

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Property at 47 John Street, Penicuik EH26 8HL (hereinafter referred to as "the House")

David Sanderson, formerly residing at 47 John Street, Penicuik EH26 8HL (hereinafter referred to as "the Tenant")

Stephen Victor Poole and Carol Roberts Poole, 4 Pomathorn Bank, Penicuik EH26 8 LP (hereinafter referred to as "the Landlord")

Chamber Ref: FTS/HPC/RP/18/0244

DECISION

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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the Landlord at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 2 February 2018 (hereinafter referred to as the "Application") the 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.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

*(b) the structure and exterior of the house including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
(c) 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; and
(d) 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 Tenant complained of the following matters:

- 1 The boiler did not work properly;
- 2 A hole in the exterior wall;
- 3 Dampness in the bedroom; and
- 4 A broken electrical socket in the kitchen.

By letter of 6 April 2018, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act to a tribunal for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Greig Adams, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were fixed for 17 May 2018.

The Tribunal received confirmation from the Tenant that the tenancy of the house has been terminated, and accordingly, under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the Tenant is to be treated as having withdrawn the Application under Section 22(1) of the Act. The Tribunal then considered the Application and whether it should be determined or abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act and resolved that the Application should be determined.

The Tribunal inspected the House on 17 May 2018. The Tenant was neither present nor represented. The Landlord was present.

Following the inspection, the Tribunal held a hearing at George House, Edinburgh. The Tribunal considered the written evidence submitted by the parties. Neither party was present or represented at the hearing, the Tribunal having agreed that the Landlord's attendance was unnecessary.

Submissions at the Hearing

None.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Tenant's Application.

The Tribunal made the following findings in fact:

- 1 The House is a ground floor flat.
- 2 The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 15 December 2017.
- 3 The Landlord was recorded on the Lease as Carol and Steven Poole.
- 4 Steven Victor Poole and Carol Roberts Poole are the registered owners of the House.
- 5 The Landlord employed Saltouns Ltd as its agent.
- 6 The Tenant took possession of the House from 5 January 2018.
- 7 The Tenant ceased to occupy the House from on or around April 2018.
- 8 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 9 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by letter addressed to the Landlord's agent on 13, 22 and 26 January 2018.
- 10 The inspection on 17 May 2018 revealed:
 - a. The House was generally in a fair standard of repair.
 - b. There was no evidence of any holes in the exterior wall..
 - c. The bedroom had been the subject of repairs to the floors and walls and were shown as reasonably free of dampness by the use of a damp meter.
 - d. The gas boiler was functioning properly and a satisfactory Landlords Gas Safety Certificate was displayed by the Landlord.

- e. The socket was in working order and a satisfactory Electrical Installation Condition Report (EICR) was displayed by the Landlord.

A schedule of photographs taken at the inspection is attached.

Reasons for the Decision

Exterior Wall

There was no evidence of any holes in the exterior wall. It was in good condition and had been repointed relatively recently.

Dampness

The bedroom had been the subject of repairs to the floors and walls. The Landlord showed the Tribunal paperwork from the contractors. The walls and floor were observed to be reasonably free of dampness.

Boiler

The gas boiler was functioning properly and a current satisfactory Landlords Gas Safety Certificate as well as one for the preceding year was displayed by the Landlord.

Electrical Socket

The socket was in working order and a satisfactory Electrical Installation Condition Report (EICR) was displayed by the Landlord.

The Repairing Standard

The Tribunal consider that there is no breach of the repairing standard. Accordingly, no Repairing Standard Enforcement Order should be made.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

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 of the 2006 Act

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.

J M McHugh

John M McHugh
Chairperson

Date: 1 June 2018



**PROPERTY AT 47 JOHN
STREET, PENICUIK EH26
8HL (HEREINAFTER
REFERRED TO AS “THE
HOUSE”)**

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SCHEDULE OF PHOTOGRAPHS



1 Kitchen sockets.



2 Carbon Monoxide detector.



3 Boiler.



4 Boiler.



5 Hardwired smoke alarm.



6 Consumer Unit.



7 Gas Safety Certificate.



8 Rear Bedroom.



9 No high moisture levels.



10 No high moisture levels.



11 External walls.



12 External walls.



13 External walls.



14 External walls.



15 External walls.



16 Front Elevation.