

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/RP/19/3893

Re: Flat 0/1, 22 Seedhill Road, Paisley PA1 1RU (“the house”)

Land Register Title No: REN15462

The Parties:-

Ms Lesley Edgar, residing at the house (“the tenant”)

**Mrs Mandy Thomson, Festival Business Park, 150 Brand Street,
Glasgow G51 1DH (“the landlord”)**

Tribunal Members:

**Sarah O’Neill (Chairperson) and Mike Links (Ordinary (Surveyor)
Member)**

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on her 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 landlord has failed to comply with the said duty. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal’s decision is unanimous.

Background

1. By application received on 9 December 2019, the tenant applied to the tribunal for a determination that the landlord had failed to comply with her duties under Section 14(1) of the Act.

2. In her application, which was submitted by her representative, Kevin Montgomery of Renfrewshire CAB, the tenant stated that she believed the landlord had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13(1) (a) (c) and (d) of the Act. Her application stated that the landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonably fit for human habitation.
- 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.
- any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

3. The tenant made the following complaints in her application:

- 1) The boiler is working intermittently (note: although this complaint was not contained in the application form, it was included in the notification letter sent to the landlord on the tenant's behalf, which was submitted as part of her application).
- 2) The drum in the washing machine does not work properly.
- 3) A number of rings on the gas cooker do not work.
- 4) The oven thermostat does not work.
- 5) Dampness in front and back bedroom including a wall recess, wet when it rains.

4. On 18 December 2019, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 12 February 2020.

5. The tribunal issued a direction to the landlord on 8 January 2020, requiring her to provide: 1) a current Electrical Installation Condition Report (EICR) and any PAT test certificate relating to the house; 2) a current gas safety certificate for the house; 3) copies of any quotations, invoices or receipts for any specialist dampness works carried out since the start of the tenant's tenancy; 4) any engineers' reports for the washing machine and oven/cooker relating to the issues in the tenant's application.

6. On 4 February 2020, an EICR and gas safety certificate were received from Mr John Thomson, the landlord's husband. No further information was received from the landlord in response to the direction.

7. On 12 February 2020, the tribunal was unable to obtain access to the house to carry out an inspection, and neither party attended the hearing.
8. The tribunal issued a second direction to the landlord on 12 February 2020, requiring her to provide:
 - 1) a current valid EICR prepared by a member of a recognised accreditation scheme, including a portable appliance certificate for all electrical appliances supplied by the landlord within the house. The tribunal noted that the EICR which had been provided on 4 February 2020 did not appear to have been prepared by a member of an accredited registration scheme.
 - 2) a current gas safety certificate for the house for any gas hob, oven or gas cooking appliance within the house.
 - 3) any reports by an engineer or specialist appliance contractor, reports on the washing machine, oven or cooker.
 - 4) copies of any quotations, invoices or receipts for any specialist dampness works carried out since the start of the tenant's tenancy.
9. A further inspection and hearing were arranged for 17 April 2020, but these later had to be postponed due to the Covid-19 pandemic.
10. A case management discussion (CMD) was later arranged for 13 January 2021, involving a differently constituted tribunal comprising the same ordinary (surveyor) member as before and a different legal member.
11. The purpose of the CMD was to explore whether an inspection of the house was necessary and to gather any further information which was needed to take the application forward. The parties were invited to submit any further evidence they wished to be considered by 6 January 2021. No further evidence was received from either party prior to the CMD.
12. As no response has been received to the second direction, the tribunal issued a third direction to the landlord on 17 December 2020 requiring her to provide the documents which had been specified in the second direction. No response was received from the landlord to that direction.

The case management discussion

13. A CMD was held on 13 January 2021 by telephone conference call. The landlord was not present or represented on the conference call. The tenant was represented by her new representative, Mr John Gallacher of Renfrewshire Citizens Advice Bureau. The tribunal was satisfied that the requirements of rule 17 (2) of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

("the 2017 rules") regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the landlord in terms of rule 29 of the 2017 rules.

14. Mr Gallacher told the tribunal that the tenant had informed him that all of the repairs in the application had now been addressed, other than the dampness in the front and back bedrooms and the wall recess. The boiler had been fixed, the cooker rings and oven thermostat had been replaced, and the washing machine drum had been replaced. He said that he believed the dampness was a communal repairs issue, but he was unsure as to whether any action had been taken by the landlord about this. To his knowledge, no contractor had come to inspect the interior of the tenant's flat. He was also unsure as to whether there was a property factor for the block or if so, whether they had been notified of the dampness issue.
15. Given the circumstances, the tribunal considered that it was necessary to arrange an inspection of the house, at the earliest possible date, in order to decide whether the landlord has failed to comply with the duty under Section 14(1) of the Act.
16. Unfortunately, it was not possible to schedule an inspection at that time, due to the continuing effects of the Covid-19 pandemic and the current government restrictions which were in place. The CMD was therefore postponed until such time as a safe inspection was possible.
17. On 15 January 2021, the tribunal issued a fourth direction, requiring the landlord to provide by 10 February 2021 all of the documentation which had been required in the previous directions. The landlord was also required to confirm:
 - a) whether there is a property factor for the block of flats within which the house is situated, including the name of the property factor.
 - b) if so, whether the property factor had been notified of the dampness issue affecting the building and complained of by the tenant, including the tenant's flat.
 - c) whether any works had been instructed and/or carried out to the block in respect of these dampness issues by either the property factor, the landlord or other owners in the block.
18. No response to the fourth direction was received from the landlord.
19. Following the easing of Covid-19 restrictions, an inspection was arranged for 10 June 2021. The inspection and hearing had to be postponed the day before the scheduled inspection, due to an issue

arising during the Covid-19 checks carried out by the tribunal administration. An inspection was rearranged for 21 July 2021 and a hearing for 29 July 2021.

The inspection

20. The tribunal inspected the house on the morning of 21 July 2021. The weather conditions at the time of the tribunal's inspection were warm and sunny. The tenant and her son, Mr Kyle Edgar, were present at the inspection. Mr John Thomson, the landlord's husband, who is joint owner of the property, was also present at the inspection.
21. Photographs were taken during the inspection. A pre-hearing inspection summary and schedule of photographs, a copy of which is attached to this decision, was sent to the parties prior to the hearing. Note: to reflect the terminology used by the tenant, the term 'front bedroom' as used in the attached photograph schedule should be read as saying 'rear bedroom' and vice versa.

The house

22. The house is a ground floor flat within a three-storey sandstone Victorian tenement block. It comprises two bedrooms, living room, kitchen, bathroom and hallway.

The hearing

23. On 29 July 2021, the tribunal held a hearing by telephone conference call. The tenant and Mr Gallacher were both present on the call. The landlord was not present or represented. The tribunal delayed the start of the hearing by 20 minutes, in case the landlord had been detained. She did not attend the conference call, however, and no telephone calls, messages or emails had been received from her.
24. The tribunal noted that a letter notifying the landlord of the date and time of both the inspection and the hearing had been sent to the landlord by recorded delivery on 11 June 2021 and was signed for on 14 June 2021. The tribunal also noted that Mr Thomson had been present at the inspection on 21 June, which had been notified in the same letter as the hearing. Mr Thomson had also indicated to the tribunal during the inspection that he was aware of the hearing.
25. 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 landlord, in terms of rule 29 of the 2017 rules.

The evidence

26. The evidence before the tribunal consisted of:

- The application form completed by the tenant
- Registers Direct copy of Land Register title REN15462, which showed that the house is owned jointly by the landlord and her husband, Mr John Thomson.
- Scottish Landlord Register registration details for the house, showing that the landlord is the registered landlord for the house.
- Tenancy agreement (purporting to be a short-assured tenancy agreement) between the parties in respect of the house which commenced on 17 July 2018.
- Copy letter dated 29 November 2019 sent by Mr Gallacher on behalf of the tenant to the landlord, notifying the landlord of her complaints, together with proof of sending by recorded delivery and proof that it had been signed for on 2 December 2019.
- Mandate signed by the tenant dated 23 August 2019 authorising Renfrewshire CAB to act on her behalf in relation to the application.
- EICR in respect of the house produced by D.M. Electrical, Cumbernauld dated 28 November 2016.
- Gas safety certificate in respect of the house produced by C. Lamont of Rutherglen dated 31 January 2020.
- Email from Kevin Montgomery of Renfrewshire CAB to the tribunal administration dated 13 September 2020, advising that Mr Gallacher would be taking over as the tenant's representative.
- The tribunal's inspection of the house.
- The oral representations of the tenant and of Mr Gallacher at the hearing.

Summary of the issues

27. 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 landlord has complied with the duty imposed by section 14 (1) (b).

Findings of fact

28. The tribunal made the following findings in fact:

- The house is owned by the landlord jointly with her husband, Mr John Thomson.
- The landlord is the registered landlord for the house.
- The parties entered into a tenancy agreement which commenced on 17 July 2018.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. The washing machine had been replaced.
 - ii. The hob and oven had also been replaced.
 - iii. There was black staining along the outside wall, back wall and alcove in the rear bedroom.
 - iv. High dampness readings were taken along the outside wall towards the back corner of the room, above the alcove and on the carpet under the window in the rear bedroom.
 - v. Dampness readings were taken in the rear bedroom along the outside wall behind the bed and along the rear wall. These readings were at acceptable levels.
 - vi. The internal lining of the external close wall in the front bedroom had been replaced with plasterboard in recent times.
 - vii. Dampness readings were taken along the exterior wall (to the common close) in the front bedroom. These readings were at acceptable levels.
 - viii. Water staining was observed at various places along the gable wall in the living room.
 - ix. High dampness readings were taken to both the left and right of the mirror above the fireplace on the living room gable wall.
 - x. A tumble dryer was installed in the living room close to the front window.

Reasons for decision

29. The tribunal considered each of the tenant's complaints in turn, as set out below.

1. The boiler is working intermittently

30. The tenant confirmed to the tribunal that the landlord had replaced the boiler, and that the new boiler was operating correctly. The tribunal therefore determined that the boiler was in a reasonable state of repair and in proper working order.

2. The drum in the washing machine does not work properly

31. The tenant confirmed that she had replaced the washing machine herself, as the landlord had failed to do so. The tribunal noted that the original washing machine had been provided by the landlord under the tenancy. The landlord therefore had a responsibility to replace it if it was faulty. It was clear, however, that the tenant now had a functioning washing machine, albeit one provided by herself. The tribunal therefore determined that there was no outstanding repairs issue to be addressed here.

3. A number of rings on the gas cooker do not work

32. The tenant confirmed that the landlord had replaced the hob, and that the new hob was functioning correctly. The tribunal therefore determined that the hob was in a reasonable state of repair and in proper working order.

4. The oven thermostat does not work

33. The tenant confirmed that the landlord had replaced the oven, and that the new oven was functioning correctly. The tribunal therefore determined that the oven was in a reasonable state of repair and in proper working order.

5. Dampness in front and back bedroom including a wall recess

34. The tribunal observed at its inspection that there was black staining along the outside gable wall, back wall and alcove in the rear bedroom. High dampness readings were taken along the outside wall towards the back corner of the room, above the alcove and on the carpet under the window in the rear bedroom. Dampness readings taken along the outside wall behind the bed and along the rear wall were at acceptable levels. The tenant told the tribunal that the carpet in the rear bedroom had always been damp.
35. The tribunal observed at its inspection that the internal lining of the external close wall in the front bedroom had been replaced with plasterboard in recent times. Dampness readings were taken along the exterior wall (to the common close). These readings were at acceptable levels. The tenant told the tribunal that she believed the landlord had addressed the dampness issue in that room.
36. There was also clear evidence of dampness in the living room. Water staining was observed in several places along the gable wall. High

dampness readings were taken to both the left and right of the mirror above the fireplace on the gable wall. The tribunal noted that dampness in the living room had not been included in the tenant's original application. The tenant said that this was because the dampness issues in this room had only become apparent in around February 2021. She said that she had notified Mr Thomson of these issues by text message on 12 February 2021. She had forwarded this message to the tribunal administration the day prior to the hearing.

37. The tribunal also observed at its inspection that a tumble dryer was installed in the living room close to the front window. The tenant said that this was her own tumble dryer, which she had installed in the house. There was nowhere else to dry clothes, and the landlord had refused to provide a washer-dryer. There was no room for the tumble dryer in the kitchen. She told the tribunal that she used the dryer for only brief periods at any one time, and that it was ventilated when she used it.
38. The tribunal noted that Mr Thomson had suggested at the inspection that the two flats above the ground floor flat were also experiencing dampness along the gable wall. He had said that he had been in discussion with the owner of the flats and suggested that a report had been obtained. The surveyor member had asked him at the inspection to send any reports to the tribunal, but none had been received prior to the hearing.
39. It was also unclear, in the absence of the landlord, and given the lack of any response to the tribunal's fourth direction, whether there was a property factor for the block. The tenant said she did not know whether this was the case.
40. The tribunal noted that it had issued four directions to the landlord between 8 January 2020 and 15 January 2021 asking for various documentation to be produced, including copies of any quotations, invoices or receipts for dampness works carried out at the property. There had been no response from the landlord, other than a partial response to the first direction, which was received in February 2020. The tribunal again notes, as pointed out in the note of the CMD, that failure to comply with a direction from the tribunal is a criminal offence.
41. The tribunal considered that on the basis of the evidence before it, the dampness in the house could have resulted from any or all of several causes. These include condensation, penetrating and/or rising dampness. It was difficult to determine the cause/s in the absence of a specialist dampness report, however.

42. There was clear evidence of dampness in the rear bedroom and the living room. While the internal lining of the close wall in the front bedroom had been replaced with plasterboard, a damp proof course installation may not have been installed. At the time of the tribunal's inspection, the weather had been very dry and sunny for several weeks. It is possible therefore that there was underlying dampness elsewhere, which was not observed at the inspection.
43. While the dampness in the living room was not specifically included in the tenant's application, it is possible that this is connected to the dampness in the rear bedroom. The tribunal therefore based its findings on the dampness on the condition of the flat as a whole. While it is possible that the dampness in the living room is related to dampness elsewhere in the tenement building, the landlord nevertheless has a duty to ensure that the tenant's flat meets the repairing standard.
44. The tribunal determined on the basis of all the evidence before it that the house is not wind and watertight and in all other respects reasonably fit for human habitation.

Observations by the tribunal

45. The tribunal wishes to make several observations about issues which did specifically not form part of the tenant's application. Firstly, the tribunal notes that the EICR provided by the landlord from D.M. Electrical, Cumbernauld dated 28 November 2016 was produced by a contractor who did not appear to be registered with NICEIC or SELECT or to be a member of NAPIT. The current guidance issued by Scottish Ministers on electrical safety standards¹ states (at paragraph 10) that an EICR must be completed by a 'suitably competent person'.
46. A 'suitably competent person' must be:
 - Employed by a firm that is a member of a firm that is a member of an accredited registration scheme operated by a recognised body
 - A self-employed member of an accredited registration scheme operated by a recognised body, or
 - Able to complete the checklist at Annex A of the guidance.
47. The guidance goes on to state that this will usually mean a contractor who is registered with NICEIC, SELECT or a member of NAPIT.

¹ [Scottish Government Statutory Guidance On Electrical Installations And Appliances In Private Rented Property](#)

48. The tribunal notes that the current EICR is dated 28 November 2016. A new EICR is required to be provided by a landlord every 5 years. The landlord will therefore need to instruct a new EICR in a few months' time. The tribunal points out that this should be produced by a suitably qualified contractor, as outlined above.
49. The tribunal also notes that the gas safety certificate in respect of the house produced by C. Lamont of Rutherglen was dated 31 January 2020. As the gas safety inspection is required to be carried out yearly, the landlord should have instructed a further inspection in January 2021 and provided a copy of the certificate to the tenant.
50. Finally, the tribunal notes that the tenancy agreement between the parties, which states that it is a short-assured tenancy agreement, was entered into on 17 July 2018. The landlord's attention is drawn to the fact that any new tenancy agreement commencing after 1 December 2017 should be in the form of a new Private Residential Tenancy Agreement.

Summary of decision

51. On the basis of all the evidence before it, the tribunal determined that the landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that the house is not wind and watertight and in all other respects reasonably fit for human habitation.
52. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

53. 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.
54. 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..... **S O'Neill**
Sarah O'Neill, Chairperson

.....Date: 5 August 2021

Housing and Property Chamber

First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Front elevation

Property Flat 0/1, 22 SEEDHILL ROAD, PAISLEY PA1 1RU
Ref No: FTS/HPC/RP/19/3893

Tribunal members Ms Sarah O'Neill (Legal Member)
Mr Mike Links (Ordinary-Surveyor Member)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 11.30 am on 21st July 2021 Also in attendance were Mr John Thomson (Landlord), Ms Lesley Edgar (Tenant) and Mr Kyle Edgar (Tenant's son)

Appendix 1

Schedule of photographs taken during the inspection on 21st July 2021



Exposed gable wall



Rear elevation



Washing machine



Hob/Oven



Front bedroom-staining



Meter reading (2+) -Front bedroom



Front bedroom – alcove



Meter reading (2+) - alcove



Front bedroom – wall adjacent to bed



Meter reading at bed(0.4)



Front bedroom – front wall



Meter reading at front wall of bedroom(0.6)



Front bedroom – reading on carpet (2+)



Living room – gable wall



Meter reading – Left of mirror (2+)



Meter reading (2+)– Right of mirror



Rear Bedroom – gable wall



Living Room – tumble drier