

Housing and Property Chamber

First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Parties : Ms Siobhan Mackenzie residing at 118 Kirkton Avenue, Glasgow G13 3AB ("the Tenant")

Mr John Deans residing at 110 Helensburgh Drive, Glasgow G13 1RR ("the Landlord")

Property: 118 Kirkton Avenue, Glasgow G13 3AB registered in the Land Register for Scotland under Title Number GLA65336 ("the Property")

Chamber reference: FTS/HPC/RP/16/1005

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Surveyor Member)

NOTICE TO THE LANDLORD

Mr John Deans residing at 110 Helensburgh Drive, Glasgow G13 1RR ("the Landlord")

Whereas in terms of their decision dated 14 February 2017, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to comply in respect of Sections 13 (1) (c), 13 (1) (d), 13 (1) (f) and 13 (1) (g) of the Act and failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair, whether any fixtures and fittings provided by the Landlord under the tenancy are in a reasonable state of repair and working order, whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and whether the Property has satisfactory provision for giving warning that carbon monoxide is present in a concentration that is hazardous to health. The First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlords must on or before 30 April 2017:-

1. Instruct a gas safe engineer to carry out a full inspection of the gas central heating boiler and to repair or renew the gas central heating boiler so that the system provides heating to all radiators in the property and domestic hot water to all hot water taps;

2. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards;

3. If required by the inspection specified at 2 above, replace the light fitting in the bathroom with a light fitting which meet current regulatory standards;
4. Instruct a Corgi registered plumber (i) to inspect the hot and cold water supply in the bathroom and (ii) to carry out such works as are necessary to ensure all taps are fully functioning with water pressure suitable for a domestic supply;
5. Provide and install sufficient hard wired smoke, heat and carbon monoxide detectors to comply with current regulations;
6. Instruct a gas safe engineer to carry out a full inspection of the gas installation in the Property and provide a gas safety certificate to the Tenant and tribunal;
7. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus in the property and provide a EICR to the Tenant and tribunal and
8. Make good any décor damaged as a result of these works.

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

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a

tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 27 March 2017 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

W Moore

K Moore

Witness

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application Section 22(1A) of the Housing (Scotland) Act 2006 ("the Act")

Parties : Ms Siobhan Mackenzie residing at 118 Kirkton Avenue, Glasgow G13 3AB ("the Tenant") Mr John Deans residing at 110 Helensburgh Drive, Glasgow G13 1RR("the Landlord")

Property: 118 Kirkton Avenue, Glasgow G13 1RR registered in the Land Register for Scotland under Title Number GLA65336 ("the Property")

Chamber reference: FTS/HPC/RP/16/1005

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Surveyor Member)

Background

1. By application received on 1 December 2016 ("the Application"), the Tenant applied to the First-tier Tribunal for Scotland for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (b), 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act.

2. The President of the Chamber, having considered the Application and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the Act, intimated to the Landlord by Notice of Referral dated 7 December 2016, a

decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 8 February 2017 at 10.00 a.m. and 11.30 a.m., respectively.

Inspection and Hearing.

6. The Inspection took place on 8 February 2107 at 10.00 a.m. at the Property. The Tenant was present at the Inspection. The Landlord was not present at the Inspection.

5. The tribunal inspected the parts of the Property referred to by the Tenant in the Application namely:-

the living room windows;

the boiler;

the light fittings in the kitchen and bathroom;

the bathroom sink and bath taps and

the smoke detectors.

6. At the Inspection, the tribunal took digital photographs which photographs form the Schedule annexed to this decision.

7. Following the Inspection, a Hearing was held at Wellington House, Wellington Street, Glasgow on the same day at 11.30 a.m. at which neither the Tenant nor the Landlord was present.

Summary of the Issues

9. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (b), 13(1) (c), 13(1) (d), 13(1) (f), and 13(1) (g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

10. The Landlord is the owner of the Property. Ms Siobhan Mackenzie is the Tenant by virtue of a written Agreement between her and the Landlord dated 18 November 2010.

11. The Property is an upper cottage flat in a block of four flatted properties with a roughcast exterior and pitched tiled roof, constructed circa 1940. The Property comprises a living room, two bedrooms, a kitchen and bathroom and has double glazed windows and gas central heating. There are gardens to the side and rear.

12. From the Inspection, the tribunal found the following:

The seals of the lower units of two of the living windows appear to be defective and appear to allow moisture to gather;

The boiler appears to be operating but the tribunal could not establish if it is functioning fully and properly;

The water flow from the cold taps at the bath and the wash hand basin is intermittent;

The light fitting in the kitchen appears to be new and operating properly;

The light fitting in the bathroom appears to be new but does not appear to be suitable for use in a bathroom;

The smoke detectors appear to be functioning but do not appear to be hard wired;

There is a carbon monoxide detector in the kitchen which was not tested for functionality;

There are loose wires in the hall cupboard adjacent to the meter box;

The handrail at the front door is loose and

The tiling at the front doorstep is damaged and loose.

13. At the Inspection, the Tenant advised the tribunal that the Landlord recently had carried out work on the boiler, had fitted the lights in the kitchen and bathroom and had installed the smoke and carbon monoxide detectors. As far as the Tenant was aware, the smoke and carbon monoxide detectors were not connected to the electricity supply. The Tenant further advised the tribunal that the Landlord had not provided any certificates in respect of the gas and electricity installations in the Property.

Decision of the tribunal

14. The tribunal's decision is based on the Application with supporting documents and the Inspection.

15. In respect of the Application, the tribunal noted that the Tenant made a complaint in terms of Section 13 (1)(b) on the grounds that the windows were defective. Section 13(1)(b) relates to the exterior of the house and so the tribunal considered that this complaint properly fell within Section 13(1)(a) which relates to the requirement that the house is wind and watertight. The tribunal dealt with the complaint under that subsection. In respect of Section 13 (1) (a) of the Act, the tribunal found that at the date of the Inspection and Hearing the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that, in the view of the tribunal, although the seals of the lower parts of the double glazing appears to be defective, there is no water or wind ingress. Given the age and style of the Property, the windows are reasonably fit human habitation.

16. The tribunal then considered the Tenant's complaint in respect of Section 13 (1) (b) of the Act and was of the view that the defective handrail at the front door and defective tiling at the front doorstep fell within this subsection. However, the tribunal noted that the Tenant had not given the Landlord prior notice of these complaints and so the tribunal could not make a finding in this respect. However, the tribunal recommends that the Landlord makes good the defective handrail at the front door and defective tiling at the front doorstep.

17. In respect of Section 13(1) (c) of the Act, the tribunal found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that as there are no gas or electric safety certificates, the tribunal cannot be certain that the installations in the Property 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.

18. In respect of Section 13(1) (f) of the Act, the Committee found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that, as the tribunal cannot be certain that the smoke detectors comply with current regulation, the tribunal cannot be certain that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

19. In respect of Section 13(1) (g) of the Act , the Committee found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that, as the tribunal cannot be certain that the carbon monoxide detector complies with current regulation, the tribunal cannot be certain that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

20. The decision was unanimous.

21. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

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.

Effect of Section 63

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

K Moore

Karen Moore

Chairperson

14 February 2017

Photograph Schedule

Inspection of

118 Kirkton Avenue, Knightswood, Glasgow, G13 3AB

Case Ref: FTS/HPC/RP/16/1005 8th Feb 2017

WEATHER CONDITIONS – Slightly overcast and dry.

PHOTOGRAPHS – All photographs were taken at the time of the inspection.

DESCRIPTION OF SUBJECTS – The subjects comprise a first floor flat in a 4-in-a-block detached property. The internal accommodation extends to 3 apartments, kitchen and bathroom (2 bedrooms).



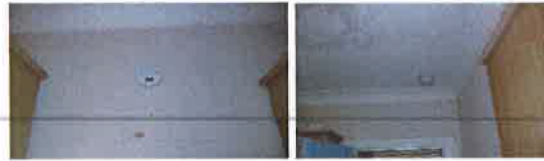
(Ph1) F/Elevation – Upper left flat (Ph2) R/Elevation – Upper right flat



(Ph3) Kitchen – From lounge (Ph4) Kitchen - Gas hob



(Ph5) Kitchen – Boiler cupboard (Ph6) Kitchen – Boiler



(Ph7) Kitchen – CO Detector (Ph8) Kitchen – Smoke detector



(Ph9) Kitchen – Ceiling light



(Ph10) Bathroom – From Hall



(Ph11) Defective R/H bath tap (Ph12) Lounge – From Kitchen



(Ph13) Lounge – Misting in sealed unit (Ph14) Lounge – Smoke detector



(Ph15) Hall cupboard - switchgear



(Ph16) Hall cupboard – Alarm box



(Ph17) Hall cupboard – Smoke detector



(Ph18) Bathroom – Ceiling light

F/Elevation – Front Elevation
R/Elevation – Rear Elevation
R/H – Right Hand

Nick Allan
Surveyor member
8th February 2017

22 Feb 2017
This is the schedule
referred to in the
foregoing decision
K Moore