

Housing and Property Chamber First-tier Tribunal for Scotland



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: PRHP/RP/16/0019

Re: Property at 23b Nile Street, Kirkcaldy, Fife KY2 5AX (“the Property”)

Land Certificate No: FFE26206

The Parties:-

Zakaullah Raja Begum, residing sometime at 26 Kent Road, Dunfermline, thereafter at 25g Dunnikier Road, Kirkcaldy, Fife KY1 2RU and now at 251 Tideslea Path, Thamesmead, London SE28 0NH (“the Landlord”) and

Piotr Wozniak, residing sometime at 23b Nile Street, Kirkcaldy, Fife KY2 5AX (“the Tenant”)

Tribunal Members; George Clark (Legal Chair) and David Godfrey (Ordinary Member)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order in respect of the Property made on 27 April 2016, determined, in terms of Section 26 (1) of the Housing (Scotland) Act 2016 that the Landlord had failed to comply and that the failure should be reported to the local authority and the police.

Background

1. By application received on 19 January 2016 the Tenant applied to the Private Rented Housing Panel 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 by the Tenant stated that the Tenant 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 fit for human habitation,
 - (b) 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,
 - (c) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order
 - (d) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire, and

(e) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. By letter dated 15 March 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee ("the Committee").
4. The Committee inspected the Property on the morning of 27 April 2016.
5. The Committee comprised George Clark (chairman) and David Lawrie (surveyor member).
6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Linktown Community Action Centre, Ramsay Road, Kirkcaldy KY1 1UH.
7. Following the inspection and hearing, the Committee made a Repairing Standard Enforcement Order ("the Order") in respect of the Property. The Order required the Landlord:
 - To install in the Property interlinked, mains-wired smoke detectors and in the hallway and living room and a heat alarm in the kitchen, all of which comply with the revised Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.
 - To install one or more carbon monoxide detectors in the Property to comply with the Scottish Government's Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, which came into effect on 1 December 2015.
 - To carry out such repairs to the roof, including the slatework, defective rones and associated flashings as are necessary to make the Property wind and water tight.
 - To instruct a suitably qualified electrician to replace the cooker extraction hood in the kitchen or to carry out such repairs to the existing extraction hood as are necessary to restore it to proper working order.
 - To instruct a suitably qualified Gas Safe engineer to carry out such repairs to the gas fire in the living room as are necessary to restore it to proper and safe working order or to disconnect it.
 - To carry out such work as is necessary to repair the leak from the pressure valve adjacent to the boiler.
 - To exhibit to the Committee a current Gas Safety Certificate in respect of the Property, including the boiler and the gas fire.

The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of 4 weeks from the date of service of the Notice on the Landlord. On 27 July 2016, at the request of the Landlord, the Committee granted an extension of time for the Landlord to complete the works required by the Order, the period of extension being 6 weeks from the date that the variation was notified to the Landlord.

8. The jurisdiction of the Private Rented Housing Panel was transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016.
9. A reinspection of the Property, scheduled for 21 December 2016 was cancelled by the Landlord due to a family illness. A further reinspection was scheduled for 1 March 2017, but was brought forward, at the request of the Landlord, to 7 February 2017. On the day the reinspection was due to take place, however, the Landlord contacted the Tribunal to

say he was not available to attend. Accordingly, the reinspection and hearing were rescheduled for 1 March 2017.

10. The Tribunal comprised George Clark (Legal Chair) and David Godfrey (Ordinary Member).
11. The Tribunal reinspected the Property on 1 March 2017. The Tenant, having vacated the Property, was not present or represented at the reinspection or the subsequent hearing. The Landlord was not present at the reinspection, but was represented by his brother Q. Raja. The Landlord was not present or represented at the hearing.
12. A copy of the reinspection report, incorporating photographs taken at the reinspection, is attached to and forms part of this Decision.
13. Following the reinspection, the Tribunal held a hearing at Linktown Community Action Centre, Ramsay Road, Kirkcaldy.

Summary of the issues

14. The issue to be determined was whether the Landlord had carried out the works required by the Order and had, therefore, complied with the Order.

Findings of fact

15. The Committee finds the following facts to be established:-
 - The Landlord has installed interlinked, mains-wired smoke detectors in the hallway and living room and a heat detector in the kitchen, as required by the Order.
 - The Landlord has not installed any carbon monoxide detectors in the Property.
 - The Tribunal was unable to inspect the flashings behind the chimney to the rear of the Property, but there is no evidence of any repairs having been carried out to the rones or downpipes. The Property has been redecorated since the time of the original inspection, but there is still visible evidence of past staining on the living room ceiling. The Landlord has not provided any evidence, such as contractors' receipts, in respect of repairs to the roof and associated flashings.
 - The cooker extraction hood in the kitchen has not been replaced. It was functioning at the time of the reinspection, but its light was not working.
 - There is no evidence of any repair having been carried out to the gas fire in the living room and it does not appear to have been disconnected.
 - There is no evidence of any remedial work having been carried out to the central heating boiler to repair the leak at the pressure valve.
 - The Landlord has not exhibited to the Committee a Gas Safety Certificate in respect of the Property, including the boiler and gas fire.

Reasons for the decision

16. The Tribunal held that only one of the 7 items included in the Order appeared to have been attended to by the Landlord. At the reinspection, the Landlord's representative stated that he would obtain and forward to the Tribunal receipts for work he was sure would have been done to the roof and flashings, rones and downpipes and for repairs to the pressure valve. He stated that he would also exhibit the Gas Safety Certificate, but neither the Landlord nor his representative subsequently produced any further paperwork for the Tribunal to consider. The Committee understood that the Property was currently being advertised for sale, but was concerned that a purchaser might intend to let the Property to tenants or that the Property might be withdrawn from the market and re-let by the Landlord. The matters which remained outstanding had significant health and safety implications for any future occupiers of the Property.
17. The Tribunal accordingly determined that the Landlord had failed to comply with the Order and that the failure should be reported to the police and the local authority.

18. The Tribunal was unable to consider making a Rent Relief Order in respect of the Property, as the Tenant has vacated it.
19. 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.

Signed. **G Clark** Chairperson Date: 7 July 2017

Housing and Property Chamber First-tier Tribunal for Scotland



2nd REINSPECTION REPORT



Property: 23B NILE STREET, KIRKCALDY KY2 5AX

Ref no: PRHP/RP/16/0019

Committee: George Clark and David Godfrey

Inspection: The property was inspected at 3.00 pm Wednesday 1st March 2017.

Access: The Landlord Mr Zakallah Raja Begum was not present but his representative Mr Q. Raja provided access to the property.

The original tenant Piotr Wozniak no longer resides in the property and was neither present nor represented.

Repairing Standard Enforcement Order:

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the Landlord:-

- 1. To install in the Property interlinked, mains-wired smoke detectors and in the hallway and living room and a heat alarm in the kitchen, all of which comply with the revised*

Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.

2. *To install one or more carbon monoxide detectors in the Property to comply with the Scottish Government's Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, which came into effect on 1 December 2015.*
3. *To carry out such repairs to the roof, including the slatework, defective rhones and associated flashings as are necessary to make the Property wind and water tight.*
4. *To instruct a suitably qualified electrician to replace the cooker extraction hood in the kitchen or to carry out such repairs to the existing extraction hood as are necessary to restore it to proper working order.*
5. *To instruct a suitably qualified Gas Safe engineer to carry out such repairs to the gas fire in the living room as are necessary to restore it to proper and safe working order or to disconnect it.*
6. *To carry out such work as is necessary to repair the leak from the pressure valve adjacent to the boiler.*
7. *To exhibit to the Committee a current Gas Safety Certificate in respect of the Property, including the boiler and the gas fire.*

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice.

General Remarks:

A re-inspection of the property was previously carried out on 16th June 2016 at which time it was noted that none of the items contained within the Repairing Standard Enforcement Order had been attended to.

Works in Repairing Standard Enforcement Order completed since original inspection:

1 Interlinked, mains-wired smoke detectors have been installed in the hallway and living room and a heat alarm has been installed in the kitchen.

Works in Repairing Standard Enforcement Order outstanding following re-inspection:

1. There are no carbon monoxide detectors in the Property.
2. Although the damp staining on the living room ceiling has been redecorated there is no evidence to suggest that repairs have been carried out to the roof covering or rhones.
3. The cooker extraction hood in the kitchen has neither been replaced nor satisfactorily repaired. The extraction hood is loose and the light fitting is still defective.
4. There is no evidence to suggest that repairs have been carried out to the gas fire in the living room.
5. There is no evidence to suggest that repairs have been carried out to the pressure valve adjacent to the boiler.

6. There was no Gas Safety Certificate available at the time of inspection.

Photographs

- A. Hall smoke detector
- B. Living room smoke detector
- C. Kitchen heat alarm
- D. Rear elevation – showing roof covering and rones
- E. Living room ceiling
- F. Kitchen – cooker extraction hood
- G. Living room gas fire
- H. Central heating boiler



Hall smoke detector



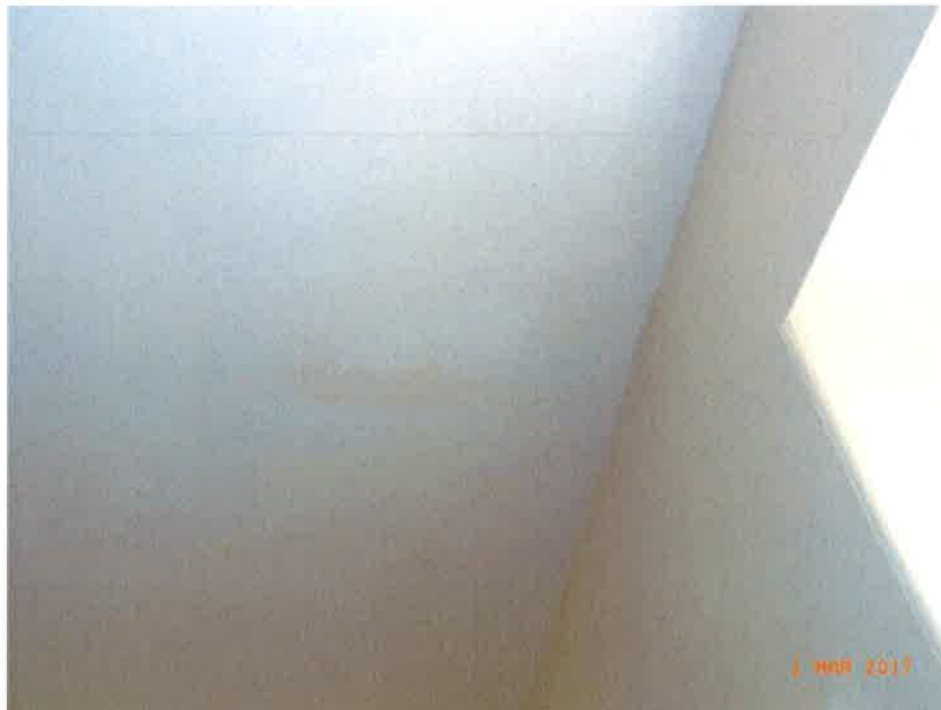
Living room smoke detector



Kitchen heat alarm



Rear elevation – showing roof covering and rhones



Living room ceiling



Kitchen – cooker extraction hood



Living room gas fire



Central heating boiler

David Godfrey, MRICS

1st March 2017