

**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: FTS/HPC/RP/19/2312

RE: Property known as ALL and WHOLE the subjects known as and forming 14 Stoneybank Crescent, Musselburgh being the southwestmost house on the ground floor of the block 10, 12, 14 and 16 Stoneybank Crescent, Musselburgh and being part of the subjects referred to in Feu Charter by the Trustees of The Earl of Wemyss and March with consent therein mentioned in favour of the Provost, Magistrates and Councillors of the Burgh of Musselburgh dated Second February and subsequent dates and recorded in the Division of the General Register of Sasines applicable to County of Edinburgh (now Midlothian) on First March all in the year Nineteen Hundred and Twenty Eight.

("The Property")

The Parties:-

**Jeanann Jordan, 14 Stoneybank Crescent, Musselburgh East Lothian EH21 6HP
("the Tenant")**

June Beddard, 259 Ryfields Village, Arena Gardens, Warrington WA2 7GA

("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) in relation to the house concerned, and taking account of the written representations on behalf of the Landlord and the inspection, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Andrew McFarlane – Surveyor/Ordinary Member

Background

- 1) By application dated 19 July 2019 the Tenant applied to the First-tier tribunal: Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) and Section 19B(4) of the Housing (Scotland) Act 2006 (“the Act”).
- 2) The Application referred to a Denise Bramhall as the Tenant’s landlord for the Property. Whilst said Denise Bramhall is listed as the landlord in the lease for the Property, she is the daughter of the Landlord and it is clear she only assists the Landlord in relation to the management of the Property on an informal basis effectively as the Landlord’s agent.
- 3) The Application by the Tenant stated that she considered the Landlord, through the said Denise Bramhall had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - a) The Property had a functioning boiler and therefore had no heating or hot water;
 - b) The Property had a carbon monoxide detector and one was required; and
 - c) The Property had a smoke detection system that meets current legislative requirements.
- 4) By letter dated 6 August 2019 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
- 5) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the said Denise Bramhall and the Tenant.
- 6) Following service of the Notice of Referral, written representations were received from the said Denise Bramhall. Following receipt of those representations, the original date for inspection of the Property and for the Hearing was discharged to allow intimation of the Application and a further date for inspection and Hearing on the Landlord. Intimation of the new date was thereafter made to the Landlord, the Tenant and the said Denise Bramhall. The Tribunal wished to ensure that all parties affected by the proceedings had received notification.
- 7) The Tribunal inspected the Property on the morning of 5 November 2019. The Tenant was present and provided access. The Landlord did not attend the inspection nor was she represented.

- 8) Following the inspection of the Property, the tribunal held a hearing on 5 November 2019 at Riverside House, 2nd Floor, 502 Gorgie Road, Edinburgh. Neither the Landlord nor the Tenant attended nor were they represented.

The Hearing

- 9) As the Landlord and Tenant did not attend the Hearing and there were no representatives, there were no submissions on behalf of either party. The Tribunal therefore required to consider the Application based on the written representations submitted, the Application itself as well as their own findings at the Inspection. The Tenant did however confirm at the inspection that the boiler had been replaced approximately 6 to 8 weeks prior to the Inspection and that the central heating was now working and that she had hot water.

Summary of the Issues

- 10) The issues to be determined are whether:
- a) 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 a proper working order.
 - b) That the Property has satisfactory provision for detecting fires and for giving warning of fire or suspected fire.
 - c) That the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings of fact

- 11) The Tribunal finds the following facts to be established:-

- a) That there is tenancy for the purposes of section 14(1) of the Act.
- b) That the tenancy commenced on or around 2 August 2015.
- c) That June Beddard is the heritable proprietor of the subjects at 14 Stoneybank Crescent, Musselburgh East Lothian EH21 6HP and holds the landlord's interest in the tenancy for same with Jeanann Jordan.
- d) That the Property is an ex local authority ground-floor self-contained two bedroomed flat within a block of 4 such flats. Facing the block from the street the Property is at ground level and to the right-hand side of the block. The roof to the block is of pitched configuration finished with slates whilst outer walls are of brick finished with roughcast and painted. Windows and external doors appear to be modern replacements whilst internally there appears to have been a degree of refurbishment throughout the life of the property.
- e) That there is within the Property one battery powered smoke detector in the living room.

- f) That there is no heat detector in the kitchen.
 - g) That in the hallway there is an inoperative smoke detector.
 - h) That the alarms are not interlinked.
 - i) That the Property does not have satisfactory provision for detecting fires and for giving warning of fire or suspected fire.
- 10) That the Property has a gas fired boiler located within the kitchen to the Property that was in proper working order.
- 11) That there is no carbon monoxide detector within the kitchen of the Property.
- 12) That the Property does not have satisfactory provision for detecting carbon monoxide in quantities hazardous to health.

Reasons for the decision

- 11) The Tribunal was satisfied that the installations in the Property for the supply of gas, electricity or space heating were in a reasonable state of repair and in a proper working order for the following reason:
- a) When the Property was inspected on 5 November 2019, the central heating within the Property appeared to be fully operational.
 - b) The Tenant also confirmed that the boiler had been replaced 6-8 weeks earlier and was working without any issue.
- 12) The Tribunal was not satisfied that the Property had satisfactory provision for detecting fires and for giving warning of fire or suspected fire for the following reasons:
- a) There was only what appeared to be a battery powered smoke alarm within the living room, which when tested was operational but was not interlinked to any other alarm. It was not a long-life lithium tamper-proof detector.
 - b) The smoke alarm within the hallway was inoperative when tested.
 - c) There was no heat detector within the kitchen.
 - d) There was nothing in the fuse box to suggest a separate circuit for a fire detection system.
 - e) All such alarms required to be either hardwired or long-life lithium tamper proof alarms. They also require to be interlinked.

13) The Tribunal was not satisfied that the Property has satisfactory provision for the detection of carbon monoxide in quantities hazardous to health for the following reason:

- a) Despite having a gas fired boiler within the kitchen, the Property did not have a carbon monoxide detector in the kitchen.
- b) There appeared to be an old but inoperative carbon monoxide detector in the hallway.

Decision

- 14) The Tribunal accordingly determined that the Landlord has failed to comply with her duties imposed by Section 14 (1)(b) of the Act.
- 15) The Tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 16) The decision of the tribunal was unanimous.
- 17) The Surveyor/Ordinary Member of the Tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 1) 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.
- 2) 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.

R Cowan

Signed ...

Date 22 November 2019.....

Chairperson

Housing and Property Chamber
First-tier Tribunal for Scotland



Property Address

14 Stoneybank Crescent
Musselburgh
East Lothian
EH21 6HP

*22 November 2019
This is the scheduled
photograph referred
to in the decision
dated 22 November 2019*

Case Reference

FTS HPC RP 19 2312

R Cowan

Chairman

Schedule of Photographs taken during the
inspection by tribunal members on 5th
November 2019





1. Central heating boiler



2. Central Heating boiler controls



3. Smoke detector in Living Room



4. Carbon monoxide detector and alarm along with redundant alarm base in Living Room



5. Smoke detector along with redundant alarm base in Hallway



6. Consumer control unit with no circuit for fire detection and warning

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