



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

Statement of a Decision of the First Tier Tribunal Housing and Property Chamber regarding the Landlords' compliance with a Repairing Standard Enforcement Order in terms of Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/21/0262

Re: Property at 141/PF3 Broughton Road, Edinburgh EH7 4JJ ("the Property")

The Parties:

Mr Kamal Chowdhury, 141/ PF3 Broughton Road, Edinburgh, EH7 4JJ ("The Tenant")

Mr Ruan Ua Duineain, C/O Albany Lettings, 168 Bruntsfield Place, Edinburgh, EH10 4ER ("The Landlord")

Tribunal Members – Richard Mill (Legal Member) and Andrew McFarlane (Ordinary Member)

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Decision

The Property meets the Repairing Standard. The Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary. The application is Dismissed.

Introduction

By application dated 1 February 2021, the Tenant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber for determination of whether his Landlord had failed to comply with the duties imposed by section 14 of the Housing (Scotland) Act 2006 in respect of the property.

Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, this Case Management Discussion (CMD) was arranged, in order to discuss

further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.

A Case Management Discussion (CMD) was fixed to take place on 30 March 2021 at 10.00 am. Notices of Referral were issued to both parties on 19 February 2021.

The narrative provided by the Tenant in support of the application dated 1 February 2021 referred to the corroded and leaking gas boiler with a lack of hot water and heating.

Within 14 days of the application being submitted, on 12 February 2021 the Tribunal received correspondence from the Tenant indicating that he did not wish to continue with his application. He stated that the gas boiler had been replaced and all problems resolved. The Tribunal considered whether or not the application should be determined or whether or not it should be abandoned, all in terms of Schedule 2, paragraph 7(3) of the Act. The Tribunal considered that due to the complaints about the gas boiler that the application did raise issues of health and safety concern for the existing Tenant, and also for future occupiers. In the circumstances, the Tribunal determined to continue with consideration of the application. The Tribunal also issued a Direction, on 19 February 2021. The Direction required the Landlord to produce :

1. A copy of the invoice relative to the installation of the new gas boiler.
2. A Gas Safety Certificate relative to the new gas boiler.
3. Confirmation of the existence of a carbon monoxide detector within the property, installed in accordance with the current Scottish Government Guidelines.
4. Photographs of the new gas boiler and carbon monoxide detector in position in the property (it is expected that the Landlord may obtain these directly from the Tenant for onward production).

On 3 March 2021 the Landlord's letting agent lodged documents in response to the Tribunal's Direction.

The CMD took place on 30 March 2021 at 10.00 am by teleconference. Neither the Landlord or his letting agent joined the hearing. The Tenant did not participate which was unsurprising given his earlier indication that he did not wish to insist upon his application.

Discussion

The Tribunal fully discussed and evaluated the documentary evidence available in the absence of either party. The Tribunal concluded that it was possible to determine the application fully in the absence of any further input from the parties and in the absence of any further documentary evidence.

In the application it is stated that the requirements contained within subparagraph (c) of Section 13(1) of the Act were applicable which are in the

following terms:-

- (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.

The Landlord has cooperated with the Tribunal process. Items of documentary evidence have been provided by his letting agent in response to the Tribunal's Direction and to vouch the position in respect of the gas installations.

The landlord's letting agent has produced :

1. An invoice dated 11 February 2021 relative to the installation of the new gas boiler.
2. A gas safety certificate dated 9 February 2021

The Gas Safety Certificate produced by the Landlord is dated 9 February 2021 and is produced by a registered gas engineer (Gaswarm Services Ltd). There are two gas appliances in the property, which are the gas central heating boiler and the gas hob. The Certificate records that there are carbon monoxide detectors fitted in respect of both the boiler and the hob, which are in date and have been tested satisfactorily.

The Gas Safety Certificate raises an issue with the hob – the clearance from the hob to Inuit (thought to be a typographical error and should be "unit"), at the side, is less than 150mm. The Tribunal is aware that new gas hobs come with their own specifications regarding minimum clearances. These spaces at the sides of such appliances ought to be far greater than ever traditionally allowed for in terms of kitchen design and planning. The greater distances required now can make the use of a gas hob impractical. The Tribunal concluded that the 'defect' was not one which has any material impact upon the safety of the tenant or other occupiers of the property. The issue raised by the gas engineer is of a recommendation and guidance category. The gas appliance is safe.

No photograph of the boiler and carbon monoxide detector were produced by the Landlord. His letting agent advised by email that a request had been made to the Tenant for this but it had not been produced. Given ongoing covid-19 restrictions there is no criticism of the Landlord or his letting agent for failing to attend and obtain photographs directly. The requirement for photographs is obviated by the terms of the documentary evidence otherwise produced.

Tribunal Findings

The gas installations in the property are satisfactory, are in working order and are safe. There is adequate provision for the detection of carbon monoxide.

Reasons for Decision

The Tribunal determined the application having regard to the original bundle of papers issued to parties together with the additional documents produced on behalf of the Landlord.

The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference at the teleconference hearing.

The Tribunal was satisfied that the component of the Repairing Standard put at issue was not breached. The Tribunal attached weight to the documentary evidence produced on behalf of the landlord which are all unchallenged and found to be both credible and reliable.

There were no issues or other concerns outstanding which required the Tribunal to consider that an on-site inspection was necessary.

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.

Effect of section 63 of the Act

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 : **R Mill**
Legal Member

Date : 30 March 2021