

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: PRHP/RT/16/0308

Title no: GLA 46689

Flat 2/2 8 Westmoreland Street, Govanhill, Glasgow, G42 8LD (“The Property”)

The Parties:-

Glasgow City Council, 3rd Floor, Samaritan House, 79 Coplaw Street, Glasgow, G42 7JG (“the Third Party Applicant”)

Mrs Gunwant Kaur, 43 Traquair Drive, Glasgow, G52 2TB; Mrs Gunwant Kaur, 43 Keir Street, Glasgow, G41 2LA; Mrs Gunwant Kaur c/o Property 4 U, 434 Cathcart Road, Glasgow, G42 7BZ (“the Landlord”)

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 Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised:-

Mrs Josephine Bonnar, Chairperson

Mr Kingsley Bruce, Ordinary Member

Background

1. By application received on 20 September 2016 the Third Party applied to the Private Rented Housing Panel 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 by the Third Party stated that the Third Party considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard. The Third Party stated that the Landlord had failed to ensure that (i) 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; (ii) Any fixtures fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Specifically the Third Party stated that the property does not have hard wired smoke alarms, it is not clear if there is a carbon monoxide detector, the door intercom is faulty, the toilet flush mechanism is faulty, the boiler overflow is leaking and no gas safety certificate has been provided.
3. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Third Party on 10 October 2016.
4. Following service of the Notice of Referral the Third Party intimated on 13 October that it did not intend to attend or be represented at the hearing.
5. On 5 November 2016 the Committee issued a Notice of Direction to the Landlord requiring her to provide an up to date Gas Safety Certificate for the property from a Gas Safe registered engineer by 17 November 2016. On 16 November 2016 the Landlord requested a postponement of the inspection and hearing scheduled to take place on 21 November 2016 because the repairman carrying out work to the property had suffered a bereavement. The Third Party confirmed that it had no objection to a postponement and the Committee agreed to the request. On 7 December 2016 the Landlord submitted paperwork to the Tribunal namely an installation certificate for a smoke alarm system and a domestic electrical installation certificate. A gas safety certificate was not produced. On 6 January 2017 the Landlord produced a copy of an invoice relating to work at the property on Gas Safe registered letterhead.
6. The Tribunal inspected the property on the morning of 9 January 2017. The tenant was present. An interpreter, arranged by the Tribunal was also present as the tenant does not speak English. The Landlord and her husband, Mr Singh were also present.
7. Following the inspection of the property the Tribunal held a hearing at Wellington House, Wellington Street, Glasgow. Neither the Third party nor the Landlord attended.

The Inspection

8. At the time of the inspection it was cold and showery. The Tribunal were able to inspect the whole property which is a second floor tenement flat in Govanhill. The property is generally in a reasonable state of repair. The Tribunal noted a number of smoke detectors on the ceiling of the hall. One of these is a hard wired detector. A similar hard wired detector was noted on the ceiling of the living room and also the kitchen. The Tenant indicated that these were installed approximately three weeks prior to the inspection. The Landlord confirmed this and said that the kitchen detector is a heat detector. The Tribunal inspected the door entry system in the hall which appeared to be in working order. The toilet flush mechanism was also checked. The also appeared to be in working order. The tenant confirmed this to be the case and the Landlord indicated that repairs to both have been carried out. An additional detector was noted on the kitchen ceiling close to the boiler. The Landlord advised that this is a recently installed CO detector. It was noted however that a red light flashes intermittently, in the absence of an instruction book or information the Tribunal could not determine whether this light indicated that the detector was active or whether it was flashing possibly as an indication of the presence of low levels of carbon monoxide. The Tribunal inspected the boiler which appears to be at least 15 years old. The pressure gauge indicated that the boiler pressure was relatively high. The Landlord produced a gas safety certificate dated 20 September 2016. The Tenant also produced a copy of same. The Tribunal inspected the exterior of the property, both front and rear. At the rear it was noted that the boiler expansion pipe is running and marks on the wall suggest that this has been the case for some time. During the inspection the Landlord volunteered that the repairs issues at the property relate to the former tenant and that the delay in completing the repairs is as a result of the current tenant being keen to move in quickly and the repairs being carried out while the property is occupied. At the conclusion of the inspection the Landlord indicated that she would attend the hearing.

The Hearing

9. Neither party attended the hearing. Accordingly no evidence was heard.

Findings in Fact

10. The property is a second floor tenement flat in the Govanhill area of Glasgow. The Tenant has resided there with her family since 26 January 2016. The Tenant is Romanian and does not speak English.

11. The Third Party notified the Landlord of the repairs issues at the property by leaving a message on her answer machine and issuing a recorded delivery letter to her on 14 June 2016. A further letter detailing the repairs issues was also sent on 29 June 2016. Following further investigation a further recorded delivery letter was issued on 7 September 2016 relating to outstanding repairs issues.
12. The door entry system and toilet flush mechanism are in full working order. There are hard wired smoke and heat detectors in the hall, living room and kitchen.
13. There is an additional detector on the ceiling of the kitchen. There is water escaping from the boiler expansion pipe and boiler pressure is high.

Reason for decision

14. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection.
15. Neither the Third Party nor the Landlord attended the hearing. No written representations were received from the Third party but it had lodged with the application a copy of the tenancy agreement and a record of its actions in relation to the matter including copy correspondence to the Landlord and recorded delivery track and trace confirmation of delivery of the correspondence. The Landlord did not attend the hearing. The Third Party's information about notification of the repair issues was accordingly unchallenged. The Tribunal is satisfied that the Landlord had appropriate notification of the repairs issues and sufficient time to remedy same.
16. The Landlord did not make written representations but submitted documentation in advance of the hearing. She submitted a Domestic Electrical Installation Certificate which includes the circuits for the smoke alarm. An installation certificate for the hard wired smoke detectors in the hall, living room and kitchen was also submitted dated 26 November 2016. Lastly a copy invoice relating to a variety of repair works was submitted on 6 January 2016. It is undated and not marked as paid. A gas safety certificate was produced at the hearing. At the inspection the Tribunal noted that hard wired smoke detectors are in place and that both the toilet flush mechanism and door entry system seem to be in working order. The Tribunal therefore concluded that there is no breach of the repairing standard in relation to the smoke detectors, the toilet flush mechanism and door entry system.
17. There is no reference in any of the paperwork produced by the Landlord to the CO detector. A detector in the kitchen was identified at the inspection by the Landlord as being a CO detector which was

previously in the hall and has been moved to the kitchen. The Tribunal are concerned at the lack of paperwork relating to same. The Tenant does not seem to have been provided with an instruction booklet. Furthermore, there is an intermittent flashing red light which could indicate the presence of low levels of CO in the air. In the circumstances the Tribunal is not satisfied that the property is currently served by a fully functioning CO detector which meets the repairing standard. The Tribunal is also not satisfied as to the condition of the boiler. Although a gas safety certificate was produced at the inspection it indicates that there is a need for cross-bonding and the certificate contained some recommendations which were not legible. It also indicated that the engineer did not service the boiler. Furthermore, there is evidence of an ongoing water escaping from the boiler expansion pipe which requires investigation and repair.

18. The Tribunal accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(b),(c),(d) and (g). The Third Party did not stipulate subsections (b) and (g) in the application but did identify the external overflow pipe and lack of a CO detector as repair issues in breach of the repairing standard. Accordingly the Tribunal is of the view that it can proceed to make a repairing standard enforcement order in terms of these subsections. The Tribunal concluded that it will require to make a Repairing Standard Enforcement Order in respect of the boiler, gas safety certificate and carbon monoxide detector.

Decision

19. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

20. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

21. 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 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.

Josephine Bonnar

Signed...
Josephine Bonnar, Chairperson

.....Date 20 January 2017

SCHEDULE OF PHOTOGRAPHS:

8 Westmoreland Street, Glasgow

PRHP/RP/16/0308

DATE: 9 January 2017







Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24(1)**

Chamber Ref: PRHP/RT/16/0308

Title no: GLA 46689

Flat 2/2 8 Westmoreland Street, Govanhill, Glasgow G42 8LD (“The Property”)

The Parties:-

**Glasgow City Council, 3rd Floor, Samaritan House, 79 Coplaw Street, Glasgow,
G42 7JG (“the Third Party Applicant”)**

**Mrs Gunwant Kaur, 43 Traquair Drive, Glasgow, G52 2TB; Mrs Gunwant Kaur
43 Keir Street, Glasgow, G41 7JG; Mrs Gunwant Kaur Property 4 U, 434
Cathcart Road, Glasgow, G42 7BZ (“the Landlord”)**

Whereas in terms of their decision dated 20 January 2016 The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘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”) and in particular that the landlord has failed to ensure that :-

- (a) 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;
- (b) 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;
- (c) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
- (d) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the property concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the landlord:-

- (1) to instruct an accredited Gas Safe engineer to inspect and report on the condition of the boiler, identify any defects and thereafter to carry out any

- repairs which are recommended by said engineer, or to replace the boiler with a new one
- (2) to instruct an accredited Gas Safe engineer to inspect the carbon monoxide detector and confirm that it is compliant and in full working order, or replace the carbon monoxide detector with a new one
 - (3) to obtain and exhibit to the Tribunal a gas safety certificate from an accredited Gas Safe engineer.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of four weeks from the date of service of this Notice.

A landlord, tenant or third party applicant 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Josephine Bonnar, Solicitor, Chairperson of the Tribunal at Motherwell on 20 January 2017 before this witness:-

Gerard Bonnar

Josephine Bonnar

Witness

Chairperson

Gerard Bonnar _____ name in full

58 Port Dundas Road ___ Address

Glasgow _____
