

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 24(1)Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/22/2126

Property Address: 5/1 East Pilton Farm Crescent, Edinburgh EH5 2GF ("the property")

The Parties: Ms Natasha McGourt, Granton Information Centre, 134-138 West Granton Road, Edinburgh EH5 1PE ("third party applicant")

Mr Richard Elby, 3 Causton Way, Rayleigh SS6 8DD ("the landlord")

Tribunal members:

Mr Mark Thorley (Legal)
Ms Sara Hesp (Ordinary)

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 has failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By application dated 29 June 2022 the third party applicant applied to the tribunal for a determination as to whether the landlord has failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. The third party applicant considered that the landlord had failed to comply with his duty to ensure that the house meets the repairing standard in respect of the following matters, namely:-
 - (a) That the boiler had broken down completely on 8 June 2022 after being faulty for many months and with the consequent result that the tenant had been unable to obtain heating.

- (b) That the washing machine within the property had not worked for a period of three months.
 - (c) That the floor inbetween the kitchen and livingroom was damaged and presented as a tripping hazard.
 - (d) That the livingroom ceiling was bowed and that the attempts to fix same had not been successful.
3. Accordingly the third party applicant set down that the property was not wind and watertight and in all other respects fit for habitation; the structure and exterior of the property (including drains, gutters and external pipes) were not in a reasonable state of repair and in proper working order; the installations to the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and any fixtures, fitting and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.
 4. The third party applicant forwarded along with the application a copy of the Private Residential Tenancy Agreement for the property which had a commencement date of 1 August 2019 together with correspondence between the tenant and "Harry McLeod" of IRD Homes. The third party applicant had also written to the person referred to as "Harry McLeod".
 5. The application was acknowledged by the tribunal on 1 July 2022. On 15 September 2022 the application was accepted for determination by the tribunal.
 6. It is to be noted that the tribunal have regarded the property address as being 1/5 East Pilton Farm Crescent, Edinburgh. The application was made correctly as 5/1 East Pilton Farm Crescent, Edinburgh. Indeed clarification of this was made by the third party applicant by email of 2 August 2022.
 7. Intimation of the application was made on the landlord by letter dated
 8. No representations were received from the landlord.

The inspection

The inspection took place on 25 November 2022. The tribunal members were in attendance. The tenant was present.

The property is a flat in a newly built block of flats –

- (i) Boiler.
The tenant confirmed that the boiler still does not produce heating throughout the house. The operation of the shower was intermittent. She has no gas safety certificate.

- (ii) Washing machine.
The washing machine has now been replaced and is functional.
- (iii) The floor between kitchen/livingroom.
The kitchen/livingroom is open plan. The kitchen flooring has been laid at a level higher than that of the livingroom flooring. As a result tape has been used round the join of the flooring and presents as a tripping hazard.
- (iv) Livingroom ceiling.
The livingroom ceiling has been repaired. There are screws present within it. There remains a depressed crack in the ceiling.

The hearing

A hearing took place by teleconference on 25 November 2022. No parties attended.

Findings in fact

1. The boiler is not in working order. The boiler does not produce heating and hot water is intermittent.
2. No gas safety certificate has been produced.
3. The washing machine is now in working order.
4. The level of the flooring in the kitchen area is above that of the livingroom area.
5. The ceiling has been repaired. Screws have been placed into the ceiling to deal with the crack. The ceiling is cosmetically unsightly.

Reasons for decision

1. The tribunal accepted the evidence of the tenant in that there is currently no central heating in the house. The tenant does not have a copy of the gas safety certificate. The tribunal accepted the evidence of the tenant that the boiler was not in working order. The tenant did not have a copy of the gas safety certificate.
2. The floor between the kitchen and the livingroom was visible. The join had been taped over. Clearly the kitchen floor is at a slightly elevated level. This does present as a hazard. These should be levelled.
3. The tenant accepted that the washing machine was now working.
4. In relation to the ceiling although cosmetically unsightly the ceiling was fixed. This did not constitute a breach of the repairing standard.

Decision

The tribunal determined that the landlord has failed to comply with the duties imposed by section 14(1)(b) of the Act as stated. The tribunal proceeded to make a repairing standard enforcement order as required by section 24(1).

The decision of the tribunal was unanimous.

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.

M Thorley

Legal Member:

Signed:
Chairperson

Date: 15 December 2022

Housing and Property Chamber

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Flat 1, 5 East Pilton Farm Crescent, Edinburgh EH5 2GF

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Schedule of photographs taken on 25 November 2022



Photograph 1: Front elevation

Photograph 2: Living room – general view



Photograph 3: Living room ceiling





Photograph 4: Living room ceiling



Photograph 5: Living room – ceiling/wall above radiator



Photograph 6: Living room – boiler



Photograph 7: Carbon monoxide detector on shelf beneath boiler



Photograph 8: Heat detector – living room



Photograph 9: Kitchen – general view with washing machine



Photograph 10 – junction of kitchen and living room floor



Photograph 11- hallway – smoke detector



Photograph 12 – hallway – central heating control