

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/21/1253

6 Pinebank, Livingston EH54 6EU (“the property”)

The Parties:-

Damian Mrotek, 6 Pinebank, Livingston EH54 6EU and Justyna Hamberg, 6 Pinebank, Livingston EH54 6EU (“the applicants”)

Newport Asset Management Ltd, Firth Road, Houston Industrial Estate, Livingston EH54 5DJ (“the respondent”)

Tribunal Members

Graham Harding (Legal Member)

Donald Wooley (Ordinary Member)

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 23 May 2021 the applicants applied to the Housing and Property Chamber for a determination of whether the respondent had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated that the applicants considered that the respondent had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the respondent had failed to ensure that:-
 - (a) The house met the tolerable standard.

Specifically the applicant complained that:-

- (i) The Landlord had failed to fix the leaking fridge;
- (ii) The radiator in the living room was hanging off the wall;
- (iii) Water was running in both toilets all the time;
- (iv) The kitchen cupboard doors were hanging off;
- (v) Dampness in bathroom;
- (vi) Leak under kitchen sink'
- (vii) Broken handle on kitchen window;
- (viii) Faulty gas boiler.

3. By Notice of Acceptance dated 27 May 2021 a legal member of the Housing and Property Chamber with delegated powers accepted the application and a Case Management Discussion was assigned.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the respondent on 8 June 2021.
5. By email dated 27 June 2021 the applicants submitted further written representations.
6. By email dated 12 July 2021 the applicants' representative requested a postponement of the CMD and this was granted by the Tribunal.
7. By email dated 2 September 2021 the applicants' representative submitted further written representations including photographs and a report from Dr Stirling Howieson dated 4 August 2021.
8. By email dated 21 September 2021 the respondent submitted written representations to the Tribunal.
9. By email dated 21 September 2021 the applicants requested a postponement of the CMD in order to respond to the Respondent's representations. The Tribunal gave consideration to this request but refused it.
10. A CMD was held by teleconference on 22 September 2021. The respondent was represented by Mr Jim Thomson. The applicants did not attend nor were they represented. The Tribunal determined that an inspection and oral hearing was necessary and the application was adjourned.
11. By email dated 23 September 2021 the respondent submitted copy current Gas Safety Certificate and Electrical Installation Condition Report in respect of the property.

12. The Tribunal carried out an inspection of the property on the morning of 18 November 2021. The applicants were present and the respondent was represented by Krzysztof Gertrudziak and Cameron Scott.
13. A pre-hearing summary and schedule of photographs prepared by the ordinary member of the Tribunal was sent to the parties on 22 November 2021.
14. The applicants submitted written representations by letter received on 24 November 2021.

The Hearing

15. A hearing was held by teleconference on 25 November 2021. The applicants did not attend nor were they represented. The respondent was represented by Mr Jim Thomson. Mr Krzysztof Gertrudziak was also present.
16. Mr Thomson confirmed he had no objection to the Tribunal considering the written representations submitted by the applicants although late.
17. Mr Thomson confirmed that he accepted the pre-hearing summary and schedule of photographs accurately described the issues affecting the property. He went on to say that there were clearly issues needing attention and there was dampness within the property. However, the landlord had been unable to gain the tenants approval to gain access to the property due to a breakdown in the parties' relationship. There had been a period of about three months where the respondent had no staff available to effect repairs due to the Covid pandemic but there had been an impasse over access for about two years. Mr Thomson said that he had a lot of sympathy for the situation the applicants were in and wished to have the necessary repairs carried out but it needed the applicant's co-operation.
18. The ordinary member commented that at the inspection it appeared that ponding in the front garden may not be the cause of the dampness in the living room and that further investigation would be required. Mr Thomson explained that he had previously been unaware of the problem and agreed that further investigation was necessary including considering whether there could be a leak from the adjacent property.
19. With regards to the radiator that had a faulty bracket, Mr Thomson said that someone had attended to remedy the fault and had tried to get it repaired but then the relationship with the applicants had broken down and this had frustrated attempts to complete the repair.
20. With regards to the faulty boiler, Mr Thomson accepted that this needed attention and agreed that it may be connected to the issue with the radiator in the living room.

21. With regards to the leaking fridge, Mr Thomson said that the fridge had been new when the applicants moved into the property. He accepted it may have developed a fault and that it may be as well to replace it as to attempt to repair it as these items had a limited life.
22. Mr Thomson accepted that the kitchen cupboard doors were in need of repair as was the kitchen window handle and the leak in the cupboard under the kitchen sink.
23. The Tribunal noted that the broken door handle on the kitchen door did not form part of the applicants' original complaint and during the inspection the applicants confirmed that the non-stop running of water in the toilets was no longer an issue.
24. Mr Thomson suggested that the way forward would be to arrange a multi-trades inspection of the property with a view to carrying out all necessary repairs over an 8–10-week period.

Summary of the issues

25. The issues to be determined are whether the property meets the Repairing Standard. The applicants have identified a number of issues with regards to the gas boiler, a faulty radiator, a faulty fridge, a faulty window handle, a broken door handle, non-stop running water in the toilets, dampness in the bathroom, a leaking waste pipe, broken cupboard doors and significant damp issues to the extent that they have suggested the property does not meet the tolerable standard. A property may not meet the tolerable standard if for example it has problems with rising or penetrating damp. Mr Thomson on behalf of the respondent has accepted that there are issues affecting the property that require to be addressed by the Respondent but has submitted that access to the property has been frustrated by the applicants otherwise repairs would have been effected. The applicants have submitted detailed written representations and photographs as well as a report from a Chartered Architect/Chartered Engineer, Dr Stirling Howieson.
26. The Tribunal has taken account of both the written representations and the oral submissions in addition to its own observations at the inspection in determining the application.

Findings in fact

27. The Tribunal finds the following facts to be established:-
 - The tenancy is a short assured tenancy
 - Water is condensing on the floor of the fridge;
 - The cupboard doors in the kitchen are ill fitting, poorly hung and in some cases missing;
 - The kitchen window handle is broken;

- There is an apparent leak from the kitchen waste pipe with a high damp reading in the cupboard under the kitchen sink;
- The brackets holding the radiator on the rear living room wall are damaged and the radiator is resting on the floor and there is a high damp reading on the floor and wall plaster in this area;
- There is a high damp reading and defective plasterwork along the mutual wall with number 7 Pinebank as well as damp plasterwork at the front of the living room;
- There was no evidence of ponding in the front garden of the property on the day of the inspection;
- There is an issue with the gas boiler in the property indicative of a drop in pressure in the system;
- The kitchen door handle is broken;
- The respondent has experienced difficulty in gaining access to the property and the relationship between the parties is at best strained.

Reasons for the decision

28. There was no dispute with regards to the extent of the defects affecting the property. Mr Thomson accepted that the pre-hearing summary and schedule of photographs accurately described the issues affecting the property and agreed that remedial works were required. He suggested that the application be continued for the works to be carried out to avoid any adverse finding on the respondent. However, in terms of Section 24 (2) of the Housing (Scotland) Act 2006 where a Tribunal finds that a landlord has failed to comply with its duty under section 14(1)(b) it must impose a Repairing Standard Enforcement Order ("RSEO"). In this case there is no dispute that the property does not meet the repairing standard given the issues identified above. It may well be that the dispute between the applicant and the respondent has exacerbated the problem and the Tribunal wishes to make it absolutely clear to the applicants that they must fully co-operate with the respondent and its contractors by providing access as and when required in order that the remedial works can be completed as soon as possible and within the timescales provided in the RSEO mentioned below.
29. For the avoidance of doubt the Tribunal does not have any jurisdiction in this application to consider any issues with regards to payment of rent or the withholding of rent. The Tribunal is only concerned with determining whether or not the property meets the repairing standard and where it does not ensuring that it is brought up to standard. In this regard it is satisfied that the property does not meet that standard.
30. It appeared at the inspection that there was no longer a problem with the non-stop running water in the toilets or dampness in the bathroom and from the applicants' written submissions it would seem Mr Mrotek has carried out repairs in this area himself.
31. Although the Tribunal noted the broken door handle on the kitchen door at the inspection this did not form part of the applicants' initial application and

therefore cannot be included in any RSEO. It would however make sense for the handle to be repaired when works are being carried out at the property.

Decision

- 32. The Tribunal accordingly determined that the respondent had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 33. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 34. The decision of the Tribunal was unanimous.

Right of Appeal

- 35. 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

- 36. 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.

G Harding

Signed Graham Harding Legal Member

Date 1 December 2021