



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/24/0237

Re: Property at 7/1 High Street, Hawick TD9 9BZ (registered under title number ROX15601) (“Property”)

The Parties:

Dawn Berry, 7/1 High Street, Hawick TD9 9BZ (“Tenant”)

Gary Cairns, Kinninghalldell, Cavers, Hawick, Roxburghshire TD9 8LH (“Landlord”)

Dr Anca Carrington, Flat 71, Flaxman Court, Flaxman Terrace, London WC1H 9AN (“Landlord’s Representative”)

Tribunal Members :

Joan Devine (Legal Member); Greig Adams (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (d) (g) and (h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 17 January 2024, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that she believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a), (c), (d), (g) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property is wind and watertight and in all other respects reasonably fit for human habitation.

- 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
 - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
 - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
- Leak in the heating system
 - Leak in kitchen ceiling
 - Light in kitchen not working.
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 7 May 2024.

The Inspection

5. The Tribunal inspected the Property on the morning of 7 May 2024. The weather conditions at the time of the inspection were clear and dry. The Tenant was present at the Property during the inspection as was the Landlord and the Landlord's Representative. The Property is a first floor flat with 2 bedrooms, bathroom, kitchen and living room. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

7. The Hearing took place on 7 May 2024 at Heart of Hawick Tower Mill. The Tenant was in attendance as was the Landlord and the Landlord's Representative. The Tenant told the Tribunal that she had lived in the Property since March 2022.
8. The Tribunal considered the issues raised in the Application. As regards the heating system the Tribunal noted that the heating had been switched on at the inspection and was working. The Tenant told the Tribunal that the pressure in the heating system would drop. She said the system caused a leak into the bank below the Property. She said the pressure could be topped up manually. She said she had only required to do that once since the plumber had attended the Property in February 2024. She said that the last leak into the bank had been in February 2024 and she understood the leak was due to a blockage in the shower. The Landlord told the Tribunal that the leak into the bank had been fixed.

9. As regards the leak in the kitchen ceiling the Tenant said she had first reported the issue not long after she had moved into the Property. The Landlord said that the issue requires to be investigated. He said the Tenant had refused to give him access to check the ceiling. He said he received a message from the Tenant in September 2023 saying that the ceiling was leaking. The Landlord said that letters had been issued to the Tenant requesting access but none had been given. The Tribunal asked the Landlord if he had made a right of entry application. He said he had not and was not familiar with the process.
10. As regards the light in the kitchen the Tribunal noted it was not working when tested at the inspection. The Tenant said it had not been working for 8 – 12 months. She said the issue had been reported when a property inspection was carried out. She said that communication had been difficult but the issue was last reported in December 2023. The Landlord said he had requested access to fix the light but access was not given. The Tenant said it was not true that the Landlord had not been afforded access. She said she had only been asked for access regarding a repair required to the balcony. The Landlord said he accepted that the light in the kitchen was not working.
11. The Tribunal noted there was no carbon monoxide monitor in the kitchen and that the hob was gas. The Tribunal noted that the gas safety certificate dated 5 October 2023 lodged by the Landlord noted that a carbon monoxide alarm was required for the hob. The Landlord said he accepted there was no carbon monoxide monitor in the kitchen. The Landlord said he had requested access to instal a carbon monoxide monitor but access was not given. The Landlord said he thought there had been a carbon monoxide monitor in the kitchen at the start of the tenancy. The Tenant said that was incorrect. The Tribunal asked if there was a carbon monoxide monitor in the space around the boiler. The Landlord said there had been one at the start of the tenancy. The Tenant said there wasn't one and that she had installed one herself but the batteries died and she removed it. The Tribunal asked the Landlord if he could produce the gas safety certificate for the period prior to March 2022. He said that he could. The Landlord said that a previous tenant of the Property had referred to the carbon monoxide monitor being triggered which indicated there was one present in the Property.

The Evidence

12. The evidence before the Tribunal consisted of:
 - 12.1 The Application completed by the Tenant
 - 12.2 Land Register report relating to the Property
 - 12.3 Screenshots of messages between the Tenant and the Landlord notifying them of the issues complained about in the Application
 - 12.4 Written submission from the Landlord with documents annexed.

- 12.5 Emails received from the Parties since the Application was lodged with the Tribunal.
- 12.6 The Tribunal's inspection of the Property
- 12.7 The oral representations of the Tenant and the Tenant's Representative.

Summary of the Issues

13. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on him by Section 14(1)(b).

Findings in Fact

14. Tribunal made the following findings in fact:
 - 14.1 The Tenant has lived in the Property since March 2022.
 - 14.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 14.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 14.3.1 The heating system is operational.
 - 14.3.2 The light in the kitchen is not operational.
 - 14.3.3 There is no carbon monoxide monitor in the kitchen.
 - 14.3.4 There is a carbon monoxide monitor in the space around the boiler.

Reasons for Decision

15. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (d), and (g) of the Act nor does it meet the tolerable standard as required by Section 13(1)(h) of the Act.
16. In the application the Tenant complained of a leak in the heating system and of a leak in the kitchen ceiling. At the inspection the Tenant turned on the heating and it was operational. There was no evidence of a leak in the system. Whilst there was staining on the kitchen ceiling there was no evidence of an active and ongoing leak. Moisture meter readings taken in the kitchen did not indicate there was an active leak whilst thermal imaging recorded did not evidence thermal

anomalies to the ceiling or walls to show any active water saturation patterns or drips.

17. The fixtures, fittings and appliances provided by the Landlord in the Property are not in a reasonable state of repair as the light in the kitchen is not working.
18. The Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as there is no carbon monoxide monitor in the kitchen where a gas hob is situated.
19. The Property does not meet the tolerable standard in that it does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as there is no carbon monoxide monitor in the kitchen. On reviewing the photographs taken at the inspection the Tribunal noted that there is a carbon monoxide monitor in the space around the boiler.

Decision

20. The Tribunal determined that the Landlord has 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 Property meets the repairing standard in respect of Section 13(1) (d), (g) and (h) of the Act.
21. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
21 May 2024**