

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24)

Chamber Ref: FTS/HPC/RP/17/0099

Property: the semidetached property situated at and known as 2 Beauly Place, Coatbridge, ML5 4ND ground, being the subjects registered in the Land Register of Scotland under Title Number: LAN116855 ("The Property")

The Parties:-

Mrs Linda Muir, residing at 46 Rosemount Drive, Uphill, Broxburn, EH52 6DE

NOTICE TO

Mrs Linda Muir, 46 Rosemount Drive, Uphill, Broxburn, EH52 6DE ("**the Landlord**")

Whereas in terms of their decision dated 10 February, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined 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:-

- (a) 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;
- (b) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and

The Tribunal now requires the Landlords to carry out such works as are necessary for the purposes of ensuring that the Property concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlords to:-

- (a) commission a certified Electrical Installation Condition Report (EICR) on the entire electrical installations of the Property and all electrical appliances and equipment supplied by the Landlords, which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor; and

- (b) carry out such works as are necessary to rectify any identified issue in the Electrical Installation Condition Report and provide the tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (c) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government guidance for the satisfactory provision for the detection and warning of fires and current building regulations; and

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice.

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.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order (“RSEO”) commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord’s successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding two pages only are executed by Andrew Cowan, chairperson of the tribunal at Glasgow on 20th July 2017 before this witness:-

Andrew Cowan

Signed
Andrew Cowan, chairperson

Donna Jones

Witness
Donna Jones, Secretary, 7 West George Street, Glasgow, G2 1BA

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/17/0099

Property: The property situated at and known as 2 Beaully Place, Coatbridge, ML5 4ND ground, being the subjects registered in the Land Register of Scotland under Title Number: LAN116855 ("The Property")

The Parties:-

Mrs Linda Muir, residing at 46 Rosemount Drive, Uphill, Broxburn, EH52 6DE ("the Landlord")

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 concerned, and taking account of the evidence provided by the Landlord and the Tenant in writing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:-

Mr Andrew Cowan – Legal Member
Ms Lori Charles – Ordinary Member (Surveyor)

Background

1. In terms of a short-assured tenancy agreement the Landlord let the Property to Mr William Hogg (the Former Tenant). By application received by the Housing and Property Chamber on 13th March 2017, the Former Tenant applied for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act);
 - (b) 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 (as required by section 13(1)(c) of the Act);

- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order (as required by section 13(1)(d) of the Act);
 - (d) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed (as required by section 13(1)(e) of the Act);
 - (e) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section 13(1)(f) of the Act); and
3. The Former Tenant noted in his application that he considered that repairs were required to bring the Property up to the repairing standard. The Former Tenant alleged that:-
- (a) The bedroom was uninhabitable as carpet was heavily stained with either human or animal bodily fluids.
 - (b) There was no valid electrical installation condition report for the Property.
 - (c) There was no adequate smoke detection in place in the Property.
4. By letter dated 6th June 2017, the Former Tenant and the Landlord were advised of the decision of the President of the Housing and Property Chamber to refer the application to a Tribunal for Determination.
5. By email dated 12th June 2017 the Former Tenant advised the Tribunal that he was no longer the tenant of the Property.
6. In terms of a minute of continuation dated 16th June 2017 the Tribunal determined to continue to consider the Former Tenant's application and to make a determination in relation to the complaints raised in that application.
7. The Tribunal inspected the Property on 13th July 2017. The Landlord was present during the inspection. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Wellington Street, Glasgow. Neither the Landlord nor the Former Tenant attended the hearing.
8. Photographs were taken during the inspection of the Property by the tribunal. Copies of the photographs taken by the tribunal are attached as a schedule to this report.

Findings of fact

9. The tribunal finds the following facts to be established:-
- (a) The Owner of the Property is Mrs Linda Muir. Mrs Muir let the property to Mr William Hogg on 5th June 2015.
 - (b) Mr Hogg occupied the tenancy in terms of a short assured tenancy agreement until he vacated the Property on or around 12th June 2017.
 - (c) On 13th July 2017 the carpets in the upstairs bedrooms of the Property had been lifted. There is no evidence of any continuing stains or other issues concerning the floor coverings in the bedrooms of the Property.
 - (d) The Property has a hard wired smoke detector situated in the entrance hallway of the Property on the ground floor. A further hard wired smoke detector is situated on the upper

landing of the Property (although it did not appear to be operating correctly as a backup battery had been removed from that smoke detector). These smoke detectors were not interconnected.

Reasons for the decision

10. (a) The Tenant had complained that the bedroom within the Property was uninhabitable as the carpet was heavily stained with either human or animal bodily fluids. The Tribunal noted (as at the date of their inspection) that the Landlord had lifted the carpets within the bedrooms. At the time of their inspection the Tribunal noted that there were bare floorboards within the bedroom of the Property. There was no evidence of the complaint which had been raised by the tenant. In the circumstances the Tribunal were satisfied that there was no failure of the Repairing Standard in respect of this matter.
- (b) The tenant had complained that there was no valid Electrical Installation Condition Report for the Property. The Tribunal had noted that the Landlord had provided an Electrical Installation Condition Report dated 5th April 2017. The Tribunal had issued Direction dated 26th June 2017. At that time the Tribunal had noted that they were not satisfied that the EICR dated 5th April 2017 had been prepared by a suitably competent person. In the terms of the Direction dated 26th June 2017, the Tribunal had directed that the Landlord was to provide an EICR in relation to the Property which must be completed by a suitably competent person. Prior to the inspection of the Property the Landlord had emailed the offices of the Tribunal to confirm that she had been unable to have the electrician complete the necessary further inspection to ensure compliance with the Tribunal's direction. The Tribunal were not satisfied that the Landlord held an EICR in relation to the Property which had been completed by a suitably competent person. Accordingly the Tribunal were not satisfied that the installations for the supply of electricity within the property were in reasonable state of repair and in proper working order and accordingly the Tribunal considered that the Landlord had failed to meet the Repairing Standard in relation to this matter.
- (c) The Tribunal had noted at their inspection that there was one hard wired smoke detector in the hallway on the ground floor of the property and another hard wired smoke detector on the upper landing of the property. They did not consider that these smoke detectors met the requirements of the Scottish Government Statutory Guidance on Satisfactory Provision for Detection and Warning of Fires. The Tribunal noted that the smoke alarms which had been installed within the property were not interlinked. The Tribunal noted that there was no heat alarm in the kitchen. The Tribunal noted that there was no functioning smoke detector in the room which was most frequently used by the occupants for general daytime living purposes. In the circumstances the Tribunal were not satisfied that the Property had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the Property does not meet the Repairing Standard in this respect.

Observations

11. The Tribunal noted that there was a gas boiler in the cupboard off the kitchen in the Property. The Committee noted that there was no carbon monoxide detector located close to this boiler. It is recommended that the Landlord carries out necessary work to ensure the Property meets the requirements of the Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing.
12. The Tribunal noted that there was no evidence that portable appliance testing had been carried out within the Property. It is recommended that the Landlord carries out such works as are necessary to fully comply with the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property.

Decision

13. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the tribunal was unanimous.

Right of Appeal

16. 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

17. 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 _____
Andrew Cowan, Chairperson

Date 20/7/17