

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Reasons: Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/23/0376

Property: 113 Kelvin Gardens, Hamilton, South Lanarkshire ML3 9NR ('The House')

The Parties: -

Stefan Galluccio, residing at 113 Kelvin Gardens, Hamilton, South Lanarkshire MLR 9NR ('the tenant')

James Docherty, Concept Property Ltd, 12 St. Bryde Street, East Kilbride, Glasgow G74 4HQ ('the landlord')

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are 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 into account the inspection of the house and of the written documentation submitted by the parties, determined that the landlord has not failed to comply with the duty imposed by Section 14(1)(c) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Andrew Taylor, Ordinary Member (surveyor)

Background

1. By application received on 7th February 2023, the tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(c) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *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 application stated: *“The problem with the shower is that the heating elements are not correctly functioning which leaves a poor pressure since only a small amount of water is able to be heated up. This violates the standard as the shower is not in proper working order.”*
4. The application contained email correspondence between the tenant and the landlord’s letting agents spanning the period from 3^{1st} January 2023 and 6th February 2023 in which the tenant specified that the electric shower in the property was not working as intended. The landlord’s letting agents responded that there was no repairs issue with the shower and that it had adequate pressure and temperature and was operating satisfactorily. The tenant lodged a letter to the landlord in which he stated: *“The problem with the shower is that the heating elements are not correctly functioning which leaves a poor pressure since only a small amount of water is able to be heated up. This violates*

Hearing and Inspection

5. The Tribunal inspected the house on the morning of 24th April 2023. All parties were in attendance at the inspection.
6. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.

7. The Tribunal inspected the shower. The shower is powered by electricity and sits above the bath. It was noted that the shower was functioning to an adequate standard. The Tribunal noted that the shower had adequate pressure and heated water properly. Whilst the shower did not produce a powerful jet it was sufficient to allow the tenant to shower.
8. A hearing took place at Glasgow Tribunal Centre at 2pm on 24th April. Neither party was in attendance. The Tribunal was satisfied that both parties had proper notice of the hearing and determined to proceed to consider the application in their absence.

Summary of the issues

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

Findings in fact: -

10. The Tribunal find the following facts to be established: -
 - a. Parties entered into a Private Residential Tenancy agreement with a commencement date of 16th July 2021.
 - b. The monthly rent due in respect of the house is £360.
 - c. At the time of the inspection the shower in the house was in a reasonable state of repair and in proper working order.

Reasons for the decision

1. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, parties written representation and the inspection.
2. The Tribunal was only able to consider those items which formed part of the intimated application.
3. The Tribunal noted that the scope of the application was narrow and confined to whether the shower in the property was operating to an adequate standard. The Tribunal accepted that the tenant may be dissatisfied with the pressure in

the shower as it was lower than a “power shower”. The Tribunal considered that as the shower was located on the top floor of a five storey maisonette block this may impact on water pressure. However, the shower was functioning at a level which was adequate to allow the tenant to shower. The Tribunal found that the shower was in proper working order and functioning to a reasonable standard. The Tribunal observed that whilst the shower was functioning at an adequate level thorough cleaning or replacement of shower head may provide some increase in water pressure.

Decision

The Tribunal determined that the landlord has not failed to comply with the duty imposed by section 14(1)(b) of the Act. The Tribunal proceeded to dismiss the application.

Right of Appeal

A landlord, tenant or third-party applicant 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.

Chairperson: **M C Kelly**

Date: 24th April 2023



Pre-hearing Inspection Summary and Schedule of Photographs



Property – 113 Kelvin Gardens, Hamilton, ML3 9NR

Reference- FTS/HPC/RP/23/0376

Tribunal Members – Mary-Claire Kelly (Legal Member) & Andrew Taylor ((Ordinary Member)

Purpose of Inspection – 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 – 10.00am, 24th April 2023

Weather – Clear and dry

In Attendance – The above Tribunal Members attended the property. Also in attendance were Mr Stefan Galluccio – Tenant; Mr James Doherty, Concept Property Letting Ltd- Landlord

Appendix 1

Schedule of Photographs taken during the Inspection on 24th April 2023



1. Instantaneous electric shower unit.



2. Flow of water at shower head.

Andrew Taylor MRICS,

Surveyor Member, Housing and Property Chamber, First-tier Tribunal for Scotland

24th April 2022