

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/21/1988

3/2, 223 Hilltown, Dundee DD3 7AG (“the property”)

The Parties: -

Dundee City Council, Private Sector Service Unit, 5 City Square, Dundee DD1 3BA (“the Third Party Applicant”)

Ms Carla Sinclair, 3/2, 223 Hilltown, Dundee DD3 7AG (“the Tenant”)

Mr Graham Bradley, 34 Strips of Craigie Road, Dundee DD4 7QG (“the Landlord”)

Tribunal Members:

Graham Harding (Legal Member) and Sara Hesp (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 15 August 2021 the Third Party Applicant applied to the Housing and Property Chamber 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 Third Party Applicant 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 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;
- (b) Any fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (c) The house has satisfactory provision for detecting fires and for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Specifically, the Third Party Applicant complained that:

The living room windows required maintenance or replaced to ensure that they are draught free, able to be secured in the opened and closed position and can be opened safely.

The property did not comply with current regulations for provision of smoke and heat detectors.

There was no evidence of a current Electrical Installation condition Report.

The kitchen floor required maintenance or replaced.

Exposed pipework required to be covered.

The installation of the gas boiler required to be completed to provide heating and hot water.

On completion of installation of the gas boiler a Certificate of Installation was required.

A carbon monoxide detector was required.

- 3. By Notice of Acceptance dated 24 August 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
- 4. A Case Management Discussion was held on 13 October 2021 and the application was continued for an inspection to take place. The Tribunal also issued a Direction to the Landlord.
- 5. The Tribunal inspected the Property on the morning of 3 March 2022. Mr Byron Young of the Third Party Applicant and the Tenant were present during the inspection. The Landlord did not attend. The Ordinary Member of the Tribunal took photographs of the property which were issued to the parties in advance of a hearing.
- 6. Following the inspection of the Property a hearing was held by teleconference on 10 March 2022. It was attended by Mr Byron Young. Neither the Tenant nor the Landlord were in attendance. Following discussion with regards to the correct identity of the Landlord the Tribunal allowed the Third Party Applicant to amend the designation of the Landlord and determined that the case papers and a direction be served on Mr Graham Bradley and assigned a further hearing.

The Hearing

7. A hearing was held by teleconference on 16 May 2022. It was attended by Mr Byron Young. Neither the Tenant nor the Landlord were in attendance. Mr Young advised the Tribunal that he had not heard from the Tenant nor had he heard from the Landlord. The Tribunal noted that the Landlord had not complied with the Direction requiring him to produce a current Gas Safety Certificate.
8. For the Third Party Mr Young confirmed that many of the issues complained about had been dealt with but that the living room windows still required to be repaired or replaced. He was also of the view that the kitchen floor was unstable. He accepted that most of the exposed pipework at the property had been boxed in and those that had not were at a height that could not easily be reached.
9. Mr Young went on to say that he was satisfied that there were now smoke and heat detectors installed in the property. The Tribunal noted that the smoke detector in the living room was attached to the wall and not the ceiling. Mr Young confirmed that there was also a carbon monoxide detector installed in the kitchen and that the gas boiler had been installed and was operative.
10. In light of there still being works outstanding and no current Gas Safety Certificate having been produced Mr Young submitted that the Tribunal should determine to issue a Repairing Standard Enforcement Order.

Findings in Fact

11. Since the raising of the application the Landlord has completed the installation of the gas boiler and it is now fully operative.
12. The exposed pipework at lower levels has been boxed in.
13. The kitchen floorcovering has been replaced and is adequate.
14. Smoke and Heat detectors have been installed.
15. A carbon monoxide detector has been installed.
16. The living room windows have not been repaired or replaced and do not open or close properly and permit draughts.
17. The Landlord has failed to comply with the Tribunal's direction dated 13 March 2022 to produce a current Gas Safety Certificate.

Reasons for the decision

18. The Tribunal was satisfied that many of the Third Party's initial complaints had been attended to by the Landlord and although Mr Young expressed some concern as regards the condition of the kitchen floor the Tribunal was of the view that the flooring provided by the Landlord was in the circumstances adequate. Although not all of the pipework had been boxed in, any exposed pipes were at such a height that although unsightly they did not present a safety hazard to the occupants of the property. The Tribunal would have preferred to have seen the smoke detector in the living room mounted on the ceiling rather than on the wall adjoining the hall but, in the circumstances, did not consider it necessary to insist on it being moved.
19. The Landlord had not taken any steps to repair or replace the living room windows. These require attention in order to put them in proper working order.
20. The Tribunal was particularly concerned that despite issuing a direction to the Landlord to provide a Gas Safety Certificate he failed to do so even although it was made clear that failure to comply with a direction of the tribunal was a criminal offence. The Tribunal considered that the provision of a Gas safety Certificate was important for health and safety reasons. Therefore, the Tribunal was of the view that the Landlord's failure to comply with the direction should be referred to the police for investigation.

Decision

21. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
22. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
23. The Tribunal determined to refer the Landlord's failure to comply with its Direction dated 13 March 2022 to the police for investigation.
24. The decision of the Tribunal was unanimous.

Right of Appeal

25. **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

26. 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.

Signed Graham Harding Legal Member

Date 19 May 2022