

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RT/23/1265

Title No: MID64269

35 Eskview Terrace, Musselburgh EH21 6LT ("The Property")

The Parties:-

East Lothian Council, Housing Options Team, Brunton Hall, Ladywell Way, Musselburgh EH21 6AF ("the third party applicant")

Miss Janice Monteith, residing at 35 Eskview Terrace, Musselburgh EH21 6LT ("the tenant")

Mr Craig Oliver and Mrs Rochelle Oliver, 34 Denholm Road, Musselburgh EH21 6TU ("the Landlords")

Tribunal Members: R Mill (Legal Member) and M Links (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlords have not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The third party applicant local authority applied to the tribunal for a determination of whether the landlords have failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the third party applicant stated that the landlords had failed to comply with their duty to ensure that the

property meets the repairing standard according to section 13(1)(a), (b), (c), (d), (e), (f), (g) and (h), which set out the following obligations:-

- whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- whether 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.
- whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
- whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- whether any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
- whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- whether the house does not meet the tolerable standard.

3. On 14 June 2023 the tribunal issued a direction requiring the landlords to produce the following evidence no later than 10 July 2023. This was not complied with.

- 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, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
- a copy of a current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection and a corresponding report regarding the condition of the heating system.

Inspection

4. The tribunal inspected the property on 28 July 2023 at 10.00 am. The tenant permitted entry to the tribunal. The third party applicant and landlords were invited but did not attend.

Hearing

5. Following the inspection of the property, the tribunal convened a hearing at 2.00 pm at George House, 126 George Street, Edinburgh EH2 4HH. The tenant appeared personally. The third party applicant and landlords were invited but did not attend.

Summary of Issues

6. The issues to be determined by the tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
7. The written application raised a large number of concerns. All aspects of the repairing standard in terms of the 2006 Act were put at issue.

Relevant History

8. Following a complaint from the tenant to East Lothian Council an inspection was performed on 3 March 2023. The assessment was undertaken with reference to the Housing (Scotland) Act 1987 (as amended) and also with regard to the repairing standard set out in the 2006 Act. It was found that the property had failed to meet the tolerable standard due to the absence of provision for the detection of fire and carbon monoxide. Concerns existed in relation to the electrical installation. Otherwise it was noted that the property did not appear to be wind and watertight. There appeared to be penetrating damp within parts of the property and an area of east facing wall of one of the bedrooms was wet to touch and there was discolouration of wallpaper in areas of the property. It had been reported that a number of radiators were reported not to work. There were other items of disrepair noted including the fridge and freezer being broken, together with some fixtures and fittings being broken such as floor tiles in the kitchen and bathroom and doorhandles in the property which were missing.

Findings in Fact

9. The tribunal makes the following findings in fact (as at 28 July 2023):
 - a. The title to the subjects known as 35 Eskview Terrace, Musselburgh EH21 6LT is held by the landlords in the Land Register for Midlothian MID64269.
 - b. The property which is the subject of this application is an upper two bedroomed flat. The property is comprised of a hallway, living room, kitchen, two bedrooms and bathroom.
 - c. Externally the property showed signs of neglect. The gutterings were noted to be corroded at the joints and the render around the chimneyhead on the gable end was noted to be cracked.
 - d. There was no provision for the detection of smoke and fire in the property.
 - e. There was no provision for the detection of carbon monoxide in the property.
 - f. The integral fridge freezer, supplied as part of the tenancy, was noted to be broken.
 - g. There were cracked, broken and loose floor tiles in both the kitchen and bathroom.
 - h. There was evidence of water staining, evidencing water ingress, at multiple points throughout the property on the walls at ceiling level.
 - i. There was evidence of damp and mould in areas of the property, in particular on the gable end wall in the bedrooms.
 - j. The door handles and latch mechanism are missing from the internal hallway door. It cannot be closed. The latch mechanism in the rear bedroom door does not function. It cannot be closed.
 - k. The gas central heating radiators were reported not to be working as was the electric focal point radiator in the living room.
10. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision.

Reasons for Decision

11. The tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection. Reference is made to the tribunal's findings in fact and the corresponding schedule of photographs..
12. The tribunal is only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the inspection and hearing on 28 July 2023.
13. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
14. The landlords have failed to engage in this process. They have not opposed the application. They have failed to correspond with the local authority and have failed to adhere to the direction earlier issued by the tribunal.
15. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The Tribunal determined that the landlord be provided with a period of 6 weeks to carry out these works which is reasonable given the nature and extent of the works. There will now be serious legal consequences if they fail to comply with the tribunal. The landlords should prioritise as a matter of urgency the installation of smoke, heat and carbon monoxide detectors.

Unregistered landlords

16. To the knowledge of the tribunal the landlords are not registered landlords. This is a criminal offence. The tribunal is obliged to refer this matter to the local authority under section 72 of the Private Housing (Tenancies) (Scotland) Act 2016 for further investigation.

Decision

17. The tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlords have failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

Right of Appeal

18. 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

19. 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.

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