



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

**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”)**

**Chamber Ref: FTS/HPC/RP/20/2192**

Property at 2 Scotswood Terrace, Dundee, DD2 1PA (“The Property”)

**The Parties:-**

Mr Keith Kosto, formerly residing at 2 Scotswood Terrace, Dundee, DD2 1PA (“the former Tenant”)

Ms Susan Rhodes, 16 Brompton Terrace, Perth, PH2 7DH (“the Landlord”)

Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN (“the Landlord’s Representative”)

**The Tribunal comprised:-**

Mrs Ruth O’Hare - Legal Member

Mr Mike Links - 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 duty imposed on it 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 not failed to comply with the said duty

**Background**

1. By application received 19 October 2020 the former Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. In particular the former Tenant alleged that the Landlord had failed to maintain the house in a condition that was wind watertight and in all respects reasonably fit for human habitation, that she had failed to keep the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water in a reasonable state of repair and in proper working order and that the house did not meet the tolerable standard. The application stated that the heating and hot water

system was in constant need of repair, the thermostat did not work resulting in excessive energy bills and the system therefore required updating.

2. By Notice of Acceptance of Application dated 17 November 2020 the Legal Member with delegated powers of the Chamber President confirmed that there were no grounds for rejection of the application. Under normal circumstances, the Tribunal would subsequently have arranged for the Ordinary Member to carry out an inspection, prior to the Tribunal consider matters at a Hearing. However, an inspection was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (CMD) was arranged for 19 January 2021, in order to discuss further procedure in the case and to ascertain if an inspection was required or if other evidence was available or could be agreed.
3. On 28 October 2020 the former Tenant intimated to the Tribunal by email that he had given notice to terminate the tenancy as at 23 November 2020. On 7 January 2021 the former Tenant sent a further email confirming his new address. The former Tenant was therefore removed as a party to these proceedings.
4. On 13 January 2021 the Tribunal emailed the Landlord's Representative, Pavillion Properties, to advise that the Tribunal would require to consider whether to continue or abandon the application following the termination of the tenancy and would expect to be addressed on this at the CMD.

### **The Case Management Discussion**

5. The CMD took place on 19 January 2021. Mr Sean Cruickshank and Ms Robyn Dolan were representing the Landlord. The Landlord was also present but confirmed she was content for Mr Cruickshank to represent her in the matter. She did interject at various points in the proceedings when she wished to bring a matter to the Tribunal's attention.
6. The Chair explained the purpose of the Case Management Discussion and the procedure the Tribunal would follow. She outlined the matters the Tribunal required to determine and the current position regarding property inspections, namely that these were not permitted due to Covid-19 restrictions. She then asked Mr Cruickshank on behalf of Ms Rhodes to address the Tribunal on the terms of the application.

7. Mr Cruickshank advised that he was surprised when he heard about the former Tenant's application. He confirmed that the property has a back boiler type system which is fully compliant with a property of that age. He conceded that there had been a bit of an issue when the former Tenant had moved in, the system was old and had been difficult to flush out but this had been addressed. Mr Cruickshank confirmed that all repairs had been attended to when reported and the property was heated well. The last repair was carried out on 10 December 2020 which was a repair to the timer. Mr Cruickshank confirmed that he has been in the property during the last six months when the heating has been on and it has all been working fine.
8. Mr Cruickshank was referred by the Tribunal to a comment in the application paperwork from the former Tenant which suggested that there had been no hot water in the property for a period of six weeks when the former Tenant was in occupation. This was subsequently noted by the Tribunal to be five weeks. Mr Cruickshank advised that he did not believe this to be the case. Tenants would never be left without heating and hot water for that length of time. There had been an issue shortly after the former Tenant commenced occupation of the property due to a blockage in the system. He explained that the heating and hot water was operated through a dual system with a back boiler. It only took a couple of days to flush the blockage out and to restore the system to proper working order. However Mr Cruickshank confirmed that as far as he was aware the hot water system was now operating correctly.
9. The Tribunal queried the reason why the former Tenant had left the property. Mr Cruickshank confirmed that he understood it to be the high energy bills. The former Tenant considered the costs to be excessive. Mr Cruickshank conceded that the boiler could benefit from being replaced and was not as energy efficient as it could be which could lead to higher costs. However it was fully operational and worked well at this time. Inefficiency was to be expected of an older system but the house was completely wind and watertight. The former Tenant was the first to complain of such an issue and Mr Cruickshank believed from speaking with the former Tenant that he was paying around £120 per month on his energy bills which Mr Cruickshank didn't consider overly high. He pointed out that the Energy Performance Certificate had an E rating which was still compliant with legal requirements. In response to questions from the Tribunal he confirmed that three quotes had been obtained for a replacement boiler which ranged between £2573 and £2833. The rent for the property was £900 per month.

10. Mr Cruickshank advised that he had managed the property up until October 2020. There had been few issues. Ms Dolan had since taken over the management of the property. He confirmed in response to questions from the Tribunal that the property had now been relet – the new tenants had moved in on 10 December 2020. There had been no further complaints regarding the heating and hot water since the new tenants took up occupation.
11. Having heard from the parties the Tribunal confirmed that due to the nature of the allegations specified in the application and the fundamental requirement for the property to have a heating and hot water system that was fit for purpose and in proper working order it considered it necessary to continue with the application. The Tribunal therefore issued a Minute of Continuation dated 20 January 2021 confirming its intention to proceed with the matter.
12. Thereafter the Tribunal considered the terms of the application. The Tribunal was not satisfied on the basis of verbal submissions at the Case Management Discussion that the heating and hot water system was in proper working order. However the Tribunal considered that it could seek further documentary evidence from the Landlord to see if the application could be determined without an inspection. The Tribunal therefore issued a Direction dated 20 January 2021 requiring the landlord to provide the following:-
  - (i) An inspection report from an independent suitably qualified heating engineer of the heating and hot water system in the property confirming the present condition of the system and its efficiency, including any recommendations, if required, to ensure the system is in a reasonable state of repair and in proper working order; and
  - (ii) Copies of records held by the Landlord, the Landlord's representative or contractors instructed on either of their behalf relating to any repairs, maintenance or inspections carried out at the property between 10 February 2020 and the date of this Direction, including but not limited to invoices, inspection reports, notifications of repairs and general correspondence.
13. The Tribunal therefore determined to adjourn the Case Management Discussion for the landlord to provide the information sought by the Direction to ascertain whether the application could be determined without an inspection.

## Response to Direction

14. On 1 March 2021 the Landlord's representative provided the following documentation by email:-
  - (i) Email from MJM Services dated 26 February 2021 confirming that the heating system was not working correctly as the boiler was staying on and the system was not turning off. MJM Services had arranged for an electrician to attend the property. The fault was found to be a motorised valve which was stuck on the "on" position. This was causing the high gas bills. The valve was replaced and the heating system had been working correctly ever since. The email did note concerns had been expressed by MJM Services in relation to single glazing at the property, a lack of underfloor heating and the age of the boiler.
  - (ii) Excerpts from a system operated by the Landlord's representative detailing repairs reported and sent to contractors between 19 February 2020 and 20 January 2021.
15. Having considered the documentation, the Tribunal was not satisfied that the actions required by the Direction had been completed. In particular the Tribunal noted that the Direction required the landlord to produce a professional inspection report by a suitably qualified heating engineer. Instead the Tribunal had received an email from MJM Services with a narration of work purported to have been carried out at the property with no information as to the qualifications of the employees who had carried out the work nor any information regarding the company itself. This did not, in the view of the Tribunal, comply with the Direction. Furthermore, the excerpt from the system operated by the Landlord's representative did not provide any information as to what work had been done in response to repair requests. On that basis the Tribunal could not properly satisfy itself that the property met the Repairing Standard. A further request for documentation was therefore sent to the Landlord's representative by email on 22 April 2021.
16. By email dated 3 May 2021 the Landlord's representative provided the following documentation:-
  - (i) Copy invoices from MJM Services dated 11 July 2019, 9 April 2020, 28 July 2020, 29 December 2020 and 14 January 2021, and from Steve McLauchlan Glazing and Window Maintenance dated 17 December 2020 and 22 December 2020, detailing work undertaken at the property in respect of the windows, boiler, electrical system and radiators.
  - (ii) Estimates from MJM Services dated 23 March 2020, 10 April 2020 and 31 August 2020 in respect of replacing the boiler, fitting motorised valves and a cylinder stat and fitting new radiators.

- (iii) Copy Registration Certificate (No.573661) for MJM Plumbing and Heating Services confirming gas safe registration.
- (iv) Gas Safe Register identification card in the name of Matthew Michie, MJM Plumbing and Heating Services.
- (v) Report from Matthew Michie, MJM Plumbing and Heating Services confirming the works undertaken as outlined in the aforementioned email of 26 February 2021 to the Landlord's representative.

### **Reasons for Decision**

17. The Tribunal determined the application having regard to the terms of the application, the written representations received from the parties including the response to the Direction and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that there was sufficient information upon which to reach a fair determination of the application and that it did not require to carry out an inspection of the property. Having regard to the documentation produced by the Landlord's representative the Tribunal concluded that the heating and hot water system was in a reasonable state of repair and in proper working order. On that basis it considered that the Landlord had complied with her duties under the Repairing Standard.
18. Notwithstanding the above the Tribunal noted the comments from MJM Services regarding the age of the boiler and the single glazed windows and would observe that it would be in the Landlord's interest to undertake upgrading works to ensure the property remains in a reasonable state of repair for current and future occupiers.
19. The decision of the Tribunal was unanimous.

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**

# R O'Hare

Signed -

Date - 11 June 2021

Chairman