4. Bedroom door handle

23. The tribunal observed at its inspection that the bedroom door and door frame had been damaged. The door appeared to have been forced open. The door handle had been replaced and was functioning correctly.
24. It therefore determined that the handle on the bedroom door was in a satisfactory state of repair and in proper working order.

Observation by the tribunal

25. The tenants told the tribunal during the inspection that their main complaint was in fact that mice had been entering the house. They pointed to several areas in the bathroom and the lounge/bedroom which they said were entry points for mice (photographs 9,10 and 11).
26. The tribunal was unable to consider this complaint as it was not part of the application. It observed, however, that if necessary, it was open to the third-party applicant - or the tenants - to make a separate application to the tribunal about this matter. The tribunal raised the issue with Mr Sharma at the hearing. Mr Sharma said that he had been unaware of any issues with mice. He told the tribunal that he would

contact the tenant straight away to arrange for an appropriate contractor to visit the property and investigate this matter.

Summary of decision

27. On the basis of all the evidence before it, the tribunal determined that the landlords have not failed to comply with the duty under section 14(1) (b) of the Act. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the application.

Rights of 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.

Signed

Date...28 June 2022

Sarah O'Neill, Chairperson