

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: Reference number: FTS/HPC/RP/23/2341

Property: 11 Thistle Street, Galashiels, TD1 1LX the property described in disposition to Christina McNeill or Waldie recorded in the General Register of Sasines for the County of Selkirk on 18 August 1969 ("The property")

Parties:

Gordon McPhail, residing at 11 Thistle Street, Galashiels, TD1 1LX ("the Tenant")

Angela Foss, residing at 2 Brockbank, Tweedbank, Galashiels, TD1 1DP ("the Landlords")

Tribunal Members:

Paul Doyle (Legal Member)
Andrew Murray (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 Landlord has 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 the Tenants at the hearing, determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 14 July 2023 the tenant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the repairing standard and fails to meet the tolerable standard.

2. The tenant says that the landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlords have failed to ensure that:-

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 proper working order, in terms of Section 13(1)(c) of the 2006 Act;

and

The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. By interlocutor dated 2 August 2023 the application was referred to the tribunal. By letter dated 5 September 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant. Both the tenant and the landlord made written representations.

5. An inspection of the property took place at 10.00am on 31 October 2023. A hearing took place at 11.45am on 31 October 2023. The tenant was neither present nor represented. The Landlords was present and represented by Mr J McKeown of Jackson Boyd Lawyers.

The Tenant's Position

6. The tenant was not present at either the inspection or the hearing. The tenant left a key to the property with instructions for tribunal members to use the key to access the property and carry out the inspection. The tenant also left written representations dated 31/10/2023 to be placed before the tribunal.

7. The tenant's written representations dated 31/10/2023 say;

Unfortunately, I cannot be here in person today due to work commitments (new job).

However, you can access the flat with key under plantpot – if you could post it through the letterbox when leaving.

I cannot add any further evidence beyond that submitted (mainly emails) – the case discussion should rely on these – the remaining repair standard issue concerns the fridge – never opened etc., or removed by owner/agent.

I first reported it in FEB 2020 .

The smell on opening fridge door will be self-evident etc. Food unable to be kept within. Goes mouldy quickly,

The boiler, as shown in my evidence, was replaced but only after 4 months of being unable to use it as evidenced by my submitted emails.

Note: I am on the verge of moving, still looking for another tenancy, thus the half empty house.

Nb My various other submitted evidence, though outwith the repair issue, will be re-submitted in response to the owner's recent application to evict, not least the owner's/agent refusal to furnish me with a decent reference.

Summary of the issues

8. The issues to be determined are

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 11 Thistle Street, Galashiels, TD1 1LX ("the property"). The landlord let the property to the tenant on 11/12/2019.

(b) The property is a two bedroomed mid terraced dwellinghouse on two storeys. A garden to the front leads to the front door of the property, which opens onto a central hallway providing access to the kitchen and living-room on entry level. A flight of stairs leads to an upper landing providing access to two bedrooms and a bathroom. The property has gas central heating and double glazing.

(c) In June 2023 a new central heating boiler was installed in the property. The most recent gas safety certificate for the property is dated June 2023. In his written representations dated 31/10/2023 the tenant concedes that the central heating boiler has been replaced.

(d) At the hearing, the landlord's representative exhibited a satisfactory up to date gas safety certificate.

(e) The central heating boiler is in good working order.

(f) To the rear of the property there is a modern fitted kitchen. One of the fitted units contains a fridge freezer. The fridge is in good working but would benefit from cleaning.

(g) Carpeted stairs lead from the central hallway to the upper landing. They are narrow and the carpet bears some stains, but the stairs are in good condition and are not faulty.

(l) The property meets the repairing standard. The property meets the Tolerable standard. There is no need for a repairing standard enforcement order.

Reasons for the decision

10. (a) In Form A, submitted on 14 July 2023, the applicant focused on s.13(1)(c) of the Housing Scotland Act which says requires that

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 proper working order, in terms of Section 13(1)(c) of the 2006 Act.

(b) The applicant's specific complaint related to the Central heating boiler, the tenant now accepts that the central heating boiler has been replaced. At the hearing on 31 October 2023 the tenant's representative exhibited a satisfactory, up to date, Gas Safety Certificate.

(c) Tribunal members could see at the inspection on 31 October 2023 that the central Heating boiler is new.

(d) There are no defects in the installation for the supply of space heating and heating water.

(e) The two remaining strands to the tenant's application relate to the fridge provided by the landlord and to the stairs.

(f) The tenant says a bad odour issues from the fridge which is immediately obvious when the fridge door is opened. Tribunal members opened the fridge and found no odour. The fridge was empty and would benefit from cleaning. Tribunal members looked below the fridge freezer and could see no signs of a defect.

(g) At the hearing on 31 October 2023 the landlord's representative exhibited an exchange of emails between the landlord and the local authority. On 30 June 2023 a local authority private sector liaison and enforcement officer, accompanied by an electrician, inspected the fridge, and found no fault.

(h) There is nothing wrong with the fridge.

(i) The final part of the tenant's complaint relates to the stairs. Tribunal members inspected the stairs and walked up and down the stairs. The stairs are narrow with winders. They are carpeted. There is nothing unusual or remarkable about the stair. The stair might not comply with today's building regulations, but tribunal members observations lead them to conclude that the stair complied with the relevant building regulations at the time it was constructed.

(j) There is nothing wrong with the stair in the property.

(k) The tenant says that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(l) The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 incorporated smoke and heat alarms into the tolerable standard in recognition of the danger fire poses to the occupants of a house. The revised tolerable standard includes criteria for '*satisfactory equipment for detecting fire and giving warning in the event of fire or suspected fire*'. There is now a requirement for

- one smoke alarm installed in the room most frequently used for general daytime living purposes (normally the living room/lounge);
- one smoke alarm in every circulation space, such as hallways and landings;
- one heat alarm installed in every kitchen;
- all smoke and heat alarms to be ceiling mounted; and
- all smoke and heat alarms to be interlinked.

(m) No part of the tenant's detailed application engages the tolerable standard. Tribunal members observations lead the tribunal to conclude that the property meets the tolerable standard.

(n) A combination of agreed facts, persuasive evidence, and Tribunal members observations tell the tribunal that the property meets both the repairing standard and the tolerable standard. We therefore dismiss the application.

Decision

11. The tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

12. The tribunal dismiss the application.

13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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.

Signed *Paul Doyle*
Legal Member

31 October 2023