

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/21/1895

Title no: FFE21835

34A High Street, Inverkeithing KY11 1NN ("The Property")

The Parties:-

Ms Teodora Gabriella Bokonyi, residing at 34A High Street, Inverkeithing KY11 1NN ("the Tenant")

Mr Steven Lessels, residing formerly at Fleets Villa, Elphinstone, Tranent, East Lothian EH33 2NE and now at 8-12 Church Street, Inverkeithing KY11 1LJ ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and David Godfrey (Ordinary Member)

Decision

The Property does not meet the Repairing Standard. The landlord has not complied with the duty imposed by section 14 (1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. By way of application dated 3 August 2021, the tenant applied to the Tribunal for a determination of whether the landlord had failed to comply with the duties imposed by section 24(1) of the Act in respect of the property.
2. In the application the tenant states that the landlord has failed to comply with his duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the

repairing standard put at issue are those contained within section 13(1)(a), (b), (c) and (d):-

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- Whether 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.
- Whether 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.
- Whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and the property and in proper working order.

3. Notices of referral were issued to parties on 9 November 2021.

Procedure

4. Under normal circumstances, the Tribunal would arrange for an inspection to be carried out early in the process. Due to the continuing effects of the Covid-19 pandemic; a Case Management Discussion (CMD) was arranged in order to discuss further procedure and to ascertain if an inspection was required.

5. A CMD took place by teleconference on 22 December 2021 at 10.00 am.

CMD 22 December 2021

6. The tenant represented herself. The landlord was represented by Rosie Seaward of Ennova Law, Solicitors.

7. Following discussion the Tribunal determined that an onsite inspection required to be carried out by the Tribunal. An inspection and a hearing was thereafter fixed. A Direction was issued to regulate further procedure.

Inspection 21 February 2022

8. The Tribunal inspected the property on 21 February 2022 at 10.30 am. The landlord's father Mr John Lessels attended. The tenant allowed entry for the purposes of the inspection.

Inspection report

9. The Tribunal's schedule of photographs, based upon the inspection conducted on 21 February 2022 was issued to parties for discussion at the hearing.

Documentary evidence on the condition of the property

10. A Gas Safety Certificate dated 16 June 2021 was produced for the property. This highlights the gas fire in the living room has been isolated and that blankets are in the flue. There is no reference to provision for carbon monoxide detection.
11. Two 'Select' electrical certificates, both dated 7 December 2021, were produced by the landlord which evidence the satisfactory electrical condition of the property together with the provision for smoke and heat detection.
12. Following the issuing of a Direction after the CMD, a report in respect of the reported mould in the property was produced on behalf of the landlord. This is based upon a survey undertaken on 11 January 2022 by Graeme Cornwall of Edinburgh Preservation Ltd.

The hearing

13. The hearing took place by teleconference at 10.00 am on 1 March 2022. The tenant participated personally and the landlord was represented by Emma Forrester of Ennova Law, Solicitors. The landlord's father John Lessels was also present.

Summary of Issues

14. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
15. The application by the tenant specifically narrates the following complaints about the property:-
 - i. Fridge rusty and leaking.
 - ii. Washing machine broken and disconnected.
 - iii. Feature fireplace in living room unsafe.
 - iv. Broken window and door handles.
 - v. Mould throughout the home.
16. At the CMD the tenant confirmed to the Tribunal that the fridge and washing machine had both been replaced in August 2021. It was noted that the gas fire in the living room had been isolated and capped. The gas fire was provided at the commencement of the tenancy as part of the heating in the home. She indicated a wish to have the fire

replaced. The tenant reported that the only window which was continuing to cause her a problem was the bathroom window. She continued to complain about ongoing dampness and mould in the home.

Findings in Fact

17. The Tribunal makes the following findings in fact:-

1. The title to the subjects known as 34A High Street, Inverkeithing KY11 1NN is held by the landlord. His interest is registered in the Land Register of Scotland under title number FFE21835 on 24 April 2009.
2. The property which is the subject of this application is a converted former coach house.
3. The property consists of three bedrooms and a bathroom on the lower ground level and a living room, kitchen, bedroom and WC on the upper level.
4. The lease agreement between the parties is a short assured tenancy which commenced on 28 September 2013 for an initial period until 27 March 2014 and which continues to operate by tacit relocation. The named landlord in the tenancy agreement is VM Inverkeithing Ltd and it was signed by Mr John Lessels on behalf of that company. Title to the property is, in fact, held by Mr Steven John Lessels who is the registered landlord. He is the son of Mr John Lessels.
5. The Gas Safety Certificate for the property is dated 16 June 2021. This confirms that the gas boiler and hob in the kitchen are safe. It states that the gas fire in the living room is isolated and capped.
6. The Tribunal's inspection on 21 February 2022 revealed the following:-
 - i. There are hardwired interlinked smoke alarms in the property together with a heat alarm in the kitchen.
 - ii. The replaced fridge and washing machine were both noted to be present in the property.
 - iii. All windows were found to be operational following recent works undertaken by the landlord. Not all the trickle vents were operational (these have now been repaired and are operational).

- iv. There was evidence of mould spots in a number of locations throughout the home. It was evident that these areas had been recently washed, but staining remained. The cause of the problem is high levels of condensation in the property. There was evidence of items of washing being dried in various locations within the home. Limited heating is used by the tenant.
 - v. The living flame coal effect gas fire within the living room is known to be no longer operational and has been condemned by a gas engineer.
7. Reference is made to the pre - hearing inspection summary and schedule of photographs previously issued by the Tribunal dated 21 February 2022.

Reasons for Decision

- 18. The Tribunal determined the application having regard to the bundle of papers which were made available, their findings at their inspection on 21 February 2022, and the representations made by parties at the hearing.
- 19. The Tribunal is only able to consider the complaints which formed part of the intimated application and has an obligation to consider the complaints as at the date of the hearing.
- 20. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient* evidence available to reach a fair determination of the application.
- 21. The Tribunal has based the decision upon the circumstances noted at the time of their inspection together with all sources of documentary evidence.
- 22. The condition of the property as at the date of the hearing remains the same as at the date of inspection conducted on 21 February 2022 with one exception. The trickle vents in the windows have been serviced and repaired and are now operational. The tenant agreed that this is the case.
- 23. As at the date of the hearing, the tenant confirmed, as she had done at the CMD, that she was no longer complaining about the fridge and washing machine. She also confirmed that all windows have now been repaired and are fully operational and that the defective door locks have been replaced.

24. The two live remaining issues were the condemned gas fire in the living room, together with the tenant's ongoing complaints of mould throughout the home.
25. The gas fire was provided as part of the tenancy. There is no dispute that the existing living flame coal effect gas fire in the living room is no longer operational. The tenant is entitled to have this replaced and wishes it replaced. She has placed blankets in the flue due to the draught but is happy that they be removed and will be fully cooperative in the process to have the fire replaced. The landlord is required to replace the gas fire.
26. The landlord has provided a mobile carbon monoxide detector to the tenant via a plumber. This has not been professionally installed. It is essential that the property has adequate provision for the detection of carbon monoxide relative to all sources of gas burning. The landlord requires to evidence this.
27. The Tribunal was satisfied, both by their own inspection and from the terms of the independent report produced on behalf of the landlord that the actions of the tenant and other occupants within the home, are contributing to condensation and mould. There is no evidence of water ingress or dampness from any water ingress. What was seen was the residue of blackspot mould, particularly in the double bedroom on the lower level (where washing was noted to be drying) and to the wall below and around the window at the top of the landing. The Tribunal was satisfied that this is caused partly by condensation due to the number of occupants in the home, together with other everyday activities such as cooking, bathing and the drying of clothes. Importantly however there is a lack of adequate ventilation in the property given its size and type. It was also noted that the heating is only being used for a limited period each day.
28. The Tribunal is satisfied that the tenant has not been given advice from the landlord regarding ensuring that there is adequate provision for ventilation in the property. Such advice should be given. The Tribunal is also satisfied that all of the problems with mould in the property cannot be blamed upon the tenant and other occupants entirely. The Tribunal noted that the kitchen, bathroom and WC do not have any mechanical fan for ventilation. The landlord is required to install these.

Right of Appeal

29. 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.

30. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 2 March 2022 before this witness:-

Legal Member

Witness

Name

Address