



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 60(5) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/21/3237

Flat 2/1, 149 Onslow Drive, Glasgow, G31 2QA being the subjects registered in the Land Register of Scotland under Title number GLA71713 (“the Property”)

The Parties:-

Ms Dorothea Hinrichs, residing at Flat 1/2, 32 Craigie Street, Glasgow, G42 8NQ (“The Former Tenant”)

Mr Nacerdine Tcheir residing at Flat 1/2, 295 Golfhill Drive, Glasgow, G31 2NZ (“The Landlord”)

Tribunal Members:

Jacqui Taylor (Chairman) and Kingsley Bruce (Ordinary Member)

1. Background

1.1 The former Tenant leased the Property from the Landlord in terms of the lease agreement between the parties dated 1st July 2021.

1.2 The Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

2. Application

The application by the Tenant dated 24th December 2021 stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She advised that the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order; that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous for health.

In particular the application stated that the work that needed to be carried out was as follows:

2.1 Source of dampness requires to be investigated and addressed.

2.2 Windows need to be repaired or replaced.

- 2.3 Carbon monoxide detector and fire alarms need to be installed.
- 2.4 Floor surface in the kitchen needs to be made level.
- 2.5 Electrical safety check is required.

3. Notice of Acceptance

On 14th January 2022, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that she had considered the application, comprising documents received on 30th December 2021, and she referred the application under Section 22 (1) of the Act to a Tribunal.

4. Minute of Continuation

The Tribunal received confirmation from the former Tenant that the tenancy of the house had been terminated. The Tenant had vacated the Property in January 2022. Under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the Tenant was to be treated as having withdrawn the application under Section 22(1) of the Act. The Tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act; The Tribunal considered the matters detailed in the application and considered that as they included health and safety concerns they would continue to determine the application in terms of Minute of Continuation dated 26th April 2022.

5. Inspection

The Tribunal attended at the Property at 10.30 am on 12th May 2022. The Landlord was present at the inspection.

The Property Flat 1/2, 149 Onslow Drive, Glasgow, G31 2QA is a second floor flat in a four storey traditional sandstone tenement, which dates from circa 1890. The tenement has a communal door entry system. The accommodation comprises lounge, kitchen, two bedrooms and bathroom.

The Tribunal inspected the alleged defects and found:-

5.1 Source of dampness requires to be investigated and addressed.

The only evidence of dampness at the inspection was some slight mould and condensation/ mould on the bathroom ceiling and at window ingoes, internally.

5.2 Windows need to be repaired or replaced.

No defects were identified at the inspection.

5.3 Carbon monoxide detector and fire alarms need to be installed.

There were battery operated smoke alarms in the living room and hall and there was no heat detector in the kitchen. The smoke alarms were not interlinked.

There was also a carbon monoxide alarm fitted to the kitchen ceiling.

5.4 Floor surface in the kitchen needs to be made level.
The Kitchen floor was slightly off level.

5.5 Electrical safety check is required.

After the inspection the Landlord provided the Tribunal with an EICR certificate dated 23rd August 2017. The Report stated that the electrical installation in the Property is satisfactory but it noted that there are no inter connected smoke alarms.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

6. Hearing

This case called for a conference call Hearing at 10.00am on 19th May 2022 2022. The Landlord attended the Hearing. In connection with the matters detailed in the application he advised as follows:

6.1 Source of dampness requires to be investigated and addressed.

There was no condensation in the Property when the former Tenant moved out in January. New tenants moved into the Property recently.

6.2 Windows need to be repaired or replaced.

He acknowledged that the windows were in good order.

6.3 Carbon monoxide detector and fire alarms need to be installed.

He acknowledged that there was a carbon monoxide detector in the kitchen. He didn't know that the smoke alarms that have been installed in the Property do not comply with the regulations.

6.4 Floor surface in the kitchen needs to be made level.

He acknowledged that the Kitchen floor was slightly off level but explained that the Property is over one hundred years old.

6.5 Electrical safety check is required.

He had provided an EICR report dated 23rd August 2017

7. Decision

7.1 The Tribunal found that there was no evidence of dampness in the Property. The evidence of condensation was due to the occupancy of the tenants.

7.2 The Tribunal found that the windows in the Property were not defective.

7.3 The Tribunal found that there was a carbon monoxide alarm installed in the kitchen of the Property.

7.4 The Tribunal found that the kitchen floor was slightly off level and determined that this was consistent with the age of the Property and it did not constitute a tripping hazard.

7.5 The Tribunal found that the Landlord had exhibited a valid EICR certificate.

7.6 In connection with the remaining matters:-

The house does not comply with the Tolerable Standard as it does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1)(h) Housing (Scotland) Act 2006).

The Tribunal determined that the Property does not have the required heat and smoke detectors as specified in the Scottish Ministers' guidance 'Fire detection in private rented properties'.

The guidance requires:

- (i) One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- (ii) One functioning smoke alarm in every circulation space, such as hallways and landings.
- (iii) One heat alarm in every kitchen and
- (iv) The alarms should be ceiling mounted and
- (v) The alarms should be interlinked.

7.7 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Section 13 (1) (h) of the Act, as stated.

8. The decision of the Tribunal was unanimous.

9. 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.

Signed 

Chairperson

Date: 19th May 2022



Pre-hearing inspection summary and schedule of photographs

Property Flat 2/1, 149 Onslow Drive, Glasgow, G31 2QA

Reference number: FTS/HPC/RP/21/3237

Tribunal members Mrs J Taylor (Legal Member) and Mr K Bruce (Ordinary/Surveyor Member)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10.30am on Thursday 12 May 2022. Also in attendance was Mr Nacerdine Tcheir (Landlord).

The inspection of the property was limited to items raised in the application made to the Tribunal on behalf of the former tenant, dated 24 December 2021, the issues and observations are summarised as follows:

1. "Source of dampness to be investigated and addressed"- Evidence of condensation noted affecting the bathroom ceiling and also visible to window in goes internally.
2. "Windows Repaired or replaced"- in the absence of specific complaints, no defects were identifiable.
3. Carbon Monoxide/Fire Detection- See photographs.
4. Floor surface in kitchen- Noted to be off level.
5. Electrical Safety Check.

J Taylor

Kingsley K Bruce, MRICS

Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
12 May 2022

Appendix 1

Schedule of photographs taken during the inspection on 12 May 2022

Condensation marks to bathroom ceiling and window ingoes



J Taylor

Smoke detector



CO detector



Kitchen Ceiling

J. Taylor



U Taylor