

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/17/0319

4 Easdale, East Kilbride, G74 2EB ("The House")

The Parties:-

Mr Jack Taggart and Ms. Caitlin McConnell, formerly residing at 4 Easdale, East Kilbride, G74 2EB

("The Tenants")

Per their Agent Mr Martin Taggart, 11 Ermelo Gardens, East Kilbride G75 9DP

Mr Vincent Paterson, EK Business Centre, 14 Stroud Road, East Kilbride, G75 0YA; 7 Lodge Cottages, Elvanfoot, Biggar, ML12 6TQ

("The Landlord")

Per his Agent Angel Homes, 6 Main Street, East Kilbride G74 4JH

("The Landlord's Agent")

Tribunal Members – Morag Leck (Chairperson) and Carol 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 the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (the Act) in relation to the House concerned, and taking account of all the available evidence, determines that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal's decision is unanimous.

Background

1. By application comprising documents received between 14th August 2017 and 17th August 2017, the Tenants applied to the Tribunal 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").

2. The application stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and water tight and in all other respects reasonably for human habitation (as required by section 13(1)(a) of the Act) ; and
 - (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 (as required by section 13(1) (b) of the Act).
3. The Tenants referred in the application to the following: - "We have reported serious damp and mould issues within the flat. Initially the landlord refused to fix it due to the room causing it being "uninhabitable". This was addressed by Mr M. Taggart (father). An agreement was reached to investigate but no action is being taken with little or no correspondence received". They also added in their application that work requiring to be done included "walls needing re-insulated and re-plasterboarded. Monitor to gauge moisture in flat." In email correspondence included with the application the tenants also complained that the dishwasher did not work.
4. By Minute dated 28th August 2017, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.
5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants on 8th September 2017. An inspection of the house and a hearing were fixed for 23rd October 2017.
6. Following service of the Notice of Referral, written representations were received from the Landlord's agent per Carina Doherty, Angel Homes Ltd by email dated 19th September 2017 advising that the tenants were moving out at the end of the month. The email also stated that contractors had called at the property on numerous occasions who had informed Angel Homes that "the apparent dampness" was a lifestyle issue due to washing hanging up and the flat not being properly ventilated. She also stated that the landlord had been happy to have a meter installed to record temperatures but the tenants had handed their notice in.
7. A further email was received from Ms Docherty on 29th September 2017 advising that the tenants had left the property and attaching photographs of the property which she suggested showed that there were no signs of dampness in the property. She added that the property had not been left in a clean condition and a child had drawn on a bedroom wall causing damage where the tenants had tried to wipe it off.
8. A further email was sent by Ms Doherty on 4th October confirming the tenants had vacated on 28th September 2017 and referencing her previous email of 29th

September 2017. This email also referred to deductions for the cleaning of the property and repainting of a damaged wall.

9. Mr Martin Taggart the Tenants' representative confirmed by email dated 4th October that the Tenants had vacated the property on 28th September 2017. The Tribunal elected to continue with the application in the public interest and a Minute of Continuation was issued on 11th October 2017.
10. Following receipt of the Minute of Continuation, the Landlord's agent, Ms Docherty again emailed the Tribunal on 13th October 2017 submitting further photographs of the property and repeating comments made in her previous emails including that the Tenants had been advised on numerous occasions to stop drying wet washing in the house and open windows to vent the property but they had said this was a security risk. They also had to be shown how to open the trickle vents on the windows. The email also stated this was a young couple living for the first time on their own and suggested that they did not know how to look after a property as after the first week they had blocked the toilet with baby wipes and the landlord did not charge them for clearing this.
11. The Tribunal inspected the House on the morning of 23rd October 2017. The Tenants were neither present nor represented, no longer being the Tenants of the House. The landlord was not present. Ms Carina Doherty attended on behalf of the Landlord's agent and introduced herself as the manager of Angel Homes Ltd. She explained that the house had been re-let to a new tenant the previous week. She indicated that she was in attendance to facilitate the inspection which she had only recently been made aware was going ahead but was not certain if she would be able to attend the hearing given other commitments. As far as she was aware the Landlord would not be attending the hearing.

The House is a ground floor flat in a refurbished four storey block of flats dating from around the 1960s. It is located in the St Leonards district of East Kilbride in South Lanarkshire and is situated around one mile south east of the main town centre. The accommodation comprises two bedrooms, living room, kitchen, bathroom and large walk in storage/service cupboard.

Photographs were taken during the inspection and are attached as a schedule to this decision.

12. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Glasgow. There were no parties in attendance. The Tribunal was advised that Ms Doherty had sent an email intimating that she was unable to attend. She had also advised that a carbon monoxide detector would be fitted the next day. This email together with another email from Ms Doherty dated 25th October 2017 were later provided to the Tribunal after the hearing. The second email attached a brief inspection report by the agent's contractor following the Tribunal's inspection of the property and related emails. It stated that in the writer's opinion the property was in a good wind and water tight condition. The writer referred to the need for adequate ventilation of the property and the problem of drying clothes.

Summary of the issues

13. The issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

Findings of fact

14. The Tribunal finds the following facts to be established:-

- (a) The Tenant entered into a Short Assured tenancy agreement with the Landlord per the Landlord's Agent with a start date of 28th April 2017.
- (b) The Landlord is recorded on the lease as Vince Paterson.
- (c) Vincent Paterson is the registered owner of the House.
- (d) The Tenant ceased to occupy the House on 28th September 2017.
- (e) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- (f) The Tenants notified the Landlord by email correspondence between June and August 2017 of all the repair issues detailed in their application. These repairs included notification that the dishwasher in the house was not working. The Landlord's agent had acknowledged intimation of the dishwasher problem. The Tribunal therefore included the dishwasher within the scope of their consideration of the application notwithstanding it was not referred to on the application form.
- (g) The Tribunal at its inspection on 23rd October 2017 carefully checked the items which were the subject of the complaint during the inspection. The Tribunal observed the following :-
 - a. There was condensation on the kitchen window. The Tribunal noted there was no extractor fan in the kitchen. Ms Doherty advised that an engineer had looked at the dishwasher the previous Friday and it was faulty. Initially the agents had thought it was not plumbed in properly. A new dishwasher had been ordered. She would check with the Landlord when it was to be delivered. She also referred to new central heating and a boiler being installed just before the previous tenants had moved in. The Tribunal pointed out that proof of purchase and installation of a new dishwasher should be submitted.
 - b. There was condensation on the bathroom window. The Tribunal noted there was no extractor fan in the bathroom.
 - c. The boiler was located in the large walk in cupboard. The Tribunal noted there was no carbon monoxide detector located nearby. Ms Doherty advised that if there was no detector then she would have

installation instructed immediately. Damp meter readings were taken in the cupboard which indicated low and moderate readings.

- d. There was condensation on the window of the smaller bedroom. Damp meter readings were taken, these showed high readings along the base of the external wall and these moisture readings were noted to be higher on the right hand side of the external wall than the left.
- e. There was condensation on the window of the larger bedroom. Damp meter readings were taken and a high moisture readings were recorded to the base of the external wall.
- f. There was condensation on the window of the living room. It was noted clothes were drying in the living room. Ms Doherty referred again to the lifestyle issues which had all been referred to in her email representations on behalf of the landlord. Damp meter readings were taken in the living room and high moisture readings noted at the base of the external wall.
- g. There was no evidence of mould in any of the rooms during the inspection and the Tribunal noted that the window trickle vents were open.
- h. Smoke detectors were noted in the hall and living room and heat detector in the kitchen

Reasons for the decision

15. The Tenant had complained that there was a serious problem with dampness and mould in the House.

The Tribunal noted from the inspection on 23rd October 2017 that was no evidence of mould. There was condensation on all windows of the House and dampness meter readings in the two bedrooms and living room showed high meter readings on the external walls of each room. The tribunal considered all of the written representations which had been put forward on the Landlord's behalf by the Landlord's agent which suggested that essentially the problem was caused by a lifestyle issue particularly the drying of clothes in the property and referred to views which had been expressed by contractors who had inspected the House . The Tribunal however, were not persuaded that the high moisture readings recorded in the living room and bedrooms could be attributed solely to the difficulties suggested on behalf of the landlord and were of the view that specialist investigation would be required to establish the cause of condensation/damp in the property.

Accordingly, the Tribunal is not satisfied that:- (i) the house is wind and watertight and in all other respects reasonably fit for human habitation; and (ii) 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. The Tribunal therefore determines that there is a breach of the repairing standard in this regard.

16. The Tenants had also complained that the dishwasher was not working. This was acknowledged by Ms Doherty at the Tribunal's inspection. She had advised that

the dishwasher would be replaced. The Tribunal notes that no further information in this regard has been provided to the Tribunal since the inspection on 23rd October 2017.

Given the circumstances set out above the Tribunal is not satisfied that: - any fixtures fittings and appliances provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed. The Tribunal therefore determines that there is a breach of the repairing standard in this regard.

Observations

17. Whilst, it was not included in the tenant's application, the Tribunal noted during the inspection that there was no carbon monoxide detector in the House and accordingly the house does not meet the current required standards. This should be rectified forthwith in order to meet the repairing standard.

Decision

- a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- b) The decision of the Tribunal was unanimous.

Right of Appeal

A Landlord, Tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

- c) Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M Leck

Signed
Chair and Legal Member ✓

Date 13/11/17

This is the Schedule of
Photographs referred to in
the foregoing decision.

M Leck

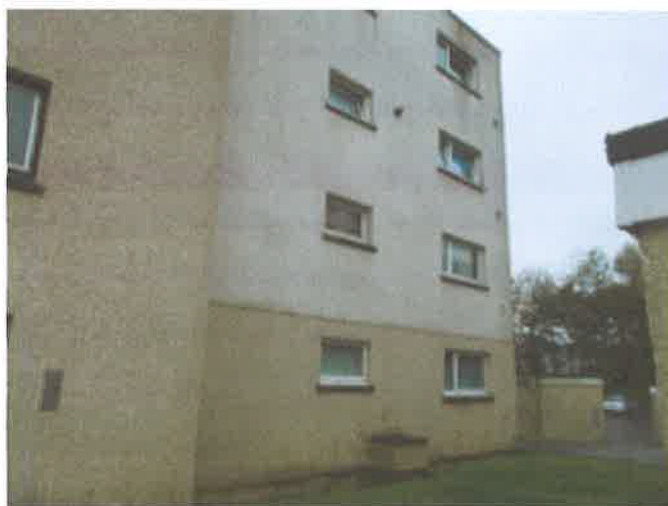
Housing and Property Chamber
First-tier Tribunal for Scotland



Legal
Convenor

Schedule of photographs taken during the inspection of 4 Easdale, East Kilbride G74
2EB by the First-tier Tribunal for Scotland (Housing and Property Chamber)
23 October 2017

Reference Number : FTS/HPC/RP/17/031



Front Elevation



Kitchen - Dishwasher



Kitchen



Bathroom



Large walk in cupboard



Large Bedroom



Large bedroom - showing condensation on window



Small Bedroom



Living Room



Living Room



Living Room - showing condensation on windows



Living Room - high moisture reading to base of external wall



Large bedroom - high moisture reading to base of external wall



Rear Elevation



Rear Elevation